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# National integrity systems

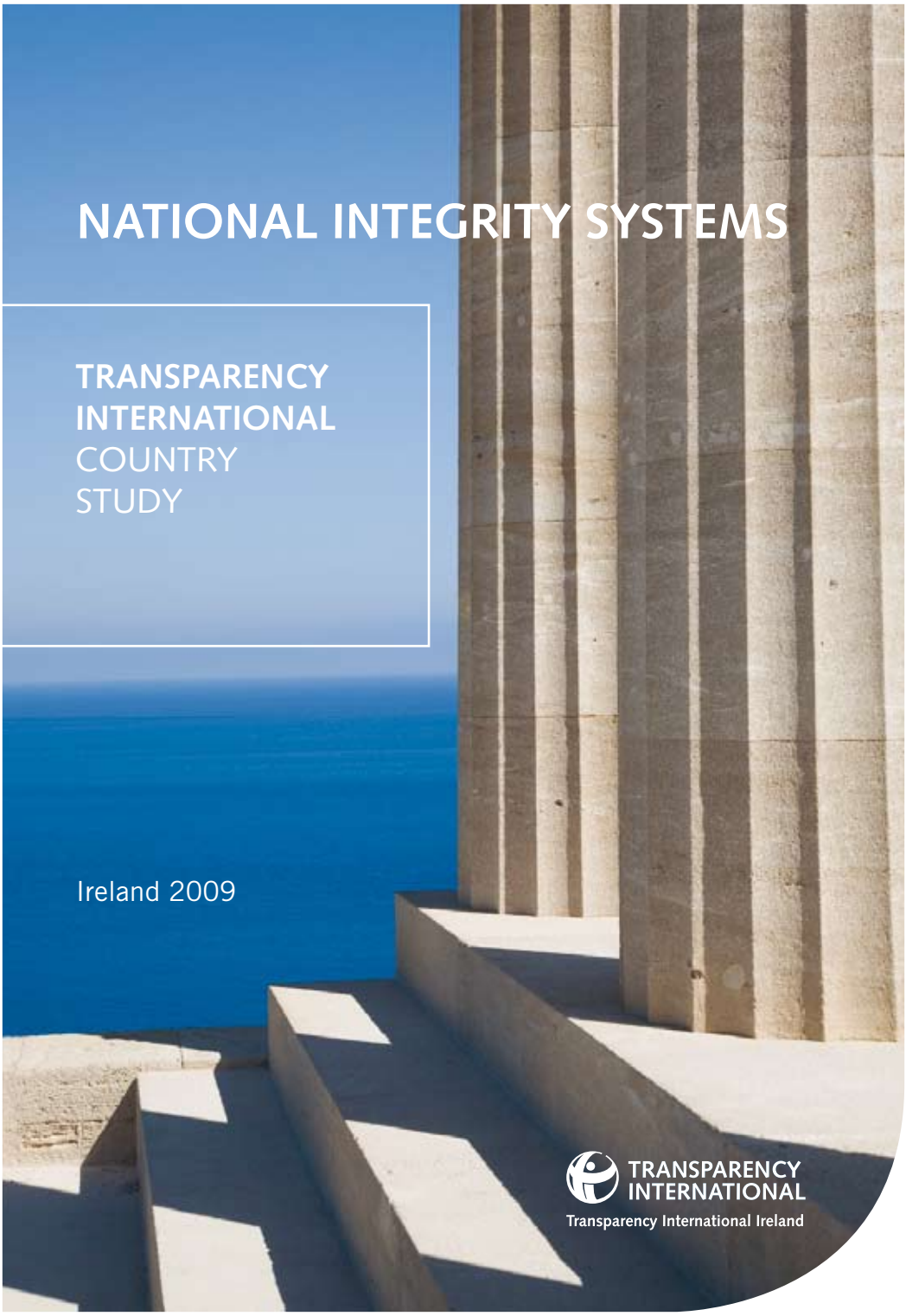
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|---|---|
| Item Type | Preprint |
| Authors | Transparency International |
| Publisher | Transparency International |
| Rights | With permission of the license/copyright holder |
| Download date | 2026-11-09 21:08:23 |
| Link to Item | http://hdl.handle.net/20.500.12424/177437 |

# NATIONAL INTEGRITY SYSTEMS

## TRANSPARENCY INTERNATIONAL COUNTRY STUDY

Ireland 2009



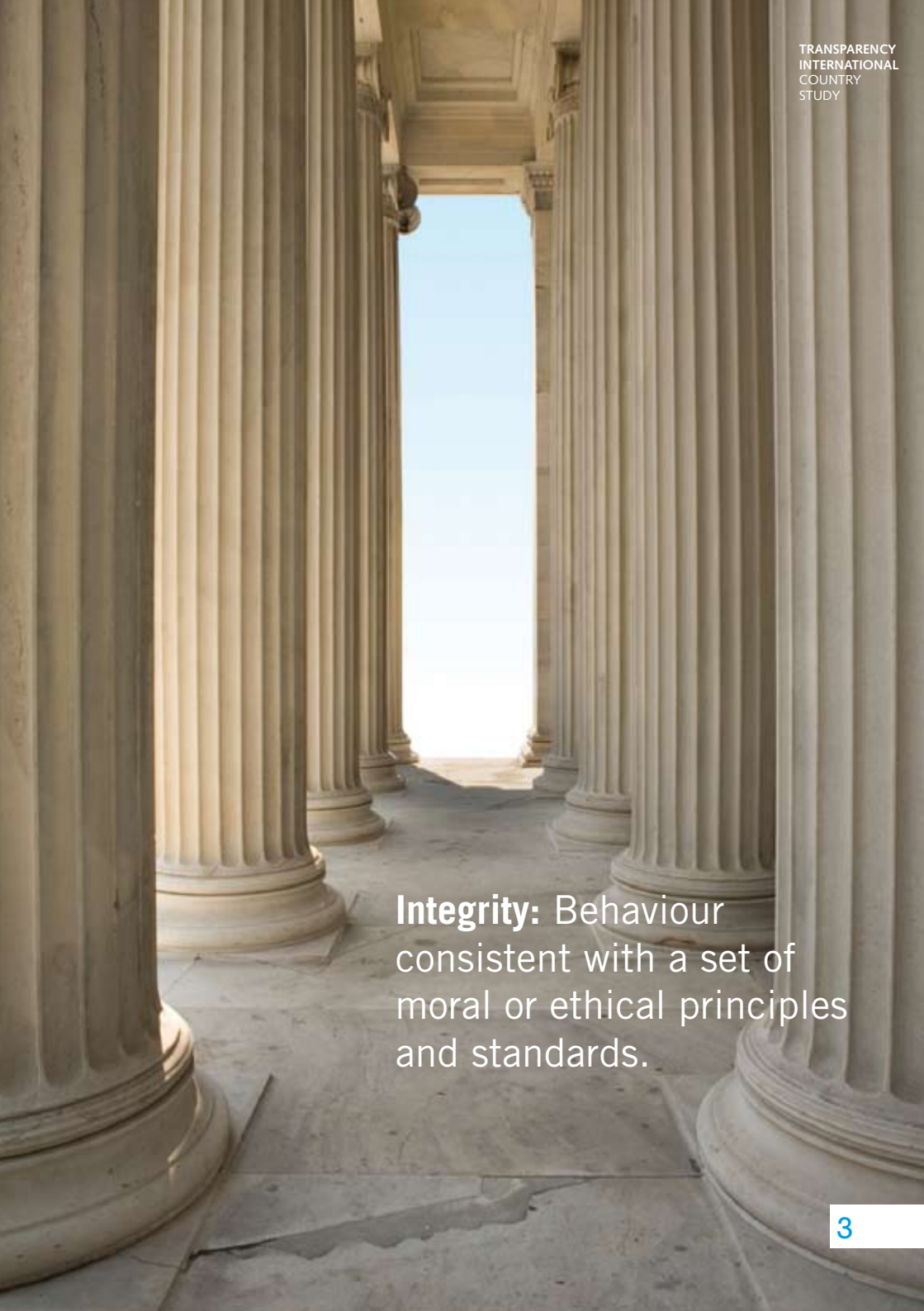
TRANSPARENCY INTERNATIONAL
Transparency International Ireland

# National Integrity Systems

**TRANSPARENCY INTERNATIONAL**
COUNTRY
STUDY

Ireland 2009

TRANSPARENCY INTERNATIONAL
Transparency International Ireland



**Integrity:** Behaviour consistent with a set of moral or ethical principles and standards.

## Note for Readers

Comments and observations on this study are very welcome and can be forwarded to Transparency International Ireland at info@transparency.ie. Future updates and revisions will be posted on its website, www.transparency.ie.

## Research Timeline

Primary research for this National Integrity Country Study for Ireland was led by Dr. Elaine Byrne between June 2006 and November 2006, and led by John Devitt between January 2007 and December 2008.

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## Acknowledgements

Transparency International would like to thank the following individuals and organisations for their comments and observations. We apologise to those we have failed to mention.

Professor Niamh Brennan, University College Dublin
Dr. Mark Callanan, Institute of Public Administration
Professor Dermot Cahill, Bangor University
Dr. Gemma Donnelly Cox, Trinity College Dublin
Ms. Anna Marie Curran
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Dr. Eoin Reeves, University of Limerick
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Department of Community, Rural and Gaeltacht Affairs
The Company Law Review Group
The Competition Authority
Office of the Comptroller and Auditor General
The Courts Service
Office of the Director of Corporate Enforcement
Department of the Environment, Heritage and Local Government
The European Commission
Department of Finance
The Financial Regulator
An Garda Síochána
Garda Síochána Ombudsman Commission
Irish Council for Civil Liberties
Department of Justice, Equality and Law Reform
Office of the Oireachtas Commission
Office of the Ombudsman and Information Commissioner
National Public Procurement Policy Unit, Department of Finance
The Revenue Commissioners
The Standards in Public Office Commission
TASC - Think Tank for Action on Social Change
The Board and members of Transparency International Ireland
The Wheel

Transparency International takes sole responsibility for the content and commentary contained in this study. All material was believed to be accurate at the time of writing. Any corrections and clarifications will be posted on the Transparency International Ireland website at www.transparency.ie.

This study was funded by the Department of Justice, Equality and Law Reform. Core support is provided to Transparency International Ireland by the Joseph Rowntree Charitable Trust.

## List of Acronyms and Abbreviations

| | |
|---|---|
| AG | Attorney General, legal advisor to the Government |
| BCI | Broadcasting Commission of Ireland |
| BCC | Broadcasting Complaints Commission |
| C&AG | Comptroller and Auditor General |
| Cathaoirleach | Chair of either Seanad Éireann or a Local Authority |
| CDB | County Development Boards |
| Ceann Comhairle | Speaker or Chair of Dáil Éireann |
| CEV | Commission on Electronic Voting |
| CPSA | Commission for Public Service Appointments |
| CDBs | County/City Development Boards |
| CAB | Criminal Assets Bureau |
| CPI | Centre for Public Inquiry |
| CPI | Corruption Perceptions Index |
| CPSA | Commission for Public Service Appointments |
| CSOs | Civil Society Organisations |
| CRO | Company Registration Office |
| Dáil Éireann | Lower House of Parliament |
| DPP | Director of Public Prosecutions |
| DIRT | Deposit Interest Retention Tax |
| FARC | Revolutionary Armed Forces of Columbia |
| FATF | Financial Action Task Force |
| FOI | Freedom of Information Legislation |
| GRECO | Council of Europe anti-corruption body |
| GRA | Garda Representative Association |
| GSA | Government Supplies Agency |
| Garda Síochána | National Police Force |
| IAS | International Accounting Standards |
| IAASA | Irish Auditing and Accounting Supervisory Authority |
| IBEC | Irish Business and Employers Confederation |
| ICTU | Irish Congress of Trade Unions |
| IFSRA | Irish Financial Services Regulatory Authority |
| IMF | International Monetary Fund |

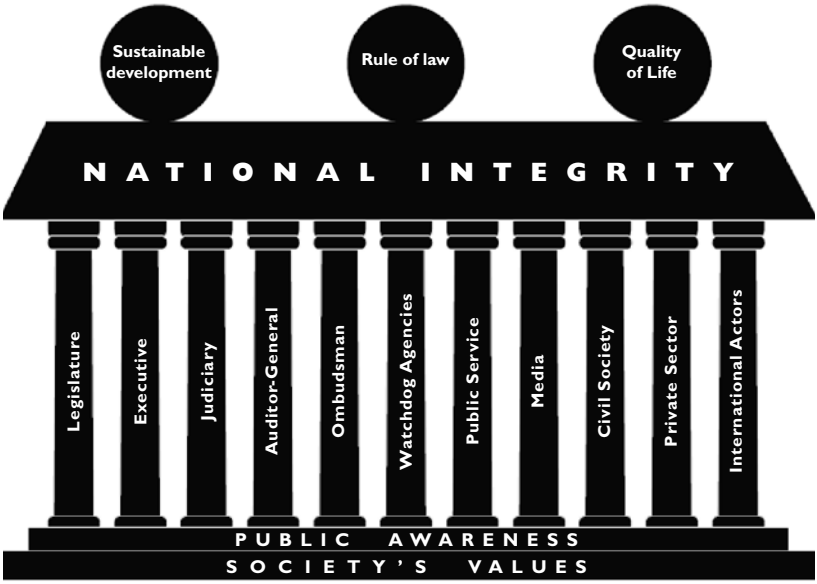
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|---|---|
| IRA | Irish Republican Army |
| ISME | Irish Small and Medium Enterprises Association |
| Leas-Cathaoirleach | Vice speaker or Chair of the House |
| LGAs | Local Government Auditors |
| LGAS | Local Government Audit Service |
| NDFA | National Development Finance Agency |
| NPPPU | National Public Procurement Policy Unit |
| NTMA | National Treasury Management Agency |
| NUJ | National Union of Journalists |
| OPW | Office of Public Works |
| OECD | Organisation for Economic Cooperation and Development |
| Oireachtas | (Houses of the Oireachtas) Parliament |
| ORP | Organisational Review Programme |
| PAC | Committee of Public Accounts |
| PQs | Parliamentary Questions |
| PR-STV | Proportional Representation - Single Transferable Vote |
| PAS | Public Appointments Service |
| PMDS | Civil Service Performance Management and Development System |
| PPPs | Public Private Partnerships |
| PSB | Public Sector Benchmark |
| RIA | Regulatory Impact Analysis or Regulatory Impact Assessment |
| Seanad Éireann | Upper House of Parliament |
| SIPO | Standards in Public Office Commission |
| SPCs | Strategic Policy Committees |
| STRs | Suspicious Transaction Reports |
| Taoiseach | Prime Minister |
| Tánaiste | Deputy Prime Minister |
| TD | Teachta Dála (Member of Parliament) |
| TI | Transparency International |
| VFM | Value for Money |

## What is the NIS?

The National Integrity System encompasses the key institutions, sectors (the 'pillars' as represented in Figure 1), culture and activities that contribute to integrity, transparency and accountability in a society. When it works properly, the NIS combats corruption to support sustainable development, rule of law and human rights. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

Figure 1: The National Integrity System 'Temple Diagram'



## Why Conduct NIS Studies?

The purpose of each NIS study is to assess the National Integrity System, in theory (laws and institutions) and practice (how well they work). The studies provide benchmarks for measuring further developments and a basis for comparison among a range of countries. The studies signal areas requiring priority action and also form the basis from which stakeholders may assess existing anti-corruption initiatives. NIS studies help explain, for example, which institutions or sectors, otherwise known as 'pillars' have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. The studies create a strong empirical basis that adds to our understanding of strong or weak performers. For Transparency International, National Integrity Studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern National Integrity Systems. More than 75 such studies had been completed as of late 2007. TI believes that it is necessary to understand the provision for and capacity of the integrity pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks.

## National Integrity Study Methodological Note

The study provides a brief overview of Ireland's political and economic history and environment; a summary of key incentives and opportunities for corruption; a synopsis of efforts to tackle the phenomenon since 1854; and recommendations designed to strengthen Ireland's NIS further. The main body of the study is dedicated to providing an outline of sixteen NIS 'pillars', including the Executive, Legislature, Judiciary, Media, Civil Society, Business, and Public Contracting System. Each pillar is examined under the headings of 'Role and Structure', 'Accountability, Integrity and Transparency Mechanisms', 'Complaints and Enforcement Mechanisms', and 'Relationship with other NIS pillars'.

While the study's main purpose is to assess safeguards and efforts against corruption (defined by TI as 'the abuse of entrusted power for private gain'), the pillar section of the study also highlights those systems and dynamics that affect the State's ability to prevent the abuse of power more generally. This stems from the logic that measures designed to promote good governance overall are supportive of

those designed to prevent corruption in the narrower sense of the word.

It offers a qualitative assessment of the integrity system in Ireland and is based on both objective and subjective sources of data. The studies therefore required desk research, face-to-face and phone interviews and involved the organisation of an expert workshop on 4 September 2006 with further consultation on first and subsequent drafts of the study. The study was conducted according to an international terms of reference and international guidelines designed by Transparency International Secretariat's Policy and Research Department in Berlin.

The NIS Study for Ireland was refereed by three independent scholars, one of which was based outside Ireland. Quality control was directed by Sarah Repucci and Finn Heinrich, Policy Coordinators at TI Secretariat.

The definition of corruption used in this study is 'the abuse of entrusted power for private gain'. Integrity can be defined as 'behaviour consistent with a set of moral or ethical principles and standards'.

This study's focus is on Ireland or Éire (commonly known as the Republic of Ireland).

# EXECUTIVE SUMMARY



# EXECUTIVE SUMMARY

*Overview*

Ireland has made substantial progress in strengthening legal and institutional safeguards against corruption over the past fifteen years. In addition, the scale of **'petty corruption'** is perceived to be amongst the lowest measured anywhere in the world. In spite of a number of revelations of political **'grand corruption'** during the 1980s and 1990s, there is little evidence that this type of corruption currently poses a major threat to the integrity of the State.

Significantly however, Ireland is regarded by domestic and international observers as suffering high levels of **'legal corruption'**. While no laws may be broken, personal relationships, patronage, political favours, and political donations are believed to influence political decisions and policy to a considerable degree. The situation is compounded by a lack of transparency in political funding and lobbying.

This National Integrity System (NIS) Country Study for Ireland highlights a range of strengths and weaknesses in legislation, law enforcement, and other aspects of government policy and business practice.

*Strengths and Weaknesses*

The study notes the efforts made by successive governments and legislators in addressing **conflict of interest** through legislation and codes of conduct. It also takes account of successive governments' role in promoting transparency and accountability through the establishment of bodies such as the **Standards in Public Office Commission (SIPO)**, **the Criminal Assets Bureau** and the **Office of the Director of Corporate Enforcement**. Concerted efforts have also been made to reform accountability and integrity systems within **An Garda Síochána** (the Irish police service).

Proposals on the reform of Local Government and electoral governance have been brought forward to public consultation. Meanwhile **audit committees** have been established in local authorities to improve financial transparency and oversight. Continued **computerisation** of some administrative functions including the filing of courts' and Garda files as well as public contracting and planning applications will also greatly help in preventing corruption. More recently, the Irish Government appears to have reacted positively to criticism by international organisations of its efforts to tackle bribery in international business transactions.

Overall Ireland's NIS could be described as relatively strong by global standards. Ireland is a parliamentary democracy with a Constitution providing for the **separation of powers** between the Executive, Legislature and Judiciary; an independent Comptroller and

Auditor General; and guaranteeing certain fundamental human rights. **Asset Disclosure** and tax compliance declarations by politicians and Office Holders go some way to preventing conflicts of interest.

Ireland also has a **professional Civil Service** with a merit-based appointment system and a **Public Service Modernisation** programme that has increased accountability and efficiency within the sector. Elections are free and fair with little reporting of electoral fraud or irregularities. There is no Executive interference in the work of the Director for Public Prosecutions, while **no cases of Judicial corruption** have ever been recorded. There is also relatively little undue State interference in the work and governance of civil society organisations, business or the media.

Nonetheless there are significant gaps in Ireland's NIS that undermine the quality of Ireland's democracy and standards of governance. A tradition of **self-regulation** and a **crisis-led approach** to fighting corruption within Ireland's public service, professions, civil society and business has yet to be overcome. This is particularly evident in the financial and business sector, where **weak enforcement** of a principles-based approach to financial regulation has led to the country being branded by the New York Times as the 'Wild West of European Finance'. Anti-corruption planning has rarely been undertaken by Government or law enforcement agencies. There are no clear **statistics** produced or published by the Gardaí on investigations or prosecutions for corruption, money laundering or the foreign bribery offence. Neither is it clear whether adequate resources are being applied to either the investigation of corruption and money laundering or the confiscation of the proceeds of corruption.

Comprehensive **whistleblower safeguards** have yet to be fully implemented across both the public and private sector, with the Government instead adopting a sectoral approach to shielding those employees who report concerns of public interest in good faith. There is no compulsion on civil servants to report evidence or instances of corruption. Anonymous reporting to the authorities is not permitted for offences under the Ethics or Prevention of Corruption Act.

Given the acknowledged role that transparency has in preventing corruption, it is surprising that the Irish Government has **curtailed access to official information**. The Freedom of Information (FOI) Act has been weakened by the introduction of fees for access to non-personal information and charges of €150 for appeals. The fees which are amongst the highest in the world, have led to a dramatic fall in the number of requests for information from both the media and general public. The study also notes the **exclusion of An Garda Síochána** from the list of institutions

covered by the FOI Act. The omission of Ireland's police service from the list of bodies covered by FOI is believed to make her unique among industrialised democracies.

The study finds the Irish media still plays a central role in exposing and thus preventing corruption. While there have been reforms of the libel regime, future attempts to expose corruption could be hampered by proposed **privacy legislation** that could allow court injunctions to be placed against media investigations and prevent publication of any report into alleged wrongdoing.

The Executive is widely believed to have **excessive discretion** in a number of democratic functions, including control over the legislative agenda. This poses a potential barrier to the ongoing development and reform of Ireland's legal and institutional environment. The way in which the annual budget is formulated also poses some danger of undue interference in this process. Ministers also have a great degree of discretion over the **appointment** of members of the Judiciary and board members of public bodies. The risk of patronage and corruption is particularly high in the appointments process to the boards of some public bodies, which in most cases provides sole responsibility for appointments to individual Ministers. This risk is heightened by the **delegation** of duties away from the Civil Service to agencies and bodies not subject to full parliamentary scrutiny.

There are numerous reported cases of **procurement guidelines** being **circumvented** by public officials. This has exposed the public contracting system to the possibility of significant abuse and waste. Furthermore there are few sanctions or remedies arising from abuses of the public procurement system beyond those available through the courts.

At a national level, **influence-selling** has yet to be completely outlawed, while **political funding** remains **open to abuse** through loose thresholds on political donations and weak disclosure criteria for political parties. **Political lobbying** is entirely unregulated. Political parties are not required to publish audited accounts. A proposed amendment to Ireland's **Ethics laws** would treble the size of gifts and loans politicians can receive without declaring or surrendering them. Official **expenses** claimed by parliamentarians are also largely unaccounted for.

The study also reports that while **codes of conduct** and legislation aimed at curbing corruption are in place for public representatives and officials, there appears to be little understanding and repeated transgression of the codes at national and local level. The codes are further undermined by **unclear boundaries** of responsibility on their enforcement, with an Oireachtas Committee responsible for monitoring the conduct of its members, and the SIPO and the Cabinet sharing responsibility for

advising on and preventing abuse by Office Holders. The SIPO is unable to appoint an official to undertake preliminary inquiries into suspicions of misconduct by Officer Holders without a formal complaint.

The risk of fraud and corruption is particularly acute within **Local Government**. The risk is heightened by the lack of adequate safeguards against planning corruption, false accounting, misuse of resources, influence-selling and fraud. A survey by the Department of the Environment in 2006 showed that few local authorities had adequate resources or systems in place for audit. Furthermore only 7 out of 34 local authorities had **fraud and corruption plans** in place. This should be of grave concern given the economic incentives for corruption created by Ireland's planning system.

The possibility that Irish companies and nationals may be involved in **trans-national corruption** has, up to recently, been neglected by the Irish authorities. Eleven years after it was signed, the OECD Convention on Combating Bribery in International Business Transactions is now being implemented. In addition Ireland has yet to ratify the **United Nations Convention against Corruption** or the **Council of Europe Civil Law Convention on Corruption**. Given the political priority given to fighting drugs smuggling, arms and human trafficking and global terrorism, it is regretful that so little energy has been spent in addressing a problem that is central to the growth of international organised crime and political instability.

Ireland already has a sound legal and institutional framework upon which future progress can be made. For this to happen, **existing institutions** will have to be **adequately resourced**, and **laws adequately enforced**. Just as importantly, a shift in **political will** and **general attitudes** to corruption and abuse of power will be needed. The electorate has regularly elected and re-elected politicians who are either suspected of, or found to have broken the law or ethical standards. Cultural attitudes to corruption in Ireland may have to change. However it is the responsibility of the country's political leadership to effect that change. It can do so by committing itself to ongoing review, reform and support of Ireland's National Integrity System.

### Table 1: Key Strengths and Weaknesses of NIS Pillars

| Pillar | Strengths | Weaknesses |
|---|---|---|
| The Executive | Separation of powers well defined<br>Clear Codes of Conduct and Cabinet Handbook<br>Regulatory Impact Analysis<br>Public Sector Modernisation Programme | Post employment restrictions not in place for office holders |
| The Legislature | Committee System | Executive domination of the Legislature exercised through parliamentary majority<br>Expense system open to abuse<br>Little oversight of appointments to State Bodies |
| Political Parties | Few barriers to participation or party formation<br>Strong representation of local constituencies | Little financial transparency |
| Electoral Commission | N/A | N/A |
| Anti-Corruption Commission (Standards in Public Office Commission) | Ability to launch investigations on own initiative<br>Comprehensive and detailed annual reporting | Unlikely to launch formal inquiries without a complaint<br>No role in oversight of political lobbying |
| Judiciary | Constitutional independence | No ethical or disciplinary framework in place<br>Potential for political interference in appointments |
| Ombudsman | Independence and impartiality | No remit for a range of public bodies |
| Civil Service / Public Sector Agencies | Professional and well paid<br>Merit-based appointment system | Freedom of Information law not applied evenly across public sector<br>Inadequate public consultation on draft legislation |
| Law Enforcement Agencies | Reforms strengthened oversight and disciplinary mechanisms<br>Criminal Assets Bureau | No Garda Anti-Corruption Unit<br>No corruption statistics published |

| Pillar | Strengths | Weaknesses |
|---|---|---|
| Media | Largely independent and free from State interference | No anti-bribery policies in place for journalists<br>Little tradition of investigative reporting |
| Local and Regional Government | Strong codes for Councillors and Members of Staff | Few Fraud and Anti-Corruption Plans in place<br>Poorly resourced internal audit function<br>Councillor Registers of Interests not published on Internet |
| Civil Society | Few barriers to formation of Civil Society Organisations | Over reliance on State funding<br>Potential barriers to advocacy for charities<br>Self regulation of professions |
| Business Sector | Relatively little red-tape or administrative barriers to doing business or registering businesses | Legal whistleblowing safeguards largely absent<br>Few companies with anti-corruption safeguards in place<br>Weak regulatory enforcement |
| International Institutions | Prominent role in regulation of markets and anti-corruption peer review | Little visible coordination of anti-corruption efforts |
| Supreme Audit Institution | Independence guaranteed by Constitution | Power to report limited by resources available |
| Public Contracting System | Comprehensive guidance offered by National Public Procurement Policy Unit | Little centralised oversight of procurement practice<br>Criteria and evaluations may be set by same official<br>Shelf companies awarded large public contracts<br>Public Sector Benchmarks and evaluations not published |



# PRIORITIES AND RECOMMENDATIONS

# PRIORITIES AND RECOMMENDATIONS

## General Recommendations

1. **Protect whistleblowers.** Anti-corruption safeguards can also be reinforced through the introduction of whistleblower protection for all private and public sector employees. A timetable for the introduction and full implementation of whistleblower legislation should be published as a priority. Such a measure would help instil public confidence in the ability of the State and business to effectively prevent and control the abuse of power and corruption.

2. **Ratify international Conventions against Corruption.** Longer term efforts to tackle corruption will depend on the Government's ability to articulate a suitable roadmap for action. Both the NIS framework and international conventions against corruption provide an internationally-recognised blueprint for governments to promote accountability in politics, government and business. The Irish Government has already signed the UN Convention and Council of Europe Civil Law Convention on Corruption but has yet to ratify these international treaties. Ratification will not only signal the Government's ambition to fight corruption, but will also provide an important reference against which it can measure its own performance.

3. **Establish a Register of Lobbyists.** The Government has committed itself to consider legislation for a Register of Lobbyists in its Programme for Government 2007. The form of a Register and its administration should be open to public and professional consultation with Government proposals brought forward as a matter of priority.

4. **Support law enforcement agencies.** Additional resources should be allocated for agencies such as the Director of Corporate Enforcement, the Competition Authority, the Criminal Assets Bureau, and the Garda Bureau of Fraud Investigation. The economic benefits arising from tackling corruption are self evident and could represent a multiple of the initial investment by the State in these agencies. This is no less true than for the Criminal Assets Bureau which, with sufficient evidence and resources, could recoup much of the cost of corruption Tribunals by seizing the proceeds of corrupt payments identified in Tribunal reports.[1]

1 In July 2006 the Criminal Assets Bureau secured a High Court 'corrupt enrichment order' freezing lands belonging to Jackson Way Properties Ltd valued at €53 million. The estimated cost of the Mahon Tribunal in 2006 was €58 million.

5. **Introduce a Corruption Immunity Programme.** Corruption is a conspiratorial crime. Parties to a corrupt transaction rely on secrecy and the knowledge that they are both criminally implicated. An immunity programme aimed at encouraging conspirators to 'break ranks' could improve rates of reporting and detection of corrupt transactions. A Cartel Immunity Programme offering immunity to witnesses involved in price fixing and bid rigging already exists. Witnesses to Tribunals of Inquiry are also immune from prosecution arising from evidence they present to the Tribunal. Applications for immunity would be made on the basis of full disclosure to the relevant law enforcement/ anti-corruption agency before a complete file is submitted to the Director of Public Prosecutions (DPP).

6. **Reform Freedom of Information fee system.** The capacity of citizens to hold their public servants to account will also be boosted greatly by the reform of the Freedom of Information system of fees. These fees and cost of appeals have proved to be prohibitive for both media and citizens in fulfilling their right to public information. Costs for appeals and reviews are not justifiable and should be removed entirely. In addition, the scope of the Freedom of Information Act should be expanded to all public and semi-state bodies including An Garda Síochána.

Of the sixteen pillars examined in this National Integrity Systems Study, three in particular appear particularly vulnerable to the risk of corruption. The public interest would be greatly served by introducing new and reinforcing existing safeguards against the abuse of power in the following areas as a priority:

## Local Government

1. Local authorities should ensure that all members' **declarations of interest** are posted in a prominent and accessible area of every local authority website.

2. **Fraud and anti-corruption alert plans** should be implemented and placed online. Local authorities should be required to publish periodic reports on specific steps taken to implement these plans.

3. Adequate **funding** should be made available for ongoing training and resourcing for an effective **internal audit function** in every local authority.

4. Government should consider how economic incentives for corruption in **planning and rezoning** can be mitigated and move to address them promptly.

## Political Parties

1. The threshold for **disclosure of donations** to political parties should be reduced significantly. Spending limits should also be

set for electoral spending in local elections by an independent Electoral Commission.

2. Political parties should be compelled by law to submit annual independently **audited accounts** to the Standards in Public Office Commission and/or any new Electoral Commission and to publish those accounts on their websites in a timely manner.

3. Any increases in reporting thresholds under the Ethics Acts for **gifts and loans** to politicians should only be set in line with inflation.

## Public Contracting

1. Greater **centralised coordination** of procurement policy, reporting and monitoring of public procurement practice is needed. An independent national procurement body could help reduce the cost of appeals and arbitration; oversee induction and training; and monitor certain contracts, tendering and bidding processes.

2. The Comptroller and Auditor General should publish an **annual report** on compliance with procurement policy on contracts over a certain value. Particular emphasis should be placed on the effectiveness of procurement strategy and policy; tendering and evaluation processes; arbitration; and the management of anti-corruption/fraud strategy.

3. In order to **prevent conflicts of interest**, those staff responsible for establishing criteria for public contracts over a certain value should not be involved in the evaluation of the same contracts.

4. **Shelf companies** established for the term of the contract should show that they have sufficient collateral to cover any risk associated with the performance or failure to deliver on the terms of the contract. At the bidding stage, liable persons representing the bidder/contractor should be identified, as should clear legal remedies for the contracting authority where the contractor defaults on the terms of the contract. This should preclude the awarding of state contracts to companies holding bank accounts that cannot be inspected in the event of a criminal investigation or where the beneficial owners are not identified.

5. Making **Public Sector Benchmarks and evaluations** subject to the terms of the Freedom of Information Acts after a specified length of time would help build public and business confidence in the integrity of Public Private Partnerships (PPPs). There is a strong case, both in economic and accountability terms, for making the PPP process more transparent.

# Additional Recommendations

## Executive

1. Appointments to the **Boards of State bodies** should be subject to open competition. The recruitment process should be managed by the Public Appointments Service. An Oireachtas committee could have a role in monitoring potential conflicts of interest and assessing the suitability of candidates for board membership in key state bodies.

2. Workable **moratoriums ('cooling off periods')** should be set and enforced on the appointment of former Government Ministers to posts in the private sector upon retirement or loss of their post. This would go some way to prevent potential conflicts of interest arising where a Minister was responsible for making decisions affecting a future employer/s. In line with good practice in other jurisdictions, a 'cooling off period' of one year should be set for former Ministers entering into the private sector where an appointment would pose a real or reasonable perception of a conflict of interest.

3. Government should undertake an assessment of the potential effects of new ethics, electoral and anti-corruption legislation, regulations or regulatory amendments through a full **Regulatory Impact Analysis**.

## Legislature

1. An overhaul of the **expense** and **allowance** system for members of the Legislature is needed to enhance public confidence in the integrity of politicians and prevent abuse and waste of State resources. Receipts should be presented to the Oireachtas Commission Secretariat for all claimable expenses.

2. The **codes of conduct** for Oireachtas members should be reinforced by regular training of persons who have obligations under the Ethics and Electoral Acts.

3. **Chairs of Oireachtas Committees** should be designated as 'Office Holders' for the purposes of the Ethics Acts.

## Anti-corruption Agencies

1. The Standards in Public Office Commission should be granted the authority to adopt less formal procedures in order to make initial inquiries into apparent breaches of the Electoral and Ethics Acts by Office Holders. Such inquiries led by an **Inquiry Officer** should be authorised without a formal complaint. This would go a long way to cutting the cost and time involved in launching a formal investigation; avert any unnecessary publicity surrounding an Office Holder; and thus help to safeguard the reputation of those subject to any inquiry.

## Judiciary

1. A **Judicial Ethics Bill** should be published and open to consultation as a priority. This legislation should provide for an independent statutory-based Judicial Council and clear disciplinary procedures to regulate judicial conduct and ethics.

## Civil Service/Public Sector Agencies

1. The **Official Secrets Act** should provide for a defence of reporting of public interest concerns in good faith by civil servants. In addition, the commercial interests of public contractors should not be held as grounds for preventing an individual from reporting evidence of irregularities or wrongdoing to his employers or the authorities.

## Law Enforcement Agencies

1. An adequately resourced, specialised **Anti-Corruption Unit** should be established within An Garda Síochána with specialised staff recruited from Garda ranks and qualified professionals. This would have responsibility for investigating all offences indictable under the Prevention of Corruption Acts (and related legislation).

2. Coordination of agency efforts could also be enhanced by establishing an **inter-agency task force on corruption** (similar to that already established to tackle money laundering and foreign bribery). Such a task force could identify strategic priorities for the multitude of bodies responsible for preventing and investigating corruption and economic crime. It would also be responsible for publishing annual statistics on investigations and prosecutions, and above all, for ensuring an adequate flow of information between State agencies, government departments, and international bodies such as Interpol and the OECD. An annual report would also help public representatives, policy makers, and the general public better understand how the State is getting to grips with bribery and corruption. Social partner engagement and feedback could also be facilitated through an informal anti-corruption consultative forum of public and private sector/civil society organisations.

3. An officer corps or **fast-track system** should be introduced within An Garda Síochána to allow suitably qualified individuals contribute in specialised roles. Fast tracking would also assist in creating a clear delineation between management and front-line policing.

## Media

1. Newspaper organisations and journalist associations/unions should include clear **no-bribe** and **conflict of interest policies** or standards in professional codes of conduct.

## Business Sector

1. Business leaders need to foster a **culture of zero-tolerance** towards corruption. Supply-side corruption undermines Ireland's competitiveness, productivity and attraction to foreign investors. Taking into account their size, sector, activity and risk exposure, Irish businesses need to invest more in anti-corruption controls, internal reporting systems, education and training.

2. Safeguards should be integrated into company law that **protect employees** in the private sector against reprisals for reporting issues of public/stakeholder concern to their employers or the authorities.

3. A system of **financial penalties** for civil breaches of competition law should be introduced to complement criminal prosecution as a deterrent to anti-competitive activity.

## Civil Society

1. Political activity under the Electoral Act and Charities Bill should be more clearly defined. **Political activity** should refer exclusively to any activity undertaken to advance the goals or interests of a political party or a political cause during an electoral or referendum campaign.

2. Civil society organisations need to **diversify sources of funding**. This is particularly the case for advocacy organisations that must remain independent of any one or a collection of donors.

3. **Audited accounts** for all civil society organisations with annual income over €100,000 should be published on their websites

4. A fully independent **Legal Services Ombudsman** should be established with the power to initiate investigations into alleged misconduct by solicitors and barristers upon a complaint by a client; and the power to make awards in favour of clients. Further consideration should also be given to how legal fees could be reduced to facilitate a higher number of successful economic crime prosecutions through the courts.

5. **Religious organisations, Professional Organisations** and **Trade Unions** should take a leadership role in promoting the principles of trust, transparency and responsibility across government, business and civil society.

# COUNTRY PROFILE



# COUNTRY PROFILE

Ireland (Éire, also commonly referred to as the Republic of Ireland) has a surface area of 70,282 sq km and a total population of 4.2 million, 1.6 million living in the greater Dublin area. The island of Ireland is divided into 32 regional counties. Ireland consists of 26 counties[2] governed by 29 County Councils[3], while Northern Ireland, part of the United Kingdom has 6.

Ireland gained its independence from the United Kingdom after signing the Anglo Irish Treaty on 6 December 1921. This was followed by civil war from 1922 to 1923. Ireland was declared a Republic in 1949. The Irish Constitution, which sets boundaries within which the country is to be governed, provides for the separation of powers between the Executive, Legislature and Judiciary. It was written in 1937. Any amendments to the Constitution can only be made through public referendum.

The Head of State is the President. The Head of Government is the Taoiseach (Prime Minister). Ireland has a bicameral Parliament which consists of the Dáil (Lower House of Parliament) and the Seanad (Upper House of Parliament, also known as the Senate).

2 In 1994, County Dublin was divided into Dun Laoghaire-Rathdown, Fingal, and South Dublin. County Tipperary was divided into Tipperary North and Tipperary South.

3 See Local and Regional Government page 113

Ireland is a multi-party state with five leading political parties each commanding over four per cent or more of the national vote at the 2007 general election. Independent candidates generally fare well in elections, commanding over six per cent in 2007. The ruling party Fianna Fáil won over 40 per cent of the national vote.[4]

Ireland's civil and public service was largely inherited from the British administration that governed the country until independence, while Ireland's legal system is based on Irish, English and UK law. This is substantially modified by judicial review of legislation by the Supreme Court.

According to Irish analyst Michael Gallagher, 'Ireland has some features of the archetypal Westminster system, such as bare majority cabinets, no effective separation of power between government and parliament, unbalanced bicameralism and unitary and centralised government. Yet, at the same time, other aspects of the Irish political system are quite different: Ireland has a multi-party system, proportional representation and a judicially interpreted written constitution'.[5]

Ireland's political landscape was also shaped by the thirty-year conflict in Northern Ireland and the influence of the Catholic Church.

4 At the time of writing: Fianna Fáil, Fine Gael, Labour, Sinn Féin, Green Party

5 Gallagher, 2005: 212

The end of the conflict in 1998 and the waning of the Church's authority during the 1990s left more space for civil society to expand and a change in priorities for both Government and the electorate.[6] Quality of life issues such as health, education, transport, and infrastructure have since been the most prominent items on the political agenda.[7]

As a small, open and export-led economy, Ireland's financial fortunes during the 1990s remained vulnerable to shifts in the global economic climate. The liberalisation of world financial markets and a trend towards greater investment in pharmaceuticals and information technology was seized upon by the Irish Government during this period. By 2003 Ireland was the largest exporter of computer software in the world.[8] The low corporate tax rate (currently at 12.5 per cent), a relatively large, educated labour force, access to EU markets, combined with Ireland's geographical location contributed greatly to the change in Ireland's economic climate.

Ireland also benefited a great deal from its membership of the European Union (EU). A member since 1973, large transfers of aid from the EU allowed Ireland to dramatically reduce personal and corporate taxation while increasing spending in education, social services, infrastructure, and urban and regional regeneration. Between 1995 and 2004 its growth rate averaged at 7 per cent.[9]By 2007 per capita GDP was 10 per cent above that of the four big European economies and the second highest in the EU behind Luxembourg.[10]

During 2008 Ireland's economic fortunes began to change with the onset of a world financial crisis. It was not clear at the time of writing what net effect these events would have on the long term political and economic environment of the country.

6 See page 107, Media Section for discussion on role of conflict on media coverage of governance

7 In a May 2006 opinion poll, some 60% of voters cited these as the most important issues in the forthcoming general election, The Irish Times, 20 May 2006

8 IMD World Competitiveness Yearbook 2003 in www.ictireland.ie

9 World Services Group

10 CIA Factbook, 2007



# CORRUPTION PROFILE

# CORRUPTION PROFILE

*Prevalence and Typology*

From independence to the mid 1990s Ireland was perceived to be relatively free of corruption. Perceptions changed as a series of tribunals of inquiry began to reveal near systemic levels of corruption in politics, government and business. **Embedded networks** that fostered tax evasion, theft, and bribery at all levels of government and public life were exposed to widespread media scrutiny in the 1980s and 1990s.

Tribunals revealed corruption in town **planning** and **Local Government**. Allegations were investigated into the award and abuse of **licences** and **export credit guarantees**. High Court and parliamentary committee inquiries were also launched into Banks' facilitation of **tax evasion** and financial mal-administration, while in 2005 corruption was exposed within **An Garda Síochána** (the police service). In 2006, it was revealed that a former Taoiseach had received the equivalent of €45 million in **gifts** and payments from wealthy individuals.[11] In 2008, the serving Taoiseach Bertie Ahern resigned in the wake of revelations about his personal finances.

Additional forms of corruption and malpractice unearthed by these inquiries included **embezzlement** of state and charitable funds, **sale of influence**, **money laundering**, the **abuse of position** to advance career, and **collusion** with others to withhold information. The **political finance system** in particular was also found to have been abused by business interests, political candidates and elected officials to disguise illicit gifts and payments.

Although the reputation and career of a number of individuals was irrevocably damaged, as of 2008, only two individuals had faced charges for corruption exposed during the course of the Tribunals.[12]

Cases continue to be exposed by both the media and official investigations. A number of investigations into breaches of anti-corruption and electoral legislation were undertaken by the Garda Síochána in 2005 and 2006 leading to the prosecution of a former Leas-Cathaoirleach of the Seanad[13], a County Councillor in Co. Galway, and two members of staff at the Land Registry in Dublin. A further five investigations were underway into alleged misfeasance or malfeasance in Local Authorities at the time of writing. Fourteen valid complaints had been made against politicians at national level for breaches of ethics legislation since its introduction in 1995.[14] In spite of the relative prevalence of corruption in politics and Local

11 Moriarty Tribunal, 2006: 544-5

12 George Redmond, former Assistant City and County Manager at Dublin Corporation and Frank Dunlop, former Government Press Secretary and lobbyist.

13 Vice Chair of the Senate

14 See Table 8

Government, **petty corruption** is not viewed as a major problem. Only 1 per cent of respondents to the 2004 and 2005 Global Corruption Barometers claim to have been forced to pay a bribe or facilitation payment to a public official.[15] This is the joint lowest figure of any country surveyed by Transparency International.

*Causes*

Little research is available on the causes of corruption in Ireland, instead most academic discourse has emphasised the role of **clientelism** and **patronage** within Ireland's political system. This has partly manifested itself through ministerial favouritism towards a particular constituency over the national interest (partly a by-product of Ireland's small population and electoral system); inspiring one political scientist to write about politicians 'busy harassing civil servants on behalf of constituents'.[16]

While the cost of political clientelism and patronage to the national interest has generally been discussed in terms of divergence from strategic goals and resource misallocation, it also has had other negative effects on Ireland's NIS. Above all it has served to dilute **political will** to tackle corruption in national politics. Firstly there is little political disincentive for politicians found to have breached ethics or electoral guidelines, so long as the same politician delivers for his constituency. Moreover, there is no evidence that allegations of wrongdoing damage an incumbent candidate's prospects of re-election to national or local parliament in Ireland.

Secondly patronage of private interests has undermined the reliability of policy design, public appointments, and decision making processes in relation to taxation, licensing, procurement, and quota, grant and budget allocations. The non-adherence to stated guidelines and legislation, and the lack of transparency surrounding the preparation of the Estimates presents an additional incentive risk for corrupt transactions.

Political will to fight corruption has also been weakened, while additional incentives and opportunities for corruption have been underpinned, by the **private funding of political parties** and candidates. **Bribery** is notoriously **difficult to prove**, even with physical evidence and witness testimony. Investigations are complicated further by donations to political candidates and parties, where any donation below €5080 to a party or €635 to a candidate does not have to be declared to the authorities. The Planning Tribunal has highlighted numerous allegations of bribery of County Councillors and Government Ministers, usually involving relatively small sums

15 Global Corruption Barometer, 2004 and 2005

16 Chubb, 1963. See also Civil Service section

of cash (on average IR£1300).[17] Limits on the size of donations and expenditure were introduced in 1995. However these have been regularly but legally circumvented by candidates and political parties since the introduction of the relevant legislation. Limits on expenditure have been increased twice since their introduction. Proposals have also been tabled to treble the level of gifts and loans (other than political donations) politicians can receive without declaring them to €2000 each year from any one individual.[18]

The regulation of urban **planning** which provided (and continues to provide) an 'artificial scarcity value'[19] on development land, saw the value of agricultural land increase exponentially when rezoned by local government for residential and commercial purposes. This system created an added incentive for corrupt transactions between developers and local officials and representatives. However, it is a **combination of factors** that rendered, and continues to render, Local Government highly vulnerable to corruption and fraud. Discretion on the rezoning of land largely rests with local elected representatives; while financial accounting systems in Local Government have been traditionally weak.

The risk of corruption in the awarding of **public licenses** has also been raised in the proceedings of the Moriarty Tribunal and by academics. Licences include, but are not restricted to, rights to oil and gas exploration, and telecoms and broadcasting licences. Such licences have generally had a zero or nominal value placed on them 'known to be well below the likely market value… [which] are then allocated through a so-called beauty contest process.'[20] According to economist Colm McCarthy 'the Irish State has never used auction or tender processes for the allocation of assets other than physical property' thus, he claims, presenting a significant opportunity for corruption.[21]

Ireland's legislative framework has also been the source of potential weakness in the country's NIS. Clearly defined laws and **codes of conduct** governing conflict of interest, political party and campaign finance, and freedom of information were not introduced until the mid 1990s. Comprehensive legal safeguards for **whistleblowers** have yet to be introduced, contributing to a 'culture of silence' in both public and private sector bodies.[22] In addition there were few institutional safeguards to prevent or detect corruption in either the public or private sector. As the timeline for anti-corruption initiatives demonstrates

17 Tribunal records – www.planningtribunal.ie
18 Ethics in Public Office (Amendment) Bill 2007
19 McCarthy, 2001: 11
20 Ibid: 13
21 Ibid: 14
22 The Irish Times, Frank McDonald, 20 November 2003

(Table 5), most institutions designed specifically to tackle conflicts of interest, fraud, and money laundering have only been established since 1995.

Without further examination it is difficult to ascertain what effect public sector management and work practices had on the prevention and control of corruption. However it is worth noting that **rotation of staff** in sensitive roles has traditionally not been standard practice within Government departments.

**Libel law** in Ireland has posed a barrier to the investigation and exposure of corrupt networks and transactions. Threats of libel action through the courts by the subjects of investigation and media scrutiny have deterred the reporting of allegations in mainstream media.

High personal taxation during the 1980s and early 1990s may have been a primary cause of systemic tax evasion and corruption. While public sector salaries remained relatively high during this period, these were offset by **high income tax** and high mortgage interest rates. This is likely to have led to a higher incidence of petty corruption and the enabling of black markets. Weak economic growth during the 1970s and 1980s further compounded the prevalence and effect of tax evasion and corruption.

*Existing Research*

Specialist academic research on corruption and anti-corruption (the study of its control and prevention) remains limited in Ireland. The volume of political commentary and widespread media attention emanating from the series of high profile Tribunals of Inquiry, suggests that ongoing quantitative and qualitative analysis on corruption is needed.[23]

With the exception of a small number of academic studies[24], published research in this area has traditionally been authored by political journalists and has focused upon specific individuals or political scandals. Moreover, debate on corruption and Ireland's NIS has conventionally focused upon **personalised accounts** of corruption scandals at the expense of a broader and deeper analysis of why such corruption occurred.

Importantly, elements of Ireland's National Integrity System have also come under a great deal of **international scrutiny**. Reports from the Council of Europe (GRECO), the Organisation for Economic Cooperation and Development (OECD), the Financial Action Task Force, the International Monetary Fund (IMF) and Transparency International have been published in recent years.[25]

23 For discussion and outline on the Tribunals see Anti Corruption Commission section

24 See Collins, Murphy, McCarthy

25 See International Institutions section, page 141

**Table 2: Corruption Perception Index Ireland's Score 1995 to 2008**

| Year | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03 | 04 | 05 | 06 | 07 | 08 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Ranking | 11 | 11 | 12 | 14 | 15 | 19 | 18 | 23 | 18 | 17 | 19 | 18 | 17 | 16 |
| Score | 8.57 | 8.45 | 8.28 | 8.2 | 7.7 | 7.2 | 7.5 | 6.9 | 7.5 | 7.5 | 7.4 | 7.4 | 7.5 | 7.7 |
| No. of Countries | 41 | 54 | 52 | 85 | 99 | 90 | 91 | 102 | 133 | 145 | 159 | 163 | 180 | 180 |

*Source: Transparency International, www.transparency.ie*

### *Perceptions of Corruption*

Ireland's international and domestic reputation for public and corporate probity has been heavily tarnished since the late 1990s. This can be partly attributed to raised awareness of corruption arising from a number of corruption Tribunals. While international perceptions of official and political corruption in Ireland appear to compare relatively favourably, from 1995 to 2002 Ireland's score dropped more than any other EU country from the time the **Corruption Perceptions Index (CPI)** was first published. Since 2002 its score has improved somewhat, though the statistical variance over the past five years may not be significant enough to draw firm conclusions on its cause.

Table 2 demonstrates how Ireland's place and score has dropped significantly in the Transparency International Corruption Perception Index[26] over the period, 1995 - 2008.

The CPI while not an indicator of absolute levels of corruption is an indicator of a country's relative levels of official and political corruption. However the CPI does not account for what is referred to by the World Bank Institute (WBI) as **'Legal Corruption'**, perceptions of which are far more negative than those of political or official corruption in Ireland.

26 The Corruption Perceptions Index (CPI) is described as a 'poll of polls' and measures perceptions of business leaders (both domestic and international), political analysts and journalists towards the prevalence of official and political corruption 'the abuse of public power for private gain' in respective countries. A score of 10 denotes a country that is 'highly clean', while a score below 3 denotes a country that is seen as 'highly corrupt'.

### Table 3: Corporate Legal Corruption Component (CLCC), 2004

Percentage firms in the country with satisfactory ratings to questions on influencing legal political funding and undue political influence. Note: Top 30 countries of 104 surveyed.

| Rank | Country | Score |
|---|---|---|
| 1 | Netherlands | 79.2 |
| 2 | Norway | 78.6 |
| 3 | Denmark | 74.7 |
| 4 | Finland | 72.6 |
| 5 | Singapore | 72.6 |
| 6 | Iceland | 69.6 |
| 7 | New Zealand | 68.7 |
| 8 | United Arab Emirates | 68.2 |
| 9 | United Kingdom | 67.4 |
| 10 | Germany | 62.4 |
| 11 | Sweden | 60.0 |
| 12 | Jordan | 59.4 |
| 13 | Hong Kong SAR | 59.1 |
| 14 | Switzerland | 59.1 |
| 15 | Luxembourg | 57.2 |
| 16 | Austria | 57.2 |
| 17 | Belgium | 54.1 |
| 18 | Chile | 53.5 |
| 19 | Bahrain | 52.3 |
| 20 | Australia | 50.3 |
| 21 | China | 49.4 |
| 22 | Tunisia | 48.8 |
| 23 | Botswana | 47.3 |
| 24 | Ghana | 47.2 |
| 25 | Malaysia | 47.1 |
| 26 | South Africa | 46.5 |
| 27 | Japan | 46.2 |
| 28 | Taiwan | 44.6 |
| 29 | Canada | 42.9 |
| 30 | Ireland | 42.6 |

*Source: World Bank Institute, 2004*

Public perceptions have also been measured on some of Ireland's public and private sector institutions. The **Global Corruption Barometer**[27] 2004 and 2005 rated political parties as the least trusted sector with a score of 3.7 out of 5. Political parties were followed in order by the Judiciary/Legal System, Dáil Éireann, and the private sector as most prone to corruption. Conversely trust in An Garda Síochána increased between 2004 and 2005.[28]

Two of the most notable findings from the Global Corruption Barometer is that Irish respondents also appear to be amongst the most **optimistic** that levels of corruption will decrease in the next three years. In 2005 28 per cent of respondents believed that corruption would decrease a little or a lot compared to a worldwide average of 19 per cent.[29] In 2007 this figure increased to 44 per cent. They were also amongst the **least likely** to pay or be solicited for a bribe amongst the 69 countries polled, indicating very low levels of 'petty corruption' or official extortion. Only 1 per cent of respondents claim to have paid a bribe in 2005 and 2007.[30]

27 Conducted by Gallup International on behalf of Transparency International

28 Where a score closer to 5 denotes an institution or sector believed to be more corrupt than other institutions

29 Transparency International 2005 and 2007

30 Ibid

## Table 4: Global Corruption Barometer 2007

| Rankings from 2007 | Sector | Ireland Average 2007 |
|---|---|---|
| 1 | Political parties | 3.4 |
| 2 | Business / private sector | 3 |
| 3 | Legal system / Judiciary | 2.9 |
| 4 | Media | 2.8 |
| 4 | Parliament/ Legislature | 2.8 |
| 6 | Religious bodies | 2.7 |
| 6 | Police | 2.7 |
| 8 | Tax revenue | 2.6 |
| 9 | Medical services | 2.5 |
| 10 | Utilities (telephone, electricity, water, etc.) | 2.4 |
| 11 | NGOs (non governmental organisations) | 2.3 |
| 12 | Registry and permit services (civil registry for birth, marriage, licenses, permits) | 2.2 |
| 14 | Education system | 2.1 |
| 14 | The military | 2.1 |
| n/a | n/a | n/a |

*Source: Transparency International, www.transparency.ie*

## Table 4: Global Corruption Barometer 2005

| Rankings from 2005 | Sector | Ireland Average 2005 |
|---|---|---|
| 1 | Political parties | 3.7 |
| 2 | Legal system / Judiciary | 3.2 |
| 4 | Parliament/ Legislature | 3.1 |
| 4 | Business / private sector | 3.1 |
| 6 | Media | 2.8 |
| 6 | Tax revenue | 2.8 |
| 8 | Police | 2.7 |
| 8 | Religious bodies | 2.7 |
| 9 | Medical services | 2.4 |
| 12 | Customs | 2.2 |
| 12 | Utilities (telephone, electricity, water, etc.) | 2.2 |
| 12 | NGOs (non governmental organisations) | 2.2 |
| 14 | The military | 2.0 |
| 14 | Education system | 2.0 |
| 15 | Registry and permit services (civil registry for birth, marriage, licenses, permits) | 1.8 |

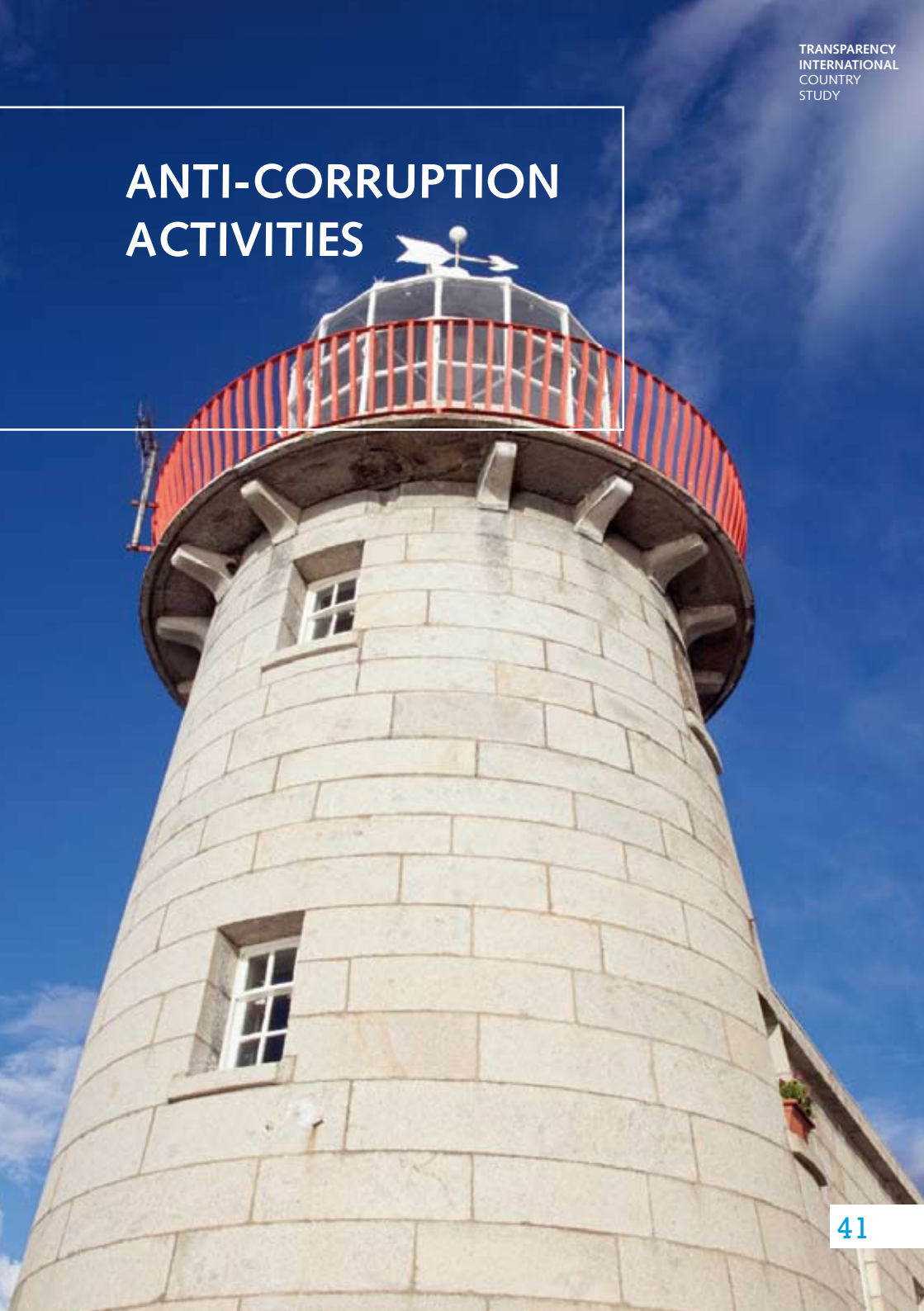
*Source: Transparency International, www.transparency.ie*

## Table 4: Global Corruption Barometer 2004

| Rankings from 2004 | Sector | Ireland Average 2004 |
|---|---|---|
| 1 | Political parties | 3.9 |
| 2 | Legal system / Judiciary | 3.3 |
| 3 | Parliament/ Legislature | 3.2 |
| 5 | Police | 3.1 |
| 5 | Business / private sector | 3.1 |
| 6 | Tax revenue | 3 |
| 9 | Medical services | 2.8 |
| 9 | Religious bodies | 2.8 |
| 9 | Media | 2.8 |
| 11 | Utilities (telephone, electricity, water, etc.) | 2.3 |
| 11 | Customs | 2.3 |
| 13 | Education system | 2.2 |
| 13 | NGOs (non governmental organizations) | 2.2 |
| 14 | The military | 2.1 |
| 15 | Registry and permit services (civil registry for birth, marriage, licenses, permits) | 2 |

*Source: Transparency International, www.transparency.ie*

# ANTI-CORRUPTION ACTIVITIES



# ANTI-CORRUPTION ACTIVITIES

In the absence of adequate legal safeguards against corruption or perhaps an unwillingness to take politically controversial decisions, Irish policy makers have tended to react to crises by establishing Tribunals of Inquiry or by amending existing legislation.

However since 1995 some substantive reforms have been undertaken to meet greater public demand for accountability. Tribunals and other forms of investigation complemented other efforts to fight economic crime and corruption.

Over this period, a number of institutions have been established such as the Standards in Public Office Commission (SIPO), the Information Commissioner and the Office of the Director of Corporate Enforcement.

New civil and administrative measures have also been introduced that appear to have strengthened safeguards against corruption (see page 51).

A number of international conventions against corruption have been signed by Ireland though not all have been ratified. Most notable of these are the Council of Europe (CoE) Civil Law Convention on Corruption and the United Nations Convention against Corruption. The former convention is designed to provide the legal basis for restitution to the victims of corruption and also provide legal safeguards for whistleblowers. No indication has been given as to when, if ever, the CoE Civil Law Convention will be ratified. The UN Convention on the other hand, is a much wider reaching instrument drafted to cover both preventive and criminal measures in both the public and private sectors. No date has been set for the latter's ratification.

Table 5 illustrates the key legislative changes, the variety of inquires and other initiatives undertaken to combat corruption, fraud and abuse of power. This table provides a chronology of developments relating to ethical standards in Ireland and partly illustrates the length and complexity of the reform process.

**Table 5: Selected Anti-Corruption Timeline**

| Year | Development |
|---|---|
| 1854 | Corrupt Practices Prevention Act |
| 1863 | Corrupt Practices Prevention Act |
| 1866 | Exchequer and Audit Departments Act |
| 1869 | Corrupt Practices Commission Expenses Act |
| 1872 | Ballot Act |
| 1883 | Corrupt and Illegal Practices Prevention Act |
| 1884 | Municipal Elections (Corrupt and Illegal Practices) Act |

| Year | Development |
|---|---|
| 1889 | Public Bodies Corrupt Practices Act |
| 1906 | Prevention of Corruption Act |
| 1916 | Prevention of Corruption Act |
| 1921 | Tribunals of Inquiry Act |
| 1923 | Prevention of Electoral Abuses Act |
| 1923 | Comptroller and Auditor General Act |
| 1924 | Ministers and Secretaries Act |
| 1926 | Local Authorities (Officers and Employees) Act |
| 1935 | The Wicklow Gold Select Committee Parliamentary Inquiry |
| 1943 | The Great Southern Railways Tribunal |
| 1944 | Comptroller and Auditor General (Amendment) Act |
| 1944/45 | Convictions for Bribery in Seanad Elections |
| 1946 | The Ward Tribunal of Inquiry |
| 1947 | The Locke Tribunal of Inquiry |
| 1963 | Local Government (Planning and Development) Act |
| 1974 | Kenny Report on Building Land |
| 1975 | The Tully Tribunal |
| 1976 | Local Government (Planning and Development) Act |
| 1979 | Tribunals of Inquiry (Evidence) Act |
| 1980 | Ombudsman Act which created the Office of the Ombudsman |
| 1983 | Local Government (Planning and Development) Act |
| 1990 | Local Government (Planning and Development) Act |
| 1991 | Competition Authority established |
| 1991-94 | The Beef Tribunal |
| 1993 | Comptroller and Auditor General (Amendment) Act |
| 1995 | Ethics in Public Office Act - Public Offices Commission established |
| 1996 | Criminal Assets Bureau Act<br>Criminal Assets Bureau established |
| 1996 | Proceeds of Crime Act |
| 1997 | Freedom of Information Act |
| 1997 | Committee of the Houses of the Oireachtas (Compellability, Privileges, and Immunities of Witness) Act |
| 1997 | Public Services Management Act |
| 1997-97 | The McCracken Tribunal of Inquiry |
| 1997- | The Moriarty Tribunal of Inquiry |
| 1997- | The Flood (now Mahon) Tribunal of Inquiry Into Certain Planning Matters and Payments |
| 1997 | Tribunals of Inquiry (Evidence) (Amendment) Act |
| 1997 | Taxes Consolidation Act |
| 1997 | Local Government (Declaration of Donations and Expenditure) Act |
| 1997 | Electoral Act |
| 1998 | Electoral (Amendment) Act |
| 1998 | Dáil Public Accounts Committee DIRT Inquiry |

| Year | Development |
|---|---|
| 1998 | Comptroller & Auditor General and Committees of the Houses of the Oireachtas (special provisions) Act |
| 1999 | Council of Europe Civil Law Convention on Corruption signed (not yet ratified) |
| 1999 | Finance Act |
| 2000 | High Court Ansbacher (Cayman) Inspectors Reports |
| 2000 | Planning and Development Act |
| 2000 | UN Convention against Transnational Organized Crime signed (not yet ratified) |
| 2001 | Local Government Act |
| 2001 | Code of Practice for the Governance of State Bodies |
| 2001 | Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act |
| 2001 | Criminal Justice (Theft and Fraud Offences) Act |
| 2001 | Prevention of Corruption (Amendment) Act |
| 2001 | Standards in Public Office Act<br>Standards in Public Offices Commission established |
| 2001 | Office of the Director of Corporate Enforcement established |
| 2002 | Electoral (Amendment) Act |
| 2002-2008 | The Morris Tribunal of Inquiry |
| 2002 | Tribunals of Inquiry (Evidence) (Amendment) Act |
| 2002 | Competition Authority established |
| 2002 | Codes of Conduct for members of the Legislature (TDs and Senators) |
| 2003 | Freedom of Information Amendment Act |
| 2003 | Code of Conduct for Office Holders |
| 2003 | Council of Europe Criminal Law Convention on Corruption ratified |
| 2003 | European Arrest Warrant Act |
| 2003 | Central Bank and Financial Services Authority of Ireland Act |
| 2003 | OECD Anti-Bribery Convention ratified |
| 2003 | UN Convention against Corruption signed (not yet ratified) |
| 2004 | Central Bank and Financial Services Authority of Ireland Act<br>Financial Regulator established |
| 2004 | Tribunals of Inquiry (Evidence) (Amendment) Act |
| 2004 | Commissions of Investigation Act |
| 2004 | The Civil Liability and Courts Act |
| 2004 | The Public Service Management (Recruitment and Appointments) Act |
| 2004 | Civil Service Code of Standards and Behaviour |
| 2004 | Code of Conduct for Councillors |
| 2004 | Code of Conduct for Local Authority Employees |
| 2005 | Council of Europe Criminal Law Convention on Corruption Additional Protocol |
| 2005 | Proceeds of Crime (Amendment) Act |
| 2005 | Civil Service Regulation (Amendment) Act |
| 2005 | Garda Síochána Act |
| 2006 | Civil Service Disciplinary Code |
| 2008 | Prevention of Corruption (Amendment) Bill 2008 |

*Legal Environment*

Ireland's anti-corruption laws are based on the Prevention of Corruption Acts 1889, 1906, 1916,[31] 2001 and supplemented by other Acts of the Oireachtas including the Ethics Acts, the Electoral Acts, the Planning and Development Acts, the Proceeds of Crime Acts, and the Criminal Justice (Theft and Fraud Offences) Acts. The anticipated amendment to the Prevention of Corruption Acts had not been enacted at the time of writing.

The **Prevention of Corruption (Amendment) Act 2001** gave legal effect to the OECD Convention on the Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe Criminal Law Convention on Corruption and the EU Treaty on the Fight against Corruption.[32] It states that an agent or any other person who '(a) corruptly accepts or obtains, or (b) corruptly agrees to accept or attempts to obtain, for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence'. It further states that a person who '(a) corruptly gives or agrees to give, or (b) corruptly offers, any gift or consideration to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence'.[33]

The definition of the term **'agent'** was broadened in the 2001 Prevention of Corruption Act to cover officers of bodies corporate and foreign public officials.[34] Meanwhile, penalties were increased to ten years imprisonment and an unlimited fine for a conviction upon indictment under the Act and to one year imprisonment and a €3000 fine for a summary conviction. A **Prevention**

31 The 1889, 1906 and 1916 Corruption Acts were implemented during direct rule by the Government of the United Kingdom.

32 Article K 3(2)(c)

33 Prevention of Corruption (Amendment) Act 2001, Section 2

34 Other 'agents' include any person employed by or acting for another, an Office Holder or director of a public body, a member of Dáil Éireann or Seanad Éireann, members of the European Parliament, the Attorney General, the Comptroller and Auditor General, the Director of Public Prosecutions, a judge of a court in the State, any other person employed by or acting on behalf of the public administration of the State, a member of the government of any other state, a member of a parliament, regional or national, of any other state, a member of the Court of Auditors of the European Communities, a member of the Commission of the European Communities, a public prosecutor in any other state, a judge of a court in any other state, a judge of any court established under an international agreement to which the State is a party, a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and any other person employed by or acting on behalf of the public administration of any other state. (S.2 of the Prevention of Corruption (Amendment) Act 2001.

**of Corruption (Amendment) Bill** was published in 2008 which would further broaden the definition of an 'agent', 'nationality jurisdiction' and an 'advantage'. It also provided for the introduction of **whistleblower safeguards** for individuals reporting offences contained in the legislation. The OECD welcomed the amendments but criticised the lack of harmonisation with other anti-corruption legislation, and called for greater clarity over the definition of 'agent', 'advantage' and 'corrupt intent'.[35]

Domestic Office Holders are **presumed guilty** of corruption in certain circumstances under the Corruption Acts, and the Ethics in Public Office Act 1995 where 'any gift, consideration or advantage has been given to or received by a person' where that person has an interest in the 'granting, refusing withdrawal' of a licence, permit or 'similar permission'; the sale of property by a Minister or official; or any planning matter under the Planning and Development Act, 2000.[36]

The **Standards in Public Office Act 2001** compels Office Holders[37] to declare all income and complete a statement of interests which is aimed at preventing conflict of interests. This Act also created an offence of obstruction of the Standards in Public Office Commission (SIPO) or its agents. It also required the drafting of codes of conduct for the guidance of Office Holders and required all members of the Houses of the Oireachtas or appointments to 'senior office' and judges to file **tax compliance declarations** within nine months of election or nomination.

The 2001 Act also provides for immunity for complainants and establishes a basis whereby the SIPO can appoint **Inquiry Officers** to carry out preliminary inquiries into complaints. Complaints can be made to the SIPO by a member of the general public against an Office Holder but not against an ordinary member of the Houses of the Oireachtas for a suspected breach of the Ethics or Electoral Acts. Only the Committees of Members' Interests of Dáil Éireann or Seanad Éireann may make a complaint against one of their members to the SIPO.

The **Local Government Act 2001** allows for an investigation of an alleged breach by an employee or Councillor of the Local Government ethics framework by the City or County Manager and/or Cathoirleach (or Mayor) of the local authority. The City or County Manager or Cathaoirleach of the local authority may inter alia refer the matter to the SIPO for investigation. Amongst the provisions of the Act is one

35 OECD, 2008

36 Section 4 (2) Prevention of Corruption (Amendment) Act 2001

37 Office Holders are defined as the Taoiseach, the Tánaiste, Ministers, Ministers of State, an Attorney General who is a member of the Oireachtas and the Chair and Deputy Chair of Dáil and Seanad Éireann, Chairs of Oireachtas Committees are not yet designated as Office Holders.

that compels members and senior officials within local authorities to complete a **declaration of interests** such as development of land, profession or trade including consultancies, property, options on land, investments, gifts, and contracts with the local authority worth more than €6750. They must also declare any **'beneficial interest'** they or any connected person (spouse, child, or child of spouse) may have in any decision that the Council may deliberate upon. A local authority member (Councillor) may also be disqualified from serving on the Council where he is convicted of fraud, corruption or making a false election statement[38]

Ireland partly implemented the **OECD Convention** to Combat the Bribery of Public Officials in International Business Transactions (the OECD Convention) under the Prevention of Corruption (Amendment) 2001 Act. It outlawed the bribery of foreign public officials by any individual or company based in Ireland so long as part of the offence was carried out in Ireland. This loophole which allows Irish nationals to bribe public officials overseas, so long as no evidence is available that any part of the offence was conducted in Ireland, is due to be addressed in the Prevention of Corruption (Amendment) Bill 2008. Sentences for the bribery of foreign officials are the same as for those arising from a conviction for the bribery of an official in Ireland. The sentence differs for the bribery of an official in the European Union – the offence for which was created under the Criminal Justice (Theft and Fraud Offences) Act 2001.

38 Local Government Act 2001, Section 13

### *Enforcement and Investigation*

Table 6 illustrates that the number of convictions for money laundering, corruption and the Criminal Assets Bureau (CAB) related convictions remain very low. A precise breakdown of cases relating specifically to corruption was not available at the time of writing.[39]

39 GRECO's second evaluation report recommended a systematic collection and analysis of the number of seizures investigations, prosecutions and confiscations (and if possible civil forfeitures) linked to corruption (GRECO, 2005: 9) This would assist in the identification of possible flaws or blind spots in existing anti-corruption legislation. A 2006 TI Ireland report called for a new category within the annual Garda statistics to account for the Foreign Bribery Offence. It also called for a reordering of resources for the Gardaí and the DPP to investigate and prosecute this offence and for initiatives to raise public awareness about this offence (Transparency International Progress Report, 2006: 6, 9, 12, 17).

### Table 6: Annual Crime Statistics[41]

For statistics on the application of the Ethics and Electoral Acts, see page 78.

***Table notes***

*a*: Number of offences reported or known to the Gardaí
*b*: Number of offences which were detected
*c*: Number of offences in which criminal proceedings were commenced
*d*: Number of convictions (indictment and summary)

| Year | 2000 | | | | 2001 | | | | 2002 | | | | 2003 | | | | 2004 | | | | 2005 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Offences** | a | b | c | d | a | b | c | d | a | b | c | d | a | b | c | d | a | b | c | d | a | b | c | d |
| **Money Laundering** | 0 | 0 | 0 | 0 | 9 | 9 | 2 | 0 | 10 | 7 | 4 | 0 | 15 | 14 | 8 | 1 | 18 | 18 | 15 | 0 | 9 | 9 | 4 | 0 |
| **Corruption** | 1 | 1 | 0 | 0 | 2 | 2 | 1 | 0 | 1 | 1 | 1 | 0 | 5 | 3 | 1 | 1 | 3 | 2 | 2 | 1 | 7 | 3 | 2 | 0 |
| **CAB** | | | | | | | | | | | | | 1 | 1 | 1 | 0 | 4 | 3 | 2 | 0 | 1 | 1 | 1 | 1 |

*Source: An Garda Síochána Annual Reports 2000, 2001, 2002, 2003, 2004, 2005*

It is not clear whether the low rate of convictions for corruption is due to the low levels of corruption or other factors. **No statistics** are available for the number of investigations or prosecutions for the bribery of a foreign public official. Using both domestic and international perception measurements and historical trends, it may be safe to assume that a large number of cases have not been fully investigated by law enforcement agencies or brought before the Courts.

One explanation for the apparent low rate of convictions arising from allegations is that the authorities face great difficulties in prosecuting anyone suspected of, or even found to have been corrupt by a Tribunal of Inquiry. This is in part due to the fact that evidence heard by **Tribunals** (where the bulk of cases have been exposed over the past decade) cannot be presented in criminal proceedings against the person giving that evidence.[41] Additionally, the Irish Director of Public Prosecutions is unlikely to offer **immunity** or plea bargains to those faced with corruption charges or witnesses to an offence of corruption.[42] Due to the secrecy surrounding corrupt transactions and networks, exposure requires a **witness** to report a crime to the authorities and/or adequate **resources** to investigate offences.

40 CAB statistics commenced from 2003. Money laundering, corruption and Criminal Assets Bureau (CAB) are classified under 'Fraud' headline offences.

41 Tribunals of Inquiry (Evidence) (Amendment) Act, 1979, Section 5

42 OECD Phase 1 Review 2003: 24. Such immunity is granted in accordance with section 4.18.h of the Statement of General Guidelines for Prosecutions, which indicates that 'whether the offender is willing to co-operate in the investigation or prosecution of other offenders, or has already done so' is one of the factors that may be considered when determining whether the public interest requires a prosecution.

Since many witnesses to corrupt transactions are often involved in the crime itself, it is unlikely that they will come forward without the offer of a reduced sentence or immunity from prosecution. Trials are therefore more likely to be concluded on the basis of a judgement by a jury rather than upon a guilty plea by the defendant. This leads to lengthier and thus more expensive trials which in themselves present a deterrent to undertaking formal investigations and prosecutions.

The barrier to greater numbers of investigations and convictions is raised further by the lack of **reporting obligations** for public servants and of comprehensive legislation that protects individuals who make public interest disclosures to their employers or to the authorities from prosecution or other punitive action. A Whistleblower Protection Bill was introduced in 1999 but was removed from the legislative schedule in 2006. The Government has stated instead that it will introduce **whistleblower protection** according to the needs and circumstances of individual sectors. Under the Prevention of Corruption (Amendment) Bill 2008, safeguards will be offered to individuals who make a complaint to the 'appropriate person' in good faith. At the time of writing an 'appropriate person' was defined as a member of An Garda Síochána, the individual's employer or a nominee of the employer. Confidential or anonymous reporting was also not provided for.

There are no general whistleblower safeguards provided under Company Law.

An additional hurdle to the consistent application of anti-corruption law in Ireland arises from the **patchwork of legislation** covering corruption offences in Ireland. The bribery offence alone is punishable with four different sentences under the Prevention of Corruption Acts and the Criminal Justice (Fraud and Theft Offences) Act.

The potential for confusion is raised when attempting to identify who has responsibility for applying the law. Firstly, Ireland has no single **Anti-Corruption Commission**. Instead responsibility for the prevention, detection, investigation and prosecution of corruption or economic crime currently lies with a number of agents and agencies including, but not restricted to Tribunals of Inquiry, Commissions of Inquiry, High Court Inspectors, the Financial Regulator, the Standards in Public Office Commission (SIPO), the Garda Bureau of Fraud Investigation, the Criminal Assets Bureau, and the Office of the Director of Corporate Enforcement. There is no body responsible for the prevention of corruption in Local Government. Instead each local authority is responsible for investigating and preventing corruption internally, though they may call upon the Garda or the SIPO to conduct investigations on their behalf. Investigations into matters involving improper behaviour may

also be conducted by individuals appointed by the Government without reference to the SIPO.

The patchwork of enforcement agencies is not just potentially confusing for elected representatives and officials but also for the general public who may wish to make enquiries or report allegations of wrongdoing. Furthermore, following a 2006 High Court judgement compelling a T.D. (Member of Parliament) to disclose phone records to the Morris Tribunal, members of the general public may no longer be able to report wrongdoing to their **elected representatives** in confidence.[43] Members of the public can report allegations to the SIPO and Ombudsman about the conduct of a member of Government or the Oireachtas, and to An Garda Síochána. The National Contact Point for the OECD Guidelines for Multinational Corporations (based at the Department of Enterprise, Trade and Employment) has few resources and very little if any public interface in spite of its prescribed role in processing complaints of unethical or illegal behaviour against multinational enterprises.

Up until recently, little effort was made to enforce the law on **foreign bribery** in Ireland. A report by Transparency International in 2006 found that no investigations had taken place by the Garda into five allegations of bribery by Irish companies or nationals overseas. It also found that no attempt had been made by either Government or business organisations to raise awareness amongst Irish businesses that the bribery of foreign public officials is a criminal offence in Ireland. Measurable progress was made in 2008 with the establishment of interdepartmental and senior official committees to monitor compliance with the Convention; the launch of a new website **www.anticorruption.ie** aimed at Irish businesses; and Government sponsored training provided by Transparency International Ireland.

Finally, it is not clear whether relevant law enforcement agencies have (or have had) the necessary resources available to undertake the growing number of cases that are emerging of economic crime more generally. Neither is it clear how well investigations or efforts to detect corrupt transactions are coordinated across public bodies.

For further discussion of enforcement mechanisms against other forms of economic crime refer to the sections on the Standards in Public Office Commission section, Law Enforcement Agencies section, and Business Sector section.

43 Molony, The Irish Independent, 04 January 2006

*Civil and Administrative Measures*

The **Public Service Modernisation** process, discussed further on page 90, has been credited with increasing transparency and promoting greater accountability within the civil and public service. The **computerisation** of public record and management systems has also been an important step in the prevention and detection of fraud and corruption. The Courts Service for instance is better able to prevent or detect attempted misappropriation of court files and funds through its own computer system. The filing of warrants and other court files are recorded and the resulting data shared with a number of **Court Service** employees with access to a computer database. This, it is claimed, makes it very difficult to misappropriate files that have been recorded without a significant number of employees and information systems managers identifying the anomaly. A reliance on paper records and audit trails posed a much greater risk of untraceable theft of, and interference with court documents.[44]

Since 2001, the **Garda National Immigration Bureau (GNIB)** has implemented an IT system (GNIB-IS) as part of its anti-corruption plan. The GNIB-IS aims to increase transparency by creating a computerised trail of non-national applications at the bureau by recording 'information entered at ports of entry, registration and deportation offices, as well as data from various external agencies'.[45] The Revenue Commissioners and the National Public Procurement Policy Unit have both developed **online filing services** aimed at increasing transparency in tax collection and public procurement respectively.

Few Government Departments, Local Government agencies, or other public bodies appear to have specific **fraud and corruption plans** in place (see Local Government, page 113), while none appear to have raised awareness of these plans with the wider public. Only a limited number of agencies, the GNIB for example, have published anti-corruption strategies that involve the systemic rotation of staff and spot checks. Only 7 out of 34 local authorities had published Fraud and Corruption Alert Plans as of 2006.[46]

South Dublin County Council's **Fraud Policy** for staff states that 'the Council is determined that the culture and tone of the organisation will continue to be one of honesty and opposed to fraud and corruption'.[47]

Amongst the steps it outlines are

- A policy on whistleblowing which 'encourages staff, members and the public to bring to its attention any event which may occur within the workings of the Council which might be illegal, improper or

44 Courts Service interview with authors, September 2006

45 AGIS Conference Paper, 2005

46 Local Government Audit Service, 2006

47 South Dublin County Council, Fraud Policy, 2006

unethical. Reports can be made in the strictest of confidence'

- Clear lines of reporting
- The production of project manuals including fraud prevention risk assessments
- Segregation of staff duties and where this is not possible, closer supervision
- Restriction of access to assets and computers to authorised personnel
- Security vetting of staff
- Production of compliance statements
- Staff training
- Support and counselling for staff
- Post investigation evaluation of procedures

The policy also outlines the responsibilities of line managers and staff, and identifies an individual to whom complaints or reports can be made. However, as with other such policy documents or plans, no costing or timeline is stipulated for the implementation of the above measures. Moreover the plan itself is not clearly posted on the Council's website.

The Executive, Legislature, Public Bodies and Civil Service rely on a number of **codes of conduct** and relevant **legislation** as the basis for their anti-corruption strategies. These include the Code of Conduct for members of the Legislature (2002), the Code of Conduct for Office Holders (2003), the Civil Service Code of Standards and Behaviour (2004), Code of Conduct for Employees of Local Authorities (2004), Code of Conduct for Councillors (2004), and the non statutory Code of Practice for the Governance of State Bodies (2001). These codes are supplementary to existing legislation and provide staff and public representatives with general guidance on the prevention of conflicts of interest and misuse of resources. No code appears to provide any guidance for anyone wishing to report wrongdoing or makes reference to safeguards for whistleblowers. Table 7 provides a breakdown of the application and scope of public sector codes of conduct.

The Garda Síochána appears to be one of the few institutions within the State that provides regular anti-corruption **training** to its personnel. There appear to be few resources applied to training on the various codes of conduct for employees and public representatives around the country. While a number of corporate governance and public administration programmes are run at a number of universities and educational institutes in Ireland, little attention has been given to anti-corruption education or research by academics.

## Table 7: Relevant codes of conduct and legislation for local and national politicians, civil servants, local authority employees and members and employees of public bodies

| Regulated Sector | Office Holders | TDs / Senators | Civil Servants | Local Authority Councillors | Local Authority Staff | Public Bodies' Board Members | Public Servants (other than civil servants) |
|---|---|---|---|---|---|---|---|
| Codes of Conduct[49] drawn up by | Government 2003 | Committees on Members' Interests 2002 | Minister for Finance 2004 | Minister for Environment 2004 | Minister for Environment 2004 (Revised 2007) | None | None |
| Supervised by | Taoiseach | Committees on Members' Interests | Secretary General/ Head of Office | Local Authority | City/County Manager | N/A | N/A |
| Immunity protection[50] | Section 5 SIPO Act 2001 | Section 5 SIPO Act 2001 | Section 5 SIPO Act 2001 | Section 5 SIPO Act 2001 | Section 5 SIPO Act 2001 | Section 5 SIPO Act 2001 | Section 5 SIPO Act 2001 |
| Moratorium | Code states office holders should be 'careful'. No formal moratorium | None | One year, where the terms could lead to a conflict of interest | None | One year, where the terms could lead to a conflict of interest | None | None |
| Disclosure of donations | Yes | Yes | N/A | Yes | N/A | N/A | N/A |
| Limits on election expenditure | Yes | Yes for TDs. No for Senators | N/A | No | N/A | N/A | N/A |
| Disclosure of election expenditure | Yes | Yes for TDs. No for Senators | N/A | Yes | N/A | N/A | N/A |

The codes are summarised in the Appendix, page 163

48 Code of conduct as provided for in Section 10 of the Standards in Public Office Act 2001. While no statutory code under the 2001 Act applies to members of boards or to employees of public bodies (other than to civil servants), there is a non-statutory code of practice for the governance of state bodies published by the Minister for Finance, which includes a framework code of ethics for such persons.

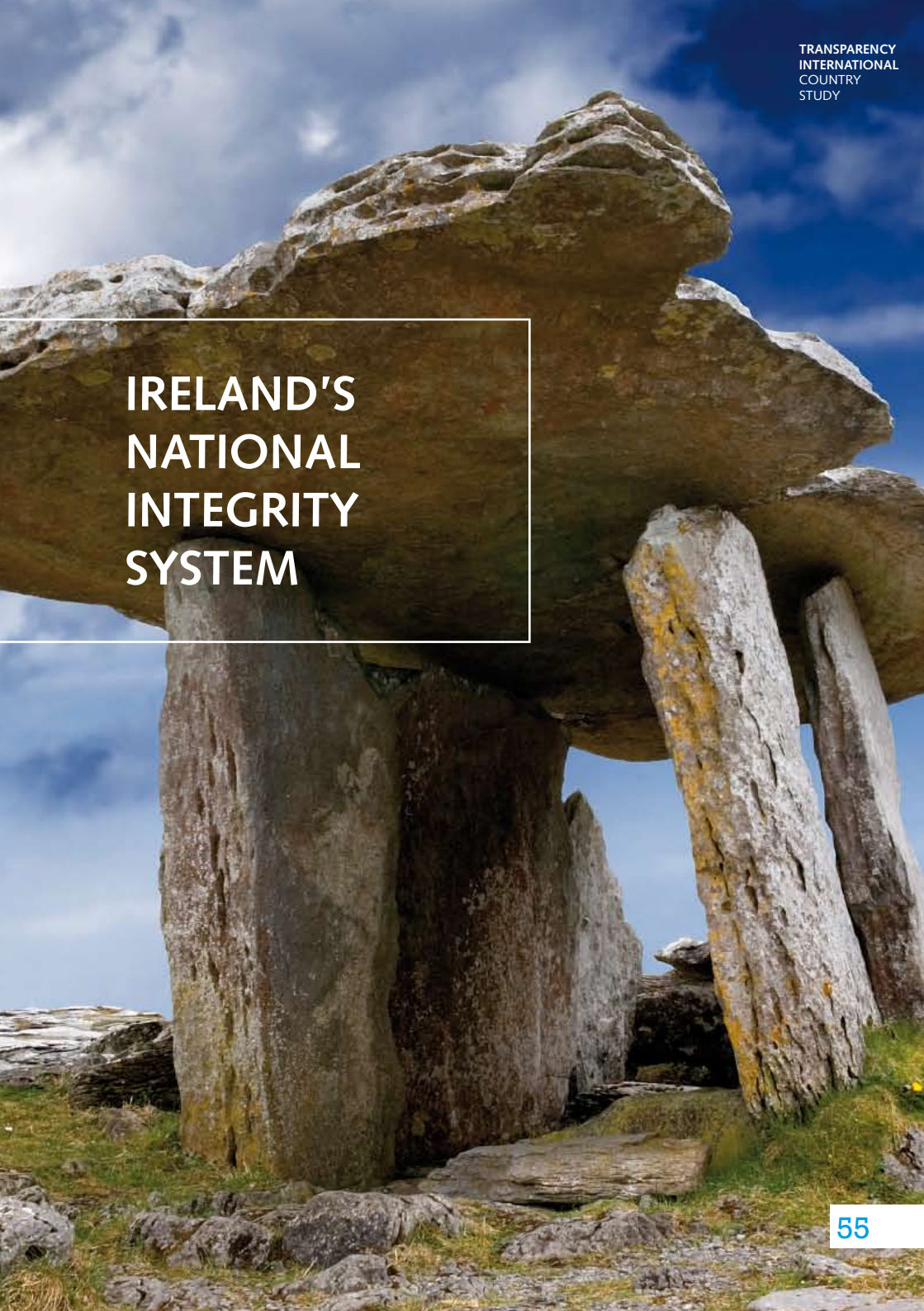
49 Section 5 provides immunity for a person who complains under the Standards in Public Office Act 2001 to the Standards Commission, a Committee on Members' Interests of Dáil or Seanad Éireann or the Clerk of Dáil or Seanad Éireann.

### *The Media*

The investigation and exposure of corruption in Ireland has more often than not been led by the media. This is in spite of a lack of **resources** for investigative reporting and reluctance, by some editors and media outlets for financial, legal or other reasons, to commission such investigations. In some cases, corruption in Ireland has been exposed by the British media (for further discussion, see Media page 107). A non-profit investigative agency, the Centre for Public Inquiry, established to expose corruption and wrongdoing in public and corporate life closed less than a year after it was established in 2005 (for further discussion see Civil Society section).

### *Business*

The Irish business community has not taken a proactive approach to tackling bribery and corruption. Few companies appear to have specific anti-bribery or corruption codes in place. However as the regulatory environment expands, (governing the role of directors, company registration, accounting standards, tax compliance, labour, and health and safety standards) greater emphasis is expected to be placed on the importance of corporate governance. It is also expected that more Irish businesses will introduce anti-bribery and corruption safeguards on foot of the amendment to anti-corruption law in Ireland and the increasing number of bribery convictions in the US and mainland Europe.



# IRELAND'S NATIONAL INTEGRITY SYSTEM

# IRELAND'S NATIONAL INTEGRITY SYSTEM

## THE EXECUTIVE

### Role and Structure

The **President** is the Head of State and is directly elected every seven years. Articles 12.1, 13 and 26.1.1 of the Constitution give her the power to appoint the Government, subject to Dáil (lower house of parliament) approval. The President is not 'answerable to either House of the Oireachtas [houses of parliament] or to any Court for the exercise and performance of the powers and functions of his office'.[50] Within a European context the Irish presidency is perceived as 'the weakest presidency to be filled by direct election'[51] and is more aptly regarded as a ceremonial and symbolic role.

The **Taoiseach** (Prime Minister) is nominated by the Dáil and appointed by the President following a general election. General elections must be held within five years of each other. Traditionally the Taoiseach has been the leader of one of the two main parties, Fianna Fáil or Fine Gael. The Taoiseach is considered to be 'one of the strongest of all heads of Government' in Europe.[52] Subject to Dáil approval, the Taoiseach appoints his members of Government, the Ministers, also known as the Executive or Cabinet. He has power to request the President to terminate the appointment of a member of the Government; the President does not have discretion in the matter. It is also the Taoiseach's sole prerogative to request the President to dissolve the Dáil.

The Executive is the decision making body of the Government. It manages the public finances, administers the Government departments and controls the policy and legislative programme of the Government. The Executive consists of the Taoiseach and at least six, but not more than fourteen Ministers including the **Tánaiste** (deputy prime minister). Presently there are 14 **Ministers** and 20 **Ministers of State**. The Taoiseach also appoints the Attorney General and 11 members of the Seanad (upper house of parliament).

The **Cabinet** consists of the Taoiseach, Tánaiste (Deputy Prime Minister), Government Ministers, with the Attorney General in attendance. The Cabinet is the supreme decision making body of the Executive though it will regularly delegate Government business to committees of its members.

Cabinet **Committees** consist of two or more Ministers and may include the Attorney General and Ministers of State. They are established by the Cabinet to assist Ministers

50 Article 13.8.1
51 Gallagher, 1999: 104
52 Elgie and Fitzgerald, 2005: 313

in considering and developing policy; to manage issues of public importance. Ad hoc committees may also be established to address short term items on the Government's agenda.[53] Chaired by the Taoiseach, Cabinet Committees must produce a programme of work within three months of being established. They will report to the Cabinet on developments and recommendations for action by Government and must file an annual report to the Cabinet on their performance. The Secretary General of the Government will provide an annual evaluation of the work of Committees to the Taoiseach.

The role of the **Attorney General (AG)** is enshrined in the Constitution. He is appointed by the Government and acts as its legal adviser. Although the AG is not a member of Government he attends cabinet meetings. The Constitution entitles the AG to prosecute indictable offences but since 1974 this role has been the responsibility of the Director of Public Prosecutions.

## Accountability, Integrity and Transparency Mechanisms

As the head of government, the Taoiseach presides over meetings of the Cabinet. Nevertheless the Constitution (Article 28.4.2) states that the Executive shall be **collectively responsible** for the running of government. Ministers are expected to seek approval for regulations, new initiatives and policies before announcing them publicly.

53 Cabinet Handbook: 84

### *Cabinet Confidentiality and Transparency*

The Constitution requires **'strict confidentiality'** regarding the detail of discussions at Cabinet meetings.[54] This requirement was relaxed in 1997 after a referendum to allow anti-corruption Tribunals to access Cabinet documents that they may need to pursue their inquiries. Details of Cabinet discussions can now be disclosed where the Supreme Court agrees to an application from a Tribunal. Cabinet documents including details of Government decisions, proceedings and memoranda had been opened to Freedom of Information applications in 1997. The Freedom of Information (Amendment) Act 2003 restricted the nature of such documents to those only relating to factual information. Cabinet documents not covered by the amendment may be made available for public scrutiny after ten years but only upon a Freedom of Information request. All documents (including Cabinet minutes) enter the national archives after thirty years.

Some concern has been voiced about the effect the **Freedom of Information Act** has had on levels of accountability within Government and the relationship between Ministers and their civil servants.[55] It is believed that applications for Government records by the media and political

54 Article 28.4.3

55 Molony, The Irish Independent, 20 March 2006

Opposition have made it less likely that Ministers and senior civil servants will leave a written record of comments or concerns about departmental activity. Such records would normally help account for the process involved or reasons behind departmental decisions and identify the individual or individuals responsible for those decisions. The move away from written records of commentaries and information exchanges makes it more difficult to discover whether a Minister has reviewed or commented on documents presented to them.

Public officials and members of public or private bodies (including business groups and NGOs) may be invited to address and take part in Q&A sessions with Cabinet Committees. However they must not be present for substantive deliberations. Even the programme of work for Committees is covered by the principle of Cabinet confidentiality. No information other than the purpose and membership of Committees may be disclosed to the Oireachtas or to any other body. Records of meetings, other than action points arising from those meetings, may only be kept by the Secretary of the Committee.

*Ethical Codes and Guidelines*

Office Holders, i.e. the Taoiseach, the Tánaiste, Ministers, Ministers of State, an Attorney General who is a member of the Oireachtas and the Chair and Deputy Chair of Dáil and Seanad Éireann, are subject to the **2003 Code of Conduct for Office Holders** which is supervised by the Standards in Public Office Commission (SIPO). Chairs of Oireachtas Committees are not yet designated as Office Holders. The Code was drawn up by the Government under the Standards in Public Office Act 2001.

The Code sets out general principles rather than detailed procedures for adherence to statutory obligations under the Ethics Acts. These are set out in the Guidelines for Office Holders published by the SIPO. Government Ministers and other Officer Holders must also disclose any donations received and register any **'Registrable Interests'** to the SIPO. Registrable Interests include earnings outside their positions as Office Holders or TDs, contracts with the State, shares, directorships, land and buildings, gifts worth over €650 in value (received by virtue of his office), and travel facilities. It is not necessary to specify the monetary value of any interest or outside earnings.

Paragraph 2.2.4 of the Code provides that Office Holders who take up appointments on leaving office should be 'careful' to avoid any real or apparent conflict of interest. No formal **moratorium** ('cooling-off period) exists however. Office Holders are also not permitted to use official facilities for party political purposes. In their 2004 and 2005 annual reports, the SIPO expressed their 'disappointment' at the continued

disregard of a particular aspect of the Code by Office Holders.[56]

The **Cabinet Handbook** provides advice to Ministers on a number of procedural matters in line with the principle of collective responsibility and legislation including the Ethics Acts and the Code of Conduct for Office Holders. The Handbook is prepared by the Department of the Taoiseach and the guidelines may be changed by the Government as it sees fit.[57] Where appropriate 'the Government may decide that the guidelines (in whole or in part) do not apply in particular circumstances'.[58] The Secretary General to the Government is available to offer advice to Ministers on the application of the guidelines and in consultation with the Taoiseach where necessary.

The Handbook offers little advice on the application of the Ethics Acts but does refer to potential conflicts of interest and the receipt of gifts. Since 2005 it has also set down procedures for Ministers to observe when appointing outside consultants, especially from the public relations profession. This guideline was inserted into the Handbook after a Government Minister was found to have allowed the perception of impropriety arise in his appointment of an associate as a communications advisor at his Department.[59]

Ministers are required to inform the Oireachtas of any proposal to transpose EU Regulations or Directives into Irish statute.[60] The Cabinet Handbook states that Ministers should, on request, consult with the Oireachtas on the Government's position in advance of EU Council of Minister meetings.[61] Consultations may be conducted in private to maintain confidentiality and secure the Government's negotiating position on EU affairs. Ministers are also required to present a six monthly and annual report to the Oireachtas on activities and developments at EU level for which they have responsibility.

It makes it clear that Ministers should not accept offers 'in all circumstances' by companies, either national or international, to cover the **Ministerial expenses** for visits outside the State. Minor hospitality as set down in the Ethics Acts may be accepted however. Ministers should seek the advice of the Taoiseach, requested through the Secretary General to the Government, when considering the propriety of any significant offers or invitations.[62]

The Taoiseach may **request a Minister to resign** for any reason, including wrongdoing. While it is the responsibility of the President

56 'Official facilities should be used only for official purposes… Office Holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which, undoubtedly, are attached to office' 2003, Code of Conduct for Office Holders, Section 2.2.3

57 www.taoiseach.gov.ie

58 Ibid

59 The Irish Times, 15 February, 2005

60 The European Union (Scrutiny) Act, 2002

61 Cabinet Handbook: 83

62 Ibid: 13

to dismiss a Minister, she will terminate the appointment of the Minister upon the advice of the Taoiseach. Under Section 28 of the Ethics in Public Office Act 1995, an Office Holder may also be suspended from either House of the Oireachtas for up to 30 days where he has contravened the Act. If the office holder continues to fail to comply with the resolution of the House, then the suspension may be extended as long as may be required to ensure compliance.

### *Ministerial Regulations and Regulatory Impact Analysis*

Ministers implement primary legislation through regulations or statutory instruments. Regulations are not scrutinised by the Legislature and thus not subject to the same rigours of debate or amendments as primary legislation.[63] For example, the Ombudsman has noted that since its inception in 1984 'the most serious and systemic complaints' to the Ombudsman have resulted from faulty Ministerial regulations.[64]

In 2004 the Government piloted a scheme to test the feasibility of Regulatory Impact Analysis (RIA) in the Irish Civil Service. An RIA is an assessment of the potential effects of new regulations or regulatory amendments. RIAs also apply to primary legislation where there are changes to the regulatory framework.[65] It involves consultation on the possible environmental, economic, commercial and social consequences of regulation with groups outside Government including civil society and business.

Since 2007 the Cabinet Handbook has advised Ministers of their responsibility to ensure RIAs are undertaken on all proposals for new legislation, changes to the regulatory framework and 'significant Ministerial and Departmental Orders'.[66] RIA documents are expected to be published online with all memoranda to Government for approval for the General Scheme (outline) of Bill. However there is some scope for Government to prevent the publication of an RIA document where it contains information exempt under the Freedom of Information Acts. In such cases they 'can be partially published or in exceptional circumstances be withheld in their entirety'.[67]

## Complaints and Enforcement Mechanisms

Complaints can be made against Office Holders by members of the public to the **Standards in Public Office Commission**. Only complaints can be made for 'specified acts' or alleged breaches of the Ethics Acts and the Electoral Acts. Anonymous complaints cannot be investigated by the SIPO. Section 37 of the Ethics in

63 Gallagher, 2005: 218
64 The Irish Times, 5 July 2005
65 See RIA Guidelines: www.betterregulation.ie/eng/index.asp?docID=78
66 Cabinet Handbook: 61
67 Ibid: 65

Public Office Act 1995 and Section 61 of the Electoral Act 1997 provide for a maximum fine of €20,000 and/or a maximum prison sentence of three years upon indictment for offences under these acts. These penalties apply to both Office Holders and members of the Legislature.

Serving Office Holders are **not immune** from prosecution for any offences, including corruption. An exception is made under Article 15.13 of the Constitution for TDs (including Office Holders) who are immune from arrest or prosecution while attending or travelling to and from the Dáil. Such immunity only extends to offences other than treason, a felony or breach of the peace.[68] Felonies are not clearly defined elsewhere. Article 15.13 has been invoked on two separate occasions by a TD and Senator who were apprehended on suspicion of drink driving after leaving the Oireachtas.[69]

## Relationship with other NIS pillars

The Constitution stipulates that the Executive is collectively responsible to the Dáil for all its decisions; however, some commentators believe the Executive effectively dominates the Dáil.[70] The 'Westminster model' of government which entails an overall majority in parliament for the ruling party, ensures that the Government is not in practice limited or constrained in its work by the Dáil. See the Legislature, Busness Sector, Civil Service, Supreme Audit Institution and Law Enforcement sections for further discussion.

68 Constitution of Ireland: Article 15.13

69 Michael O'Farrell, 'Politicians should not have prosecution immunity, says expert', The Irish Examiner, 27 September 2003

70 Gallagher, 2005: 211; MacCarthaigh, 2005; Murphy, 2006

# THE LEGISLATURE

## Role and Structure

Ireland has a bicameral Parliamentary system. In addition to the President, Ireland's legislative branch (Oireachtas) comprises of a lower House (Dáil Éireann or 'Dáil' for short) and an upper House (the Seanad Éireann, or 'Seanad'/Senate for short), known as the Houses of the Oireachtas. The Dáil consists of 166 TDs (MPs) elected by the proportional representation single transferable vote electoral system (PR-STV,) in a general election of 43 constituencies.

The **Dáil** is responsible for proposing and passing legislation, and nominating and removing the Taoiseach (although formally it is the President who appoints and removes the Taoiseach and signs Bills into law). It also has the power to declare war, pass treaties and to approve or reject the annual Budget.

The **Seanad** consists of sixty members. Forty-three are elected by members of the Dáil, outgoing members of the Seanad, members of county and city councils, six are elected by graduates of the National University of Ireland and the University of Dublin and eleven are nominated by the Taoiseach. Although the Seanad has the power to initiate[71] and review legislation, the Constitution confers primacy on Dáil Éireann. The Seanad does not exert significant control on the business of the Dáil and debate is continuing as to potential reform.[72] No member of the Dáil may also serve as a member of the Seanad at the same time.

The Houses of the Oireachtas have the power under their Standing Orders (Rules) to establish **Parliamentary Committees**. Each House decides the Orders of reference, membership and powers of Committees. Traditionally, membership of Committees has been in proportion to levels of political representation. Some committees are also able to compel witnesses to attend hearings and provide for certain witness immunities.[73] Currently under Standing Orders, only two Committees have compellability powers – the Committee of Public Accounts and the Standing Joint Committee on Consolidation Bills.

As of 2007 the Dáil had four standing committees and nineteen select committees. The most of important of these in terms of Ireland's NIS are the Committee of Public Accounts (see Supreme Audit Institution) and the Committees of Members' Interests of Dáil Éireann and Seanad Éireann.

In 2004 the **Houses of the Oireachtas Commission** was established to run the Houses of the Oireachtas and to manage its staff. The Commission is chaired by the Ceann Comhairle

71 Bills to amend the Constitution and Money Bills, i.e., financial legislation, can only be initiated in Dáil Éireann.

72 Gallagher, 2005: 233-235

73 The Committee of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997

and comprises 11 members in total. It has no role in relation to parliamentary business. The Secretary General of the Office of the Houses of the Oireachtas (who is a member of the Commission) is the Chief Executive of the Commission and has responsibility for managing the Office on a day-to-day basis and for implementing and monitoring Commission policies. The Commission has statutory responsibility for determining budgets and monitoring public expenditure in running the Houses. A new budget is set by legislation every three years following negotiations between the Commission and the Minister for Finance.

The Commission has no role in relation to setting the levels of salaries, allowances or other entitlements of members of the Houses or in relation to pay or terms and conditions of civil service staff – these functions are reserved to the Minister for Finance. The Commission is subject to the same audit procedures as are applicable to all Government Departments and Offices (i.e., review by the Comptroller and Auditor General) and records of the Commission are subject to the Freedom of Information Acts. Its Chief Executive (Secretary General) also appears before the Committee of Public Accounts.

While resources and facilities for Oireachtas members have improved, it is still believed that the Oireachtas committee system, as a vehicle of executive oversight, remains inadequately resourced and poorly attended.[74] 2001 High Court and 2002 Supreme Court decisions checked the parliamentary powers of investigation of the Abbeylara Incident Sub-Committee,[75] ruling that they had exceeded their powers. 'In effect, the courts were preventing the Oireachtas from investigating part of the executive apparatus… [and] raised serious long-term difficulties for the ability of committees, and by proxy parliament, to extend their scope for providing accountability'.[76]

### *Legislation*

Legislation originates predominantly from the Executive and not from the Legislature. The Dáil may confer power to a Select Committee to 'draft recommendations for legislative change and for new legislation'.[77] Parliamentary procedures allow Opposition parties and Independent members to introduce Bills which are called private members' Bills. In the vast majority of cases private members' Bills do not succeed in progressing beyond the Second Stage debate. Only 35 private members bills have been enacted between 1923 and 2007.[78] In comparison, 268 were enacted in Westminster between 1979 and 1997.[79]

74 Gallagher, 2005: 232
75 A Dáil subcommittee established to examine events surrounding the shooting of a man by Gardaí (Irish police) in 2000.
76 MacCarthaigh, 2005: 176,179
77 Standing Order 83(4)
78 Oireachtas Commission
79 MacCarthaigh, 2005: 110-111

The annual **Finance Act** is regarded as one of the most significant pieces of legislation each year but which 'the Executive tightly controls'.[80] The Finance Act gives legislative authority to the Budget Resolutions but also contains many other provisions. The **Social Partners** and other interest groups also make pre-budget submissions to the Department. Some of these groups are subsequently invited to meet with the Minister and his officials.

The Second stage allows for a debate on what is included, and what relevantly could be included, in the Bill. Third Stage allows for detailed consideration of all sections and schedules. In the course of the Third Stage debate, typically held in select Committee, it would be normal for the Minister to explain why he proposes a certain course of action. In the case of the Finance Bill, the Committee stage debate is generally subject to an allocation of time motion, which restricts the debate and could impact on the level of parliamentary scrutiny. According to the Irish Times, 'the Finance Bill comes under relatively little political or media scrutiny, [and] the existence of particular tax breaks often doesn't become widely known in the early stages, save among the group that lobbied for them in the first place'.[81]

*Oversight of Government*

Increasingly, Government functions have been devolved to **executive agencies** (see Civil Service/Public Sector pillar). Thus functions that were traditionally under the remit of the relevant Minister have been devolved to bodies such as the Arts Council, Irish Prison Service, Courts Service, National Roads Authority and the Health Services Executive. Although these bodes are accountable to the Oireachtas through their annual reports which are laid before the Oireachtas, opposition TDs have expressed frustration that they are not subject to oversight by individual members of the Dáil by means of Parliamentary Questions (PQs). TDs must now write personally to the relevant body, the answers of which are not on the public record. The effectiveness of PQs as a means of executive oversight has also been weakened by their increased usage as a method of meeting constituency demands.

The decision in 2002 to reduce the length of time the Taoiseach attends in the Dáil has allowed accusations to be levelled at Government, especially from the Opposition, that **answering questions** in parliament ranks low on its list of priorities.

The **Ceann Comhairle** (Speaker or Chair of the House) has the authority to interpret the 173 standing orders or rules of the Dáil. The Ceann Comhairle is elected by the Dáil, although in reality the

80 MacCarthaigh, 2006: 97
81 The Irish Times, 25 November 2003

Executive pre-determines this. The Ceann Comhairle is independent of both the Government and Opposition and his powers and duties are defined by Standing Orders and rules of procedure. In essence the Ceann Comhairle is responsible for ensuring that Standing Orders are adhered to; that members' speeches are relevant to the matter under discussion; and that business is conducted in an orderly and impartial manner. He enjoys a great degree of cooperation from members, though his neutrality has been called into question on occasion with an alleged tendency 'towards the preservation of the status quo rather than enforcing the Dáil's right to act as a check on Government'.[82]

Several Tribunal and Parliamentary Committee reports have explicitly criticised the failings of the Dáil. The chair of the Beef Tribunal, Mr. Justice Liam Hamilton, stated that had Dáil procedures and powers been more rigorous there would have been no need for the Tribunal in the first place.[83] The Committee of Public Accounts Parliamentary Inquiry into Deposit Interest Retention Tax (DIRT)[84] stated that 'many of the issues which have been under inquiry could have been examined and dealt with earlier if the Oireachtas had been better organised'.[85]

82 Op cit: 137
83 Op cit: 137
84 First Report December 1999
85 The Committee on Public Accounts, 1999: 3). (For more information on the Committee of Public Accounts, see Audit pillar

## Accountability, Integrity and Transparency Mechanisms

*Committees of Members' Interests*

The **Committees of Members' Interests** of Dáil Éireann and Seanad Éireann were established in 1995.[86]

They are empowered to draft and publish guidelines for members of both Houses of the Oireachtas on their obligations under the Ethics Acts; to give advice to members on compliance with the Codes of Conduct for TDs and Senators and the Ethics Acts; and can carry out investigations into failures by individual members to disclose or adequately register declarable interests. The Committees have no jurisdiction over Office Holders (supervised by the Standards in Public Office Commission). They do not have the power to compel the attendance of witnesses and production of documents. Neither can they confer privileges and immunities on witnesses.[87] Hearings

86 Under the Ethics in Public Office Act 1995
87 The power to compel witnesses under the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 only applies to Committees whose Orders of Reference include the power to send for persons, papers and records. The Act provides for the appointment of a sub-Committee on Compellability by the Committees on Procedure and Privileges of both Houses to carry out the following functions: a) to consent to the issue of a direction by a Committee exercising the power to compel a witness (section 3(1) and (9); and b) to make rules and issue guidelines relating to the conduct of proceedings and procedure generally of Committees (section 13).

of the Committees can be heard in private. Reports of the Committee must be presented to the relevant House of the Oireachtas. The Dáil or Seanad may then take action on the findings of that report in line with the Ethics Acts. The Committees on Members Interests do not publish an annual report, although the equivalent body for Office Holders, the Standards in Public Office Commission, does so.[88]

In 2000 the Committee of Members' Interests of Dáil Éireann investigated a TD for failure to disclose his possession of an offshore bank account during a Dáil vote on a related matter. The TD had been found to have evaded tax through this account. The Committee reported to the Dáil and the TD was suspended from the Dáil for two weeks. In 2003 another TD was investigated by the Committee for presenting a false tax compliance certificate to the Clerk of the Committee. The case was presented to the Standards in Public Office Commission who in turn presented the files to the Director of Public Prosecutions.

The **Codes of Conduct for TDs and Senators** were drawn up by the relevant Committees on Members' Interests of Dáil Éireann and the Seanad in 2002. Supervision of adherence to these Codes is a matter for the separate Committees on Members' Interests.

TDs and Senators do not have to issue receipts in order to claim **expenses**. They are able to claim travel and subsistence allowances, overnight allowances, constituency office grants, constituency telephone and Internet allowances, additional secretarial allowances and foreign travel. In 2006, a newspaper revealed that some €10 million had been claimed by TDs and Senators over the previous year. It also claimed that 18 Dublin TDs had received €20,000 each for travel expenses although they lived less than 15 miles from Leinster House (the houses of parliament).[89]

A complete **archive** of debates and decisions of the Oireachtas is available in the printed Official Report of the Debates and on its website www.oireachtas.ie. Live and archive webcasting of the proceedings of Dáil Éireann and Seanad Éireann is also available. Sittings of both Houses are generally in **public**, save for private sittings facilitated by special resolution in either House with two-thirds of Members present assenting. TDs make themselves available to the public through their constituency offices where they hold regular **'clinics'** for constituents or through their Oireachtas office.

## Complaints and Enforcement Mechanisms

Members of the public may make complaints against members of the Legislature, for a breach of the Ethics Acts, to the Clerk of the Dáil or Seanad who may forward

88 See Anti Corruption Commission pillar

89 The Sunday Independent, 31 December 2006

these complaints to the relevant Committee on Members' Interests. Members of the Houses of the Oireachtas may make complaints to the relevant Committee. Complaints against members of the Legislature to the SIPO can also be made by the Committees on Members' Interests. Members of the public and members of the Oireachtas may make complaints to SIPO against certain **specified persons**. A list of persons against whom a complaint can be made to SIPO under the Ethics Acts is available from the SIPO website: www.sipo.gov.ie.

The SIPO may investigate any breach of the Electoral Acts by a political party, candidate for election, TD or Senator on foot of a complaint from a member of the public or on its own initiative. Since members of the Legislature do not have immunity from prosecution, complaints and suspicions of corruption or other criminal activity can be forwarded directly to An Garda Síochána for investigation.

The Electoral Act 1992 sets out the grounds for **disqualification** of a serving or prospective member of the Dáil. Where a member is serving six months or more imprisonment and the conviction or sentence is not under appeal, the member automatically loses his seat. Under the Ethics Act a member of either House may be suspended upon resolution of the House for an initial period of up to 30 days for failure to comply with the Act. The suspension continues in effect until such time as the member complies with the resolution

## Relationship with other NIS pillars

The Legislature is believed to be constrained in fully exercising its duties as a legislator and in holding the Executive to account.[90] The domination of the Legislature by the Executive through **ruling-party majorities** and the weakness of the Seanad and conflicting demands on TDs partly account for this. The imbalance has also been attributed to the strength of the **whip system**, where TDs vote in accordance with party lines at party level. TDs also find themselves subject not only to cross party but intra **party competition** within multi-seat constituencies: a consequence of the PR-STV system.[91]

The legislative reform process over the last ten years has focused upon procedural and technical changes to streamline the functioning of the Legislature. According to some academics this process has largely failed to address its limits.[92] Although the Constitution of Ireland[93] gives considerable nomination, appointment, dismissal and scrutiny powers to the Legislature, in reality these powers are not exercised, are exercised inadequately or are exercised instead by the incoming or sitting Executive.

90 Murphy 2006
91 Joint Oireachtas Committee on Finance and the Public Service, 1999: A5
92 Murphy, 2006: 437-453
93 Articles 13.1.1, 15.2.1 and 28.4.1

Some key Government policy initiatives have not been announced in the Dáil chamber, where the opposition would have an opportunity to react, but in **press conferences**. For example, in 2006 the Minister of State at the Department of Transport resigned from office on a national radio programme and did not subsequently comment on the matter in the Dáil.

Furthermore, the Irish Social Partnership arrangement, institutionalised since 1987, bypasses formal Dáil approval and is negotiated directly between the Executive and the economic and social partners. As one senior civil servant[94] noted '[The **Social Partners**] are now a more powerful influence in the policy process, to the extent that some politicians feel that trade unionists, for example, have more power than backbenchers'.[95] Moreover, frustrated at their inability to influence the Government they support in the Dáil, backbench Fianna Fáil TDs attempted to form a new committee in June 2006 which would influence Government decisions. 'Backbenchers from all parties who have been in Government have complained about being excluded from having a real input'.[96]

94 O'Donnell and Thomas, 1998: 126

95 A backbencher is a member of the Dáil who does not hold Ministerial office and is not a front bench Opposition spokesperson.

96 The Irish Times, 24 June 2006

*Lobbyists*

There are no statutory regulations in place for the registration, definition or disclosure of lobbyists in Ireland. The trend in Ireland has instead been to regulate the lobbied rather than the lobbyist. In 2006, the Department of the Environment, Heritage and Local Government commissioned research into international models of lobbyist regulation. It suggested that a **register of lobbyists** 'would be a good initial first step in ensuring that the perception of undue influence is something that is not an issue in Ireland'.[97] The 2007 Programme for Government states that the Government will consider the regulation of lobbyists. The Public Relations Institute of Ireland and the Public Relations Consultants Association representing lobbyists as well as other public relations professionals have a professional code of ethics.[98]

97 Chari and Murphy, 2007: 86

98 www.prii.ie and www.prca.ie

# POLITICAL PARTIES

## Role and Structure

There are currently fifteen political parties registered in Ireland although just six of these are currently represented in the Dáil. Five of these have formed single majority Government or coalition Government since the foundation of the State.[99] In spite of the trend towards coalitions, Ireland is regarded as having comparatively stable Government.[100]

The Irish electoral system is based on multi-seat constituencies returning between three and five candidates each. This proportional representation single transferable vote system (**PR-STV**) is only used in national elections in Ireland and Malta. PR-STV allows the elector to indicate their first and subsequent choices for the candidates on the ballot paper. Each candidate requires a certain minimum number of votes (a quota) to be elected. Any candidate with either more than enough, or too few, votes to be elected has votes transferred to other candidates, and the process continues until all positions have been filled. The PR-STV system allows for intra-party as well as inter-party competition. 'Competition between parties tends to be on the basis of services rendered [to the local constituency], rather than policy differences'.[101]

There are **no restrictions** on political parties that wish to establish, recruit members and canvass for office. 2.7 per cent of the electorate are members of political parties.[102] This is below the EU average.[103] Ireland has a tradition of electing independent members to parliament. In the 2002 election, independents (including the Socialist Party) won 10.9 per cent of the vote with 14 seats in 2002 (10.9 per cent of first preference vote). By comparison only 5 independents were elected in 2007 (6.7 per cent of first preference vote).[104]

**Party discipline** is very strong and it is unusual for a TD not to vote in accordance with the party position. Government backbenchers therefore do not generally act as independent adjudicators of Government decisions but rather sustain the Government in office.

Ireland's ideological cleavages have not been based on a '**left/right' divide** as the case in most other European countries. Instead they have primarily arisen from political differences which emerged during civil war in 1922 and subsequent conflict in Northern Ireland. This has contributed to a convergence towards the centre of the political spectrum by the main political parties. The Irish party system since 1989 has been characterised by coalition Government.

99 Fianna Fáil, Fine Gael, the Green Party, Labour and the Progressive Democrats
100 Gallagher, 2006: 401
101 Katz, 1984: 143-4
102 Marsh, 2005: 170
103 Gallagher et al, 2006: 312
104 Nealons Guide to 30th Dáil: 208

Irish political culture has widely been perceived to be characterised by **brokerage** and **clientelism** whereby the elected representative acts as an intermediary between the state apparatus and the constituent. Elected representatives are thus believed to be susceptible to locally based sectional interests.[105] The dynamics of PR-STV is a 'contributory' factor to this orientation towards constituency service.[106]

## Accountability, Integrity and Transparency Mechanisms

Over the past fifteen years, a relatively large body of legislation governing Irish political parties has been implemented. For the first time in the history of the State, there are regulations that govern the **financing** of elections, the **disclosure** of donations, and the enhanced scrutiny of exchequer funding for political parties.[107]

Donations to political parties (exceeding €5,078.95) and individual candidates to the Dáil, Seanad, Presidency and European elections, (exceeding €635) must now be disclosed and must not exceed €6,349 (for parties) or €2539.48 (for elected representatives and candidates) in any given year by the same donor. These are available for public inspection on the SIPO's website (www.sipo.gov.ie). In the event of failure to disclose, prosecution in the courts may follow.[108] The acceptance of foreign donations or anonymous donations above €127 is prohibited.[109]

Donations above the legal disclosure threshold to political parties, and, to individuals of political parties are separately disclosed to the Standards in Public Office Commission (SIPO).

There are no provisions to account for the total annual finances of political representatives or candidates. Political parties are not required to publish **audited accounts** of all income and expenditure in the same way that limited liability companies are expected to do.

In addition, election expenditure is only expected to be accounted for in the period from the dissolution of the Dáil to polling day (usually three to five weeks). Electioneering prior to this period is not accounted for. This effectively negates the purpose

105 Collins, 1999: 71-72

106 Sinnott, 2005: 124

107 The legal framework which provides for this includes the Electoral Acts, 1997, 1998, 2001, 2002 and 2004, and the Local Elections (Disclosure of Donations and Expenditure) Act, 1999,. The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001, increased exchequer funding to political parties. (Democracy Commission Audit, forthcoming 2007).

108 This has occurred just once in the case of a former Leas-Cathaoirleach (Vice speaker or Chair) of the Seanad who failed in 1997 to declare a donation of IR£2,500. He was sentenced to community service in 2006.

109 With the exception of donations from Irish citizens living abroad and from a body corporate or unincorporated body of persons which has an office in the island of Ireland from which a principal activity is directed

of the spending limits which is to create a level playing field for all candidates and political parties at elections. The loophole bestows an advantage to the political party with the power to call an election. It also allows those political parties with access to greater sources of electoral funding to **'front-load'** spending in the period prior to the dissolution of the Dáil.

There are currently no uniform spending limits for all elected representatives. For instance, there are no set limits for Seanad or local authority election expenditure (for discussion on local authority elections, see Regional/Local Government pillar). The SIPO believes that it 'would seem reasonable that appropriate spending limits should apply in the case of all elections for local or national office'.[110] Also, Independent members of the Dáil and Seanad are not required to furnish the SIPO with a statement of expenditure in relation to annual allowances (€30,649 and €17,415 respectively) under the Oireachtas Act.

The SIPO has also observed that 'It is possible that requests for **donations** are often pitched at a level which is below the disclosure thresholds. The relatively small difference in the maximum donation which can be accepted by a political party (€6,348.69) and the amount which must be disclosed (€5,078.95) may prompt parties and donors to accept and make donations which are below the disclosure threshold'.[111]

Over €11 million was spent by political parties and candidates during the 2007 general election. The total disclosed in donations by political parties and members of the Oireachtas came to just over €1 million.[112] In publishing these figures the SIPO claimed that 'if the intention of the Electoral legislation is to provide for transparency and openness in relation to party funding and expenditure, then it is not achieving this aim'.[113]

The Minister for the Environment, Heritage and Local Government, not the SIPO or an Electoral Commission, determines the **disclosure limits**, caps for political donations and expenditure limits. A year before the 2002 general election the Minister substantially increased election expenditure limits by 43 per cent, 47 per cent and 50 per cent in the three, four and five seat constituencies respectively. The motives for this increase are open to accusations of political bias given that the increases best served the outgoing Government parties who spent closest to the spending limits.

110 SIPO correspondence September 2006

111 Ibid 2006

112 Standards in Public Office Commission 2008: www.sipo.gov.ie

113 Ibid

## Complaints and Enforcement Mechanisms

The Standards in Public Office Commission is responsible for overseeing the enforcement of party funding regulations.

A small number of allegations relating to the **theft of party funds** have arisen in the past ten years. Political parties are usually reluctant to discipline party members for allegations or findings of wrongdoing. This could be explained partly by the impact that the expulsion of a member, particularly a serving TD or Minister, would have on the stability or credibility of a government. Even where former members are believed to have diverted party donations for personal use, no complaints have been made to the authorities and little or no effort made to retrieve the money.

## Relationship with other NIS pillars

Political parties interact most with the Legislature, Executive and Local Government. It is here that the dynamics of party allegiances are most evident with Government and parliamentary members normally voting and acting in accordance with party allegiances. In both theory and practice, party executives are answerable to their membership. However with relatively low rates of membership, political parties rely on large donations from individuals, trade unions and businesses. As a result, disproportionate **influence** is believed to be exerted over party policy by vested interests (see Table 3).

# ELECTORAL COMMISSION

## Role and Structure

The regulation and administration of elections in Ireland is not undertaken by a unitary body but a number of separate bodies incorporating civil servants, local authority and public sector employees.

### *Electoral Registration*

The **Franchise Section** in the Department of the Environment, Heritage and Local Government coordinates national elections. The Department is responsible for the various legal codes dealing with the registration of electors and the conduct of elections and referendums. This involves an ongoing review of electoral law, review of constituencies and local electoral areas, the provision of information and advice to registration authorities, returning officers and the general public together with the publication of election results.[114]

Each local authority maintains the **election register**. In 2006 the Minister for the Environment, Heritage and Local Government acknowledged that the election register figures were flawed by a margin of 300,000.[115] A registration campaign was subsequently managed by local authorities to improve the accuracy of the register.

114 www.environ.ie

115 The Irish Times, 10 May 2006

### *Constituency Commission*

The Constituency Commission, an independent body established on a statutory basis by the 1997 Electoral Act, has the power to revise constituency boundaries. It is established after the final publication of the census report and must lay its report before the Dáil within six months of its establishment.[116] Its members include a serving judge, the Clerks of the Dail and Seanad, the Ombudsman, and the Secretary General of the Department of the Environment. To date all of its reports have been implemented.

### *Electoral Commission*

The Programme for Government 2007 contained a commitment to establish an independent permanent, full-time Electoral Commission. It is anticipated that such a Commission would assume powers for constituency boundary revision, electoral administration and oversight, the compilation of a new national electoral register, examine the issue of the financing of the political system, and take over the functions of the Standards in Public Office Commission relating to election spending.

As it stands, there are a number of bodies that regulate and administrate elections in Ireland. The SIPO regulates election spending, (see Anti-Corruption

116 An Electoral (Amendement) Bill 2008 is expected to require the Commission to report within three months of the publication of the census report in future.

Commission pillar) while the Referendum Commission promotes public awareness of the referendum and encourages the public to vote.

The **Commission on Electronic Voting (CEV)** was established to consider proposals to introduce electronic voting. Its 2004 report found that it was unable to satisfy itself as to the accuracy and secrecy of the proposed system. The introduction of electronic voting was subsequently postponed.[117]

## Accountability, Integrity and Transparency Mechanisms

The same rules apply to members of the Franchise Section of the Department of the Environment, Heritage and Local Government as apply to other members of the Civil Service.

## Complaints and Enforcement Mechanisms

See Civil Service.

## Relationship with other NIS pillars

See Civil Service.

117 CEV report, 2006: 206

# ANTI-CORRUPTION COMMISSION

## Role and Structure

There is no unitary Anti-Corruption Commission in Ireland. This role is currently but only partly filled by a number of agencies including the Garda Bureau of Fraud Investigation, the Criminal Assets Bureau, Oireachtas Committees, Ethics Registrars in Local Government, Tribunals of Inquiries and Commissions of Inquiries and the Standards in Public Office Commission.

The **Standards in Public Office Commission (SIPO or Standards Commission)** most closely resembles Anti-Corruption Commissions in other jurisdictions. It is responsible for supervising the provisions of the Ethics, Electoral and Oireachtas Acts which deal with disclosure of political donations, limits on election spending and Exchequer funding of political parties. The SIPO is an independent statutory body chaired by a serving or former High Court or Supreme Court Judge. There are six members in total: including the Chair, a former member of the Oireachtas, the Comptroller and Auditor General, the Ombudsman, and the Clerks of both Houses of the Oireachtas. The SIPO replaced the Public Offices Commission (1997-2001).

In 2006 it had a total of eight staff and an annual budget of €886,000.[118] Its staff are appointed in the same way as other civil servants and are officially employed by the Ombudsman's Office (see Ombudsman). The Chair of the SIPO is appointed by the President on the advice of both Houses of the Oireachtas. The position does not need to be advertised. The Chair is appointed for a term of six years, while a decision to remove the Chair or other ex-officio members of the Commission must be based on a decision of both Houses of the Oireachtas.

Decisions are made by the SIPO on the basis of a majority of the members present and voting on the question and, in the case of an equal division of votes, the chairman of the meeting has a second or casting vote. Where a decision is needed to undertake an investigation or appoint an inquiry officer, unanimity with all members present is required.[119]

## Accountability, Integrity and Transparency Mechanisms

Members of the SIPO are not subject to any specific set of codes. Its staff are subject to the Civil Service Code of Standards and Behaviour.

## Complaints and Enforcement Mechanisms

This section relates to complaints handled by the SIPO. Refer also

118 www.sipo.gov.ie, 2005
119 Section 21, Ethics in Public Office Act 1995

to the section on Ireland's legal environment from page 45 for further detail.

The SIPO can commence an investigation into apparent irregularities or breaches of **Ethics** or **Electoral law** on its own initiative in the absence of a complaint. However it cannot appoint an Inquiry Officer to conduct a preliminary examination where no complaint has been received. The SIPO can also make enquires about donations, election expense statements and any other matters under the Electoral Acts that it has a supervisory role. Such inquiries can be made in the absence of a complaint.

The SIPO also supervises adherence to the **Codes of Conduct for Office Holders** and civil servants as well as the registration of interests by Office Holders. The **Committees of Members Interests** for both Houses on the other hand supervise adherence to the Codes by their respective members. However, the Committees regularly consult with the SIPO over the Codes and regularly seek advice from it on other matters.

From its establishment in 1995 to 2006, the SIPO had completed five **investigations** arising from the Ethics Acts. This included an investigation into a Minister of State's failure to disclose a material interest in Oireachtas proceedings in 2000.

In addition, one investigation was initiated by the SIPO on foot of a complaint by the Dáil Committee on Members' Interests but was subsequently suspended, pending consideration of the matter by the Director of Public Prosecutions (DPP). This case only came before the Courts more than three years after it was first brought to the DPP's attention.

As of 2006, 75 complaints had been made to the SIPO under the Ethics Acts, of which 14 were found to have been validly made under the terms of the legislation.[120] The SIPO had also made 24 enquiries on its own initiative in the absence of complaints into whether contraventions of the Ethics Acts have occurred. It examined 21 complaints about breaches of the provisions of the Electoral Acts. The SIPO also initiated 163 enquiries on its own initiative into breaches of the Electoral Act. A further 29 files were sent by the SIPO to the DPP under the Electoral Acts. This was achieved in spite of the fact that there are no specific procedures set out in the Electoral Acts for complaints to the SIPO.

The low level of complaints received over a nine year period and the high number of enquires the SIPO initiated, has led the SIPO to call on the Government to grant it powers to appoint an **Inquiry Officer** to undertake preliminary investigations without a complaint. A formal investigation under the Ethics Act is accompanied by an extensive legal and administrative process involving formal depositions and

120 Ibid

public hearings. The Minister for Finance rejected the SIPO's request for an Inquiry Officer.[121] The Minister was 'satisfied that the powers of the Standards Commission as they stand, are ample to meet public concerns in the field of public life'.[122]

The SIPO has also noted that there is an increasing range of legislative and administrative instruments which can apply to a wide range of public bodies. In addition to the provisions under the Ethics Acts, public servants and board members of public bodies can be required to comply with the provisions of the Companies Acts, other specific legislation, and the Department of Finance's Code of Practice for the Governance of State Bodies. According to the SIPO this 'overlap brings with it the danger of conflicting provisions and of confusion for persons charged with acting in accordance with such provisions'.[123]

The SIPO has also voiced its concern about the low level of **awareness** of the codes and has stated that 'there is scope for greater public dissemination of the terms of the codes which have been adopted to date'.[124] There are a number of factors that have contributed to the low level of complaints, such as a traditional cultural reluctance to "inform"; the complexity of the legislation; a lack of knowledge of the provisions of the legislation (which for example allows for public inspection and copying of election expenses statements); and a lack of interest from the media.

The SIPO believes that there is a 'need for some form of **'Regulatory Impact Analysis'** of ethics legislation (see also page 60). This would ensure that enacted legislation reflects the intention of the Legislature and does not have unwanted consequences or unnecessary conditions. It would also ensure that appropriate consultation takes place and that any crossover of functions is avoided'.[125]

The OECD has also pointed to the need for impact analysis.[126] This requires public institutions to test the effectiveness of the measures that have been introduced. The SIPO has called for 'an assessment as to whether, and to what extent, the legislative and other developments which have taken place in the past decade have impacted on the behaviour of public representatives and public servants in general'.[127]

121 SIPO Annual Report, 2004, 2005
122 Ibid: 9
123 SIPO Correspondence, September 2006
124 Ibid 2006
125 Op cit, September 2006
126 SIPO, 2004 Annual Report
127 Ibid

Table 8: Level of Complaints received and own-initiative enquires from 1997 to 2007 by the Public Office Commission/Standards in Public Office Commission under the Ethics in Public Office Acts 1997 and 2001

| Received complaints | Valid complaints | Enquiries (Commission initiative in the absence of complaint) | Investigations initiated | Investigations completed | Files sent to DPP |
|---|---|---|---|---|---|
| 141 | 49 | 28 | 5 | 5 | 2 |

*Source: SIPO Correspondence, 2006 and 2008*

Table 9: Summary of complaints, enquiries and prosecutions under the Electoral Acts

| Complaints | No Received | Further Enquiries made | Responses given to complainants | No Action Taken |
|---|---|---|---|---|
| | 21 | 7 | 20 | 1 |

| Enquiries made where no complaint was received | Total enquiries made | To Third Parties | Arising from Planning Tribunal | Other Enquiries |
|---|---|---|---|---|
| | 183 | 132 | 15 | 36 |

| Prosecutions (Penalties Imposed) | No. of files referred to Gardaí | Non-Returns | False Return | Other Offences |
|---|---|---|---|---|
| | 56 (5) | 51 (4) | 1 (1) | 4 (0) |

*Source: SIPO Correspondence, 2006 and 2008*

## Relationship with other NIS pillars

The SIPO appears to have a good working relationship with the Department of the Environment, Heritage and Local Government (sponsors of the Electoral Acts) and the Department of Finance (sponsors of the Ethics Acts and Party Leaders Act). It also co-operates with bodies on matters of mutual interest. For example, it liaises with the Companies Registration Office to establish whether companies who have made political donations are compliant with Section 26 of the Electoral Acts.[128]

In spite of its ability to launch inquiries and examinations, the SIPO is still very much dependent

128 Section 26 requires that companies and individuals declare aggregate donations over €5,078.95 in any one year to the SIPO

on disclosure from those it oversees. In other words, it sometimes knows only as much as political parties, election candidates and their agents let them know. Political parties are not obliged to publish their accounts and disclosure is based on self-assessment by the person making the statement in the first instance. The SIPO does not conduct forensic audits of election expenses statements. 'Unless there is evidence to the contrary, Election Expenses Statements and supporting invoices, receipts or vouchers are accepted as being accurate'.[129]

The SIPO has noted a developing trend towards the *ad hoc* examination of matters of current public interest. On occasions Government has chosen 'not to invoke the formal procedures of the Ethics Acts, but to appoint individuals without specific powers to conduct these examinations'.[130]

For instance the SIPO did not investigate allegations that a former Minister at the Office of Public Works and at the Department of the Environment, Heritage and Local Government unduly awarded public relations contracts to an associate while he held these posts in 2002 and 2003 respectively. Instead, the Government choose 'not to invoke the formal procedures of the Ethics Acts, but to appoint individuals without specific powers to conduct these examinations'.[131] In this instance the Government appointed a former Chair of the Revenue Commissioners (tax authorities) Dermot Quigley to prepare a report on the matter. Mr Quigley found that the Minister had allowed the perception of impropriety to arise, however no evidence of wrongdoing was found. [132] In its consideration of whether a formal investigation was warranted, the Standards Commission was dependent on the evidence contained within the **Quigley report** and documents discovered by the Department of the Environment. It did not have the benefit of an Inquiry Officer's report as it had not received a complaint. Additional guidelines on the appointment of consultants were subsequently introduced however no advisory role was stipulated for the SIPO.[133]

A Government Green Paper proposal (see Electoral Commission pillar) to annex the Standards Commission's role in supervising the Electoral Acts and replace it with an independent permanent, full-time Electoral Commission was at tentative stages at the time of writing.

### *Tribunals*

Tribunals of Inquiry remain the most prominent form of investigation into political corruption in Ireland. Tribunals are often, though not always, chaired by a serving or retired member of the Judiciary and are

129 SIPO Correspondence, September 2006
130 Ibid 2006
131 Op cit, September 2006
132 The Irish Times, 15 February, 2005
133 Department of the Taoiseach, February 2005

established by the Houses of the Oireachtas on the recommendation of the Government. Tribunals are independent of the Executive and Legislature. They can compel the attendance of witnesses, present its findings to parliament and refer matters to courts for legal action.

Since the 1990s there have been eight judicial inquires investigating allegations of malpractice and corruption in public life. These included the Beef Tribunal (1991-94), McCracken Tribunal (1997), Finlay Tribunal (1996-97), Moriarty Tribunal (1997-), Flood (now Mahon) Tribunal (1997-) Lindsay Tribunal, (1999-2002), Barr Tribunal (2000-2006) and Morris Tribunal (2002-2008)

Corruption tribunals, and in particular, the Moriarty and Mahon Tribunals have faced persistent criticism for the length of time it has taken them to complete their work and associated legal costs. The Mahon Tribunal alone was predicted to cost some €300 million when it completes it work.[134] The work of the Tribunals has been affected by legal challenges and by the persistent non-cooperation of key witnesses.[135] Judge Mahon, Chair of the Planning and Payments Tribunal (known as the Mahon Tribunal) acknowledged witness non-cooperation by granting costs to witnesses who, though involved in corruption, had chosen to cooperate with the Tribunal. The Judiciary are dependent upon the Director of Public Prosecutions (DPP) to negotiate immunity with potential witnesses in return for their evidence. Eight legal challenges had been filed against the Mahon Tribunal by 2005.[136]

The **Tribunals of Inquiry Bill 2005** sought to consolidate reform and replace existing Tribunals legislation. 'The Bill implements in large part the recommendations contained in The Law Reform Commission final report on Public Inquiries including Tribunals of Inquiry, published in May 2005'.[137]

A number of the Law Reform Commission's key recommendations were not incorporated in the Bill. The Tribunal does not have discretion to film, record or broadcast proceedings. In addition the Bill allowed the Government to block the publication of a tribunal's report for a specified period 'or until the Government otherwise directs, where such publication would not be in the interest of State security, or the interest of the State's relations with other states or international organisations'.[138]

The Tribunal of Inquiry into Certain Planning Matters and Payments Act 2004 removed the obligation of the Tribunal to enquire into every matter before it. The **Proceeds of Crime (Amendment) Act**

134 Keena, 30 October 2008

135 Byrne in Global Corruption Report 2006: 173

136 Ibid:173

137 The Minister for Justice, Equality and Law Reform, 29 November 2005

138 The Tribunals of Inquiry Bill 2005 Explanatory Memorandum

**2005** also meant that evidence presented at a tribunal could be used to confiscate the assets of corrupt individuals and seize a gift suspected of being a bribe. The 2005 Act eliminated existing legal difficulties that required that a specific instance of corruption must be linked to a specific payment and a specific favour.

The **Commissions of Investigation**, established under a 2004 Act, will have powers to compel witnesses to give evidence, search premises and remove documents. These new bodies are expected to operate alongside the Tribunals. A Commission of Investigation is designed to encourage cooperation by moving away from the adversarial approach that applies within the courts and Tribunals. It is envisaged that the need for legal representation will be less likely. A Commission established under this Act must submit a report on its findings and be timely and cost-effective.[139] In April 2005, the first Commission of Investigation was established to investigate the alleged role of British and Irish security services before, during and after the Dublin and Monaghan bombings of 1974.

139 It is not clear by which criteria these standards will be judged

# JUDICIARY

## Role and Structure

Ireland is a common law jurisdiction.[140] The Constitution stipulates a separation of powers between the Executive, the Legislature and the Judiciary.[141] The Judiciary is independent of the Executive and judicial decisions are not subject to scrutiny by the Legislature.

The Irish courts system consists of the **Supreme Court** (8 judges), the **High Court** (38 judges) and a number of lower courts called Circuit (38 judges) and District Courts (61 judges). The High Court and the Supreme Court have authority, by means of judicial review, to interpret the Constitution. Court decisions are delivered in open court and publicly accessible on the Courts Service website. The **Circuit Court** deals with civil matters and matters that must be tried before a jury. The **District Court** deals only with minor matters that may be tried summarily. The court chosen is dependent on the level of money involved (say in a contract case) or penalty (criminal case). The **Special Criminal Court** tries serious offences in the absence of a jury, whenever the Director of Public Prosecutions considers this to be in the interests of justice or public order. This has most notably been used to try those accused of being members of paramilitary organisations or organised criminal gangs. Both the Special Criminal Court and the **Court of Criminal Appeal** do not have separate judges but use a combination of judges from other courts. The Central Criminal Court is a division of the High Court exercising its criminal jurisdiction and consists of a judge or judges of the High Court.

The **Courts Service** provides administrative support for the courts and judges and was established in 1999. Its staff are employed as civil servants. Funding is provided by the Government through the Department of Justice, Equality and Law Reform. Its budget in 2006 was €84 million.[142] While funding and facilities have improved significantly since 1999, criminal cases have been delayed for long periods for lack of court room space. In 2005 a case brought by the Competition Authority was delayed for twelve months for this reason.[143] The Courts Service believes this problem has been largely resolved in recent years.[144]

## Accountability, Integrity and Transparency Mechanisms

Judges are not elected but formally appointed by the President. This is only exercised on the advice of the Government following recommendations by the Minister for Justice.

140 A Common Law system is one where a country's legal system has been developed through decisions of courts as well as primary and secondary legislation

141 Constitution of Ireland, Article 6.1

142 Courts Service, Interview 2007

143 The Irish Times, 31 March 2006

144 Op cit, 2007

A statutory body, the **Judicial Appointments Advisory Board**, advises the Government on the selection of judges. The Board consists of the Chief Justice, President of the High Court, President of the Circuit Court, President of the District Court, the Attorney General (AG), two representatives of the legal professions and three ministerial appointees. The Board provides a list of at least seven candidates. Where fewer than seven persons inform the Board of their wish to be appointed to judicial office, or where the Board is unable to recommend to the Minister at least seven persons, the Board may recommend to the Minister a lesser number of persons for appointment.

The Government is not obliged to select from this list. The list is confidential, as are the criteria and procedures used by both the Government and the Board. Cabinet confidentiality ensures that documentation on the process of judicial appointment is limited.

There are no ethical guidelines for judges and they are not subject to the terms of the Ethics Acts or Codes of Conduct for Office Holders. There is no requirement for judges to file a register of declarable interests or assets. However, under the Standards in Public Office Act judges must file a tax clearance certificate with the Judicial Appointments Advisory Board before appointment to judicial office.

Judges receive no training in overseeing trials on corruption.

## Complaints and Enforcement Mechanisms

There is no formal complaint mechanism for the public against a judge for alleged improper conduct. Nonetheless, the **Chief Justice** can launch an inquiry into alleged misconduct by a member of the District Court. His/her findings may be withheld from publication or forwarded to the Oireachtas to initiate impeachment hearings.

Article 35.2 of the Constitution states that 'all judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law' while Article 35.4 states that judges may not be dismissed 'except for stated misbehaviour or incapacity and then only on a majority vote in each House of the Oireachtas'. Thus far 'stated misbehaviour and incapacity' has not been judicially interpreted.

Two specific instances highlight the difficulty in disciplining members of the Judiciary, short of impeachment by both Houses of the Oireachtas.

In 1999, a Supreme Court Judge, Mr. Justice Hugh O'Flaherty, resigned following allegations of impropriety. The controversy became known as the **'Sheedy affair'**. In his investigation of the allegations, the Chief Justice Liam Hamilton found that Justice O'Flaherty had inappropriately approached the Dublin Circuit Court Registrar with the view to having a case

relisted. The Chief Justice also found that Mr. Justice O'Flaherty had approached the Registrar on foot of informal queries on behalf of the defendant (Philip Sheedy) in a case involving the death of a woman by dangerous driving. The case was re-listed a year before the original review date for sentence and Circuit Court judge, Mr. Justice Cyril Kelly suspended the remaining term of Mr. Sheedy's sentence. The Chief Justice also found that Mr. Justice Kelly should not have reviewed a case imposed by one of his colleagues and had 'failed to conduct the case in a manner befitting a judge'.[145]

In the absence of any formal disciplinary procedure Justice Flaherty, Justice Kelly and the Court Registrar resigned. It appears that public and political pressure had made the judges' positions untenable.[146] Ms. Justice Susan Denham of the Supreme Court described this period as the 'most serious constitutional crisis involving the judiciary since the foundation of the State'.[147]

In 2003 a Circuit Court judge, Judge Brian Curtin was acquitted of possessing child pornography because the search warrant issued during the investigation was out of date. The Oireachtas subsequently set up a committee to inquire into the Judge's alleged misbehaviour. The constitutionality of the Oireachtas impeachment process was unsuccessfully challenged by Judge Curtin in the High Court and Supreme Court. Before the process could begin, Judge Curtin resigned on the grounds of ill health.[148]

These two cases of alleged judicial misconduct underline the absence of formal Codes of Conduct and conflict of interest legislation governing the Judiciary. The **Committee on Judicial Conduct and Ethics**, led by the then Chief Justice, Mr. Justice Ronan Keane, issued its report in early 2001.

The Report recommended the introduction of an independent statutory based Judicial Council to regulate judicial conduct, ethics and remuneration. Such a Council would issue an annual report and formulate a Judicial Ethics Code. A three person Judicial Conduct and Ethics Committee, established by the Council, would investigate complaints of judicial misconduct made by members of the public and the legal profession. The Panel would consist of two judges and a layperson (appointed by the Attorney General).

Where allegations of misconduct are established, the judge in question would receive an admonishment or a private or public reprimand, or a recommendation that the Oireachtas take steps to remove the judge in question. The

145 The Irish Times, 17 April 2000

146 New life was breathed into the controversy a year later when the Government unsuccessfully attempted to appoint Justice O'Flaherty as a director of the European Investment Bank.

147 Denham, July 2000

148 RTÉ, 13 November 2006

Committee could also recommend further education or re-training.

The Government and the Law Society of Ireland[149] broadly welcomed the report. A **Judicial Conduct and Ethics Bill**, which would give effect to the recommendations of the report, was to be published in 2004. However, its recommendations have not yet been implemented.

## Relationship with other NIS pillars

While the Judiciary is constitutionally an independent pillar of the State, the perception of independence is undermined somewhat by the selection of judges by members of the Executive. As a common law country, judges also make law through their interpretation of legislation and the Constitution. This quasi-legislative role could in theory bring the Judiciary into conflict with both the Executive and Legislature. Court rulings have often led to criticism from members of the Executive and Legislature leading to tension between Government and the Judiciary.

149 The Law Society is both a representative and regulatory body for the solicitors' profession in Ireland. *See Civil Society Section for further discussion*

# OMBUDSMAN

## Role and Structure

The office of the Ombudsman was established under the Ombudsman Act 1980. The Ombudsman is appointed by the President upon nomination by the Houses of the Oireachtas for a six-year period. The Ombudsman is not a political office and must remain independent in the performance of her duties. Her office has a staff of 59 and a budget of just over €8 million in 2007.[150] The Office of the Ombudsman is not recognised within the Constitution.

The Ombudsman has extensive powers in law. She can demand any information, document or file from a public body which is the subject of a complaint and can require any relevant person to give information about a complaint. The Ombudsman has the power to investigate administrative actions, including decisions, refusals or failures to take action as well as administrative procedures.

The Ombudsman cannot examine decisions taken on matters which have already been adjudicated upon by a court or where court action has been initiated by the complainant unless it appears to the Ombudsman that special circumstances make it proper to do so. Furthermore, a Government minister can request an investigation to be ceased. This has never happened. The Ombudsman's recommendations are not legally binding but have strong moral and persuasive status. These recommendations normally focus upon procedural changes within public bodies. The Ombudsman is required to publish an annual report which is laid before the Houses of the Oireachtas. Although the Ombudsman does not have a specific remit in relation to the prevention and detection of corruption, she is a statutory ex-officio member of the Standards in Public Office Commission.

### *Freedom of Information (FOI)*

The current Ombudsman also holds the position of **Information Commissioner**. This post was established under the Freedom of Information (FOI) Act 1997 and is an appeals body for the public on decisions concerning access to records held by public bodies. The Minister for Finance by regulation can add more bodies and publishes a list of existing bodies covered by the legislation. The FOI Central Policy Unit at the Department of Finance coordinates the Act for the Government. Since 2007, the Ombudsman has also held the role of Commissioner for Environmental Information.

The Act does not apply to the Garda Síochána (police force) and a number of other bodies that have significant interaction with the public such as (some aspects of) the Health and Safety Authority, the Central Bank, Financial Services Authority,

150 www.ombudsman.gov.ie and www.budget.gov.ie

Financial Regulator and the National Treasury Management Agency.

The FOI Act was widely welcomed when it was introduced in 1997 and seen as an important tool in fighting corruption and engendering public trust in Government. Its effectiveness was undermined however with the adoption of the Freedom of Information (Amendment) Act 2003. Further restrictions on access to Government Memoranda and other aspects of Government work were strengthened. In addition, **fees** for requests and appeals were introduced which were 'unparalleled in any other country that has an Information Commissioner'.[151] The Government introduced these restrictions and fees in the absence of consultation with the Information Commissioner. There was a subsequent sharp drop in usage of the Act. The Information Commissioner found that since the introduction of fees the overall usage of the Act declined over 50 per cent, requests for non-personal information declined by 75per cent, requests from journalists down 83 per cent and businesses were 53 per cent less likely to use the Act.[152]

A number of domestic and international observers including the Ombudsman, Organisation for Economic Cooperation and Development (OECD), the Council of Europe Group of States against Corruption (GRECO), Irish think tank 'TASC' the media and Opposition parties, have criticised these changes. GRECO stated that the fee system 'sends a negative signal to the public, which is to some extent in contradiction with the general principles of the right to access to official information' and recommended changes to the fees for applications and appeals.[153]

## Accountability, Integrity and Transparency Mechanisms

As civil servants her staff are subject to the same laws and regulations binding all civil servants (see Civil Service section). The Ombudsman is subject to the terms of the Ethics Acts and the Code of Conduct for Office Holders. The post of Ombudsman has not been open to public competition nor are there any post-employment restrictions in place.

## Complaints and Enforcement Mechanisms

There are approximately 2,500 complaints to the Ombudsman each year, from which about 15 per cent are fully resolved, 25 per cent assistance provided and about 60 per cent either not upheld, discontinued or withdrawn.[154] In recent years there has been a growth in the number of Ombudsman bodies: for instance a Defence Ombudsman, an Ombudsman for Children and Garda Síochána

151 Ombudsman, Annual Conference of Assistant Secretaries, 3 March 2005

152 Information Commissioner, Review of the Act, June 2004

153 GRECO, 2005

154 www.ombudsman.gov.ie

Ombudsman Commission have recently been established.

## Relationship with other NIS pillars

The office of the Ombudsman is widely respected and appears to have a sound working relationship with other state and non-state actors. It has grown in confidence in recent years and is seeking a more proactive role in addressing more issues of public concern. The growing complexity in the nature of the Ombudsman's work and the absence of corresponding changes to its legal status may undermine its effectiveness.

The proposed Ombudsman (Amendment) Bill was promised in the 1994 Programme for Government and was placed in the Government's legislative programme for 2007.[155] The proposed Bill sought to widen the remit of the Ombudsman to cover a range of additional bodies including Institutes of Technology, Universities, Vocational Education Committees, Regional Fisheries Boards and the claims functions of the National Treasury Management Agency.

Currently, the Ombudsman cannot examine decisions taken in the administration of prisons such as decisions relating to a pardon or remission of prison sentences. The Inspector of Prisons and Places of Detention has repeatedly called for a **Prisons Ombudsman**. In four annual reports, the Inspector has highlighted concerns about the propriety of the Irish Prison Service where 'Transparency [and] accountability [are] dirty words'.[156] The Inspector of Prisons has also criticised the role of prison officers regarding drug use in prisons. 'Unfortunately, it would appear that some prison officers have themselves been used as conduits'.[157] An amendment to the Prisons Bill provided for the Inspector of Prisons and Places of Detention on a statutory basis in 2007.

155 It was not enacted at the time of writing

156 Inspector of Prisons Report, 2006

157 Ibid: 37

# CIVIL SERVICE/PUBLIC SECTOR AGENCIES

## Role and Structure

Each Government Department, of which there are fifteen, has a permanent staff consisting of administrative, professional, specialist and technical employees. The Secretary General is the chief civil servant of a Department and is answerable to his/her Minister or Minister of State. Upon recommendation by the Minister of the relevant Department, he is then appointed by the Government for a seven year period. In descending order, the ranking of civil servants is as follows, Secretary General, Assistant Secretary, Principal Officer, Assistant Principal Officer, Administrative Officer, Higher Executive Officer, Executive Officer, Staff Officer and Clerical Officer. There were approximately 38,000 civil servants at the time of writing.

## Accountability, Integrity and Transparency Mechanisms

Recruitment of staff to the Civil Service is on the basis of a rule-based open competition. In 2004 the Civil Service and other public service bodies' recruitment process was reformed. The **Commission for Public Service Appointments (CPSA)** and the **Public Appointments Service (PAS)** were established. The CPSA sets standards and publishes codes of practice, for recruitment and selection to the Civil Service, An Garda Síochána and a number of public service bodies, including the Health Service Executive. The CPSA also grants licences to certain public service bodies to recruit on their own behalf. The PAS provides recruitment, assessment and selection services for the civil service, local authorities, An Garda Síochána and a number of public service bodies, including the Health Service Executive.

### *Codes of Conduct*

In 2004 the Minister for Finance established the **Civil Service Code of Standards and Behaviour**. It did not apply to the wider public service. The Civil Service Code addresses what constitutes a conflict of interest and advises civil servants on how to deal with gifts. Civil servants who hold 'designated positions'[158] are required to declare their interests and those of their spouse and children. Civil servants of a certain rank[159] are obliged to report to the **Outside Appointments Board** if they intend to be engaged in or connected with any outside businesses. This Board is established by the Minister for Finance and consists of the Secretary General in the Department of Finance, the Secretary General to the Government, and three other members, who are not civil servants. The Board reports annually to Government. Where a specified act under the Code is believed to

158 Principal level and above, and other positions prescribed by the Minister for Finance

159 Assistant Secretary level and above, including resigned or retired civil servants

have been committed, the SIPO is empowered to investigate.

There is no formal legal obligation on civil servants or public officials to report corruption or suspicions of corruption, although. statutory immunity protection for whistleblowers under the Ethics Acts is provided for under section 5 of the Standards Act 2001.

According to the Ombudsman the 'principles in the [civil service] codes are also couched in general terms and little or nothing has been done to explain them or to emphasise their relevance to daily work situations'.[160] The Standards in Public Office Commission has voiced concern about the low level of awareness of public and civil service codes and has stated that 'there is scope for greater public dissemination of the terms of the codes which have been adopted to date'. [161] [162]

### *Public Service Modernisation Programme*

A key aspect of Civil Service governance is the public sector modernisation programme. A series of initiatives sought to introduce principles of best governance through increased accountability and transparency in decision-making, the development of principles of good administration, quality customer service, and efficient, fair, and simplified regulations.[163] These aims were to be achieved through organisational improvements in human resource management, financial management and enhanced information systems management.[164]

An **Implementation Group of Secretaries General** and a **Change Management Network** were established to oversee and share best practise in the modernisation programme, while the creation of individual Role Profiles for staff were facilitated under a **Civil Service Performance Management and Development System (PMDS)**. Government Departments and state agencies were also required to publish annual reports including strategy statements outlining key objectives and outputs while strategy statements were broken down into divisional and work unit business plans.[165] In 2007 an **Organisational Review Programme (ORP)** was launched by the Government. It is managed by the Department of the Taoiseach and is examining the capabilities of Government Departments in a number of key areas, focussing on their ability to deal effectively with future challenges. Computerisation and knowledge

160 Ombudsman, Institute of Public Administration, 20 June 2006

161 SIPO Correspondence, September 2006

162 See Standards Commission pillar for detailed overall discussion on codes

163 The Strategic Management Initiative (SMI) 1994, Delivering Better Government (DBG) programme 1996, Better Local Government programme 1996, the Public Services Management Act 1997 and the Programme for Prosperity and Fairness (PPF) 1999.

164 2002, PA Consulting Group, Evaluation of the Strategic Management Initiative

165 Better Government - www.bettergov.ie

management systems are seen as key elements of the modernisation programme. In 2006 Ireland launched its first fully interactive **e-consultation** on the design and passage on Government legislation.[166] The e-consultation allowed members of the public to make submissions on the draft law at Committee Stage, placed these submissions on a dedicated website (www.econsultation.ie), and broadcast proceedings of the relevant Oireachtas Committee.

A 2002 report by PA Consulting found 'that the civil service in 2002 is a more effective organisation than it was a decade ago. Much of this change can be attributed to the [Strategic Management Initiative] SMI/ [Delivering Better Government] DBG.'[167]

In 2008 the Government launched the first Organisation for Economic Cooperation and Development **(OECD) Review of the Irish Public Service**. It compared the Irish public service with other OECD countries, and made recommendations for the future direction of the Public Service. The OECD stated that 'broadly speaking Ireland is on a sound trajectory of modernisation'.[168] It highlighted the need for the Irish Public Service to place greater emphasis on citizens and their expectations. Among its recommendations was the review and revision of accountability structures and performance measures; and the consolidation of public information in order to make it more transparent and easily accessible. It also recommended the removal of Freedom of Information fees for non personal information. In response to the OECD's findings, the Government appointed a **Task Force on the Public Service**. Its report recommended the introduction of many of the OECD's recommendations but did not address those related to Freedom of Information.[169]

## Complaints and Enforcement Mechanisms

The Civil Service Regulation (Amendment) Act of 2005 provided for a new **Civil Service Disciplinary Code** outlining penalties and procedures. The Code came into effect in 2006. Penalties may be imposed on civil servants who have been found guilty of 'misconduct, irregularity, neglect, unsatisfactory behaviour or underperformance'.

Disciplinary action can include any of the following measures[170]:

1. Formal written notes placed on the officer's personnel file
2. Deferral of an increment
3. Debarment from competitions or from specified competitions or from...

166 The Broadcasting Bill 2006
167 PA Consulting Group 2002: 1
168 OECD, 2008: 11
169 Available at www.bettergov.ie
170 Department of Finance, Circular 14/2006, Paragraph 16

4. Promotion for a specified period of time
5. Transfer to another office or division or geographical location
6. Withdrawal of concessions or allowances
7. Placing the civil servant on a lower rate of remuneration (including the withholding of an increment)
8. Reducing the civil servant to a specified lower grade or rank
9. Suspending the civil servant without pay
10. Dismissal

Formal Disciplinary Procedures are divided into four stages: Disciplinary interviews are conducted at each stage before the issue of a warning.

1. Verbal warning
2. Written warning
3. Final written warning
4. Implementation of further disciplinary action

Stage four is implemented where there is serious misconduct or underperformance 'which results in a breakdown of the relationship of trust and confidence between the Department/Office and the member of staff concerned'. In cases of serious misconduct, including corruption, the department may proceed directly to stage four.

The 2005 Act also gave each Secretary General or Head of a Government agency responsibility for the disciplining of civil servants below Principal Officer level. Previously only a Minister, with approval from the Cabinet, could dismiss an established civil servant. Ministers are now only responsible for procedures at or above Principal level or those civil servants that they have directly appointed by the Minister. It is not clear how many civil servants are disciplined in any given period using the new disciplinary mechanisms.

Citizens can make complaints to the Ombudsman if they are dissatisfied with the service provided by the Civil Service. There appears to be less recourse for public complaints or scrutiny by the Ombudsman of many public service functions since a large number of Civil Service roles have been devolved to **executive agencies** or state utilities privatised. According to the Democracy Commission[171] these agencies 'have been developed in an unplanned manner and in the absence of an overarching rationale or coherent system of accountability'.[172] For example, there are now 482 such state agencies, advisory bodies and taskforces.[173] Many of these do not have formalised complaints systems.[174] Most Government departments and offices together with

171 The Democracy Commission was an initiative of the think tank TASC and Northern Irish think tank Democratic Dialogue aimed at assessing democratic standards in Ireland

172 Democracy Commission, 2005: 74

173 Ibid

174 The Health Act 2004 made provision for a statutory complaints system in relevant agencies

local authorities have non-statutory complaints systems in place.

In addition many agencies are no longer scrutinised by the Legislature through Parliamentary Questions. Public utilities that were traditionally within the remit of the relevant public sector ombudsman are now generally within the remit of industry regulators. 'However, these regulators are principally concerned with issues of pricing and standards. Issues of consumer protection are dictated by the market rather than the concepts of fairness and equity…[an] industry ombudsman [is] not always fully independent of the industry'.[175]

Although the Government body **'Regulating Better'** has attempted to address this issue, 'public bodies seem more reluctant than ever to grant redress' such as the giving of apologies and the granting of compensation.[176] The appointment procedures to the boards of these bodies, estimated at more than 5,000 appointments at national level alone, are not always clear.[177] When questioned in an RTÉ interview about why he had appointed individuals to the boards of state bodies who had lent him €38,000 in 1993/1994, the former Taoiseach Bertie Ahern stated 'I appointed them because they were friends'.[178]

175 Ombudsman, International Ombudsman Institute, 9 September 2004

176 Ombudsman, Institute of Public Administration, 20 June 2006

177 Democracy Commission, 2006: 74

178 RTÉ News, 26 September 2006

*'Decentralisation'*

In 2003 the Government announced the relocation of eight Departments and the Office of Public Works from Dublin to provincial locations around the country, leaving seven Departments with their headquarters in Dublin. This would involve the movement of 10,000 civil and public service jobs to 58 locations throughout Ireland.[179] The move was widely criticised for the financial cost of the programme and the potential loss of institutional memory within the Civil Service.

Only 4,275 Dublin-based staff had agreed to move as of 2007, while Departments were expected to lose a large number of management, specialist and technical staff.[180]

## Relationship with other NIS pillars

The **Public Services Management Act, 1997** introduced a formal structure for delegating authority and accountability through the clarification of the roles and duties of senior civil servants. Civil servants now increasingly report directly to Oireachtas committees. However, the interaction between Ministers and senior civil servants 'remains a largely grey and undefined area'.[181] This was highlighted by the 2005 Travers report into illegal charges on nursing home residents. The

179 www.decentralisation.gov.ie

180 The Irish Times, 8 January 2007

181 Ombudsman, Annual Conference of Assistant Secretaries, 3 March 2005

report called for the decision making process by Ministers and civil servants to be 'taken and recorded in a clear, transparent and timely way'.[182] Thus, despite the implementation of the Public Services Management Act, the Irish model appears to be based on the principle enshrined in the Constitution whereby Ministers are, in theory, solely accountable for the performance of their Departments.

See also the discussion on Freedom of Information on page 86.

182 Travers Report, March 2005: 79

# LAW ENFORCEMENT AGENCIES

## An Garda Síochána

### Role and Structure

An Garda Síochána is Ireland's national police service. It is responsible for both tackling crime and safeguarding national security in Ireland.

The Garda Commissioner is responsible for the direction and management of An Garda Síochána.[183] The Commissioner is appointed by the Government and is directly answerable to the **Minister for Justice, Equality and Law Reform**. In addition to the Commissioner, there are two deputy commissioners and twelve assistant commissioners. In descending order, the ranking of officers in An Garda Síochána is as follows, Commissioner, Deputy Commissioner, Assistant Commissioner, Chief Superintendent, Superintendent, Inspector, Sergeant and Garda. There were 14,000 members of the police service and a further 1,744 civilian support staff in both part time and full time positions at the time of writing.[184] The total budget for 2006 was €1.31 billion.[185] Only the Government has power to appoint officers from the rank of Superintendent. The Commissioner is responsible for appointments below this rank.

Public **trust** in the Garda Síochána has traditionally been quite high. The Global Corruption Barometer for 2005 showed that the Irish public viewed corruption as a bigger problem within the media and private sector than within the Gardaí, while a Eurobarometer survey from 2001, measured trust by Irish citizens at 70 per cent: some three points above the European average.[186] It is not clear how much long-term damage (if any) the negative publicity wrought by the Morris Tribunal Reports is likely to have on the reputation of the police force.[187]

#### *Specialised Garda Units*

The **Criminal Assets Bureau** (CAB) was established as a statutory body by the Criminal Assets Bureau Act 1996. CAB is a multi-agency unit tasked with enforcing the law on the proceeds of crime, including corruption and money laundering. It consists of officers from An Garda Síochána, Revenue Commissioners (Taxation and Customs Branches) and the Department of Social and Family Affairs. CAB also liaises closely with a number of other State agencies, financial institutions, the accountancy and legal professions and other commercial bodies. It is headed by the Chief Bureau

183 The Irish Police service, hereafter referred to as the Gardaí. The English translation of "An Garda Síochána" is "Guardians of the Peace"

184 www.garda.ie

185 www.justice.ie

186 See Corruption Profile - page 32

187 Ireland was not included in the Global Corruption Barometer for 2006

Officer, who is a Garda Chief Superintendent and reports to the Garda Commissioner. An annual report is submitted to the Minister and laid before both Houses of the Oireachtas.

The Proceeds of Crime Act 1996, the Criminal Justice (Theft and Fraud Offences) Act 2001 and the Proceeds of Crime (Amendment) Act 2005 allow the CAB to seize criminal properties through civil rather than criminal proceedings. This is significant in that no criminal conviction is required to confiscate criminal assets. CAB can now also pursue the enhanced value of assets where the enhanced value of that asset is derived from corruption. Some of the potential of this legislation was realised in July 2006 when CAB secured a High Court order which froze lands belonging to Jackson Way Properties Ltd. CAB claimed that a €53 million increase in the value of the property stemmed from a land-rezoning decision procured by 'corrupt conduct' and 'corrupt payments to county councillors'.[188]

The Council of Europe Group of States against Corruption (GRECO) has described CAB as 'particularly impressive' and stated in their 2005 report that 'The vast total amount of property seized each year by the CAB is an example of the commitment of the Irish authorities to deprive persons of the benefits from crime'.[189] The Financial Action Task Force (FATF), an inter-governmental body established to fight money laundering and terrorist finance, similarly complimented the sound legal framework available to CAB.

The **Director for Public Prosecutions**, and not CAB, retains responsibility for prosecution of money laundering offences under criminal law. FATF has noted that 'few cases lead to a successful prosecution'.[190] The Criminal Justice (Mutual Assistance) Bill 2005 proposed to reduce the burden of proof for prosecution of money laundering offences[191]. However, legal experts say further legislation may be required to effectively deal with the problem.[192]

In 2003, the Government pledged that a **Corruption Assets Bureau** would be established to undertake investigations and seize assets arising from corrupt transactions.[193] However, since the enactment of the Proceeds of Crime (Amendment) Act in 2005, the Oireachtas has decided that responsibility for the seizure of corrupt assets will remain with the Criminal Assets Bureau.

Cases involving serious economic crime including fraud, money laundering, bribery and corruption are led by three Garda specialised units. The **Garda Bureau of Fraud Investigation (GBFI)** was established in 1995 and handles investigations into fraud

188 The Irish Times, 27 July 2006
189 GRECO, December 2005: 8,9
190 FATF, 17 February 2006: 4
191 Not enacted at time of writing
192 Sunday Times, 1 October 2006
193 Government legislative programme, 27 January, 2003, www.taoiseach.gov.ie

and money laundering; the **National Bureau of Criminal Investigation (NBCI)**, established in 1997, investigates serious and organised crime on a national and international basis. The **Money Laundering Investigation Unit (MLIU)** was also established as part of the Garda Bureau of Fraud Investigation in 1995 to record, evaluate, analyse and investigate disclosures relating to suspicious financial transactions.[194]

A **Financial Intelligence Unit (FIU)** was also established in 1995 as part of the GBFI to process suspicious transaction reports (STRs) for further investigation by the Gardaí. STRs are filed where there are reasonable grounds to suspect individual financial transactions are related to money laundering.

The FATF raised concerns in 2006 about the level of the resources available to the FIU, claiming that they have not kept pace with the increased number of STRs. The number of STRs have increased from 3,040 in 2001 to 10,735 in 2005.[195] The FATF was also critical of the fact that the FIU 'does not release periodic reports or conduct strategic analysis'.[196] It concluded that 'The role and effectiveness of the FIU is therefore limited'.[197]The Garda Commissioner authorised the allocation of additional personnel to the FIU in 2008.[198]

194 OECD Phase 1 Report 2003: 22
195 FATF, 17 February 2006: 13
196 Ibid
197 Ibid
198 Correspondence with authors, 2008

The **National Criminal Intelligence Unit (NCIU)** is based at Garda Headquarters and is responsible for gathering intelligence on serious and organised crime. It is resourced with staff 'with appropriate crime analysis skills'.[199] In 2002 it was announced that a corruption index, providing statistics on cases reported, investigated and detected by An Garda Síochána, would be designed by a Garda Working Group and the NCIU to 'provide a precise picture of the corruption situation within the State'.[200] The index had not been published at the time of writing.

## Accountability, Integrity and Transparency Mechanisms

The findings of the **Morris Tribunal** into Garda corruption are credited with affecting fundamental change in how corruption is controlled in the Irish police service. The Tribunal was established in 2002 to consider allegations of misconduct within the Donegal Garda division.[201] It published six critical reports finding 'a lack of proper management at senior level, corruption at middle level, and a lack of review throughout the force'.[202]

The fourth Tribunal report recommended that urgent consideration be given as to 'what changes in structure, ethics, training and composition of an Garda Síochána might best militate against

199 GRECO 2005: 2
200 GRECO 2003:3
201 A County in north west Ireland
202 Morris Report, 2004: 542

a recurrence of the extraordinary events chronicled in the reports'.[203] In his fifth report, Justice Morris stated that the Tribunal was 'staggered by the amount of indiscipline and insubordination it has found in the Garda force'.[204] So far 103 civil claims arising from Garda misconduct in the Donegal division have been received by the State, five of which have been disposed of at a cost of €2.2 million.[205]

The Gardaí initiated eighteen investigations on foot of the Tribunal's findings. By 2006, the DPP had instructed that no prosecution should take place in nine of these.[206]

The Minister does not envisage further criminal prosecutions on foot of the Tribunal reports because of the issue of 'public prejudice'.[207] The Garda Commissioner on the other hand expressed his frustration at the limited disciplinary action that can be taken against those the Tribunal has implicated in serious wrongdoing because of the use of judicial review.[208] No member of the police service has been successfully convicted on foot of the Tribunal findings although 5 members (1 Superintendent, 5 Gardaí) were dismissed, 21 have retired and 3 disciplined.[209]

203 Morrs Report, 2006: 256
204 Ibid: 264
205 Ibid: 6
206 The Irish Times, 18 August 2006
207 Ibid
208 The Irish Times, 2 September 2006
209 Department of Justice, Equality and Law Reform Correspondence, 2007

*Garda Reform*

The Garda Síochána Act 2005 is the first effort in the history of the state to reform policing structures. However, some regarded the Act as a missed opportunity to engage in a broader and deeper reform programme.[210]

New bodies designed to improve accountability and effectiveness in the police service were established. A Garda Síochána Ombudsman Commission was set up as was a Garda Síochána Inspectorate (see Complaints and Enforcement Mechanisms). The Government also introduced streamlined disciplinary regulations which empower the Garda Commissioner to dismiss a garda to inspector rank (with the consent of Government) for breach of duty and where dismissal is necessary, to maintain public confidence in the force.

In response to the Tribunal's criticism of the 'code of silence' which existed in the Gardaí[211] the Government introduced a **whistleblower's charter** for members of the police service.[212]

Garda management have responded to the Tribunal's recommendations by implementing new procedures. For instance, criminal and subversive informants are now the subject of external audit; an informant's code of

210 See discussion on Garda Ombudsman Commission and Inspectorate, page 100 and 101
211 Morris 2nd Report, 2005: 146
212 The Garda Síochána Act 2005 makes provision for such a charter

practice has been introduced; and a **National Source Management Unit** and a **Garda Professional Standards Unit** have been established.

Detailed discussion on the merits of a single independent **Garda Authority** has yet to emerge. The Government retains control over appointments from the rank of Superintendent and members of the new Garda Síochána Ombudsman Commission and Inspectorate. A recommendation that senior Garda positions be opened to **competition** from qualified candidates from overseas has yet to be implemented.

*Freedom of Information*

Ireland is 'virtually unique' in Europe in that it does not extend Freedom of Information legislation to An Garda Síochána.[213] The Ombudsman and Information Commissioner has been highly critical of the Government's decision not to extend the **Freedom of Information Act** to the Gardaí: 'It may be argued that An Garda Síochána is currently undergoing major transformation and that this is not the right time to make it amenable to the Act. I would argue the opposite: FOI, along with the Garda Inspectorate and the Garda Ombudsman Commission, should be seen as contributing to this overall transformation process'.[214]

Using examples of the use of FOI in the UK, she has suggested that the Act would underpin accountability in the service by, for example, helping to uncover the cost of proposed Garda initiatives; identifying levels of spending on police vehicles; and by testing the accuracy of police data and the efficiency of its collection on road accidents.[215]

One barrier to the extension of FOI to the Gardaí appears to be the fact that the service is also responsible for the **security of the State**. It therefore takes on many of the functions that may otherwise be carried out by secret intelligence services. Minister for Health Mary Harney claimed that it 'is difficult to separate security issues from operational issues in the Garda Síochána'.[216]

One commentator has suggested that this be addressed by establishing a new and independent arm of the security services. [217] Many intelligence services elsewhere are also subject to FOI legislation.[218]

*Training*

In 2002, a **Declaration of Professional Values and Ethical Standards** was introduced for members of the Gardaí. It lays out a framework of ethical standards and principles for the guidance of policies, strategies and practice across the service. Continuous Professional Development courses are also run for Garda with the

213 O'Reilly, 2006
214 Ibid, 2006
215 Ibid, 2006
216 Dáil Debates, 4 May 2006
217 McVerry, 2005
218 United Kingdom and Australia

promotion of ethical behaviour representing a 'golden thread' in the curriculum.[219]

GRECO reported in 2005 that **An Garda Síochána College** had reviewed Garda training in relation to corruption. It reported that it would introduce targeted training on typologies of corruption, the legislative framework, and relevant investigation techniques.[220] Experienced course tutors would be selected from the office of the DPP and main specialist units including the CAB, GBFI, NCIU, and NBCI. A one-day training seminar would also be introduced for all members of the Garda Síochána and a booklet on the typologies of corruption was expected to be published in late 2006. It is not clear what status this programme currently has.

Training has been offered by the DPP's office on corruption offences and international legal frameworks on corruption in 2004 and 2005[221], while the Garda National Immigration Bureau (GNIB) organised a European conference on Best Practice in Fighting and Preventing Corruption of Immigration Regulations. [222]

219 Garda correspondence with authors, 2008
220 Ibid: 3
221 GRECO 14 October 2003: 3,4
222 AGIS Conference, 17-18 November 2005

## Complaints and Enforcement Mechanisms

### *Garda Síochána Ombudsman Commission*

The Garda Síochána Ombudsman Commission was appointed by the Government in 2006. It is an independent three-person body, although its members are appointed by the Government. It had a budget of €17 million and 75 staff in 2007.[223] It is required and empowered directly and independently to investigate complaints against members of the Garda Síochána, to investigate any matter in the public interest, even where no complaint has been made, and examine any practice, policy or procedure of the Gardaí with a view to reducing the incidence of related complaints. It has the discretion on what complaints it may pursue; and secure informal resolution to a complaint and mediate between a complainant and the police service. It has powers to supervise an investigation by the Garda Síochána into a complaint or appoint its own investigation officer. It may also access files and other materials and to interview individuals relevant to a case. The Ombudsman received 2084 complaints in 2007 of which 952 were admissible, 556 inadmissable with 576 cases pending.[224] Of all complaints made to the Ombudsman the highest proportion (47 per cent) related to allegations of 'abuse of authority'.[225]

223 Garda Síochána Ombudsman Commission, 2007: 10
224 Ibid:46 and 36
225 Ibid:16

The Ombudsman's role is also complemented by a new **whistleblower system** for Garda which is operated independently of the Ombudsman. These are provided for under new Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007. Confidential reporting will be facilitated through a network of 'confidential recipients', members of the Garda and civilian members of staff, who can forward cases to the Commissioner for further action (including referral to the Ombudsman Commission). No further information on the management of the system was available at the time of writing.

*Garda Síochána Inspectorate*

The Garda Síochána Inspectorate was also established by the Government in 2006 and is an independent three-person body. It is empowered at the request or with the consent of the Minister for Justice, to conduct inspections or inquiries into the Gardaí's operational and administrative procedures. This body is directly answerable to the Minister.

The fact that the Inspectorate answers directly to the Minister for Justice drew further criticism from the Garda Representative Association and the Opposition which claimed it was 'using the excuse of the report of the Morris Tribunal' to take "a hands-on approach"'.[226]

226 The Irish Times, 6 August 2004

### Relationship with other NIS pillars

There appear to be few legal obstacles, other than those ensuring operational independence of individual agencies, to cooperation between the Gardaí and other law enforcement agencies. Gardaí are regularly seconded to other bodies outside the police service. These include the Competition Authority, the Office of the Director of Corporate Enforcement, and the Revenue Commissioners, while Garda representatives sit on the Department of Finance's Money Laundering Steering Committee

## Director of Public Prosecutions (DPP)

### Role and Structure

The office of the Director of Public Prosecutions (DPP) was established under the Prosecution of Offences Act in 1974. The Attorney General's role in prosecuting cases was assumed by the DPP under this legislation. He is appointed by the Government based on a list compiled by a committee consisting of amongst others, the Chief Justice and a representative of the Attorney General.[227] The DPP is independent in the performance of the functions of its office.

227 Other members include the Chairman of General Council of General Council of the Bar of Ireland, the President of the Incorporated Law Society and the Secretary to the Government

The DPP enforces the criminal law on behalf of the People of Ireland; directs and supervises public prosecutions; and advises the Gardaí where requested.[228]

Public prosecutions are based on the seriousness of the crime, the standard of evidence available believed to be necessary in order to secure a conviction, and whether or not the DPP believes a prosecution to be in the public interest.[229] According to the 4.16b b of the **Guidelines for Prosecutions** 2001, the likelihood that the public interest will require a prosecution will rise 'if the accused was in a position of authority or trust and the offence is an abuse of that position'.

In 2003 the DPP established an **anti-corruption unit**. The unit has five members of staff but these are seconded to other cases when the need arises. Its role is to design anti-corruption strategy in collaboration with the Garda Síochána. Further detail on the DPP's anti-corruption strategy was not available at the time of writing.

## Accountability, Integrity and Transparency Mechanisms

The DPP can be removed from office but only by the Government and on the basis of a report from a committee consisting of Chief Justice, a Judge of the High Court nominated, by the Chief Justice, and the Attorney General.[230] No information other than that which relates to the general administration of the DPP's office may be made public under the Freedom of Information Act. Staff members are subject to the terms of the Ethics Acts and the Prevention of Corruption Acts.

## Complaints and Enforcement Mechanisms

If the DPP decides not to pursue a case then he will inform the Garda Síochána of his decision. According to the DPP this decision will not be published to avoid damaging the reputation of an individual that may have been the subject of an investigation or prosecution. There is no formal appeals or complaints mechanism open to the public or public institutions to the DPP although members of the public may ask the DPP to **review** a decision. Victims of crime, including corruption can contact the DPP's office but it is illegal for anyone to call on the DPP to discontinue a prosecution.

## Relationship with other NIS pillars

By the nature of its work the DPP has a close working relationship with An Garda Síochána. His office also liaises closely with the Revenue Commissioners, Standards in Public Office Commission, the Competition Authority and the

228 Article 30.3

229 See section 4, Statement of General Guidelines for Prosecutions 2001

230 Prosecution of Offences Act 1974 Section 2.9

Office of the Director for Corporate Enforcement. These agencies are permitted to present files to the DPP to assess the strength of evidence for prosecution.

## Revenue Commissioners (Tax Authorities)

### Role and Structure

The Office of the Revenue Commissioners (Revenue) was established in 1923 and has the power to assess, collect and manage taxes and duties; work in co-operation with other State Agencies in the fight against drugs and in other cross Departmental initiatives; carry out Agency work for other Departments; and provide policy advice on taxation issues. The Revenue is led by its Chairman and two Commissioners who are appointed in the same way as Secretaries General in Government Departments. There were 130 Revenue offices nationwide and a total of 7000 staff at the time of writing.[231]

Ireland has among the lowest corporate **tax rates** in the world and a personal tax burden that is relatively light by comparison with other industrialised countries.[232] Income tax is deducted from most Irish workers' salaries by their employers and paid directly to the Revenue (known as a Pay As You Earn (PAYE) system).

231 www.revenue.ie

232 Heritage Foundation, 2007

### Accountability, Integrity and Transparency Mechanisms

Revenue has undergone significant organisational change and assumed increased powers over the past ten years. This in itself appears to have affected general cultural attitudes towards tax evasion in Ireland.[233]

Since 1999, the Revenue has conducted a number of **special investigations** into tax evasion. These have been facilitated by the 1999 Finance Act which allowed the Revenue to secure High Court orders allowing it to seek information from financial institutions and other parties. The Revenue has also established an **Investigation and Prosecution Division** and is also entitled to forward information to the DPP and An Garda Síochána where that information is likely to assist in the investigation of a serious offence.[234] It also works closely with the Office of the Director of Corporate Enforcement (ODCE) in identifying non compliance with the Company Acts and works closely with the Criminal Assets Bureau to which it seconds staff.

Since 1997 Revenue has also published a quarterly **list of tax defaulters** online which identifies individuals or companies that have failed to file a return, filed a false return or that is guilty for other offences such as cigarette smuggling.

233 Interview with authors, 7 February 2007

234 Criminal Justice Act 1994 and Disclosure of Certain Information for Taxation and Other Purposes Act 1996

Various investigations and these new powers are claimed to have led to the collection of an additional €2.193 billion in revenues since 1999. The bulk of this sum arose from special investigations it had conducted on foot of revelations of tax evasion by the Tribunals and the 'DIRT Inquiry'.[235]

A number of additional steps have been taken to improve **compliance**. The requirement for tax clearance certificates in public contracts, public service modernisation, training, decentralisation to offices outside Dublin, and an emphasis on arms-length relationship with tax payers are seen as important measures to prevent the kind of abuse exposed by the Moriarty Tribunal.[236] A **Revenue Online Service (ROS)**[237] now allows businesses and individuals to download forms, guidance and pay tax online. It has gone some way to address corruption risk within the Revenue by bypassing potential 'gatekeepers' in revenue collection. In 2005, taxes gathered through the ROS rose by 45.8 per cent to €112.1 billion. In addition, almost two thirds (65 per cent or 248,967) of income tax self-assessment returns were made through ROS.[238]

Efforts to detect bribery have also improved. Since 2008 all Revenue tax auditors have been alerted to the existence of the **OECD Bribery Awareness Handbook** for Tax Examiners. The **non-deductibility of bribes** is also being included in all future training modules of their audit programme.

## Complaints and Enforcement Mechanisms

Revenue Staff are employed as civil servants and are subject to the same rules and codes that apply to most civil servants. Revenue Commissioners are defined as persons holding 'designated positions' under the Ethics Acts.

The public and business **appeal** decisions made by the Revenue through the Appeal Commissioners and the Courts. The Appeal Commissioners is described as 'an independent appeal forum appointed by the Minister for Finance and are not Revenue officials'.[239] The Appeal Commissioners are compelled to maintain taxpayer confidentiality in their hearing of appeals even where details of judgments are published. Taxpayers may look to the High Court and the Supreme Court for a judicial review where they are not satisfied with the decision of the Commission.

Revenue also runs a complaints system which allows taxpayers who are unhappy about the way in which Revenue have handled any aspect of their tax or duty affairs to ask for an **internal review**. The review is carried out by a senior

235 The Irish Times , 07 April 2006
236 Interview with authors: 7 February 2007
237 Available at www.revenue.ie
238 Revenue Commissioners, Annual Report of the Revenue Commissioners, 2005: 7
239 Available at www.revenue.ie

Revenue official who was not involved in the original decision, or jointly by an External Reviewer and the Revenue official mentioned above. Taxpayers may also make complaints to the Ombudsman.

*Tax Evasion and Political Corruption*

Ireland's economic history throughout the 1980s and 1990s was chequered by allegations and charges of widespread tax evasion. Much of this was facilitated by banks, accountants and other professionals, while the Revenue Commissioners themselves were accused of being ineffective in tackling tax evasion.[240]

The **Moriarty Tribunal** published its first report in December 2006 and uncovered an embedded network of rogue accountants, businessmen, bankers and politicians, most notably former Taoiseach Charles J Haughey. The Tribunal stated that 'inescapable conclusions must be drawn that he [Charles Haughey] received a wide range of substantial payments and that certain of the acts or decisions on his part while Taoiseach, were referable to some of those payments'.[241]

The Tribunal had conservatively identified payments received by Haughey between 1979-1996 at £9,106,369. In contemporary terms the Tribunal calculated this at €45 million or 171 times Haughey's gross salary.[242]

The Tribunal found that in return for payments Haughey 'acted with a view to intervening improperly in a pending tax case of great magnitude'.[243] Furthermore, in relation to Haughey's dealings with passports and the Leader's Allowance Account, the Tribunal noted 'with concern a disposition from time to time on the part of Mr. Haughey, as Taoiseach, to involve himself in the affairs of individual Government departments, without any, or any proper reference to the responsible Ministers'.[244]

Irrespective of whether any crime was committed, Mr Haughey's interventions demonstrated both the opportunity and incentive for corruption that weak tax compliance and poor enforcement of tax codes could present. Moreover it demonstrated the level of influence that could be brought to bear on the Revenue by senior politicians and the Taoiseach in particular.

The role of banks in facilitating tax evasion was also highlighted during what became known as the **'DIRT Inquiry'**. This inquiry was undertaken by the Oireachtas Committee of Public Accounts in 1999 on foot of revelations in the media that Ireland's leading banks were facilitating customers' use of bogus non-resident accounts to evade Deposit Interest Retention Tax (DIRT).[245]

240 FitzGerald, Garret,14 April 2001
241 Moriarty, 2006: 543
242 Ibid, 2006: 544-5
243 Ibid, 2006: 545
244 Ibid, 2006: 546
245 A tax placed on interest earned in Irish bank accounts

Compounded by high personal tax rates (the top rate was 58 per cent until 1987)[246], a culture of tolerance towards tax evasion had permeated almost every layer of society in Ireland. In 1988 and again in 1993, the State offered tax amnesties to 40,000 people nationwide, collecting IR£500 million and IR£260 million respectively.[247] High profile politicians, including a former Minister for Justice, and other public figures were found to have evaded tax by the DIRT Inquiry.

## Relationship with other NIS pillars

The Chairman of the Revenue is answerable to the Minister for Finance and the Oireachtas (through the Committee of Public Accounts). Forensic staff are regularly seconded to the Office of the Director of Corporate Enforcement, the Competition Authority, the Criminal Assets Bureau and the Garda Bureau of Fraud Investigation to assist in investigations that may lead to criminal prosecution. The Revenue may also present files directly to the DPP. Revenue staff may also sit on the Department of Finance's Money Laundering Steering Committee.

The Revenue appears to have a particularly productive working relationship with An Garda Síochána and the Criminal Assets Bureau in investigating economic crime.

246 Dorgan, 23 June 2006
247 The Irish Times, 3 May 2001

# MEDIA

## Role and Structure

The **print** media in Ireland is comprised of four national daily, two national evening newspapers, five national Sunday newspapers, about fifty regional, and twelve local newspapers. Approximately 600,000 national newspapers and 650,000 regional newspapers are sold each day and week respectively.[248] A small number of current affairs magazines are also published on a weekly, bi-monthly or monthly basis.[249]

There are three state-funded **television** stations, two run by the national broadcaster Radio Telefís Éireann (RTÉ), and an Irish language station TG4. Another national broadcaster TV3 is privately owned. All stations are funded by advertising, with financing for RTÉ and TG4 largely covered by an annual licence fee. The majority of viewers also have access to British channels including the BBC via cable and satellite.

Ireland is one of the OECD's poorest performers in terms of **internet** penetration (90 per cent) and broadband penetration (19 per cent).[250] All leading national newspapers and broadcasters have an online presence. Internet activism is still in its infancy in Ireland in spite of the use of websites by most campaign groups. However web-based groups such as 'www.rateyoursolicitor.ie' have attracted a great deal of media attention. A small community of bloggers offer commentary on Irish politics and current affairs. One blog 'www.publicinquiry.eu' publishes commentary on corruption and abuse of power in Ireland.

The **radio** media is comprised of over 50 radio stations. These are licensed by the **Broadcasting Commission of Ireland (BCI)**. This body is an independent regulatory authority but its members are appointed by Government. The key functions of the Commission include the licensing of independent radio and television broadcasting; the development of codes and rules in relation to programming and advertising standards; and the monitoring of all licensed services to ensure that licence holders comply with their statutory obligations and terms of their contracts.[251] A Broadcasting Bill providing for a new **Broadcasting Authority of Ireland** had not been enacted at the time of writing. One of the Authority's purposes is to improve transparency in the award of radio licences and a more efficient right to reply mechanism. Provision is also made for improvement of media literacy in Ireland.

There are six national stations, four of which are operated by the public service broadcaster RTÉ and two commercial stations.

248 ABC

249 No official circulation figures were available at the time of writing

250 OECD, 2008

251 www.bci.ie

Table 10: National Press (audited circulation figures Jan-June 2008)

| Sundays Publication | Jan-Jun '08 | Owner |
|---|---|---|
| Sunday Independent | 283,024 | Independent News and Media PLC |
| Sunday World | 292,124 | Independent News and Media PLC |
| Sunday Tribune | 65,717 | Consortium / Independent News and Media PLC |
| Sunday Business Post | 55,971 | Thomas Crosbie Holdings |
| Irish Mail on Sunday | 123,580 | Associated Newspapers |
| Irish Daily Star Sunday | 61,376 | Independent News and Media PLC & Express Newspapers |
| Irish News of the World | 154,328 | News International |
| Irish Sunday Mirror | 49,814 | Trinity Mirror Group |
| The People | 28,546 | Trinity Mirror Group |
| Sunday Times | 105,690 | News International |
| **Dailies Publication** | **Jan-Jun '08** | **Owner** |
| Irish Independent | 159,363 | Independent News and Media PLC |
| Irish Times | 118,259 | Irish Times Trust |
| Irish Daily Star | 109,413 | Independent News and Media PLC & Express Newspapers |
| The Examiner | 54,191 | Thomas Crosbie Holdings |
| Irish Daily Mirror | 70,682 | Trinity Mirror Group |
| The Irish Sun | 103,673 | News International |
| Irish Daily Mail | 59,443 | Associated Newspapers |
| Evenings Publication | Jan-Jun '08 | Owner |
| Evening Herald | 79,447 | Independent News and Media PLC |

*Source: ABC, 2008*

Emap plc, Communicorp Ltd, UTV and Thomas Crosbie Holdings are the dominant actors within the local/regional radio market. Local and regional radio in Ireland is particularly strong. Listenership figures from March 2006, show that 49 per cent of adults listened to national radio compared to 57 per cent for local radio.[252]

In 2005, the BCI prohibited companies from owning or controlling more than 17.9 per cent of the radio sector. There are no similar restrictions on the newspaper industry of which Independent News and Media PLC is the dominant actor. Companies which are fully or partially owned by this group account for approximately 80 per cent of daily newspaper sales. These figures are illustrated in table 10.

252 JNLR/TNS MRBI October '05 - March '06

The group publishes five leading national newspapers and 12 regional papers. The other major newspaper owners are Thomas Crosbie Holdings (two national titles and eight regional titles), Johnston Press and the Leinster Leader group.

The 1996 **Government Commission on the Newspaper Industry** and the Competition Authority conducted reviews into the concentration of press ownership but found that the Irish newspaper industry shows sufficient editorial diversity not to warrant intervention in the Irish newspaper market. The Democracy Commission has called for a fresh review and noted that the 'diversity of views has been undermined by the concentration of media ownership'.[253] The Secretary of the National Union of Journalists (NUJ) has stated that 'politicians will be reluctant to risk incurring the wrath of powerful media owners, whose power in Irish society frequently exceeds those of elected representatives. Ownership of the media is a key issue which cannot be dodged'.[254]

## Accountability, Integrity and Transparency Mechanisms

### *The Defamation Bill and Press Ombudsman*

The Defamation Bill 2006 introduced new ground rules for defamation and the principles governing the recognition by the Government of an independent **Press Ombudsman** and **Press Council**. These form part of a new regulatory regime for the print media. The Press Council is selected by a panel independent of Government and is composed of civil society representatives with minority representation from media interests and journalists. It will not include broadcasting organisations.

The Press Council also oversees a **Code of Practice** and has appointed a Press Ombudsman who investigates breaches of the code, conciliates complaints, and adjudicates cases where conciliation has not been possible. Where a newspaper has been found in breach of the Code of Practice, it has to publish the decision of the Press Ombudsman or (if the decision has been appealed) of the Press Council. Principle 2 of the Code of Practice states that readers are entitled to expect that the content of a publication has not been inappropriately influenced by undisclosed interests. However the Code does not refer to the bribery of journalists and publications to cover or bury stories, or the bribery of officials by journalists.

The Bill also reforms antiquated libel laws. Section 24 of the Bill establishes a new defence of 'fair and reasonable publication on a matter of public importance'.

The School of Communications at Dublin City University and the Irish Council for Civil Liberties, outlined their concerns that there

253 Democracy Commission, 2005: 111
254 Seamus Dooley, Democracy Commission, 17 May 2005

is a perception that the linking of defamation reform and the establishment of a Press Council is a 'trade off' or means of further imposing restrictions on the media. These restrictions are further compounded by new limits placed on access to official information in 2003.[255]

### *The Privacy Bill*

The Privacy Bill 2006 created a specific offence of violating the privacy of the individual. It had not been enacted at the time of writing. Section 13 of the Bill allows for the granting of a court injunction, upon application, to an individual which prevents publication of information relating to that individual. Such an injunction can remain sealed from public view if so directed by the court. There is an imperative that the 'means designed to control intrusion on privacy of all kinds should do that, and not just serve merely as protection mechanisms for the rich and powerful'.[256] While the existing defamation law reprimands a newspaper post-publication, the new privacy law can potentially be used to prevent publication. The Irish Times editorialised that the Bill 'will prevent good journalism and make it impossible for many serious matters of public interest to be investigated properly, never mind being brought to publication'.[257] The Minister for Justice believed these claims to be 'exaggerated'.[258]

## Complaints and Enforcement Mechanisms

It is not clear what measures newspapers and broadcasters have in place to promote internal reporting and **whistleblowing** or what codes, if any, explicitly prohibit the use of bribes to secure information. Complaints by the general public on the other hand are handled by the new Press Ombudsman and Press Council. If a complainant is not satisfied with any redress or response of the editor of a publication, complaints will then normally be handled by the Press Ombudsman who will then decide whether a newspaper or magazine has breached the Code of Practice for Newspapers and Periodicals. Where a publication is found to have breached the Code, the Ombudsman will require it to publish his decision. An agreed resolution of complaint by conciliation may include the publication by the newspaper or periodical concerned of an apology or clarification. An appeal may then be made to the Press Council who will then adjudicate on the matter.

The public can make complaints and seek redress against both public and private broadcasters via the **Broadcasting Complaints**

255 2003 and 2004 Submissions on the Report of the Advisory Legal Group on Defamation

256 The Irish Times, 3 August 2006

257 The Irish Times Editorial, 19 September 2006

258 The Irish Times, 18 September 2006

**Commission (BCC).** It has similar powers to the Press Council. The BCC is an independent body though its members are appointed by the Government for a five year term.

### *Investigative Journalism*

Although the Irish media is a powerful sector within Irish public affairs, its role within Ireland's NIS has been subject to little analysis from the media itself. For example, breaches of ethical and professional standards are generally not reported or commented on by rival newspapers.[259]

A number of media commentators have expressed concern about recent legislative developments that have the potential to curb investigative journalism. However the capacity of investigative journalists to do their job effectively rests on more than press freedom. According to the head of the National Union of Journalists, 'little is said of the refusal of media organisations to invest time and **resources** in this vital area of journalism'.[260] Indeed the 1991 Beef Tribunal, which focused on questions over the allocation of export credit guarantees, was initiated following a British 'World in Action' documentary.

Armed **conflict** in Northern Ireland which lasted from 1969 to 1998 also hindered investigations into political and official corruption.

The priority of the political establishment and law enforcement agencies was placed on resolving the 'Troubles' as they were colloquially known. The conflict was seen as one of the main concerns for the public through this period. Respondents to a 1991 Irish Independent poll cited Northern Ireland conflict as more important an issue at that time than the economy.[261] Meanwhile, roughly three times as many respondents cited the conflict as more important than politicians' abuse of power.

The **libel law** regime is probably the most cited reason for the relative dearth of investigative journalism in Ireland. Under the previous libel system, journalists have been required to prove the truth of their allegations, while apologies could be used as an admission of liability in a defamation case. The Irish Constitution also poses additional barriers to the publication of allegations against individuals. Article 40.3.2 of the Constitution provides for the statutory and unqualified protection of an individual's 'good name'. However, press freedom is subject to restrictions on the 'utterance of blasphemous, seditious, or indecent matter'[262] as well as Article 40.3.2. There is no unqualified right to the protection of sources by Journalists. In 2007, the High Court ruled that two journalists from the Irish Times had to answer questions on the source of leaked Mahon Tribunal evidence on payments to the former

259 Media Report, No.15, Summer 1999
260 Seamus Dooley, Democracy Commission, 17 May 2005
261 IMS 1991
262 Constitution of Ireland, Article 40.6.1

Taoiseach, Bertie Ahern. A Supreme Court ruling had not been published at the time of writing.

In spite of the obstacles placed by the libel regime and other barriers, Ireland was judged as having the fourth highest level of press freedom of any country by Reporters Without Borders.[263]

## Relationship with other NIS pillars

Business's relationship with the media has been a source of some controversy especially as it relates to media ownership and the sector's reliance on corporate advertising revenue. The impact of **ownership** and governance of newspapers on editorial policy and investigative reporting is worth further examination.

Relations with other pillars appear to have grown if not improved over recent years. This is in line with international trends towards increased media engagement by politicians, government, civil society and business. All government departments have well resourced press offices that provide news material on a regular basis. Meanwhile curbs on Freedom of Information appear to have greatly deterred media requests for official information.

263 www.rsf.org

# LOCAL AND REGIONAL GOVERNMENT

## Role and Structure

Irish Local Government is responsible for a number of functions including the democratic representation of local communities, the delivery of affordable housing, town and county planning, roads, water supply and sewerage, waste management, libraries, the fire service, and development incentives and controls. It consists of five directly elected **city councils**, twenty nine directly elected **county councils**, seventy five directly elected **town councils** and five directly elected **borough councils** with the primary units being the county and city councils under Irish law. Local Government is dependent on central Government for approximately a third of its income[264] while total budgeted expenditure in 2007 amounted to some €10 billion.[265] The sector employs around 30,000 staff nationwide.[266]

Article 28a of the Irish Constitution provides for the election of Local Government representatives at least every five years.[267] Members (commonly known as **Councillors**) are elected by proportional representation (see page 69).

In 2004 there were 1,627 members elected to the 114 local authorities.[268] Each local authority elects a Chairman (now commonly called 'Mayor') or **Cathaoirleach** and a Vice-Chairman or Leas-Cathaoirleach for a term of one year from among their members every year. The Cathaoirleach is responsible for the conduct of business and maintenance of order at meetings and can call for a special meeting of the council and obtain information from the County Manager.[269] The Local Government Act 2001 provided for directly elected mayors or Cathaoirligh but this provision was repealed in 2003.

Responsibilities are divided into **reserved functions** and **executive functions**. Reserved functions are the responsibility of Councillors and include the adoption of annual budget; decisions relating to the borrowing of money; making and revising of development plans and byelaws; and adoption of building programmes.

Executive functions are largely the responsibility of the **City or County Manager**. They include the employment of staff, property management, planning decisions, and administration. The County Manager is recruited through open competition by the Public

264 Quinn, 2003: 454

265 www.environ.ie

266 Review of Public Administration Implementation, www.rpani.gov.uk, 2006

267 The Constitution was amended in 1999 to formally recognise Local Government in Ireland

268 Ibid

269 The Cathaoirleach of Dublin City Council and Cork City Council is called the Lord Mayor of the city and the Leas-Cathaoirleach is called the Deputy Lord Mayor.

Appointments Service (see **Public Appointments Service** page 89) however he is accountable to the local authority and issues public monthly reports to its members. He is appointed for a period of seven years which may be extended by a further three years. A County Manager may only be disciplined or dismissed upon a resolution passed by three quarters of Councillors. The Minister then may sanction the removal of the County or City Manager. General responsibility for overseeing the actions of local authorities is assigned by the Legislature to the Minister for the Environment, Heritage and Local Government, who has formal powers of direction, approval and inquiry in relation to local authority matters, and power ultimately to remove local authority members from office. The Minister is in turn accountable to the Oireachtas in relation to the exercise of these powers.

The **relationship** between the County Manager and the elected Council is equivalent to that of a chief executive and a board of directors. The County Manager is entitled to attend meetings of Councillors of a local authority but he does not have a vote. While planning decisions are an executive function (i.e. a matter for the Manager) , the Council may, subject to certain requirements, direct the Manager to grant an application. It should be noted that some planning decisions[270] can be appealed to **An Bord Pleanala** (see below). In addition, Councillors may also propose and agree on a motion to rezone land from agricultural to commercial or residential use. This can be pursued without the permission of the authority's manager and contrary to his advice, and gives significant powers over planning to Councillors. This power is moderated however where the Minister for the Environment, Heritage and Local Government believes that a planning or rezoning decision is contrary to national planning or environmental policy. He may either require that the local authority report on its compliance with such policy and/or overturn the authority's decision. The combination of central government funding and ministerial power over the exercise of a large number of local authority functions has led some observers to conclude that the autonomy and power of Irish Local Government is comparatively weak.[271]

**Strategic Policy Committees (SPCs)** and **City/County Development Boards (CDBs)** were established in 1998 and 2000 respectively. They bring together sectoral interest groups drawn from business, trade unions, civil society and elected council members. One third of each SPC's membership is made up of representatives from these groups. Councillors make up the balance of membership. Each SPC is chaired by a Councillor and has on average 12 members.[272]

270 Decision made on foot of a motion on section 140 of the Local Government Act 2001

271 OECD 1997; John, 2001: 38

272 Democracy Commission, 2005: 95

In addition the chairs of SPCs, together with the Cathaoirleach of the Council, make up a Corporate Policy Group (CPG). The CPG acts as a policy forum and quasi-cabinet aimed at linking the work of the different SPCs. Its recommendations must be submitted to a full meeting of Councillors for formal approval. County/City Development Boards are responsible for drafting ten-year economic and social development strategies and monitoring progress on those strategies as well as the coordination of delivery of services at local level. They typically consist of 28 members from local authorities, the local development sector, state agencies and the social partners.[273] Organisations from the social partners are asked to nominate members to SPC and CDBs. Nominees are formally approved by full meetings of Councillors.

Regional structures have limited powers and resources, their remit restricted mainly to co-ordination and the oversight of EU programmes. The indirectly elected **Regional Assemblies**[274] and **Regional Authorities**[275] were created during the 1990s in response to pressures from the EU for greater sub-national involvement.[276]

273 www.cdb.ie

274 Of which there are two: Border Midland and Western Regional Assembly and the Southern and Eastern Regional Assemly.

275 Of which there are eight - Border, West, Midlands, Dublin, Mid East, South East, Mid West, South West

276 See also International Institutions, page 143

## Accountability, Integrity and Transparency Mechanisms

The ethics and electoral framework for Local Government is laid down in statute including The Ethics Act 1995, Electoral Act 1997 (as amended), Local Elections Act 1999 and the Standards in Public Office Act 2001. The Local Government Act 2001 introduced powers to issue statutory codes of conduct for Councillors and local authority employees. Under the Prevention of Corruption Acts a presumption of guilt applies where a local authority official or member is found to have received undeclared payments, gifts or political donations.

Section 3 of the **Code of Conduct for Councillors 2004** sets out what constitutes a conflict of personal and public interest. The **Local Government Act 2001** sets out specific requirements regarding declaration/disclosure of interests by Councillors. All Councillors and certain employees must complete and furnish an annual declaration setting out declarable interests to the relevant Local Authority ethics registrar. These are maintained in a **public register**. These registers are not published online but are available to members of the public in hard copy during local authority office hours.

In 2004, an **accounting code of practice** was also introduced while audited accounts are now published in annual local authority reports (see the Local Government Audit Service page 151). A report by the

Local Government Audit Service in 2006 pointed out that there were inadequate **audit systems** in almost half of Ireland's local authorities. Among its findings was that 15 out of 34 local authorities did not have a full time member of staff deployed on internal audit work; 60 per cent of internal audit staff had not received relevant formal **training** and that there were a very small number of professionally qualified accountants deployed in internal audit; while only four authorities had formed an **Audit Committee.** Furthermore only 7 out of the 34 local authorities surveyed had published **Fraud and Corruption Alert and Contingency Plans** as of 31 December 2004.[277] Audit committees had been established in City and County local authorities at the time of writing.[278] The Minister for the Environment, Heritage and Local Government introduced a moratorium for senior local authority officials on appointments to the private sector in 2006. The aim of the measure was to address concerns that conflicts of interests could arise where senior local authority officials were making decisions in office affecting the same private sector interests they subsequently worked for after leaving office.

There are no legal means to prevent an individual from taking up such a position. Instead, County and City Managers and directors of service now have to notify a new **Outside Appointments Board** which will vet such moves. This Board consists of a Secretary General of the Department of the Environment and Local Government, a former City or County Manager and three others who are not serving or former public servants. Staff below directors of service rank will not have to seek permission from this Board but should inform or apply, as appropriate, to the County or City Manager if they wish to take up a post that could lead to a conflict of interest.

The Local Government Act 2001 (Part 15), the Local Elections Act 1999 and the Electoral (Amendment) Act 2001 introduced a separate regulatory framework for Local Government elections.

This legislation entails the disclosure of **electoral donations** and **expenditure** by Local Authorities members and candidates to the relevant Local Authority – not to the SIPO. There were no limitations on local election expenditure at the time of writing although such provisions exist for Presidential, European and National elections. Moreover, a register of interests and donations disclosure for locally elected representatives is not accessible on the websites of individual local authorities nor is it explicit where these are available. The equivalent registers for European and national representatives are publicly accessible on the SIPO website.

277 LGAS, 2006

278 Under the Local Government (Business Improvement Districts) Act, 2006

**Minutes** of council meetings are made available to the general public and are normally available via local authority websites. The **Freedom of Information Acts** also apply to local authorities and appeals for non-personal information can be submitted to the Information Commissioner. The Local Government Act, 2001 gives the general public and the press a right to attend local authority **meetings**. However, the Council may pass a resolution (backed by half its total membership) to hold meetings in private.

Local authorities are also responsible for maintenance of their **archives**. In August 2006 it was revealed that one county's archives were in an appalling condition with files 'sitting beside dog and rat droppings'[279] The Society of Archivists and the Local Authority Archivists' Group described a decision in 2006 to lay off archivists in two Local Authorities as a setback for open and accountable Local Government.[280] This notwithstanding, a senior State archivist has claimed that historical records of State and semi-state agencies in general are 'badly underfunded by government'.[281]

*Planning*

The **Flood/Mahon Tribunal**, into Certain Planning Matters and Payments focused on corrupt transactions within Dublin City and County over a twenty-year period to 1997. It has exposed the prevalence and high degree of corruption risk within Local Government.

The Tribunal cast light on **networks** of corrupt County Councillors, Local Government officials, T.D.s, Government Ministers, and developers that enabled all sides to make huge profits from breaches of planning law. Planning law requires those who wish to develop agricultural land for residential or commercial use, to seek a 'rezoning' decision from the County Council, based on a vote by a majority of Council Councillors. The rezoning of land from agricultural to residential or commercial use can increase the value of land by a multiple of ten.[282]

The potential for substantial profit margins therefore served as an incentive for corrupt developers to bribe councillors or officials to secure the rezoning of land. It resulted in a planning 'free for all'.[283] This system of incentives appeared to have been further exacerbated by weak financial audit; the absence of rules on asset disclosure and conflict of interest; and inadequate efforts to enforce the law.

The planning appeals process partly reduces the risk of corruption by adding an important element of unpredictability in planning decisions and transferring financial

279 The Irish Independent, 12 August 2006
280 The Irish Independent, 4 September, 2006
281 Ibid 2006
282 The Irish Times, Frank McDonald, 8 April 2004
283 The Irish Times, 8 April 2004

risk to potential bribe payers. The planning appeals board, **An Bord Pleanala** was established in 1976 and allows third parties the right to appeal planning decisions made by local authorities. Decisions of the Board are based on a number of factors including suitability, risk of flooding, and protection of the environment and heritage.

Political interference in the decisions of the Board is prohibited while it is unlawful to communicate with any member of the Board to improperly influence an appeal. Board members, employees and consultants are also obliged to declare certain interests.

In 2007 the chairman of An Bord Pleanála claimed that 'sometimes zoning decisions seem to have more to do with pressure from local developers rather than sustainable development' and accused local authorities of bad planning and improper zoning.[284] 5,930 appeals had been received by the Board in 2006. Of the appeals received over 30 per cent were successful in overturning a local authority decision.[285]

In 1974 a report on local planning, known as the **Kenny Report**, proposed that local authorities be permitted to buy land at 25 per cent over its existing use value. This land would then be zoned for whatever purpose the local authority decided. It was claimed that the increased land price would serve as a disincentive to both the bribery of County Councillors and random planning. Successive governments claimed that the proposals would infringe on the property rights of existing landowners and therefore be in contravention of the Constitution. In 2004 a Joint Oireachtas Committee advised the Government that restricting the price of development land would indeed be constitutional.[286] Nonetheless, Government has yet to implement the proposals or undertake further analysis of economic incentives for corruption.

## Complaints and Enforcement Mechanisms

See also Codes of Conduct for additional detail on page 163.

Under the Local Government Act 2001 each local authority is obliged to appoint an **Ethics Registrar** who is responsible for familiarising those subject to the Act with the legislation; maintaining officials' and members' declaration of interests; and notifying a possible breach of the ethics framework to a Manager/Cathaoirleach, who in turn must consider what action, if any, should be taken. There is no compulsion on local authority members or employees, other than the Ethics Registrar or County Manager to report suspicions of corruption or breaches of any of the relevant codes or legislation to their

284 The Irish Times, Olivia Kelly, 10 November 2007

285 www.pleanala.ie/news/20071109.htm

286 The Irish Times, Arthur Beesley, 8 April 2004

superiors – usually the Cathaoirleach (Chair) and/or the Manager of the local authority. Allegations of wrongdoing can be brought to the **Standards in Public Office Commission** by the County Manager and/or Cathaoirleach of the local authority. While a complaint may be made by a member of the public to SIPO, an allegation of wrongdoing is expected to be brought to the attention of the local authority in the first instance or to the Gardaí.

There is no statutory **immunity protection** for complainants under the Local Authority Codes of Conduct, although this does exist in section 5 of the Standards in Public Office Act 2001 for complainants under the Ethics Acts. It is not clear to what extent whistleblowing by officials or Councillors is promoted by local authorities in practice.

The public can also forward specific complaints related to the administration of services by local authorities to the **Ombudsman** and make appeals against refusals to grant requests made under the Freedom of Information Act to the Information Commissioner. Appeals by members of the public against a planning decision may be submitted to An Bord Pleanala.

Disciplinary action can be taken against a local authority employee including suspension and dismissal. Where a member of a local authority has been found guilty of corruption, fraud or ethics offences and/or has a conviction on appeal, that person is disqualified from membership of the authority.[287] The Cathaoirleach or Leas-Cathaoirleach of a local authority may be removed for stated misbehaviour where three quarters of the total number of members of a local authority vote for his removal.

## Relationship with other NIS pillars

The relationship between local and central Government is characterised by a high degree of administrative, financial and political **centralisation**. Key functions such as health, education and policing are the responsibility of central Government. Local Government is dependent on central Government for approximately a third of its income.[288]

Oversight of Local Government is less centralised, with multiple layers of responsibility for investigation, reporting of concerns, and audit. It is not clear how well this approach works in practice.

287 Section 13, Local Government Act 2001
288 Quinn, 2003: 454

# CIVIL SOCIETY

## Role and Structure

It is not clear how many **Civil Society Organisations (CSOs)** there are in Ireland. It is estimated however that the total expenditure of 24,000 organisations sampled in a survey by Trinity College Dublin in 2007, was valued at €4.472 billion[289]. The State was found to be the primary source of income for charities, providing 62 per cent of their combined income. Private donations represent 20.3 per cent and corporate donations account for 2.6 per cent of fundraising charities' overall income.[290] Only 4.7 per cent of all civil society organisations are categorised as advocacy organisations.[291]

Organisations falling under this category could include community groups, religious organisations, self-help groups, sporting associations, advocacy organisations, professional bodies and trade unions (see Business Sector). Many of these bodies are not formally registered. A 2006 survey found that 41 per cent of organisational respondents were registered as charities.[292] According to Revenue Commissioners figures, there were 7384 charities registered for tax-relief status in 2008.[293]

289 Centre for Nonprofit Management, Trinity College Dublin, 2007, www.cnm.tcd.ie
290 Ibid
291 Ibid
292 Centre for Nonprofit Management, Trinity College Dublin, 2006: 9
293 www.revenue.ie

### *Religious Organisations*

Over 86 per cent of Irish citizens are members of the **Roman Catholic Church**. Minority religions, including the Church of Ireland and atheists/agnostics make up the remaining 14 per cent. [294] Over the past ten years in particular, the Catholic Church hierarchy has been heavily criticised for its handling of hundreds of allegations and findings of child sexual abuse by priests. There is also evidence that victims of sexual abuse were paid by clerics not to bring cases to the authorities.[295] The State has launched inquiries into child abuse in the dioceses of Dublin, Ferns and Cloyne. In 2002 the Government agreed, in return for €128 million in cash and church property, to indemnify religious orders for the future cost of compensating victims of clerical sex abuse. The estimated cost of the indemnity was valued at €1 billion.[296] With few exceptions, the churches have not been outspoken corruption or accountability in public life.

### *Charities*

The **Revenue Commissioners** currently have sole discretion over what constitutes charitable activity. Such activity must be judged to be in pursuit of the relief of poverty; the advancement of education; the advancement of religion; or certain other purposes, beneficial to the community. Applicants for

294 www.cso.ie
295 O'Kelly and Leahy, 27 October 2002.
296 Ibid

charitable tax status must also not make **political activity** or advocating law reform their primary purpose. It is not clear however what constitutes political activity.

Although the Department of Community, Rural and Gaeltacht Affairs has responsibility for formulating charity law and administering various grant schemes, it has no regulatory authority. Charities operate under different legal structures, such as trusts and limited companies, which are governed by separate legislation. Charities are thus not governed by uniform regulations.

### *Human Rights / Democratisation CSOs in Ireland*

Ireland does not have a strong tradition of indigenous philanthropy for organisations engaged in human rights or democratisation. Civil Society Organisations (CSOs) concerned with governance, accountability and transparency are generally funded by foreign philanthropic trusts (see table 11). Although Ireland is a small country, it also ranks comparatively low internationally for the number of **think tanks** dedicated to monitoring and promoting good governance in Government and business. Indeed, 'Ireland almost uniquely in Europe has relatively few think tanks of any kind'.[297]

An independent non-governmental organisation, the **Centre for Public Inquiry (CPI)**, with a brief to investigate matters of public importance within Irish political, public and corporate life, closed in 2006 only a year after its establishment. Funding was withdrawn by its lead donor after the then Minister for Justice alleged under Dáil privilege, and presented a Garda file to the CPI's donor that implied, that the CPI's Executive Director had travelled to Colombia on a false passport in 2000. It was further asserted by the Minister that the CPI presented a threat to the authority of the State.[298] The Minister maintained that the CPI's Executive Director had travelled in order to assist members of the FARC guerrilla group as part of an IRA training unit.[299] The CPI's Board refused to take disciplinary action against the Executive Director, against whom no formal charges were ever brought. Questions of political bias against the CPI were levelled by commentators[300] at politicians from both Opposition and Government parties, some of whom had earlier questioned the right of any non-governmental organisation to expose corruption.[301]

297 TASC, 2006: 62

298 The Irish Times, 23 December 2005

299 The Irish Times, 23 January 2006

300 Holt, Eddie, 25 March, 2006

301 Fine Gael Senator Brian Hayes claimed 'it is a matter for the organs of this State…to determine what should be matters for public inquiry. I do not believe that any privately sponsored body established by a group of people has the right to determine what is right or wrong.' Seanad Debate, 8 December 2005

Table 11: Human Rights/Democratisation and Anti-Corruption CSOs in Ireland

| Organisation | Funded by | Purposes |
|---|---|---|
| Amnesty International | Membership and Donations | 'To undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights'. |
| Centre for Public Inquiry (Ceased activity in 2006) | Atlantic Philanthropies | 'To independently promote the highest standards of integrity, ethics and accountability across Irish public and business life and to investigate and publicise breaches of those standards where they arise'. |
| Irish Council for Civil Liberties | Membership and Donations | 'The leading independent, non-Governmental membership organisation working to defend and promote human rights and civil liberties in Ireland'. |
| TASC | Atlantic Philanthropies, Joseph Rowntree Charitable Trust, Independent consultancy work, Donations | 'An independent think tank committed to progressive social change in Ireland' |
| Transparency International Ireland | Joseph Rowntree Charitable Trust, Membership, NIS Study funded by Department of Justice, Equality and Law Reform. Irish Aid funding anti-corruption training. | 'To empower people and organisations with the information and knowledge they need to help control the abuse of power in Ireland and abroad'. |

## Accountability, Integrity and Transparency Mechanisms

Ireland's loose regulatory system has raised concerns about the risk of fraud and abuse within the non-profit sector, particularly the facilitation of the financing of terrorism. The **Financial Action Task Force (FATF)** has noted that where beneficial ownership or control structure is complicated within trusts or companies, details of the name and address of every person in receipt of funds from the trust may be difficult to obtain and verify in a timely fashion.[302] FATF has also outlined its concerns that Ireland 'has not yet implemented measures to ensure accountability and transparency in the sector so that terrorist organisations cannot pose as legitimate non profit organisations, or to ensure that funds/assets collected or transferred

302 FATF, 17 February 2006: 8

through non profit organisations are not diverted to support the activities of terrorists or terrorist organisations'.[303] While FATF emphasises the risk that Ireland might be used as a destination for terrorist financing, the same shortcomings also pose a danger that Irish financial institutions and professions may process the proceeds of corruption.[304]

Charities have not been obliged to declare how much they collect or where money is spent. The **Comptroller and Auditor General (C&AG)** highlighted weak financial management of the disability voluntary group sector in 2005. An audit of 42 voluntary, or non-profit, organisations between November 2004 and January 2005 found that in 12 cases voluntary bodies did not file accounts for 2003. These groups received approximately €100 million from Government in the same year. In the case of one major voluntary body, the C&AG found that no financial statements had been received for four years. The group continued to receive €210 million over the same period.[305] The C&AG has called for a Government strategic review of funding relationships with voluntary service providers.

### *Charities Bill 2007*

Ireland is currently reforming the regulation of its charities sector. The Charities Bill 2007 seeks to establish a statutory framework for charities. It is proposed that a Government appointed independent **Charities Regulatory Authority** would have the power to investigate and prosecute charities accused of misconduct or mismanagement. The Regulator would have the power to enter premises, remove charity trustees, and freeze assets of charities which do not comply with new legislation. The Regulator would be accountable to the Oireachtas. Charities would be obliged to have clearly defined internal audit procedures and file annual returns on fundraising activities. All charities operating in Ireland would be required to join a central register, irrespective of their legal form. This would be open to public inspection.

A statutory definition of charity, charitable purpose, etc. would protect against abuse of charitable status and fraud. Those working within the charity sector would be obliged to disclose any misappropriation of resources to the Regulator and would be given immunity protection.

There would also be an agreed **Code of Practice** to guide charities' fund-raising operations. It must also be noted that there is also a provision within the Bill for a 'reserve power for the Minister for Community, Rural and Gaeltacht Affairs to introduce statutory regulation of the operational aspect of charitable fund-raising, should the approach to regulation through Codes of Good Practice turn out to be inadequate

303 FATF, 17 February 2006: 14
304 TIQ Ireland, Issue 4, 2006
305 The Irish Times, 19 December 2005

and fail to provide the expected benefits'.[306]

The statutory definition of charity would incorporate 'the prevention or relief of poverty or economic hardship; the advancement of education; the advancement of religion; any other purpose that is of benefit to the community'. [307]

Although the Charities Bill does not make explicit reference to charities' ability to campaign for changes in government policy, the lack of clarity around what does and does not represent 'political activity' has been a source of concern for a number of charities. The promotion of human rights will not be considered a charitable objective under proposals available at the time of writing.

The work of charitable organisations that devote significant resources to advocating change in Government policy could be further impaired by the Electoral Acts. The **Electoral Acts** define 'any group or person, other than a political party or a candidate at an election, who or which accepts, in a particular year, a donation for political purposes the value of which exceeds €126.97' as a 'Third Party'. Third Parties are obliged to register with the SIPO, open political donations accounts; are prohibited from accepting foreign donations; and are unable to raise funds from any one source over €6,348.69 in any one year.

This requirement can place similar reporting and funding liabilities on charitable organisations with an advocacy role as those faced by political parties. The definition of political purposes is extremely broad and incorporates any activity in an election or referendum campaign or which supports or opposes any policy of the Government or a public authority, including a local authority. The Standards in Public Office Commission has stated that these requirements should be reviewed.[308]

## Complaints and Enforcement Mechanisms

Individual organisations and umbrella bodies are responsible for implementing their own **codes of conduct** and reporting mechanisms. At the time of writing it was not clear what proportion of Irish CSOs had implemented codes of conduct or whistleblower safeguards for employees. In the absence of whistleblower legislation for private sector workers, there is little legal protection provided for employees of CSOs that report wrongdoing to their employers or outside agencies against a range of potential reprisals.

Some **professional bodies** such as the Law Society of Ireland and Bar Council, have a monopoly on training, accrediting and

306 Department of Community, Rural and Gaeltacht Affairs correspondence September 2006

307 Section 3, Charities Bill 2007

308 Review of the Electoral Acts December 2003

representing their members – in this case solicitors and barristers respectively. Complaints can be made by the public against solicitors or barristers directly to these bodies or to the **Solicitors Disciplinary Tribunal** or the **Barristers' Professional Conduct Tribunal**. Complaints against solicitors can also be made by the public to an **Independent Adjudicator** where they are dissatisfied with a Law Society investigation. The potential conflict of interest presented by the dual role of legal professional bodies as both representatives and regulators of the legal profession has been the subject of a great deal of public scrutiny over the past three years. This is especially the case given the number of recent high profile incidents of solicitor fraud against clients and the cost of legal representation at Tribunals of Inquiry. In 2006 the Competition Authority called for an independent **Legal Services Commission** that would set standards for the legal profession alongside an independent Legal Ombudsman that would handle public complaints against its members.[309]

In 2008 the Government presented the **Legal Services Ombudsman Bill**. The Bill has been criticised for not granting the proposed Ombudsman the power to investigate grievances on its own initiative or make awards to plaintiffs. [310] All staff appointments to the Legal Ombudsman will also be passed by the Law Society and Bar Council for their views before an offer can be made. Control over training and accreditation will remain within the remit of the professional bodies.

A 1999 study on the cost of legal representation at Tribunals of Inquiry claimed that 'competition is inhibited, in a myriad of ways; because clients cannot approach barristers directly but must go through solicitors; because legal fees are very frequently not agreed (or even discussed) in advance; and because, as we have seen, because fees are frequently set by a partnership involving the professional body and the government'.[311]

## Relationship with other NIS pillars

The nature of the relationship between this pillar and others relies on a number of factors. These include the quality and character of the CSO's work, brand and media presence, background and history, membership size, and income. The **Social Partnership** process, allows some CSOs, particularly those dedicated to poverty relief, to take part in and influence the outcome of discussions on national economic and social policy with trade unions, business and government.

Irish business is increasingly engaging with the 'voluntary sector' through corporate social responsibility programmes,

309 Competition Authority, 2006: 33
310 The Irish Times, 12 December 2008
311 Barry and O'Dowd, 1999:8

sponsorship and donations to charities and other non-profit organisations. A large number of CSOs are also governed by voluntary non-executive board members who are full-time senior executives or directors of businesses.

Irish CSOs are also involved in both advocacy and the lobbying of individual Oireachtas members, ministers and government officials in an effort to influence the passage and drafting of legislation, including the annual Finance Bill.

# BUSINESS SECTOR

## Role and Structure

Industry accounts for 46 per cent of GDP in Ireland. About 80 per cent of exports (particularly machinery and equipment, chemicals and foodstuffs), and 29 per cent of the labour force. The services industry accounts for 49 per cent of GDP while agriculture accounts for 6 per cent.[312] Up to 2008 the domestic banking and insurance sectors had been particularly successful, with banking asset growth standing at around 25 per cent annually: approximately twice as fast as the Euro area banking system average.[313]

While the economy depends on inward investment and exports, it has also relied heavily on the strength of the construction sector and high levels of consumer debt and spending.

Ireland is described as the 'world's seventh freest economy', and regarded as having transparent financial markets, high levels of investment and business freedom, and strong property rights.[314] Entrepreneurship is judged 'to be made easy by the light regulatory hand of government'.[315] The World Bank also judges Ireland to be the tenth easiest country in the world in which to do business, with short times for starting a business, processing licences, and strong investor protection. Ireland is ranked the second in the world for ease of paying taxes.[316]

312 CIA Factbook 2007, and Forfás, www.forfas.ie
313 IMF 2006: 8
314 The Heritage Foundation, 2007
315 Ibid, 2007
316 World Bank, 2006

Table 12: Ease of Doing Business in Ireland

| Ease of... | 2006 rank | 2005 rank | Change in rank |
|---|---|---|---|
| Doing Business | 10 | 10 | 0 |
| Starting a Business | 6 | 9 | +3 |
| Dealing with Licenses | 20 | 19 | -1 |
| Employing Workers | 83 | 83 | 0 |
| Registering Property | 80 | 78 | -2 |
| Getting Credit | 7 | 7 | 0 |
| Protecting Investors | 5 | 5 | 0 |
| Paying Taxes | 2 | 3 | +1 |
| Trading Across Borders | 30 | 29 | -1 |
| Enforcing Contracts | 24 | 24 | 0 |
| Closing a Business | 7 | 7 | 0 |

Source: World Bank 2006

## Accountability, Integrity and Transparency Mechanisms

### *Company Registration*

The Companies Acts 1963-2006 govern the formation of companies (including Irish-based subsidiaries), continuing operations, insolvency and liquidation. There are four types of limited companies in Ireland: private companies limited by shares; public companies limited by guarantee without share capital; public companies limited by guarantee with share capital and public companies limited by shares (minimum share capital of €38,000). A register of companies is held by the **Companies Registration Office (CRO)**, which also offers guidance to companies and individuals on compliance with the relevant acts. It has no investigative functions but instead operates on a 'good faith' principle.[317]

The CRO checks whether individuals that have been disqualified from acting as company directors have been registered as directors, and that company returns have been filed on time. It can strike companies off the register, impose late filing fees (up to €1,200) on companies or forward cases for prosecution. Company returns are available to the general public for a small fee on its website: www.cro.ie. GRECO has stated that the risk of corruption and money laundering warrants the strengthening the material checking function, especially with regard to the identity of persons behind a legal person.[318] FATF has also highlighted this risk.[319]

### *Anti-Corruption Law and Transparency*

Bribes are claimed to have been offered to almost one in ten CEOs of Irish companies to award contracts,[320] while corruption and bribery figure highly in the list of Irish economic crime risks according to RSM Robson Rhodes. The bulk of active bribery allegations have been exposed during the Flood/Mahon Tribunal with most allegations levelled at property developers and builders. Cases continue to emerge and a number of investigations are continuing into corruption in Local Government. Five foreign bribery allegations were made against Irish companies and nationals in 2005 and 2006.

Private to private bribery is outlawed under the **Prevention of Corruption Acts**. Individuals (natural persons) can face ten years in prison upon conviction on indictment and an unlimited fine, or twelve months imprisonment or a fine of €3,000 on summary conviction. Companies (legal persons) face an unlimited fine upon conviction on indictment and €3000 fine upon summary conviction. Under Section 3 of the Prevention of Corruption (Amendment Act 2001), a presumption of guilt applies

317 Ibid: 20

318 Op cit 2005: 24

319 FATF 2006: 5

320 The Sunday Independent, 16 April 2006

if a donation is not declared to the Standards in Public Office Commission or Local Authority in accordance with the Electoral Acts.

**EU Procurement Directive 2004/18/EC** also provides for the debarment of Irish companies and contractors from public contracting in Ireland that have been convicted upon indictment for offences such as fraud and corruption anywhere in the European Union (including Ireland).

The OECD's 2002 peer review report on the implementation of the OECD Bribery Convention pointed to the potential confusion arising over what sentences should apply for a conviction for foreign bribery.[321] Under the terms of the Criminal Justice (Fraud and Theft Offences) Act 2001, which outlaws the payment of a bribe to a public official anywhere in the EU, a conviction upon indictment can lead to an unlimited fine and five years imprisonment. On the other hand, conviction upon indictment for the payment of a bribe to an official outside the EU could lead to an unlimited fine and ten year imprisonment under the Prevention of Corruption (Amendment) Act 2001.

The OECD has also highlighted the fact that the deduction of **bribes for tax purposes** is not explicitly prohibited by legislation in Ireland.[322]

**Influence trading** has also not been outlawed in Ireland, but was expected to be made illegal under the **Prevention of Corruption (Amendment) Bill 2008**.[323] This legislation is also due to provide for whistleblower safeguards for those reporting offences under the Bill and close loopholes on the liability of Irish nationals and companies for corrupt payments overseas (see also International Institutions, page 141).

### *Company Law*

Irish businesses are subject to a number of statutory instruments governing the prevention of corruption, fraud and money laundering, and the payment of tax. They must also comply with laws on fair competition, health and safety, environmental protection, and employment registration and rights.

Companies are required to keep accounts for six years (off the books accounting is illegal).[324] Most non-profit organisations, including some charities, are not required to meet the same standards as commercial organisations. However, they must be able to produce sufficient records to the Revenue Commissioners to satisfy them that

321 OECD 2002: 43
322 Ibid: 40

323 Defined under Article 12 the CoE Criminal Law Convention on Corruption as "when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making" of public officials or elected representatives

324 Section 202(9) of the Companies Act 1990

the organisation is non-commercial in its operations.[325]

Since 2005, and in accordance with the EU Commission's International Accounting Standards Regulation, Irish publicly listed companies are required to prepare their consolidated financial statements in accordance with **International Financial Reporting Standards (IFRS)**.

The **Irish Auditing and Accounting Supervisory Authority (IAASA)**, established in late 2005, has responsibility for (i) supervision of nine prescribed accountancy bodies' regulation and monitoring of their members; (ii) the provision of advice to the Minister for Trade & Commerce on auditing and accounting matters; and (iii) the promotion of high professional standards in the auditing and accounting profession. In addition, IAASA is responsible for monitoring certain issuers' periodic financial reporting.[326] IAASA also has the power to initiate statutory inquiries into possible breaches of a body's approved investigation, and disciplinary procedures and investigations into possible breaches of a body's standards by a member or member firm.

Individuals are automatically disqualified from acting as directors of a company for five years where they have been convicted on indictment of any indictable offence in relation to a company or involving fraud or dishonesty.[327] Company officers, liquidators, creditors and the Director for Corporate Enforcement can also apply to the High Court to secure **disqualification** of a third party.[328] The registry of disqualified persons is also kept by the Companies Registration Office and is publicly available on its website.

It is a criminal offence to **falsify accounts** or present incomplete information and to destroy company documents and accounts for fraudulent reasons. It is also illegal to issue double invoices to defraud the Revenue Commissioners. The penalty upon conviction on indictment varies depending on the statute under which a conviction is secured: €126,970 and a maximum jail term of five years for under the Tax Consolidation Acts; five years and fine of €12,697 under the Companies Acts (although higher penalties apply in some individual cases); and an unspecified fine and maximum jail term of ten years under the Criminal Justice Act (Theft and Fraud Offences) Act 2001.

### *Anti-Money Laundering*

The Criminal Justice Acts and EU Directives on Money Laundering place a reporting requirement on

325 GRECO 2005: 23

326 i.e. Issuers listed on a regulated market in the EU and whose Home Member State is Ireland. IAASA has been designated as the competent authority for the purposes of Article 24(4)(h) of the EU Transparency Directive.

327 Section 160 (1) of the Companies Act 1990

328 Section 160 (2) of the Companies Act 1990

**Non Financial Designated bodies** (solicitors, accountants, auctioneers and dealers in high value goods) to report suspicious transactions to An Garda Síochána or the Revenue Commissioners[329], while the Company Law Enforcement Act 2001 also compels auditors to report any suspected indictable breaches of the Companies Acts to the ODCE.

Section 45 of the Companies (Auditing and Accounting) Act, 2003, provided that certain company directors produce a **compliance policy statement** and an annual **statement of compliance** with company law, tax law and other legislation having a potential material impact on the company's financial statements. However this provision was not commenced, and following a subsequent review by the Company Law Review Group in 2005, Government has decided to introduce a modified and less prescriptive provision in the forthcoming consolidated Companies Bill. It is understood that the new Bill will provide that one annual compliance statement will apply to tax law and indictable offences in company law and that the affected companies will be:

- all public limited companies (whether listed or unlisted) and
- all private companies limited by shares whose turnover exceeds €25 million and whose balance sheet total exceeds €12.5 million in the financial year in question.

Failure to report suspicious transactions under the Criminal Justice Act 1994 can result in a fine not exceeding £1,000 and/or to imprisonment for a maximum of twelve months upon summary conviction or to an unlimited fine or to imprisonment for a maximum term of five years or to both.

A **Money Laundering Steering Committee (MLSC)** provides guidance on the implementation of EU Directives and national legislation on the prevention and detection of money laundering. Chaired by the Department of Finance, the MLSC comprises of members of the Garda Síochána, the Revenue Commissioners, a representative of the ODCE and representatives from relevant professional bodies.

In its 2005 evaluation report on Ireland, GRECO noted comments from accountancy bodies that the domestic rules on the reporting of money laundering 'were not completely harmonised and the interpretation of the obligation to report was difficult'.[330] These organisations also recommended that the MLSC should 'play a stronger role to inform all the concerned professions on how to comply with their reporting obligations'.[331]

329 There were 3040 Suspicious Transaction Reports in 2001 and 5,491 in 2004. This increase is believed to be attributable to the increased understanding by auditors of their reporting obligations rather than any underlying decline in compliance. Source: FATF 2006: 63

330 GRECO 2005:23

331 Ibid: 23

The Financial Action Task Force (FATF) has pointed to additional money laundering risks arising from the lack of any compulsion for designated bodies to report or identify fund transfers from **'politically exposed persons' (PEPs)** [332] from overseas. [333] Secondly there appear to be few prohibitions or controls in place for Irish financial institutions to deal with **'shell banks'**.[334] Such banks have no physical presence and few are under the control of national supervisory authorities. FATF also pointed out that 'no explicit provision requires the identity of the beneficial owner [of funds or trusts] to be established and verified'.[335] It also stated that a lack of statistics 'prevents a full evaluation' of the effectiveness of Ireland's anti-money laundering safeguards. [336]

The Government has promised to address the points raised by FATF through the implementation of the 3rd EU Money Laundering Directive, while the Charities Bill 2007 should prevent the misuse of trusts as conduits for corrupt money.

*Business efforts to improve transparency and accountability in business*

The prevention of domestic or foreign corruption, as an issue in its own right, appears not to have been discussed amongst the Social Partners, while the business sector seems to have never addressed the topic in any public forum. Some thirty businesses are members of Business in the Community, a non-governmental organisation promoting **Corporate Social Responsibility (CSR)**. At the time of writing there were also six Irish members of the United Nations Global Compact (UNGC): Four small and medium enterprises, one medium-sized company and one academic institution.[337] However, no anti-bribery or anti-corruption programmes have been promoted through these networks in Ireland.

The promotion of good corporate governance has been led in the main by some professional organisations and educational institutes. A small number of **universities** including the Smurfit Business School at University College Dublin and Queens University Belfast (Northern Ireland), run corporate governance programmes. Since 2006, the Irish chapter of Transparency International has been based at the School of Business, Trinity College Dublin and runs an anti-corruption executive education programme for Government, the private and non-profit sectors.

A finding in 2005 that Irish business loses €2 billion a year from economic crime including corruption, does

332 PEPs are defined as 'natural persons who are or have been entrusted with prominent public functions' (including but not restricted to government ministers, officials, and their spouses

333 FATF 2006: 7

334 Ibid: 102

335 Ibid: 7

336 Ibid: 6

337 www.unglobalcompact.org. The UNGC is a voluntary initiative which commits its members to a set of ten principles designed to promote CSR including the prevention of corruption

not appear to have prompted much discussion on the need to tackle corruption in business.[338] While a further €500 million is spent annually by businesses on insurance and prevention, little effort appears to have been made to address some underlying risks. [339]

### Table 13: Top ten rated economic crimes by those companies surveyed by RSM Robson Rhodes

| | |
|---|---|
| 1 | Asset misappropriation |
| 2 | Cheque fraud |
| 3 | Employee collusion |
| 4 | Credit card fraud |
| 5 | Procurement fraud |
| 6 | Expenses fraud |
| 7 | Bribery/corruption |
| 8 | Identity theft |
| 9 | Insurance fraud |
| 10 | Money laundering |

*Source: RSM Robson Rhodes, 2005*

The report titled 'Combating Economic Crime, A report on the issues of financial fraud in Irish Companies, 2005' found that only 51 per cent of detected frauds are reported to the Garda.[340] It also found that only 51 per cent of boards discussed economic crime more than once a year; that only 31 per cent of boards had risk management training and only 36 per cent train their staff.[341]

338 RSM Robson Rhodes 2005: 8
339 Ibid: 8
340 Ibid: 5
341 Ibid: 6

Furthermore only 36 per cent of Irish companies were found to encourage whistleblowing, compared to 88 per cent of UK companies.[342] The authors stated that without 'a proper and identifiable policy in writing, many staff will still be reluctant to disclose any information on the suspicious activity of a colleague' and added that 'if companies were to be seen to encourage whistleblowing, this may deter individuals from carrying out economic crime for fear of being reported by a colleague'.[343] The culture of sharing information on fraud among companies was also found to have been very weak at 9 per cent.[344]

Those surveyed[345] were asked what new measures they would like Government or law enforcement agencies to take. The findings are shown in table 14.

The report concludes that 'there appears to be some form of heads in sand approach by directors and senior executives of companies that experience the effects of economic crime'. It adds that '…if top management has high ethical standards and demonstrates a zero tolerance attitude to fraud by clearly publicising this policy, a clear deterrent message is communicated to potential fraudsters'.[346]

342 Ibid: 10
343 Ibid: 10
344 Ibid: 28
345 2,500 corporate executives and board members
346 2005: 20

### Table 14: What new measures business would like Government or law enforcement to take in fighting economic crime

| Measure | Agree % |
|---|---|
| Tougher penalties for offenders | 72 |
| Provide more economic crime prevention advice | 57 |
| Greater involvement with industry associations | 57 |
| Specialist units to conduct investigations and prosecutions | 50 |
| Changes to legislation | 38 |
| No changes needed | 19 |
| Other | 4 |

*Source: RSM Robson Rhodes, 2005*

### Table 15: Selected Regulatory Bodies

| Body | Established |
|---|---|
| Irish Stock Exchange | 1793 |
| Central Bank | 1943 |
| Fair Trade Commission | 1953 to 1991 |
| Companies Registration Office | 1963 |
| Office of the Director of Consumer Affairs | 1978 to 2007 |
| Pensions Board | 1990 |
| Data Protection Commissioner | 1989 |
| Health and Safety Authority | 1989 |
| Competition Authority | 1991 |
| Environmental Protection Agency | 1992 |
| Commission for Energy Regulation | 1999 |
| Office of the Director of Corporate Enforcement | 2001 |
| Commission for Aviation Regulation | 2001 |
| Commission for Communications Regulation | 2002 |
| Pensions Ombudsman | 2002 |
| Financial Regulator | 2004 |
| Financial Services Ombudsman | 2005 |
| Irish Auditing and Accounting Supervisory Authority | 2005 |
| National Consumer Agency | 2007 |
| National Property Services Regulatory Authority | Pending |

## Complaints and Enforcement Mechanisms

*Regulatory Bodies*

A growing number of regulatory bodies supervise individual sectors and the business sector in general as illustrated by table 15.[347] In addition, Government Departments are directly responsible for policy, business compliance and regulation in a number of areas including the telecommunications and extractive industries (Department of Communications, Marine and Natural Resources), and employment rights and registration (Department of Enterprise, Trade and Employment).

In 2004, the Government launched a White Paper titled **'Regulating Better'** which envisaged a regulatory environment based on the principles of 'Necessity, Effectiveness, Proportionality, Transparency, Accountability, and Consistency'. These principles entailed a move towards evidence-based Regulatory Impact Analysis (RIA) including ongoing consultation with business and civil society; the reduction, where possible, of red tape; and the removal of anomalies in existing legislation and regulation. A **Company Law Review Group**, established in 2001, also provides recommendations on the reform of company law. In 2004 a **Commercial Court** was established as a division of the High Court to cut costs and waiting times on cases involving claims of €1 million or more.

347 This list is non-exhaustive

*Office of the Director of Corporate Enforcement (ODCE)*

Established under the Company Law Enforcement Act 2001, the Office of the Director of Corporate Enforcement (ODCE) offers guidance to companies on compliance with the Companies Acts and is responsible for prosecuting summary offences before the Courts or taking other 'suitable enforcement action'. Other enforcement action includes civil actions, such as the seeking of Court remedial orders or the restriction or disqualification of company directors. The Office may also refer cases for a decision on a possible prosecution under indictment to the Director of Public Prosecutions. The ODCE is also permitted by law to transmit confidential information to other relevant authorities such as the Revenue Commissioners and the Financial Regulator.

The Director of the ODCE is appointed by the Minister for Enterprise, Trade and Employment. The Director may at any time be removed from office by the Minister, so long as the Minister lays out reasons for his removal before each House of the Oireachtas. According to the ODCE, 220 convictions against companies and individuals were secured between 2002 and 2006; as well as 41 disqualifications against company directors and others, 600 company directors restricted by the High Court mostly on the application of liquidators following ODCE assent

and 20 orders made in High Court compliance proceedings against liquidators and others.[348] In 2007 the High Court refused the ODCE's request for disqualification of a former senior manager of an Irish bank for facilitating tax evasion. In his ruling the judge cited the prevailing culture of tolerance within both the private and public sectors as a mitigating factor.[349]

The ODCE has a staff complement of 37 staff most of whom are accountants, administrators and lawyers. Seven of these are members of the Garda Síochána seconded to the Office to support its work. The ODCE's 2006 expenditure amounted to some €3.355 million.[350] The ODCE seems to be faced with a difficult task when the number of complaints: 3000 in 2005 alone, are taken into account.[351] Furthermore a 2005 request by the ODCE for 20 additional staff indicated a staff shortage at the agency. A commitment to provide eight additional staff has recently been made. GRECO has also recommended that the size of fines, currently fixed at a maximum of €1,900, for summary offences, including failing to keep proper accounts should be increased to ensure that sanctions are 'effective, proportionate and dissuasive'.[352]

Business appears to have taken a mixed view to the work of the ODCE with one interviewee stating that the ODCE was over zealous in its pursuit of investigations into company insolvency and claiming it should be more selective in the investigations it pursues.[353] On the other hand, the ODCE's 2005 Annual Report stated that 68 per cent of company directors rate the ODCE 'as effective in discharging its remit' while 74 per cent of directors and 95 per cent of accountants and liquidators believed that the 'company law compliance environment has improved over the past five years'.[354]

The ODCE can also ask the High Court to appoint an inspector to investigate alleged breaches of company law. The 1990 Companies Act also granted an Inspector the ability to investigate any other related or implicated company, to summon any books or documents of the company under investigation, and to provide a final report on conclusion of the investigation.[355] The final report of the Inspector can serve as evidence admissible in any civil proceedings. **High Court inspectors** have been appointed on a number of occasions, most notably to investigate the role of banks in the evasion of DIRT tax.

348 www.odce.ie
349 McManus, John, 28 May 2007
350 Ibid
351 The Irish Times, 7 January, 2006
352 GRECO 2005: 24

353 Interview with authors, 31 January, 2007
354 ODCE, 2005: 8
355 Companies Act 1990, Sections 9, 10, 11.

*Competition Authority*

Established in 1991, the Competition Authority is conferred with the power to enforce Irish and European competition law, to investigate cartels, approve or reject mergers and acquisitions, and promote competition through the publication of guidance notes and other advocacy activity.

The Chairman of the Authority is appointed for a five year term by the Minister for Enterprise, Trade and Employment.

In 2001 the Authority and the Director of Public Prosecutions launched a **Cartel Immunity Programme** which provides immunity to witnesses involved in price fixing and bid rigging.[356]

Under the programme, applications for immunity are made on the basis of full disclosure to the Authority before a complete file is submitted to the DPP. The DPP then considers whether to grant immunity based on the Authority's recommendations. According to the Authority the programme is run because 'Cartels are by their very nature conspiratorial. The participants are secretive and hard-core cartels are notoriously difficult to detect and prosecute successfully'. The number of cartel cases however is reported to be low.[357]

The Competition Authority has called on the Government to introduce **financial penalties** for civil breaches of competition law. Currently the only form of sanction available in the civil courts is an order to cease and desist.

The Authority has brought high profile cases against professional bodies and associations. In 2005 it also secured the first conviction anywhere in Europe against a home-heating oil cartel in Galway.

*Financial Services*

Ireland's financial services sector is central to the economic welfare of the country. An **International Financial Services Centre (IFSC)** established in 1987 has become an international hub for banking, insurance and reinsurance, fund management, and venture capital. About 190 insurance companies and subsidiaries, including over half of the world's top 20 insurance companies, were operating at the IFSC in 2004.[358]

At the time of writing, domestic banking was dominated by two Irish banks, Allied Irish Bank and Bank of Ireland, that together accounted for about 75 percent of deposits.[359] The only fully state-owned financial institution was the Irish Post Office, An Post.

The **Financial Regulator** (formerly known as the Irish Financial Services Regulatory Authority) was

356 Bid rigging or market sharing was outlawed in Ireland under the Competition Act 1996

357 The Irish Times, 31 March 2006

358 Heritage Foundation 2007

359 Ibid

established in 2003 as part of the Central Bank and Financial Services Authority of Ireland. Its emergence arrived in the wake of a number of scandals in which Ireland's leading banks were implicated in systemic overcharging of retail and business customers and the evasion of Deposit Interest Retention Tax. The Regulator is responsible for issuing licences to new financial institutions, approving the appointment of directors to financial institutions, and supervising the sector. Since 2005, it has been responsible for investigating insider trading and market abuse – a role it assumed from the Irish Stock Exchange. It also issues compliance codes and offers guidance to financial institutions and consumers.

The Regulator takes a **'principle-based' approach** to regulation and supervision, 'placing responsibility on the boards and management of financial institutions to implement appropriate risk management systems and effective anti-money laundering internal controls'.[360] As of 2005, it had 318 staff and a budget of €40 million and is regarded to be adequately structured, funded, and staffed.[361]

It is also seen to have 'sufficient operational independence and autonomy to ensure freedom from undue influence or interference'.[362] Detailed checks on ownership of financial institutions including legal form and structure are carried out as part of a 'fit and proper' review.[363] The Central Bank Act 1997 also empowers the Financial Regulator to enter premises and seize and review documents. Between May 2003 and December 2004, there were 497 inspections and review meetings with banks, insurance companies, investment/stock broking firms, funds service providers and credit unions.[364] At the time of writing, the Regulator had never fined a bank for regulatory breaches, although it has the power to do so.

The Financial Regulator has been subject to continued **criticism** over its alleged failure to effectively regulate the sector following a number of high-profile scandals. In 2006 it was the subject of international scrutiny following Ireland's largest ever corporate scandal in the €14 billion **re-insurance** industry.[365] It was accused of moving too slowly to investigate a fraudulent deal worth US$500 million, and of its weak

360 FATF 2006: 6
361 Financial Regulator Annual Report 2005: 94
362 Ibid: 7
363 Ibid: 6
364 Ibid: 7
365 A US$500 million reinsurance deal was alleged to have been transacted illegally between a Dublin based re-insurance firm, Cologne Reinsurance (Cologne Re.) and AIG Insurance in the US. The Chief Executive of Cologne Re., John Houldsworth had already been debarred by the Australian Prudential Regulation Authority in 2004 for his part in a similar fraud in 2001 and contributed to the AU$5.3 billion collapse of one of Australia's leading insurance firms. In 2006, Houldsworth pleaded guilty to securities fraud in Virginia, having left Ireland to stand trial in the US, was awaiting sentence at the time of writing.

supervision of the insurance and reinsurance sector more generally. The controversy led to the New York Times referring to Ireland as the 'Wild West of European Finance'.[366] The **International Monetary Fund (IMF)** subsequently stated 'any problem that might come to the forefront in the IFSC could negatively affect Ireland's reputation. The lack of direct supervision of the significant reinsurance industry in the IFSC was seen as a particular issue'.[367] [368]

In late 2008, members of the **Oireachtas Committee on Economic Regulatory Affairs** called on the then Chief Executive of the Financial Regulator to resign stating that it had lost the confidence of investors. One Senator described the Regulator's relationship with Irish banks as being 'too cosy to be comfortable'.[369]

A major case of **insider dealing** was also exposed in 2005 when one of Ireland's largest food importers brought a civil action against a major shareholder for unlawful dealing. A Supreme Court in 2007 ruling found that the shareholder had access to price-sensitive information when selling its shares worth €106 million in the food importer.[370] The case also coincided with a review of **Irish Stock Exchange**'s governance structures and supervisory role in market trading. Following an ODCE request, the High Court appointed an Inspector in mid-2008 to examine the share dealing events in question.

The **Financial Services Ombudsman Bureau** came into effect in 2005. It deals with complaints against financial institutions and has the power to undertake investigations and award compensation of up to €250,000. The Ombudsman received 3,800 complaints in 2006, up 14 per cent on 2005: 2,229 were made against insurance companies and 1,566 against credit institutions.[371] In 2007 it was criticised for not publicly naming those institutions against whom it makes a finding.[372]

## Relationship with other NIS pillars

There are a number of **business lobby groups** and organisations, including Chambers Ireland which represents 12,000 businesses and 59 Chambers of Commerce nationwide[373]; the Irish Business and Employers Confederation (IBEC) which represents 7000 businesses; and the Irish Small and Medium Enterprises Association (ISME) which represents 5000 businesses

366 The New York Times, 1 April, 2005
367 IMF 2006: 8
368 It had warned of the "supervisory challenges" posed by the IFSC in 2000, IMF 2006: 8. In 2006 Ireland transposed the EU Reinsurance Directive into law which will provide for the regulation of the reinsurance sector for the first time.
369 Reddan, Fiona, 15 October 2008
370 Fyffes Plc -v- DCC Plc & ors, [2007] IESC 36
371 RTÉ, 16 January, 2007
372 The Irish Independent, 21 January,, 2007
373 IPA Yearbook and Diary 2006

with less than 250 staff.[374] All three undertake research, provide training for their members, and lobby Government on their behalf. Other significant groups representing specific industry sectors include the Construction Industry Federation, the Irish Bankers Federation, the Irish Exporters Association and the Irish Farmers Association.

Ireland also has a large **trade union** base with the biggest being the Irish Congress of Trade Unions representing 770,000 members.[375] The relationship amongst these organisations, Government and civil society, otherwise referred to as the **"Social Partners"**, is noteworthy for the level of consensus arrived at on pay terms, work conditions, and social and economic policy. Since 1987 six **national agreements** have been agreed and the resulting industrial relations stability is seen as having contributed greatly to Ireland's economic prosperity.[376]

The Social Partnership process has been the subject of some criticism by media and politicians. Much of the criticism has focussed on the way in which a significant element of national economic policy is effectively decided upon outside the Oireachtas.

Business is seen as particularly close to political life in Ireland. The World Bank Institute's Corporate Ethics Index 2004[377] found that only 43 per cent of Irish business leaders believed that the private sector does not have **undue influence** over the political process – this finding places Ireland behind some developing countries including Botswana, Ghana, and Malaysia. Influence can be brought to bear by business organisations, individual businesses and trade unions through political donations, the Social Partnership process, professional lobbying on legislation, board membership of Public Bodies, and more informally through social networks.

While controls and limits have been placed on the levels and sources of political finance, political parties are believed to still receive a significant proportion of their income from Irish business. It is not clear what percentage of overall income this represents since political parties and candidates are only required to disclose sources of income over €5,078.95 and €635 respectively.

374 Interview with authors, 2008
375 www.ictu.ie
376 www.taoiseach.gov.ie
377 Kaufmann, 2004

# INTERNATIONAL INSTITUTIONS

## Role and Structure

A number of international institutions have helped shape Ireland's National Integrity System. This influence has gained increased visibility over the past ten years. Membership of or scrutiny by, the Council of Europe (CoE) and the Group of States against Corruption (GRECO)[378], the European Union (EU), the Financial Action Task Force (FATF)[379], the Organisation for Economic Cooperation and Development (OECD), and the United Nations (UN) has led to the implementation of new mechanisms designed to improve accountability and prevent corruption in both public and private sectors.

378 GRECO is a Council of Europe initiative of which Ireland is one of 46 members

379 The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 to develop and promote national and international policies to combat money laundering and terrorist financing.

## Accountability, Integrity and Transparency Mechanisms

*International Reports*

The first international reports on safeguards against corruption in Ireland were published in 2001. Prior to this period, little study of the issue, even at an international level was undertaken. Four peer-review studies have been compiled by the OECD and GRECO through interviews/questionnaires with public servants, media, civil society and business representatives.

**Table 16: Recent International Reports on Ireland**

| Organisation | Report |
|---|---|
| GRECO<br>Council of Europe<br>(Peer reviewed) | First Evaluation Round Evaluation Report 2001<br>First Evaluation Round Compliance Report 2003<br>First Evaluation Round Addendum to the Compliance Report 2005<br>Second Evaluation Round Evaluation Report 2005 |
| OECD<br>(Peer reviewed) | First Peer Report on Ireland's implementation of the OECD Anti-Bribery Convention 2002<br>Second Peer Report March 2007 |
| Financial Action Task Force FATF<br>(Peer reviewed) | Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism 2006 |
| The International Monetary Fund | Country Report No. 06/293 2006 |

Table 17: International Legislation/Conventions on Ireland

| Legislation/Convention | Status |
|---|---|
| OECD Convention on Bribery of Foreign Public Officials in International Business Transactions 1997 | Ratified through the Prevention of Corruption (Amendment) Act 2001 |
| EU Convention on the Fight against Corruption involving officials of the European Communities or Officials of Member States of the EU 1997 | Ratified through the Criminal Justice Theft and Fraud Offences Act 2001 |
| Council of Europe Criminal Law Convention on Corruption 1999 | Ratified through the Prevention of Corruption (Amendment) Act 2001 |
| Council of Europe Civil Law Convention on Corruption 1999 | Signed, Not yet ratified |
| United Nations Convention against Transnational Organized Crime 2000 | Signed, Not yet ratified |
| United Nations Convention against Corruption 2003 | Signed, Not yet ratified. |

*International Legislation/ Conventions*

International bodies have also been instrumental in the adoption of new legislation and other measures designed to fight corruption.

The Prevention of Corruption (Amendment) Act 2001 enabled Ireland to ratify both the OECD Anti-Bribery Convention and the Council of Europe Criminal Convention on Corruption. The 2001 Act outlawed the bribery of foreign public office holders and members of foreign parliaments. It also gave Irish courts jurisdiction in cases where any element of the offence occurs in the State or where an Irish office holder or official is involved. Table 17 lists the status of the international legislation and conventions which Ireland has signed and/or ratified.

*Organisation of Economic Cooperation and Development (OECD)*

The OECD's Phase 1 and 2 reports on the implementation of the OECD Anti-Bribery Convention, found a number of legal loopholes that would make it extremely difficult to prosecute an Irish national or company for **bribing a public official overseas**. At present, part of an offence must have taken place in Ireland for the Irish Authorities to prosecute. In addition, the OECD also found that the legal definition of an 'agent', under the 2001 Act, may be somewhat confusing and allow intermediaries other than employees of a company to bribe officials, without fear of prosecution.

A 2006 Transparency International (TI) Progress Report and the

OECD Phase 2 Report on the implementation of the OECD Anti-Bribery Convention found that Ireland had done little to inform Irish companies or Irish-based multinationals about the law on foreign bribery.[380] To counter this information deficit, the Irish chapter of TI recommended that a sustained information programme should be undertaken to educate all relevant Government officials and Irish-based enterprises (including multi-national corporations) of their legal responsibilities in relation to the law on bribery. It also found that there had been little coordination of anti-corruption policy or initiatives amongst Government agencies.[381]

Government has since launched a website **www.anti-corruption.ie** aimed at informing Irish businesses on the law against foreign bribery; published the **Prevention of Corruption (Amendment) Bill 2008** (see Anti Corruption Activities) to address some of the legal anomalies highlighted above; established a **Senior Officials Compliance Committee** representing all relevant Departments and Agencies to monitor compliance with the Convention; and set up an **interdepartmental Committee** to organise awareness raising measures.

### *Groups of States against Corruption (GRECO)*

Ireland was one of the 16 founding members of the Group of States against Corruption (GRECO) in 1999. Since Ireland's ratification of the Council of Europe Criminal Law Convention on Corruption in 2001, it had undergone two peer reviews to highlight potential areas for reform at the time of writing.

GRECO has described Ireland as 'belonging to the group of those GRECO members that are least affected by corruption'[382], though it has raised concerns in the past about the absence of certain safeguards against corruption including protections for whistleblowers and reporting obligations for civil servants. Of the eight recommendations on the implementation of the CoE Convention on Corruption, made by the GRECO Evaluation Team in 2001, three have been or are being implemented.

### *The European Union (EU)*

Ireland's membership of the European Union (EU) is widely seen as having greatly benefitted the country's economy since it joined in 1973 (see Country Overview). The Irish public has the most positive attitudes to the EU of any in the Union.[383] Ireland is also one of the few EU member states to have a standing public Forum on Europe which serves as a platform for regular debate on the EU. Less attention however appears to have been paid to the effect that EU membership has had on standards of integrity in public and corporate life.

380 Transparency International 2006: 12
381 Ibid 2006
382 GRECO, 2001:27
383 The Irish Times, 20 June 2007

A number of **EU Directives**[384] have restructured the regulation of public procurement and competition in Ireland. Complaints and Enforcement Mechanisms in this section)

Additionally, the EU Commission has drafted guidance on financial management within Member States' public services and promoted the **Common Assessment Framework,** (CAF) to benchmark standards among Member States' public services.[385] The CAF was introduced in Ireland as part of its public service modernisation programme (see page 90). In June 2002, the EU also adopted a regulation requiring listed companies in Ireland, including banks and insurance companies, to prepare their consolidated accounts in accordance with International Financial Reporting Standards (IFRS) from 2005 onwards.

The EU's influence in Ireland can also be seen in the adoption of new **debarment procedures** for companies found guilty of serious crime, including corruption, within the European Union.[386] Ireland was also one of the first countries to adopt the **European Arrest Warrant** which allows for speedier extradition of criminal suspects (including those suspected of corruption) throughout Europe. However no cases have emerged to date. In the meantime, two **anti-money laundering Directives** have been implemented by Irish financial institutions and regulatory authorities (a third was due to be introduced in 2007). Other EU Directives on solvency, company law, and transparency of listed companies have also been transposed into Irish law. The EU's influence on the institutional environment is also evident in the establishment of **Regional Assemblies** to oversee EU funding at local level

An **'annual ex-post publication'** of beneficiaries of money received from the European Regional Development and European Social Funds has been published since 2007. The Commission already publishes information on beneficiaries under the programmes it manages directly.[387]

Not all EU recommendations related to the prevention of corruption have been adopted. Ireland has not appointed specialised anti-corruption staff to key Government Departments.[388]

384 EU Directives have primacy over Irish law

385 The CAF is supposed to serve both as a means of communication and as a tool for benchmarking among EU Member States' public administrations with a view to raising integrity, accountability and transparency in public institutions.

386 Directive 2004/18/EC of the European Parliament and of the Council

387 http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm

388 Ibid:.23, Guidance from the EU Brussels, 28.5.2003 COM (2003) 317 final Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU policy against Corruption

Neither has it banned the tax-deductibility of bribes.[389]

Another potential effect of EU membership that has not been examined thoroughly is the impact that **economic growth** has had on demands for accountability and the way it has addressed both incentives and opportunities for corruption. Public sector salaries have grown 123 per cent over the past ten years while economic growth has averaged at 7 per cent over the same period.[390] The process of legislative and institutional reform also coincided with significant budgetary support from the EU. Over €10 billion was received in EU Structural and Cohesion funds between 1994 and 2006.[391]

### *United Nations (UN)*

A number of **United Nations Conventions** including the UN Convention against Transnational Organised Crime (including a protocol on the prevention of human trafficking), and the UN Convention against Corruption have been signed by Ireland but have yet to be ratified.[392]

Ireland signed the UN Convention against Corruption (UNCAC) in 2003 but has yet to ratify this instrument. UNCAC is regarded as the most comprehensive of all the international anti-corruption conventions and is the broadest in its reach (140 countries have signed UNCAC so far). It encompasses a number of measures designed to tackle corruption in both the public and private sectors. These include the implementation of an international asset recovery framework, mutual law enforcement assistance, and the outlawing of both domestic and foreign bribery.

While Ireland has gone some way to implement measures contained in UNCAC, via both CoE and OECD Conventions on Bribery/Corruption, a number of shortcomings have been identified elsewhere.[393] (For further discussion see Anti-Corruption Activities, page 41)

### *Other International Organisations*

A number of international/bilateral **trade and business organisations** or associations, including the American Chamber of Commerce also have a visible presence in Ireland. While such organisations have no formal role in Ireland's NIS, they can serve as an important channel of information to international business on governance risks and the ethical environment in Ireland.

389 Communication from the Commission to the Council and the European Parliament on a Union policy against corruption, adopted by the Commission on 21 May 1997 COM(97) 192 final.

390 www.cso.ie

391 Irish Regions Office, www.iro.ie

392 Ireland's Constitution requires that international treaties and conventions must be transposed into Irish law before having legal effect.

393 Transparency International Ireland, November 2006

## Complaints and Enforcement Mechanisms

Ireland's commitment to international treaties and conventions is, in the main, voluntary with few if any sanctions applied for a breach of or failure to apply given terms. Their value lies in their moral force and ability to commit governments to act. This is no less evident than in the way the Irish Government has responded to **peer-review reports** by both GRECO and particularly the OECD in recent years. It has generally reacted to criticism by these bodies by publicly committing itself to taking action to address shortcomings while emphasising the positive aspects of the reviews.

Another emerging trend in the enforcement of international treaties is the role of NGOs in monitoring national implementation and enforcement. **Shadow reports** on the OECD Anti-Bribery Convention have been published by Transparency International since 2006, while a **gap analysis** on the UN Convention against Corruption was also published by its Irish chapter in 2006.

Irish citizens can also bring cases against the Irish Government for alleged human rights violations to the **European Court of Human Rights** in Strasbourg. Since the Court is established under a Council of Europe treaty (not a European Union institution), the Court's rulings do not have legal effect in member states. The effectiveness of this body rests with its ability to shame governments into action.

### *European Union*

Ireland's courts can, and sometimes must, refer to the **European Court of Justice** (ECJ) to clarify a point concerning the interpretation of European Community law to determine, for example, whether national legislation complies with that law. The Irish courts are bound by the ECJ's interpretation. The **European Commission** can bring Member States to the ECJ for breaches of European Community law including procurement and competition directives. A Member State's failure to comply with Community law can lead to an order to comply and/or a fixed or periodic financial penalty.

## Relationship with other NIS pillars

The Irish Government appears to be held in high regard within international bodies such as the United Nations, the European Commission and international financial institutions. This is in part due to its relatively open and democratic political system, success in cutting unemployment, and drive towards high levels of economic growth and foreign investment through the 1990s. Its commitment to peacekeeping and international development is also viewed positively by foreign observers.[394]

394 Commitment to Development Index 2006

Ireland's efforts at fighting corruption have received mixed reviews from both GRECO and the OECD. This is also reflected in Ireland's somewhat disappointing score in the TI Corruption Perceptions Index since 1998 (see page 37). Visiting groups from GRECO and the OECD have generally noted a high level cooperation with the authorities. In 2007 however the OECD working group on bribery stated that few business leaders in Ireland seemed to be prepared to meet with its representatives. Furthermore it noted that a number of Government officials had also failed to attend briefings on Ireland's implementation of the OECD Bribery Convention.[395]

395 OECD 2007: 10

# SUPREME AUDIT INSTITUTION

## Role and Structure

The **Comptroller and Auditor General (C&AG)** is Ireland's Supreme Audit Institution and represents a key pillar in its National Integrity System. The C&AG is a permanent witness of the Dáil (parliamentary) **Committee of Public Accounts (PAC)**[396] and also a member of the Standards in Public Office Commission. As Comptroller General, the C&AG is also responsible for sanctioning the release of funds from the Exchequer under the law. In 2007, the office of the C&AG had a complement of 150 auditors and 25 support staff. Its annual budget as of 2007 was €13.9 million.[397]

The function of the C&AG is provided for under Article 33 of the Irish Constitution and his role prescribed by the Comptroller and Auditor General Acts. The C&AG is responsible for the financial auditing of over 350 **public bodies** including all Government Departments. It also has the power to inspect the records of any agency that receives over 50 per cent funding from the State.[398] Approximately 270 non-departmental bodies come under the remit of the Comptroller and Auditor General. The think-tank TASC estimates the figure to be only 32 per cent of all public bodies.[399] The C&AG is also responsible for the audit of **cross-border (North/South) bodies** established under the Belfast Agreement.[400] **Commercial State Bodies** are audited by private sector firms.

The C&AG is also mandated to report to the Dáil on public procurement and cost estimation systems, financial management and budget controls as well as cases of financial mismanagement, and concerns about value for money. It publishes a number of reports that are presented to the Dáil and publicly available on its website. **Annual Reports** are published upon the C&AG's audit of revenue collection and expenditure of the central Government. **Audit Report Supplements** can be appended to the Annual Report where the C&AG considers that a matter of public accountability arises within a semi-state body. Similarly **Section 6**, **Section 7** and **North/South Body** reports are drawn up following the audit of a Health Board, Vocational Educational Committee and North South Bodies respectively and where issues arise around accountability. **Special Reports** can also be conducted into the financial management and governance of public bodies arising from audits or inspections carried out by the C&AG. **Value for Money Reports** cover examinations into the economy

396 www.audgen.gov.ie

397 Office of the Comptroller and Auditor General, Statement of Strategy, 2007 to 2009

398 Ibid: 3

399 Democracy Commission, 2005: 76,77

400 A peace agreement signed by the British and Irish governments in 1998 which among other provisions established public bodies that share responsibility for programmes in both Northern Ireland and Ireland.

and efficiency of State bodies' use of resources

The office of the C&AG may also issue **'post audit letters'** to audited public bodies with recommendations aimed at improving administration and preventing financial loss. In 2006 the C&AG raised a total of 584 shortcomings with public bodies' management. Of these 9 per cent related to 'Corporate Governance' and 19 per cent centred on 'Systems and General Control'.[401] There was no such separate category for fraud or corruption risk.

The C&AG is appointed by the President on the nomination of Dáil Éireann. He cannot be removed unless a resolution is passed by both Houses of the Oireachtas and then only on the basis of stated misbehaviour or incapacity. While the C&AG is constitutionally independent, Dáil Éireann votes on his office's annual budget, while the Minister for Finance determines the C&AG's salary and staffing complement of his office.

## Accountability, Integrity and Transparency Mechanisms

The C&AG reports to Dáil Éireann through the Committee of Public Accounts (PAC) and publishes a **corporate report** outlining its activities and findings throughout the year as well as accounts for the office. These accounts are audited externally and reviewed by an **Audit Board** made up of the C&AG and three of the office's most senior managers. Its corporate reports are also published online for public access.

Since 2006 the office of the C&AG has adopted **International Auditing Standards**. It also receives guidance from the **Auditing Practices Board**[402] in applying the Auditing Standards and measures progress against best practise in public audit overseas.

All C&AG office staff other than the C&AG himself are civil servants and are thus bound by the same statute that applies to other members of the Civil Service. The C&AG must comply with the Ethics in Public Office Acts.

## Complaints and Enforcement Mechanisms

In 1998 the C&AG was given time-bound but extensive powers to investigate the systemic evasion of DIRT by financial institutions and the performance of State bodies in tackling this fraud (see page 105). Under the 1998 legislation the C&AG together with the PAC were granted the power to demand discovery of any public body being audited by them and to request the attendance of witnesses to hearings of the PAC. [403] They were also granted the authority to enter any premises if there were

401 Office of the Comptroller and Auditor General, Corporate Report 2006: 9

402 A UK and Ireland professional auditing body

403 Comptroller and Auditor General and Committees of the House of the Oireachtas (Special Provisions) Act 1998

'reasonable grounds'[404] for believing that a financial institution had documents or records pertinent to an investigation, and to seize those records. The legislation ceased to be enforceable after the inquiry.

Since then the C&AG has published numerous critical **reports** of State expenditure, projects and public procurement compliance, some of which have received widespread media coverage and extensive parliamentary scrutiny.[405] However it has **no enforcement role** with his power resting in his ability to expose financial irregularities and shortcomings in corporate governance and public body systems. Unlike its Local Government counterpart, the C&AG has no **power of surcharge** or charge.[406]

Reports or allegations of wrongdoing can be made against the C&AG and his staff to the Standards in Public Office Commission or An Garda Síochána. The C&AG can only be dismissed by both Houses of the Oireachtas on the grounds of incapacity or stated misbehaviour.

## Relationship with other NIS pillars

The C&AG's working relationship with the Executive, Civil Service and the Legislature is laid down in the Constitution and legislation. The Department of Finance has also published **Public Financial Procedures**[407], a set of guidelines for officials that describe the public financial management framework – including lines of responsibility and reporting channels for government departments and bodies such as the C&AG. Together with the C&AG, the Committee of Public Accounts and the Local Government Audit Service fulfil key roles in the country's public service audit function.

### *Committee of Public Accounts (PAC)*

The Committee of Public Accounts (PAC) is a standing committee of the Legislature. Its membership is selected on a cross-party basis and is traditionally chaired by a member of the Opposition. It is charged with scrutinising the C&AG's annual reports which examine the expenditure of the Executive. The PAC may make suggestions to, but cannot compel, the C&AG as to what aspects of Government expenditure it should audit. Until 1999 the Dáil had the power to instruct the C&AG to undertake specific investigations. This power was exercised just once in the case of the DIRT inquiry

The PAC has raised concerns about the degree of parliamentary scrutiny over the formulation of the **Estimates** for expenditure. 'The Committee… acknowledges the lack of proper parliamentary scrutiny of spending Estimates that are allocated to all Government Departments and

404 Ibid: Section 10

405 C&AG special reports are available at http://audgen.gov.ie

406 Power of surcharge allows for the recovery of the loss sustained by a public body from the person(s) responsible for such loss.

407 Public Financial Procedures, 2008

Offices. In addition, it further acknowledges that the ongoing scrutiny, at a parliamentary level, of major expenditure projects is almost non-existent'.[408] The PAC has recommended that additional resources and functions should be vested in the Select Committee on Finance and the Public Service which would then scrutinise the Estimates of all Government Departments.[409]

In addition, the PAC has called for the earlier completion of the Estimates formation cycle which would thus provide for an *ex ante* (forecast) scrutiny process, which would complement the existing system of *ex post* (review) scrutiny. The PAC and C&AG's role 'has been likened to that of a pathologist. It can tell us the cause of death but it's not equipped to prevent it'.[410]

In his 2005 budget speech, the Minister for Finance has committed to present a revised **Economic Review and Outlook** document which would 'significantly revamp' and give an updated pre-Budget analysis of the fiscal outlook.[411]

### *Local Government Audit Service (LGAS)*

The Local Government Audit Service (LGAS) is statutorily independent in the exercise of its functions though is an administrative section of the Department of the Environment, Heritage and Local Government. Through the provisions of the Local Government Act 2001, the LGAS is responsible for the financial auditing of 192 bodies including city, town and county councils, regional authorities and motor taxation offices. It also carries out Value for Money audits. The LGAS has 41 auditors who are required to be qualified accountants.[412]

The Minister has attempted to strengthen the legislative framework through a prescribed statutory **Code of Audit Practice**.

Unlike the C&AG, the LGAS has **powers of surcharge** and charge. In other words, local government auditors can impose financial penalties on a local authority for improper, unaccounted or unlawful expenditure. 'In practice, it has not been found necessary to invoke these powers to any great extent'.[413] During the course of an audit, the LGAS can also secure the production of all documents needed for an audit and can enter and inspect any premises owned by a local authority.

LGAS audit reports are available to the general public upon request. Local authorities may even be directed to publish audit reports in a local newspaper by the Minister for the Environment, Heritage and Local Government.

408 PAC, second report 2005: v
409 Ibid: 14
410 RTÉ Prime Time Investigates, 9 May 2005. See section on Public Contracting for further discussion.
411 Minute of the Minister for Finance, 27 March 2006
412 LGAS correspondence, 2007
413 Ibid, 2007

**Audit committees** have been established in line with the Local Government (Business Improvement Districts) Act, 2006. The composition of the audit committee is either five members including three external members including the Chairperson and two local authority members, or seven members, including four external members including the Chairperson and three local authority members.

In 2005 the PAC stated that there was a 'serious gap in the public accountability framework for central Government funded moneys administered by local authorities'.[414] It recommended that the Local Government Audit Service and the C&AG be amalgamated so that the C&AG would have full powers to investigate Local Government spending. In its response, the Department of Finance stated that such a body would not be consistent with the democratic independent nature of Local Government but has stated that this situation will be kept 'under ongoing review'.[415]

414 Op Cit, 2005

415 Minute of the Minister for Finance, 27 March 2006

# PUBLIC CONTRACTING SYSTEM

## Role and Structure

The purpose of Public Contracting System is to provide for the fair, efficient, cost-effective purchase of works, goods and services on behalf of the State.

It is estimated that the size of the Irish procurement market represents 10 to 12 per cent of total GDP.[416] The public contracting system is governed by **national guidelines**, a 2004 European Union ("EU") Public Procurement **Directive** which governs supply, services and works contracts, a separate 2004 Utilities Directive which governs entities in the transport, water, postal and energy sectors, and two remedies Directives under which the procedures under the above Directives can be reviewed.[417]

## Complaints and Enforcement Mechanisms

Public procurement law in Ireland is not enforced by any central authority. The main recourse for unsuccessful candidates and bidders is through the Courts. Plaintiffs can have a contract award reviewed or suspended or may seek civil damages through the **High Court** (with the possibility of appeal to the Supreme Court) where it can be showed that the contracting authority infringed proper procedures.

416 NPPPU correspondence, August 2006
417 Compton, 2002

Each Government Department or Agency is responsible for its own procurement. There is no central procurement agency or tender board, instead the **National Public Procurement Policy Uni**t (NPPPU) within the Department of Finance formulates policy, issues guidelines for the public contracting system, and delivers the Government's **eProcurement** strategy. The NPPPU was established in 2002.

The NPPPU is assisted by the **Government Contracts Committee (GCC)**, a committee of officials drawn from Departments concerned with purchasing and construction contracts and chaired by an official from the Department of Finance. The Committee also acts as a general forum for discussing issues relevant to contracts.

In its evaluation report of 2001 GRECO recommended that the Government should consider assigning the GCC more powers 'in order to meet concerns related to the lack of a central authority or body responsible for all public procurement procedures in Ireland, or to examine the possibility to establish another central and independent body responsible solely with the public procurement procedure.'[418]

The **Office of Public Works (OPW)** and the **Government Supplies Agency (GSA)** procure certain works, supplies and services for the central Government sector. The Government were believed to be considering

418 GRECO 28

a new national procurement framework, under which a **National Procurement Operations Unit** could be established.[419]

## Accountability, Integrity and Transparency Mechanisms

Procurement authorities are required to advertise tenders over the relevant threshold (see table 18) in the **Official Journal of the European Commission ("OJEC")**. Awards must also be published in the OJEC no less than 48 days after they have been awarded.[420] Procurement Authorities must also inform unsuccessful candidates of the reasons for not awarding them the contract. Authorities may decide to withhold such information, if they believe this may be contrary to the national interest, undermine competitiveness or compromise the commercial interests of a relevant party.

There are four different types of award procedure: An **Open Procedure** where anyone can submit tenders; a **Restricted Procedure** where only those who are invited to submit tenders are considered; a **Competitive Dialogue** procedure which uses Restricted Procedure mechanisms for more complex contracts, including public private partnerships (PPPs); and a **Negotiated Procedure** where procurement authorities negotiate the terms of contract with a potential supplier. The latter procedure can only be followed in limited circumstances and negotiation with bidders on price or other elements of a contract during an Open or Restricted Procedures is prohibited. Procurement authorities must award contracts based on either the lowest price, or 'the most economically advantageous tender'.[421] The criteria for deciding on whether a bid is economically advantageous must also be set out clearly in the procurement notices. Scoring systems or marking sheets based on the weighted criteria should also be used by contracting authorities.[422]

National Plans and individual contracting may be made publicly available through prior information notices at the beginning of the budgetary year. Clarifications and amendments during the bidding process should be shared among all bidders through a procurement website (**www.etenders.gov.ie**). This website was launched in 2002. It advertises most, though not all, public contracts above €50,000 in value. Procurement rules and guidelines are publicly accessible on this website.

The latest set of public procurement guidelines (known as the **'Gold Book'**) was published in 2004 by the NPPPU for contracts of all values. The Gold Book is not legally binding but the Department of Finance requires contracting authorities to adhere to it and its terms could be admissible in any court case arising from a dispute. Tendering procedures below €50,000 in value differ according to the size of the

419 NPPPU correspondence, August 2006
420 Ibid
421 Ibid
422 NPPPU, 2004: 24

contract. These vary between seeking verbal quotes to obtaining a specified minimum number of quotations.

To calculate the value of a contract, it is necessary to incorporate the value of all works, supplies and services directly related to a project. Under the EU Procurement Directives, the splitting of contracts is prohibited if done to avoid compliance with the Directives.[423]

Conflict of interest, disclosures of interest and acceptance of gifts by procurement officials are governed by the **Ethics in Public Office Acts** and to some extent in the 'Gold Book'. The NPPPU guidelines state that 'contracting authorities must also take measures to separate functions within the procurement cycle, by ensuring that, for example, ordering and receiving goods and services are distinct from payment for goods and services'.[424]

423 Ibid

### Table 18: Procurement Thresholds

The following thresholds are set, subject to exceptions, by EU Directives and the Government Procurement Agreement (GPA) of the World Trade Organisation. They are revised by the European Commission, usually at two-yearly intervals. Thresholds exclude VAT.[425]

424 NPPPU, 2004:8, paragraph 3.1

425 ec.europa.eu, March 2007

**Works**

| | | |
|---|---|---|
| Contract Notice/ Prior Indicative Notice | €5,278,000 | Threshold applies to Government departments and offices, local and regional authorities and other public bodies |

**Supplies and Services**

| | | |
|---|---|---|
| Contract Notice | €137,000 | Threshold applies to Government departments and offices |
| Contract Notice | €211,000 | Threshold applies to local and regional authorities and public bodies outside the utilities sector |
| Prior Indicative Notice | €750,000 | Threshold applies to Government departments and offices, local and regional authorities and other public bodies |

**Utilities Sector**

| | | |
|---|---|---|
| Works/Prior Indicative Notice | €5,278,000 | For entities in utility sectors covered by GPA |
| Supplies and Services | €422,000 | For entities in utility sectors covered by GPA |
| Prior Indicative Notice/Supplies and services | €750,000 | For entities in utility sectors covered by GPA |

No further specific guidance is offered and there are no legal criteria in place ensuring that staff in charge of offer evaluations must be different from the staff responsible for elaboration of the terms of reference/bidding documents.

In addition the 'Gold Book' discourages open ended arrangements with sole suppliers, but they are not prohibited. It also states that contracting authorities should 'be aware of potential conflicts of interest in the tendering process' and 'should take appropriate action to avoid them'.[426] Contracting authorities are instructed to bring any evidence of **suspected collusion** in tendering to the attention of the Competition Authority.

While due diligence is performed by the contracting authority on prospective contractors, it would appear that the due diligence process relies mostly on **self declarations** by applicants and no provision is made for ongoing due diligence after the contract has been awarded. Neither is it clear whether resources are available for full verification of declarations made by bidders in due diligence procedures. Current procurement law does not require the maintenance of registers and **statistics** on contracts.

There are **no legal requirements** for staff involved in contracting to have special qualifications related to their tasks or that require procurement staff rotation. Although the Gold Book does advise that contracting authorities ensure their staff are familiar with EU and international procurement rules. There are no explicit provisions for whistleblowing on misconduct in contracting procedures. There is no legislation or any regulation which requires bidders to have codes of conduct or anti-corruption policies in place but there is **mandatory exclusion** of companies guilty of serious crime including corruption within the European Union from the procurement process.[427] It is not clear whether any bidders have ever been debarred or disqualified from securing public contracts in Ireland.

Procurement for public bodies is subject to scrutiny by the Comptroller and Auditor General (C&AG), while accounting officers for each public body are accountable to Dáil Éireann and/or to the relevant Minister for any expenditure.

The C&AG was critical of public bodies and Government Departments twice in 2006 over the way in which consultancy services were procured. **Shelf companies**, with no assets, nor any verifiable corporate governance systems have sometimes been contracted on large-scale infrastructural projects.

For example, in April 2006 internal auditors at the Health Service Executive reported on the award

426 Ibid: 9, paragraph 3.6

427 Section 53 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006

of a €1.97m recruitment service contract to a shelf company based in the British Virgin Islands. The auditors also found that 'official public procurement policy was not followed strictly enough in relation to these information technology consultancies'.[428] The C&AG urged 'that future developments should only be undertaken if there were clearly defined lines of authority, responsibility and accountability'.[429]

*Public Private Partnerships (PPPs) and the Public Sector Benchmark (PSB)*

Since 1999, Public Private Partnerships (PPPs) have increasingly been used by Government as a model of procurement for infrastructure within the education, health, public transport and environment sectors. PPPs are arrangements by which commercial bodies agree to finance, build, operate and maintain a project in return for payment from the public sector partner. They are normally undertaken using a Competitive Dialogue procurement procedure.

Under the **Competitive Dialogue** procedure, contracting authorities must advertise the PPP and enter dialogue with pre-qualified parties. Throughout the process contracting authorities 'must ensure equality of treatment and respect for the intellectual property rights of all candidates'.[430] Having decided on the 'best means of meeting its requirements, the contracting authority must specify them'[431] and invite at least three candidates to submit tenders. The most 'economically advantageous tender' should then be selected.[432]

Government policy on Public Private Partnerships (PPPs) is guided by the **Central PPP Unit** in the Department of Finance. In addition the **National Development Finance Agency** NDFA advises on policy and value for money and risks associated with PPP projects. State Authorities must seek financial and risk evaluation advice from the NDFA on public-private partnership procurement projects over €30m. State authorities then use this advice to make a choice between private and public finance.

This choice is dependent on a **Value for Money Comparison**, the total cost of the private sector bid, which is measured through the **Public Sector Benchmark (PSB)**. The PSB is a detailed budget and risk adjusted costing over the whole life of the project using conventional public sector procurement. The NDFA is responsible for the preparation of the PSB. In effect this PSB determines the direction of substantial exchequer expenditure.

The provision of finance by the private sector has two potential implications for standards of accountability in Ireland. Firstly, the **PSB is not disclosed** for commercial reasons. This led to the accusation in 2006

428 The Irish Times, 18 April 2006
429 The Irish Times, 14 December 2005
430 NPPPU 2004: 20
431 Ibid
432 Ibid

that 'Never in the history of public transport has so much been promised by so many ministers backed up by so little paperwork'.[433] When the Minister for Transport presented his 'Transport 21' €34.4 billion infrastructure proposals in 2006 he was accused of doing so without an 'accurate statement of costs and full quantification of benefits.[434]
PPP projects are by their nature long-term plans. They typically run over a 20 to 30 year period. 'Following the audit trail can [therefore] be a little bit more complicated'.[435] In his first report into a PPP in June 2004, the C&AG highlighted the case of a preferred bidder that was appointed prior to conducting a financial analysis to determine the projected costs of conventional procurement (PSB). This 'suggests political pressure to complete the procurement process and deliver a project that politicians and vested interests could announce as "on time and within budget"'. [436]

433 The Irish Times, Editorial, 29 August 2006
434 Prof Smyth, Transporting Ireland Report, 18 October 2006
435 Focus group interviewee, 4 September 2006
436 Reeves, 2005



# EVALUATION OF NATIONAL INTEGRITY SYSTEM

# EVALUATION OF NATIONAL INTEGRITY SYSTEM

Despite the centralised nature of governance in Ireland, the Irish National Integrity System could be described as relatively strong with reasonably well defined separation of powers. In comparison to its neighbours, even those with lower levels of perceived corruption, it has robust institutional and legal safeguards against corruption. In spite of some notable setbacks, improvements in both the legal and institutional environment over the past decade are clearly visible. Nevertheless a number of fundamental weaknesses in Ireland's NIS pose significant risks of both systemic and frequent abuses of power.

There are few controls in place to check or prevent undue influence by sectoral interests on government policy or regulation of the private sector and professions. Trading in influence is not outlawed, while there is no national register of lobbyists. The way in which political parties are financed has been the subject of criticism and controversy for some time. Some welcome steps have been adopted to prevent conflict of interest and introduce greater transparency in the financing of political parties and campaigns. Nonetheless, legal loopholes leave the bulk of party financing unaccounted for. The spirit and purpose of the law is habitually abused by parties and candidates. This not only presents a greater opportunity for dirty money to enter the political system but offers corporate and private donors the chance to buy a great deal of political influence.

It is also worth noting that the pace of reform has slowed since the mid to late 1990s. Advances in legislation such as Freedom of Information and proposed 'Whistleblower' safeguards have been watered down. Calls from the Standards in Public Office Commission to give it stronger powers to investigate wrongdoing have been dismissed, while there is no specialised body responsible for coordinating cross agency action against corruption.

The fragmented nature of Ireland's law enforcement framework is likely to contribute to under-enforcement of anti-corruption, fraud, collusion, and company laws. This may be compounded by weak mandates and the monopoly of the courts in imposing civil sanctions. Just as importantly, many key agencies and pillars designed to tackle economic and political crimes appear to be under-resourced. The increasing number of cases is therefore placing a severe strain on those agencies that are proactively investigating allegations, while deterring other agencies from taking on any additional workload.

While Ireland has a very well respected and capable Civil Service,

the delegation of responsibility for decisions and resources previously managed by Government departments to agencies outside ministerial control, presents challenges to Ireland's NIS. Many of the 480 such agencies have no formalised complaints systems and there appears to be less recourse for public complaints or scrutiny by the Ombudsman of these bodies. Many of these agencies are no longer directly accountable to the Legislature and appointments to boards of these bodies are not subject to open competition or nomination hearings.

In general, public sector guidelines and codes appear to leave some room for interpretation. As a result, neither the letter nor the spirit of these documents (both and local and national level) appear to be consistently observed. This situation is aggravated by the absence of any transparent system to enforce or implement these codes. There seems to be little coordination of individuals and agencies responsible for raising awareness, reporting transgressions, and imposing sanctions.

The risk of corruption remains particularly acute in Local Government, especially in local authority planning. While significant efforts have been made to tackle the problem through legislation, recent history shows that not enough has been done to prevent conflicts of interest or to either establish or implement coherent anti-corruption plans in local authorities.

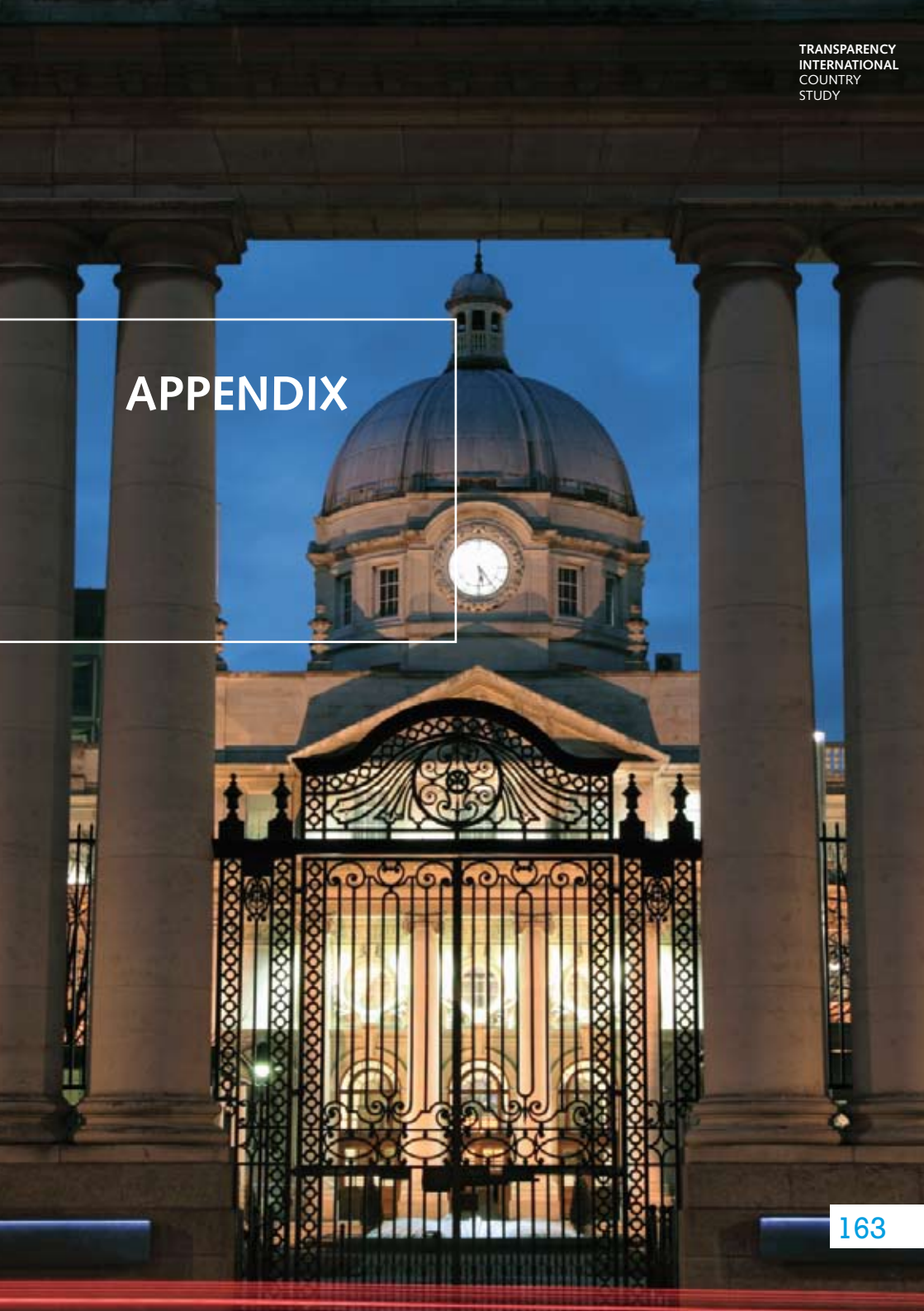
Public procurement across the Public and Civil Service remains a cause of concern. There is no centralised function for the monitoring of contracting authorities' control or prevention of ethical breaches, or violation of procurement codes. While comprehensive guidelines are in place for Government Departments and state agencies managing public contracts, it is doubtful whether the guidelines are followed as regularly as should be expected.

Recent events have also demonstrated the Business Sector's exposure to governance risks. Financial regulations, where they have applied to Ireland's financial services sector, appear to have been enforced sporadically. Irish businesses have also lagged behind other countries in terms of their commitment to fraud and corruption risk management.

Few NIS pillars could be described as meeting their full potential in fighting corruption. Of the public sector pillars or bodies charged with promoting accountability and transparency in public life, the Supreme Audit Institution, the Committee of Public Accounts and Ombudsman appear to be working effectively within their budgets and responsibilities. Pillars or institutions such as the Standards in Public Office Commission, Office of the Director of Corporate Enforcement, Revenue Commissioners, An Garda Síochána, the Competition

Authority, Civil Society and the Media also seem to be well placed to play a more proactive role in fighting corruption - but only if their independence from political interference is secured and the necessary resources and manpower are made available to them.

Legislation, new anti-corruption bodies and increased resources will not effect change on their own however. Crucially, significant levels of public indifference to standards in public life can be detected through the continued election and re-election of politicians who are either suspected of, or found to have broken the law or ethical codes. Such ambivalence appears to be shared by many in positions of authority. Political will and leadership is needed to affect a lasting change in the nation's attitude to corruption. Evidence of that leadership will be most clearly seen in continued support and reform of Ireland's National Integrity System.



# APPENDIX

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## Public Sector Codes of Conduct

1: **The Code of Conduct for Office Holders** obliges Office Holders inter alia to:

- File a statement of additional interests. The Office Holder must provide a statement where he has an actual knowledge, of a spouse, a child or a child of a spouse of the Office Holder, which could materially influence the Office Holder in the performance of the functions of his or her office.

- Record meetings. 'In all cases where meetings are arranged for the purpose of transacting official business, Office Holders should be accompanied by an official who would act as a note-taker in the Office Holder's own interest'.

- To make appointments on merit. Subject to provisions in legislation or other formal requirements for the establishment of Government bodies or the filling of positions, appointments by members of the Government should be made on the basis of merit, as well as any other relevant criteria.

Guidance from the Standards in Public Office Commission on compliance with the Ethics Acts also covers:

- The filing of an Annual Statement of Registrable Interests. Legislators and Office Holders must file a statement with the SIPO which outlines: Occupational Income, where pay, pension, benefits-in-kind, rental income, etc., during the period exceeded €2,600; Shares, with an aggregate nominal or market value in excess of €13,000 at any time during the appropriate period; Directorships; Land (including premises) that exceeded in value €13,000 at any time during the appropriate period. It also includes an interest of the Office Holder in any option held by him or her to purchase land; Gifts, any gift or a number of gifts from any individual worth over €650 in value; Government or public contracts worth over €6500 in value in which the Office Holder has an interest; Travel facilities, living accommodation, meals or entertainment supplied to an Office Holder free of charge or at less than the commercial price where the aggregate value amounts to over €650 in value in any one year; A remunerated position held by an Office Holder as a political or public affairs lobbyist, consultant or adviser.

- Disclosure of a Material Interest in Proceedings of the Houses. Where a legislator or Office Holder proposes to speak or vote in the proceedings, he must make a declaration of any material interest that they or a connected person (spouse, child, child of spouse) have in the matter before parliament or parliamentary committee.

Under the Ethics Acts both Legislators and Office Holders must also present Tax Clearance Certificates nine months after the date upon which he was elected or nominated. The Code of Conduct is enforced by the Standards in Public Office Commission and the codes are admissible in proceedings before a Court, Tribunal or Committee.

**2: The Code of Conduct for members of the Legislature 2002**, makes general declarations on:

- The prevention of and definition of a conflict of interest.
- The sale of votes.
- The acceptance of gifts and customary hospitality.
- The prohibition on the misuse of public resources.
- The misuse of official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for private gain.
- Co-operation with all Tribunals of Inquiry and other bodies inquiring into matters of public importance established by the Houses of the Oireachtas.

They also call on members to 'familiarise themselves with the relevant legislation and guidelines published from time to time by the Committee on Members' Interests and the Standards in Public Office Commission'. The Committee on Members' Interests is responsible for the observance of the Code though the SIPO may offer advice upon request and has reported on its implementation in the past.

**3: The Civil Service Code of Standards and Behaviour 2004** meanwhile sets out a number of requirements that civil servants should meet in the course of their duties in order to prevent misconduct, conflict of interest, and adhere to the principles of impartiality and political non-partisanship. These include:

- The prohibition of political activity by civil servants above clerical grades.
- The prohibition of the abuse of state resources other than de minimis use of department resources.

- Civil servants who are convicted of criminal offences or on probation must report that fact to their Personnel Officer.

- Prohibition of civil servant involvement in outside business, contracts, or consultancy which would lead to a conflict of interest.

- Civil servants intending to be engaged in or connected with any outside business with which he or she had official dealings or any outside business that might gain an unfair advantage over its competitors by employing him, must inform the Secretary General or head of office.

- The reporting of financial difficulties to the head of a department where this may lead to a conflict of interest.

- Representations on behalf of outside organisations are prohibited.

- Abuse of official position to benefit themselves or others with whom they have personal, family, business or other ties.

- Prohibition on the acceptance of cash or any gift that can be redeemed for cash.

- Every care must be taken to ensure that (a) any acceptance of hospitality does not influence, or is seen to influence, the discharging of official functions.

The Code is supplementary to the terms of the Ethics Acts which compel senior Civil Servants (holding positions deemed to be designated positions) to complete a statement of interests. The Code also prohibits them from accepting employment or a consultancy on retirement for twelve months that may lead to a conflict of interest.

Government Departments are obliged to ensure that all staff are familiar with the Code.

4: **The Code of Practice for the Governance of State Bodies 2001** is a non-statutory code designed to guide directors and staff of commercial and non-commercial state enterprises. There is no statutory code for Board members of state bodies. Unlike the Code for Civil Servants, guidelines are provided for the implementation of the Code, together with an outline for internal assessment of financial controls. A number of areas are covered including:

- Procurement.

- Disposal of assets (with thresholds set at €70,000 for auction of assets).

- Gifts and hospitality.

- Disclosure of assets and interests of directors – however

only those that 'are in conflict or in potential conflict with the business of the body. This register is not open to the public.

- Performance criteria for staff.

- Post employment - The Board of a State body should, 'in a manner most effective to such body, deal with the issue of post resignation/retirement employment, appointment and/or consultancy of its Directors and employees by the private sector and should ensure that any procedures that it may have put in place in this regard are monitored and enforced'.

- Expenses fraud – Directors fees and expenses must be outlined in the body's Annual Report while controls to prevent fraud including adequate controls to ensure compliance with prescribed procedures in relation to claiming of expenses for business travel.

Public Bodies are required to circulate the Code and a policy document on disclosure of interests to all Directors, management and employees, and requires that Directors and staff acknowledge receipt and understanding of the Code. They are also expected to publish an 'explanatory booklet providing practical guidance and direction on such areas as gifts and entertainment and on other ethical considerations'. It is not clear however to what extent the Code has been implemented.

5: **The Code of Conduct for Employees of Local Authorities** was provided for under section 169 of the Local Government Act 2001. The Code adds to and supplements the specific requirements of the Act. One of the primary concerns of the Code is 'that the actions of local government employees should be above suspicion and not give rise to any conflict of interest and that their dealings with business and other interests should bear the closest possible scrutiny and avoid any risk of damage to public confidence in local government.' [Code 5.2] The Code covers a number of areas including:

- Conflict of personal and public interest. Where an employee is involved in considering or deciding on matters in which he has a pecuniary or other beneficial interest, he must disclose this fact to the supervisor or manager. Written or oral representations on behalf of an outside organisation, club, association or other body should not be made by an employee to the authority, (except with the consent of the manager). Furthermore an employee should not consciously be involved in the selection for appointment of any employee or prospective employee, to whom

he is related. Certain categories of employees are obliged by law to furnish an annual declaration of certain 'declarable interests' and must formally disclose to the County manager any pecuniary or beneficial interest, they or a connected person have in any matter relating to the local authority's functions with which they are concerned in the course of their duties. They must then comply with any directions given by the manager. Similar type requirements also apply under the Local Government Act to Councillors; and to consultants providing a service to local authorities.

- Planning. No additional steps are outlined for prevention of misconduct but reference is made to measures identified to prevent conflict of interest. The specific requirements of the 2001 Act apply. Under the Code, employees are advised to take 'extra care' in dealing with planning matters. Employees are referred to provisions on conflict of personal and public interest and outside employment.

- Gifts. Employees are prohibited from accepting gifts other than 'infrequent items such as diaries, calendars, pens or other infrequent tokens of modest intrinsic value'. Under the Local Government Act they are prohibited from 'seeking, exacting or accepting any remuneration, fee, reward or other favour for any act done or not done by virtue of his or her employment'.

- Hospitality. Employees must ensure that any acceptance of hospitality does not influence them, and could not reasonably be seen to influence them, in discharging their functions. All offers of hospitality from commercial interests, which have had or might have contractual relations with the local authority, must be reported by the employee to her supervisor for direction.

- Employees' business dealings with local Authority. Employees must inform the manager of any involvement in a business, consultancy, or contract likely to affect a contract with their local authority (including the purchase or sale of local authority property) and are prohibited from holding a directorship (except as a nominee of the authority) in any company holding a contract with their local authority; Employees 'should not negotiate or arbitrate' in any contract with a local authority they are involved in with the company or body concerned.

- Personal dealings with local authority. While employees enjoy the same rights in their personal dealings with the council as any

other person they should not seek preferential treatment.

- Regard for council resources. Employees must not misuse council resources, or permit their use, for unauthorised or non-official purposes. They are not allowed to incur any liability on the part of their employer without proper authorisation and must observe the rules governing the making of claims and of payments.

- Attendance and outside employment. Professional and technical employees must not engage in professional or technical private practice. Nor should technical staff undertake private technical work. No employee should undertake work if it conflicts with the interests of the local authority.

- Criminal convictions. An employee who is charged with or convicted of a criminal offence or on parole must report this to a Personnel Officer. Furthermore employees who have been appointed by virtue of a specific professional qualification or licence (e.g. solicitor, accountant, driver) must immediately inform their Personnel Officer in writing of any change in status, withdrawal of or endorsement on such qualification or licence.

6: **The Code of Conduct for Councillors** is similar to the Code for Employees with the following differences provided for and supplemented by the Local Government Act 2001:

All Councillors complete and furnish to the ethics registrar an annual declaration setting out declarable interests which are maintained in a public register. Declarable interests are not outlined in the Code but are described as being 'mainly of a financial/property/business nature' and are set out in legislation.

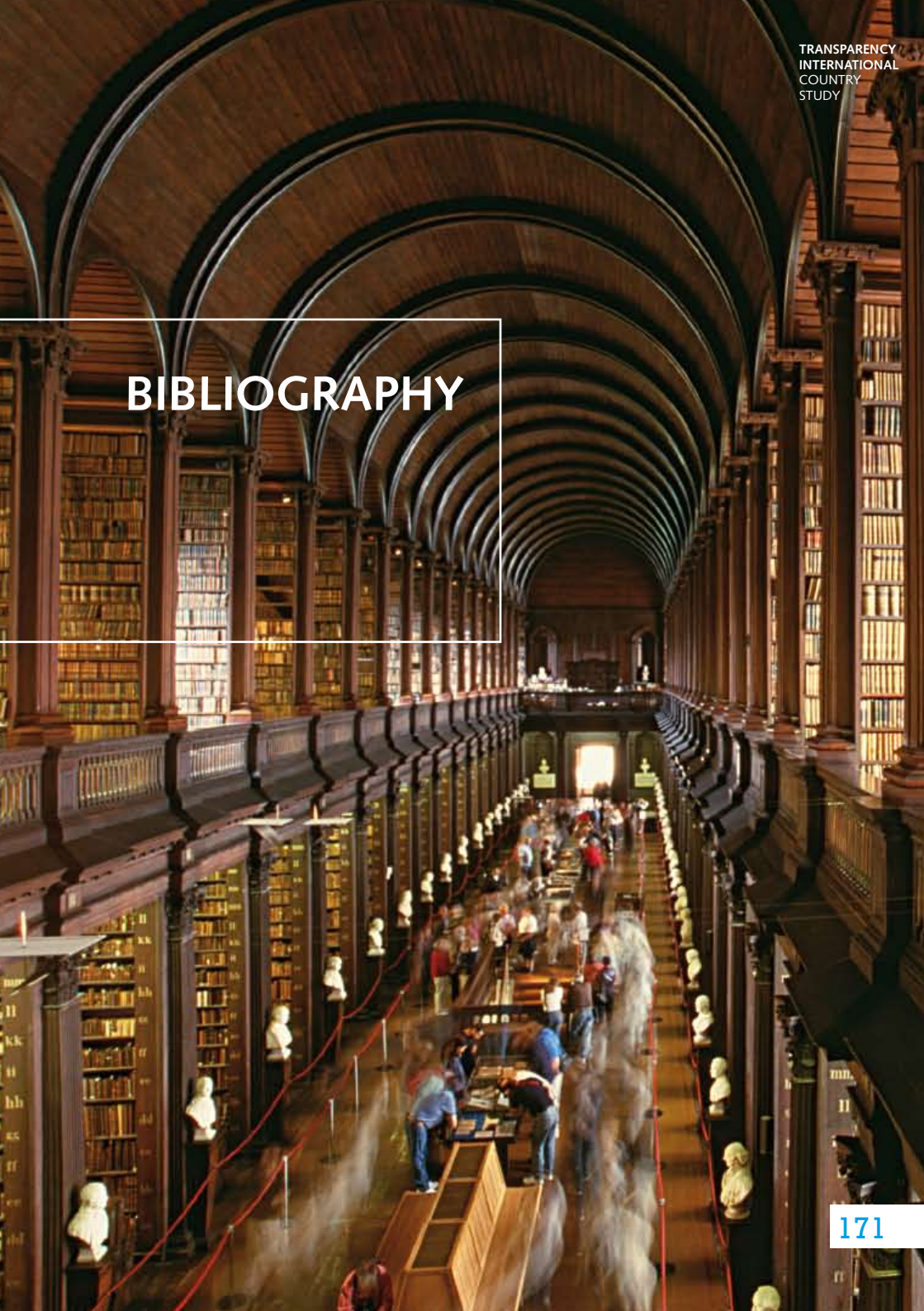
Additionally, Councillors must disclose at a meeting of the local authority or of its committees any pecuniary or other beneficial interest, they or a connected person have in any matter with which the local authority is concerned, and which comes before the meeting (even if they will not be present at the meeting). The Councillor must withdraw from the meeting after disclosure and must not vote or take part in any discussion or consideration of the matter.

Unlike the Code for Employees, there are no requirements on reporting a criminal conviction, prohibition on certain outside employment or provisions on a Councillor's business dealings with the local authority. These requirements are, however, broadly covered by the 2001

Act provisions in relation to the declarations regime, including the treatment of pecuniary and other beneficial interests, as well as the disqualification provisions of the Act

Both Codes can be considered by a court or the Standards in Public Office Commission in reviewing any relevant matter brought before them.

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