



Groupe d'Etats contre la corruption
Group of States against corruption



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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DEPARTMENT OF CRIME PROBLEMS

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First Evaluation Round

Evaluation Report on Ireland

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at its 7th Plenary Meeting
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I. INTRODUCTION

1. Ireland was the fourteenth GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter, "GET") was composed of Mr Andy HAYMAN, Deputy Assistant Commissioner, Metropolitan Police Service, New Scotland Yard (United Kingdom, police expert); Mrs Eva ROSSIDOU PAPAKYRIAKOU, Counsel of the Republic, Prosecutor (Cyprus, prosecution expert) and Mr Giorgi BARAMIDZE, Member of Parliament, Chairman of the Committee on Defence and Security (Georgia, policy expert). This GET, accompanied by a member of the Council of Europe Secretariat, visited Dublin from the 1st to 4th May 2001. Prior to the visit the GET experts were provided by the Irish authorities with a very comprehensive reply to the Evaluation questionnaire (document Greco Eval I (2001) 9) as well as with copies of the relevant legislation.
2. The GET met with officials from the following Irish Governmental organisations: the Department of Justice, Equality and Law Reform; The Department of the *Taoiseach* (Prime Minister), the Department of the Environment and Local Government; the Department of Finance; the Office of the Revenue Commissioners; the Civil Service and Local Appointments Commission; the Office of the Ombudsman; the Public Offices Commission; the Office of the Information Commissioner; the Office of the Attorney General; the Office of the Director of Public Prosecutions; the Office of the Comptroller and Auditor General; the Local Authority Audit Service; the Tribunal to Inquire into Certain Planning Matters (Flood Tribunal); *An Garda Síochána* (Police).
3. Moreover, the GET met with representatives of the Irish Bankers Federation, Incorporated Law Society of Ireland and Bar Council of Ireland and with a representative of the media and of the Consultative Committee of the Accountancy Bodies – Ireland.
4. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999) that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
 - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
 - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
 - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. Following the meetings indicated in paragraphs 2 and 3 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Irish authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Ireland, the general anti-corruption policy, the institutions and authorities in charge of combating it -their functioning, structures, powers, expertise, means and specialisation- and the system of immunities. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Ireland is fully compatible with the undertakings

resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Ireland in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

a. The phenomenon of corruption and its perception in Ireland

6. Ireland has a surface of 70,280 km² and a total population of about 3,600,000 inhabitants. It has a land border with the United Kingdom. Ireland is a parliamentary democracy. The Head of State is the President. The Head of Government is the Taoiseach (Prime Minister). The National Parliament (Oireachtas) is made up of the President and two houses, which are Dail Eireann (House of Representatives) and Seanad Eireann (The Senate). According to the OECD Economic Survey of Ireland (May 2001), "(...) economic activity surged last year to well above 10 per cent with exports expanding by some 20 per cent. Contributing factors included cyclical strength in the OECD area, buoyant demand in the information and communication technology sector (ICT). Such rapid growth was associated with strong business investment made possible by a continuation of large inflows of foreign direct investment". And also "Rising employment (unemployment rate has been brought down from some 14 per cent to under 4 per cent over the last 10 years), higher wages and lower taxes (...) underpinned strong demand for housing which saw prices continuing to rise by around 15 per cent in 2000".
7. In Ireland, provisions on Corruption are set out in 4 different pieces of legislation: the Public Bodies Corrupt Practices Act, 1889; the Prevention of Corruption Acts, 1906 and 1916 and the Ethics in Public Office Act, 1995 which amended some provisions of the earlier Acts. In January 2000, the Government published the Prevention of Corruption (Amendment) Bill which aims at updating Irish legislation and will enable Ireland to ratify international legal instruments in the field of corruption. At the time of the visit, this Bill was awaiting consideration by the Select Committee on Justice, Equality, Defence and Women Rights of the House¹. The four acts mentioned criminalise active and passive bribery of domestic officials, active and passive bribery in the private sector and bribery of members of domestic public assembly. The new bill contains additional offences related to active and passive bribery of foreign officials, bribery of members of foreign public assembly, officials of international organisations and international parliamentary assemblies, of officials in international courts. As regards sanctions, the Ethics in Public Office Act of 1995 amends the previous legislation as follows: any person convicted of active or passive bribery shall "if the conviction is a summary conviction be liable to a fine not exceeding £ 1,000 (1,270 €) or to imprisonment for a term not exceeding 12 months or both"; "if the conviction is on indictment be liable to a fine not exceeding £ 50,000 (63,487 €) or to imprisonment for a term not exceeding 7 years or both". The Prevention of Corruption (Amendment) Bill provides that these penalties will be increased up to unlimited fine or imprisonment for up to 10 years or both².
8. In Ireland, legal persons can be held liable for the criminal offences of corruption and money laundering according to a general provision contained in the "Interpretation Act, 1937" and the legislation above mentioned which provides that offences of corruption by a "person" include "a body of persons, corporate or unincorporated". Where an offence involves a director or official of

¹ The Bill has since passed all Parliamentary stages and has been enacted as the Prevention of Corruption (Amendment) Act, 2001.

² A set of the relevant legislation is included in Appendix I to this report.

a 'public body' a prosecution could be taken against that individual. The Prevention of Corruption (Amendment) Bill will provide for the liability of bodies corporate as well as persons holding certain offices within the body corporate, for offences of corruption.

9. Furthermore, it is worth mentioning that another bill has been drafted, for the Protection of Whistleblowers, which aims, among other provisions to protect employees from civil liability in the cases they report instances of corruption and to prevent other consequences, such as discrimination or unfair treatment of these employees³.
10. Ireland has signed the Council of Europe Criminal and Civil Law Conventions on corruption but not ratified them yet. The GET was told that steps that will be required to enable Ireland to give effect to those Conventions are under examination by the Parliament (notably, the Prevention of Corruption Bill; see paragraph 8) and that it was not possible at that stage to give an indication of when this examination will be completed. In Ireland international instruments, with the exception of certain EU legislation, are not given the force of law until the Parliament has passed the necessary legislation to allow them to be implemented. Ireland is party to various international instruments (multilateral and bilateral) aimed at facilitating and organising mutual legal assistance in criminal matters, including the European Convention on Mutual Legal Assistance in Criminal Matters. At the time of the visit, data on mutual legal assistance were not recorded relating to the nature of the offence in the requesting country, and therefore a precise breakdown of cases relating specifically to corruption is not available. Nevertheless, an indication of the overall volume of mutual assistance cases handled by Ireland is showed in the following statistics:

Mutual Legal Assistance Cases 1996-2000

Year	Overall no. of Mutual Assistance Cases
1996 (October to December)	19
1997	161
1998	193
1999	214
2000	258
Total	845

11. According to the information provided to the GET, extradition is granted where the offence is punishable under the laws of the requesting country and of the State by imprisonment for at least 12 months or by a more severe penalty (Extradition Act, 1965). While there are certain exceptions to this, such as offences in connection with taxes, duties, customs or exchange controls, and while certain conditions attach (e.g. the speciality rule), in general it is open to a requesting country to make a request in respect of a corruption offence. The speciality rule effectively means that a person who has been extradited for one offence cannot except in certain circumstances be tried in the requesting country for any other offence committed prior to the date of extradition. Normally Ireland will extradite its own nationals, but only subject to reciprocity. Existing anti-corruption legislation does not refer specifically to extraterritoriality. However, there are provisions in the Extradition Act, 1965 which allow for the prosecution of Irish nationals in certain circumstances for offences committed abroad and where extradition has been refused on the grounds of nationality. For the first time extraterritorial jurisdiction for corruption offences, will be covered by the new bill, "The Prevention of Corruption (Amendment)

³ The Government has now approved the submission of substantial amendments to this Bill.

Bill of 2000" specifically in sections 3 and 4. The Bill will also provide that a person may be tried in the State for an offence of corruption which is committed partly in the State and partly abroad.

12. Money laundering has been established as a criminal offence in Ireland since 1994 to enable Ireland to meet its obligations under the relevant UN, Council of Europe and European Union Instruments. Part IV (Money laundering) of the Criminal Justice Act of 1994 provides for the offence of money laundering by establishing, *inter alia*, that it is an offence for a person to do certain deeds in relation to any property which is either wholly or partly the proceeds of drug trafficking or any other criminal activity, including corruption, knowing or believing the property forms such proceeds. This includes concealing, converting, transferring or handling the property, or removing it from the State. The offence carries, on conviction on indictment, a maximum penalty of an unlimited fine or 14 years imprisonment, or both. However existing provision covers only the "knowledge" standard and does not include the concept of "recklessness". The Irish authorities will proceed with the amendment of the relevant provision in order to include the concept of "recklessness" as well.
13. According to the available information provided to the GET by *An Garda Síochána* Annual Reports from 1995 to 1999, the number of indictable offences involving bribery and corruption which were reported to, or known to, the *Gardaí* is low as can be seen from the following statistics:

Year	Bribery	Corruption
1995	1	0
1996	1	0
1997	0	3
1998	1	1
1999 (Jan. to Sept.)	1	0

14. According to the information provided to the GET in particular by *An Garda Síochána*, there is no evidence of any connection between corruption and organised crime in Ireland. Nevertheless, formal research and analysis was not provided to substantiate this claim.
15. The figures quoted above are indicative of a low level of corruption in Ireland. The common view of the Irish authorities met by the GET is that corruption is not a major problem and that it is not a widespread phenomenon. According to the available statistics mentioned above, only 8 cases were brought before the Courts for the offences of bribery and corruption between 1995 and 1999 and they do not involve any high-ranking officials or any member of Government or Parliament. According to the Corruption Perceptions Index for 2000, issued by Transparency International, Ireland was listed as number 19 with a score of 7.2 out of 10, occupying then a midway position compared with other European Union member States.
16. Even though the common view of the Irish authorities is that corruption is not a major problem, the perception of the danger represented by corruption has recently considerably increased because of revelations concerning alleged payments made to certain politicians and public officials. In 1997, 3 tribunals (for more details about the tribunals, see chapter b6) were set up in order to investigate 1) some allegations of payments made to politicians (The McCracken Tribunal), 2) some substantial allegations of payments made to politicians with a view to effecting the outcome of planning applications in the North of Dublin area (The Flood Tribunal) and 3) other payments made to politicians, some of them already involved in the McCracken

Tribunal (The Moriarty Tribunal). Among those investigated by the 3 tribunals, there are a former Prime Minister, a former Minister of Foreign Affairs, a former EU Commissioner as well as a certain number of politicians and high public officials.

17. Although corruption is not considered to be a major problem, the authorities are determined, nevertheless, to have in place modern legislation to meet any threat which may arise. Accordingly, new comprehensive legislation on corruption has been enacted (the Prevention of Corruption (Amendment) Act, 2001) which will enable Ireland to ratify a number of international Conventions against corruption and bribery and to ensure that this low incidence of corruption is maintained.

b. Bodies and institutions in charge of the fight against corruption

b1. The Police (*An Garda Síochána*)

i) Introduction

18. As provided by section 8 of the Police Forces Amalgamation Act, 1925 “the general direction and control of Ireland’s National Police (*An Garda Síochána*) shall be vested in the Commissioner (...)”. The Commissioner is assisted by two Deputy Commissioners and ten Assistant Commissioners. Recruitment is carried out by the Civil Service and Local Appointments. All members of *An Garda Síochána*, including the senior officers, are appointed by the Minister for Justice, Equality and Law Reform subject to the approval of the Government (section 14 of the Police Forces Amalgamation Act, 1925). The Commissioner is responsible to the Minister for Justice, Equality and Law Reform for the general functioning of *An Garda Síochána* and the Minister is himself responsible for the same before the Government and the Parliament. The Commissioner is in charge of the day-by-day organisation and work of *An Garda Síochána* and he performs this responsibility in accordance with the established legal regulations and best practice.

19. *An Garda Síochána* is a single police force, divided into 6 police regions for administrative purposes. As at 31/12/1999, the overall strength stood at 13,202 comprising 11,458, all ranks and 1,744 civilian staff. With regard to crime statistics, the crime recording computer system was replaced in September 1999. The numbers of indictable offences, as contained in the 1999 Annual report, only contain detailed figures for the first nine months of the year. There were a total of 81,274 indictable offences and 432,696 non-indictable offences.

20. *An Garda Síochána* has its own code of conduct. For that reason, if any suspicious case of corruption would come up involving a police officer, two separate procedures would be launched: a criminal investigation and an administrative one.

ii) Intelligence

21. *An Garda Síochána* has a national approach to intelligence emanating from the National Intelligence Unit. The local focus is achieved through divisional intelligence cells. This approach is more than adequate for the mainstream policing requirements of Ireland with clear evidence that policing is intelligence-led. There is no ‘fire-walled’ intelligence system dedicated to detect or prevent corruption or any formal informant handling policy within *An Garda Síochána*⁴.

⁴ Proposals for a formal informant management system are being finalised.

iii) *Internal Affairs*

22. From *An Garda Síochána's* perspective the investigation of criminal and discipline wrongdoing by serving police officers is shared between a dedicated internal affairs department and divisional staff. Sitting above that structure is the Police Complaints Board, which performs an independent supervisory function. During the year 2000, the internal affairs department a team of seven people investigated 163 public complaints. The majority of complaints, either criminal or misconduct, are conducted by divisional staff especially where there is a criminal allegation.

iv) *Recruitment and Training*

23. There is much evidence that the recruitment of police officers, conducted by the Civil Service and Local Appointments Commission, is subject to rigorous recruitment tests and vetting to ensure that the most appropriately qualified applicants are successful, and more importantly the system is strong enough to weed out those who are not suitable to become a police officer. The selection process incorporates an interview and a competency based selection process, which can take a recruit up to twelve months to pass. Whilst a robust vetting process exists for recruits and some sensitive posts it does not feature as a Service-wide policy. There does not appear to be a risk assessment process, which in turn is linked to a management vetting process being applied to all posts, whether police or civilian. Apart from the Inspection and Review process (see paragraphs 122-123) and the emerging "whistle blowing" policy, the GET found no evidence of any alternative management process that would contribute to the prevention and detection of corrupt activity within *An Garda Síochána* (the Police).
24. The training programme available for police officers is comprehensive and addresses the training needs for most posts. However, there is no evidence of specific training for investigators of corruption focused to developing the skills needed to address the uniqueness of such an investigation.

v) *The Criminal Assets Bureau*

25. A particular strength of the current approach to investigating organised crime is the introduction of the Criminal Assets Bureau. The Criminal Assets Bureau was established on a statutory basis in 1996 and brings together officers from *An Garda Síochána*, the Office of the Revenue Commissioners (both taxes and customs and excise branches) and the Department of Social, Community and Family Affairs, led by a Chief Bureau Officer who is a Garda of Chief Superintendent rank. This is a well-financed (2.3 millions of Irish pounds or around 2.9 millions euros) and resourced (51 people) department, which is achieving a significant impact in both the detection and prevention of major crime, including corruption related offences. It demonstrates a good partnership initiative, which is facilitating joined up thinking and joint working. It appears to have overcome problems of information sharing and joint decision making resulting in assets being frozen and seized stifling the ability of the criminal to reinvest the proceeds of crime. It is also noteworthy that the Bureau has the power to ensure that the proceeds of crime are subjected to tax and that the Revenue Acts are fully applied to such proceeds.

b2. Criminal Investigation of corruption

26. In the Irish judicial system, the investigation of criminal offences is an exclusive function of *An Garda Síochána*. Even in cases where the Office of the Director of Public Prosecutions should receive directly information concerning a criminal event, it would not investigate the case but

simply transmit it to the Commissioner of An Garda Síochána for a decision as to whether or not to initiate an investigation. Therefore, the Direction of Public Prosecutions has no investigative functions at all. According to information provided to the GET, there is, in general, good co-operation between *An Garda Síochána* and the Office of the Director of Public Prosecutions above all in matters concerning legal advises in the course of the investigation. Once *An Garda Síochána* has concluded the investigation, the file is submitted to the Office of the Director of Public Prosecutions for consideration if it concerns a serious crime. For less serious offences *An Garda Síochána* itself will be responsible for bringing charges before the court. However under standing instructions to the *Garda Síochána* allegations of corruption on the part of public officials or the *Garda Síochána* must be referred to the Director of Public Prosecutions. The criminal justice system in Ireland is based on the principle of discretionary prosecution: the decision to prosecute or not to prosecute then is one of the main tasks of the work of the Office of the Director of Public Prosecutions (see more in details chapter b4).

27. During criminal investigations of any offence, including corruption, *An Garda Síochána* can use the following special investigative techniques:

i) *Interception of communications*

28. According to the relevant legislation, the interception of postal packets or telecommunications messages is allowed only for the purpose of criminal investigations into serious offences (punishable by imprisonment for a term of 5 years or more and therefore including corruption offences) or in the interests of the security of the State.

29. The legislation sets out the circumstances justifying the issue of warrants and the procedures for issuing such warrants. Where the purpose of the proposed interception is that of criminal investigation, the application will be made by the Commissioner of An Garda Síochána. Every application will have to include sufficient information to enable the Minister for Justice, Equality and Law Reform to determine if the relevant conditions justifying the issue of a warrant are fulfilled. The Minister will have the advice and recommendation of a nominated officer in the Department to assist in making this decision. While a warrant can remain in force for a maximum period of 3 months, provision exists for extensions to this period - each period of extension may not exceed 3 months.

ii) *Informants*

30. Informants are considered as an important part of criminal investigation and confidentiality of their information has to be respected unless there are cogent reasons in the interest of justice for the accused person that it should be waived. There is presently no formal informant handling policy, although proposals in this regard are being finalised.

iii) *Undercover Operations*

31. Undercover officers and the making of pseudo purchases may be used by *An Garda Síochána* in the investigation of corruption provided that the officer does not instigate a crime by acting as agent provocateur. The GET was told that the use of undercover methods is extremely difficult due to the fact that Ireland is a small country ("everyone knows everyone") and it is not easy to infiltrate organised criminal groups. Use can also be made of video and camera.

iv) *Controlled Deliveries*

32. There is no specific legislation provided for controlled deliveries but it is a standard police technique.

v) *Witness protection*

33. Police protection can be afforded to witnesses and members of the judiciary if a real risk of intimidation exists. In 1997, a dedicated Witness Security Unit was established under the direct operational control and administration of the Garda Commissioner. The witness security programme was established to enhance the security and protection of critical witnesses in serious crime including drug trafficking, organised crime and corruption. Among the criteria for admission are that the witness's evidence must be of a critical nature and essential to the prosecution. The witness may be an accomplice or associate of the suspect(s) or may merely be a witness to an event. A real threat to the witness must exist.
34. Following a threat assessment by the Gardaí investigating a case, the matter is reviewed by a senior officer (Assistant Commissioner). If the case meets the criteria set out for admission to the Programme, it is further considered by a Witness Security Programme Review Group composed of senior Gardaí as well as a representative from the Office of the Director of Public Prosecutions. Once admitted to the Programme, the witness is assigned to the Witness Security Programme Unit which itself is under the direct control of the Review Group. These measures can range from concealment of identity, physical protection, self relocation, assisted relocation and re-identity. There is continuous review and assessment of each case.

b3. The Office of the Attorney General

35. According to the provisions of Article 30 of the Constitution of Ireland, the Attorney General (hereafter the "AG") "shall be appointed by the President on the nomination of the Taoiseach (Prime Minister)", as "adviser to the Government in matters of law and legal opinion" and he retires from Office upon the resignation of the Taoiseach. The AG is politically dependent on the Taoiseach and can be replaced by the new Taoiseach. Nevertheless, the GET was told that the AG is (i.e. shall be) independent in giving his opinion and advice.
36. The AG is the legal adviser of the Government and to all Public Service Departments. His functions include advising on the constitutionality of legislative proposals, drafting of legislation, interpretation of law, the processing of incoming extradition papers and the handling of civil cases involving the State. Advice and opinions given by the AG are of a strong persuasive value but not necessarily binding. It is for the Government Department which asked for the advice to assess the risks of not following the advice. Twenty-three advisory lawyers and 16 lawyers who draft legislation work at the AG's Office. Over the last 3 years, the work of the AG's Office has increased considerably for numerous reasons, including the fact that many new pieces of legislation have recently been enacted in Ireland.
37. Before the enactment of the "Prosecution of Offences Act, 1974", with which the Office of the Director of Public Prosecutions was established, the AG was in charge of the prosecutions in criminal cases.
38. As explained to the GET during the visit, the Attorney General is never involved in the work of the Director of Public Prosecutions concerning in particular the decisions whether to prosecute

or not. From the aforementioned, it was clear to the GET that today's role of the AG in respect of corruption matters is mainly drafting, vetting, and giving opinions on, the laws in this area.

b4. The Prosecution Service

39. In Ireland the authority in charge of prosecuting criminal cases is the Office of the Director of Public Prosecutions, which was established by the "Prosecution of Offences Act, 1974". This Law was enacted, based on article 30.3 of the Constitution, which provides that "all offences prosecuted in any court (...) shall be prosecuted in the name of the people and at the suit of the Attorney General or some other persons authorised in accordance with law to act for that purpose."
40. The "Prosecution of Offences Act, 1974" provides that the holder of the Office, the Director of Public Prosecutions (hereafter "DPP"), shall be appointed by the Government, from a list of candidates selected by a statutory Committee provided for in the same Law, consisting of:
 - i) the Chief Justice,
 - ii) the Chairman of the General Council of the Bar of Ireland,
 - iii) the President of the Incorporated Law Society,
 - iv) the Secretary General to the Government,
 - v) the Director General of the Office of the Attorney General.
41. This Committee, when requested by the Prime Minister, selects candidates for appointment to the Office of the Director and then informs the Prime Minister of the candidates selected for such appointment. The Government thereafter appoints a person from the selected candidates.
42. According to the aforementioned Law, a person shall not be appointed as DPP, unless at the date of his appointment he is a practicing barrister or a practicing solicitor, with at least ten years of practice. The Director is a civil servant in the Civil Service of Ireland and holds office upon such terms and conditions as may be determined by the Prime Minister after consultation with the Minister for the Public Service (now the Minister for Finance). He holds office until the retirement age of 65 years. The conditions of Service are included in a scheme, which is approved by the Parliament. The Director may be removed from Office by the Government, after consideration of the report of a Committee appointed to investigate the condition of health, either physical or mental of the Director, or inquire into the conduct of the Director. This Committee consists of the Chief Justice, a Judge of the High Court and the Attorney General. There have been only 2 Directors of Public Prosecutions, the first one exercised his functions for 25 years until his retirement.
43. The DPP is assisted by a Deputy Director and thirteen Professional Officers⁵ who are all lawyers being either solicitors or barristers. The Deputy Director and Professional Officers are all recruited by way of open competition through the Civil Service Commission. The posts are firstly advertised in the national newspapers specifying the nature of the post and the minimum qualification required. The applicants submit their applications to the Civil Service Commission, which sets up an interview board consisting of a senior member of the DPP's Office, a lawyer from outside the office and a chairperson who usually has a background in Government or business sector. The interview board selects suitable candidates and then makes recommendations for the appointments to the Prime Minister. According to the information

⁵ The number of Professional Officers has been increased from 13 to 17 since the GET's evaluation visit.

provided to the GET, the Prime Minister has always accepted the Commissioners recommendations.

44. The main function of the DPP is the direction and supervision of Public Prosecutions. In this respect the work of the Office includes mainly, among others, the following:
 - a. The consideration of Police criminal investigation files submitted to the Office.
 - b. The decision as to whether or not a prosecution should be initiated, or whether a prosecution already initiated by *An Garda Síochána* should be maintained and advising of any further investigations necessary for the commencement or continuation of a prosecution.
 - c. The determination of the charges.
 - d. Deciding whether appeals should be brought.
 - e. A role in relation to the decision whether to prosecute summarily or on indictment.
 - f. Overall responsibility for the conduct of the prosecution. Cases are conducted in court by members of the Bar Council appointed by the Director on the basis of instructions from the Director of Public Prosecutions.
45. Various provisions existing in the Irish legislation establish that prosecution for particular offences must be prosecuted by the DPP or, in some cases, only with his consent. Examples of these offences are cases involving bribery and corruption and some others such as offences relating to explosives, breaches of the Official Secrets Act, incest, marital rape and drug trafficking.
46. The DPP and the members of his Office exercise the function of prosecution only in a very small proportion of the total number of public prosecutions initiated annually. This function is exercised by the DPP's Office in all the most serious cases. The vast majority of all criminal prosecutions are prosecuted summarily and are initiated and prosecuted by *An Garda Síochána* (Police) without any direct involvement of the Director's Office in the process. However, it was made clear to the GET during the visit, that corruption offences are always examined by the DPP, given the seriousness both of the cases and the penalties provided and that the relevant decision whether to prosecute or not must be made by the Office.
47. Concerning the way the decision to prosecute or not is taken the following information was given to the GET: the prosecutions are initiated only where a prosecution would be in the public interest. This requirement is met where two conditions are fulfilled:
 - The first is that there should be a credible and reliable "prima facie case", from the material (factual and evidential) contained in the relevant file of the case, which is submitted to the Office by the Police (*An Garda Síochána*) after the investigation is completed.
 - The second condition is that there should be no other consideration, which would result in a trial not being in the public interest, even though there may be a "prima facie case".
48. The DPP has the power to terminate the criminal proceedings (*nolle prosequi*), if it is decided for any good reason that it is necessary to do so (e.g. where there is insufficient evidence for a successful proceeding). In any case, any decision on whether or not to prosecute can be reconsidered where further new evidence or information come to light since the initial decision was made.

49. Concerning the presentation of the prosecution case before the Court, in a general way the situation is that the DPP or his Professional Officers do not appear in court themselves. They are represented in the District Courts by the Police officers, state solicitors (outside Dublin) and solicitors and the Chief State Solicitors in Dublin. The functions of the criminal sections of the Office of the Chief State Solicitor will be taken over by a new office called the Office of Solicitor to the Director of Public Prosecutions later this year. The solicitors in this new office will represent cases in the District Courts on behalf of the Director. In the higher courts (circuit, central, special criminal court, court of criminal appeal and the supreme Court), the DPP is represented by barristers retained from private sector.
50. Summary prosecutions concerning lesser offences outside the Dublin Metropolitan District are normally presented by a Superintendent or an Inspector of *An Garda Síochána* (Police). In particular cases (e.g. legal complexity or important cases), a Prosecuting Counsel (Barrister from the private sector) will present the case. There are 30 Prosecuting Counsel acting on behalf of DPP outside the Dublin Area. The position of Prosecuting Counsel is advertised through the Bar Council of Ireland and the State Solicitor (who provides a solicitor's service to the DPP outside the Dublin area) gives an opinion on the applications presented. The final decision as to who should be a prosecuting Counsel will then be made by the DPP himself.
51. There are thirty-two local State Solicitors outside Dublin, with at least one solicitor for each county. State solicitors are appointed on contract by the Attorney General, from a list drawn up following a competitive interview of suitable applicants by a board usually consisting of the Director General of the Attorney General's Office, the Chief State Solicitor and the Deputy DPP. If any of these persons is not available to be part of the interview board, senior members of the staff of each Office are available to do so. They handle civil litigation and other legal work on behalf of the Attorney General but the bulk of their work – some 80 per cent – is prosecution work for the DPP. *An Garda Síochána* seeks legal advice and assistance from the solicitors, particularly in the more difficult or complicated court cases.
52. Within the Dublin Metropolitan District summary prosecutions are presented in court by members of *An Garda Síochána*. Prosecutions on indictment may only be taken by the DPP and each case is presented in court on behalf of the DPP by a State Solicitor and a Barrister (Counsel). There are 120 Prosecuting Counsel in the Dublin area.
53. From the aforementioned and as explained to the GET during the visit, the 15 members of the DPP's Office do not handle the criminal cases prosecuted before the Courts. Public prosecutors of the Office examine the contents of the investigation files submitted by *An Garda Síochána* and decide whether or not to prosecute, in the cases explained above, including corruption offences.
54. In spite of the fact that no specific training is provided for prosecutors during the exercise of their functions, training is provided to the members of the Office of the Director of Public Prosecutions, in Ireland and abroad, through conferences, seminars etc. which could include corruption matters.
55. As regards the independence of the Director, it is safeguarded on a constitutional and a statutory basis. The Office of the Director of Public Prosecutions was established because of two factors: (1) to alleviate the burden of work on the Attorney General's Office and (2) to depoliticise the prosecution of criminal offences as the appointment of the Attorney General is essentially a political appointment by the Taoiseach. The statutory basis is provided by section

2(5) of the Prosecution of Offences Act, 1974, which provides that “the Director shall be independent in the performance of his functions”.

56. Furthermore, during the visit it was explained that the handling of prosecution cases by barristers from the private sector has not raised any suspicion of corruption or undue influence. The fact that all material in the relevant file is known to the Office, together with the fact that prosecution barristers co-operate closely with State Solicitors, investigating *Gardaí* (Police) and the Director’s Office prevents improper or undue influence in the performance of their work. The involvement of so many different agencies makes it very difficult for anyone to bribe or unduly influence the outcome of a prosecution. The Barristers conducting the cases are selected by the Director of Public Prosecutions and conduct the cases on the basis of instructions from the Director and his Office. They do not have authority to withdraw charges without express instructions from the Director of Public Prosecutions.

b5. The Courts

57. The Courts which exercise jurisdiction in criminal matters in Ireland are the following:
- the District Court: Summary trial of minor offences. Maximum sentencing: one year. In the District Court a Judge hears cases without a jury.
 - the Circuit Court: It hears appeals from the District Court, without a jury. This Court also hears with a jury all-indictable offences, except treason, murder, attempted murder, serious sexual offences and a small number of other offences.
 - the Special Criminal Court: It is comprised of three judges and sits without a jury. It adjudicates offences in certain extraordinary circumstances defined by Law.
 - the High Court: It has jurisdiction by way of judicial review of all the decisions of previous Courts. It also has trial jurisdiction (when it is known as the Central Criminal Court) with a jury over the serious offences on which the Circuit Court has no jurisdiction.
 - the Court of Criminal Appeal: It hears appeals by a convicted person from jury trials in the Circuit and Central Criminal Courts and from trials in the Special Criminal Court. It also hears appeals against severity of sentence, appeals against undue leniency of sentence and appeals based on newly discovered facts.
 - the Supreme Court: It hears appeals by a convicted person on points of law only from the Court of Criminal Appeal, from the High Court in Judicial Review cases and Cases Stated and also as an alternative to an appeal by a convicted person to the Court of Criminal Appeal. It also deals with questions of law referred to it, without prejudice to the verdict, relating to verdicts by direction of a trial judge.
58. The Judges of all Courts are appointed by the President, on the advice of the Government, pursuant to Articles 13.9 and 35 of the Constitution. As explained to the GET during the visit, prior to 1995, the Government had absolute discretion in advising the President on the appointment of judges. However, since 1995 a Judicial Appointments Advisory Board provides a list of candidates, from which the President appoints the Judges on the advice of the Government.

59. The number of the Judges today is as follows:
- Supreme Court: 8
 - High Court: 26
 - Circuit Court: 28
 - District Court: 51

 - Total: **113**
60. Enquiries by the GET elicited a variety of views on whether or not the current numbers are sufficient to meet the volume of cases before the Courts. This is a matter which is kept under review.
61. The independence of the courts is guaranteed by the Constitution and specifically by article 35.2 according to which "All Judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the Law." The Constitution, under 34(5), lays down the text of the oath of office to be taken by all judges on appointment.
62. The age of retirement of Judges is 70 years and they cannot be removed from office except for stated misbehaviour or incapacity, and only upon resolutions passed by the Parliament calling for his removal.
63. There is no Code of Conduct for Judges. However, judicial behaviour and ethics and the impeachment procedure have been under review by a number of bodies, namely, the Constitution Review Group, the All-Party Oireachtas Committee and the Committee on Judicial Conduct and Ethics. The findings of these bodies are currently being considered by the Government.
64. The GET was informed that there has been no case of corruption involving a Judge.

b6. The tribunals of inquiry

65. According to the Tribunals of Inquiry (Evidence) Act, 1921, as amended, the Parliament may establish a tribunal "for inquiring into a definite matter described (...) as of urgent public importance" and to prepare a report on its findings and/or recommendations which should be submitted to the Parliament.
66. The proceedings followed by the tribunals are quasi-judicial and open to the public. The tribunal has the power to hear witnesses, to receive and examine documents, and the persons who are asked to appear and testify are obliged by the law to do so.
67. During the visit, the GET was informed about the establishment of a Tribunal (the Flood Tribunal) to inquire into certain planning matters, rezoning of lands and payments, including possible instances of corruption. The need for the establishment of this Tribunal arose after certain allegations were published. These allegations include a specific allegation of a payment made to the former Minister for Foreign Affairs. There are further allegations that some politicians were involved and bribed in order to facilitate the planning development of certain areas. Their names have not been made public yet but this should be done in the future.

68. During the meeting with the legal team which works with the Judge who chairs the Tribunal (a former High Court Judge), it was explained to the GET that they conduct an on going investigation (a fact finding exercise) and they referred particularly to paragraph 5 of the Terms of Reference of this Tribunal, according to which, "In the event that the Tribunal in the course of its inquiries is made aware of any acts associated with the planning process which may in its opinion amount to corruption, or which involve attempts to influence by threats or deception or inducement or otherwise to compromise the disinterested performance of public duties, it shall report on such acts and should in particular make recommendations as to the effectiveness and improvement of existing legislation governing corruption in the light of its inquiries".
69. It was also explained to the GET that the final Report of the findings of the Tribunal will be submitted to *Dáil Éireann* and, if it is considered desirable, to the DPP as well.
70. It was furthermore clarified that it is a usual procedure in Ireland to set up a Tribunal to inquire into a matter and people met by the GET during the visit recognised that if a criminal investigation is decided in the future, it has to start from the beginning⁶. The decision to set up a Tribunal for this particular matter, instead of the initiation of criminal investigation by the *Gardaí*, was, as explained to the GET, based on the interest of the public in these matters and the need to urgently inquire into these matters in public. It was noted that some years ago the *Gardaí* investigated some aspects of these planning matters, but no prosecutions arose following those investigations.

b7. Other bodies and institutions

71. There are other authorities in Ireland, which, although not directly involved in the criminal law area, play an important role in the prevention and disclosure of corruption. In this regard, it is essential to refer to the Ombudsman, the Public Offices Commission; the Office of the Information Commissioner; the Ministry of Finance, the Comptroller and Auditor General, the Department of the Environment and Local Government and to Parliamentary Committees.

i) The Office of the Ombudsman

72. The Ombudsman's Office was set up in 1984 (from the Ombudsman Act, 1980) to examine complaints from members of the public about the action of public servants and to report to the Parliament, notably by its Annual Report, in order to highlight systemic failures identified in the area of fair administration and to put forward suggested remedies. In its 16 years of existence, the Office has dealt with over 50,000 such complaints.
73. The Ombudsman Act provides that the appointment of the Ombudsman "shall be made by the President upon resolution passed by Parliament recommending the appointment of the person". The Ombudsman holds Office for a period of six years renewable and may be relieved of his office at his own request by the President or removed from office by the President only for stated misbehaviour, incapacity or bankruptcy. He must vacate the office on reaching the age of 67 years. The Ombudsman is independent in the performance of his functions.

⁶ According to the Tribunals of Inquiry (Evidence)(Amendment) Act 1979 "A statement or admission made by a person before a tribunal or when being examined in pursuance of a commission (...) shall not be admissible as evidence against that person in any criminal proceedings (...)".

74. The Ombudsman has quite extensive investigative powers: he can ask for any information, document or file from a body complained of and can require any official to give information about a complaint. He can look into all administrative actions including decisions, refusal or failure to take action and administrative procedures.
75. Excluded from examination or investigation by the Ombudsman are cases:
- where the matter is before the Courts;
 - where the aggrieved person has a statutory right of appeal to the courts;
 - where there is a right of appeal to an independent appeal body;
 - related to recruitment or terms or conditions of employment;
 - relating to aliens or naturalisation;
 - relating to pardon or to remission of prison sentences or other court penalties;
 - relating to the administration of prisons.
76. The Ombudsman may be requested in writing by a Minister of the Government not to investigate a particular case. In such circumstances the Ombudsman must cease his investigation.
77. The Ombudsman is empowered to make recommendations only; his findings are not binding. When the Ombudsman carries out an investigation he must inform the complainant of the result of the investigation. He must also indicate how the body complained against has responded to any recommendation he may have made. Where it appears to the Ombudsman that the response to a recommendation, which he has made, is not satisfactory he may make a special report on the matter to the Oireachtas.
78. The GET was told that no cases of corruption or connected to corruption have ever been submitted to the Ombudsman.
- ii) *Public Offices Commission*
79. The Commission, established in 1995, is an independent statutory body which supervises the Ethics in Public Office Act, 1995 and the Electoral Acts, 1997 and 1998. The current Chairman of the Commission is the Ombudsman, and other members are the Comptroller and Auditor General, the Chairman of the Dáil, and the Clerks of the Dáil and Seanad respectively. While not a prosecutory body, it has powers of investigation and report, including report to the Director of Public Prosecutions.
80. Under the Ethics Act, members of the Dáil and Seanad, office holders (including the Taoiseach, Ministers and Attorney General), special advisers to Ministers, board members and senior executives of more than 100 state companies, and senior civil servants are required to make an annual disclosure of registrable interests. Those of those relating to members of the Dáil and Seanad, including office holders, are published annually. Office holders and public servants must disclose, at any time, a material interest which they, or a connected person, might have in an official function to be performed by them. All members of the Dáil and Seanad, including office holders, are required to disclose any material interest they, or a connected person, might have, if they are voting or speaking in the proceedings of either House.
81. Under the Electoral Acts there is provision for State funding of qualified political parties, reimbursement of certain candidates' election expenses, disclosure of political donations and limits on election spending by political parties and candidates.

82. Under recently passed legislation, the Public Offices Commission is to be reconstituted as the Standards in Public Office Commission. This will have wider investigative powers. It will be chaired by a judge (or former judge), and have five ordinary members (Clerk of Dáil, Clerk of Seanad, Comptroller and Auditor General, Ombudsman and a former member of either House of the Oireachtas). The legislation also provides for the development of codes of conduct for Ministers, office holders, members of the Oireachtas and employees of public bodies.

iii) Office of the Information Commissioner

83. The Commission was established in 1998 on the date when the Freedom of Information Act, 1997 came into effect. The Ombudsman was appointed, and is currently, Ireland's first Information Commissioner. His role is to provide an independent review of decisions taken by public bodies in relation to requests for access to records. The Information Commissioner's review decisions are binding on the parties subject only to an appeal to the High Court on a point of law.

iv) Department of Finance

84. The Department of Finance is considered as one of the most important and powerful Governmental departments in Ireland given notably the high number of responsibilities in the field of expenditures of State agencies. According to the Ministers and Secretaries Act, 1924, the Department of Finance is responsible for "... the administration and business generally of the public finance of Ireland and all powers, duties and functions connected with the same, including in particular, the connection and expenditure of the revenues of Ireland from whatever source arising". Two Government orders of 1980 and 1987 allocated new important functions firstly in the field of planning policies and then transferring the functions of the Department of the Public Service to the Department of Finance. The Department of Finance holds responsibility for public procurement policy and procedure.

v) Public Procurement

85. In the area of Public Procurement the rules of the European Union are applied and specifically the relevant E. U. Directives, according to which if the value of a contract exceeds the financial threshold in the relevant E. U. Directive, the contract must open for competition across the European Union and must be advertised in the Official Journal of the European Communities.

86. Below the threshold of the E. U. Directive, national public procurement guidelines issued by the Government Contracts Committee (hereafter the "GCC") apply, which reflect the principles of the E. U. Directives in regard to open competition and transparency. Where Government departments, in exceptional circumstances wish to depart from these guidelines, for example, not to have a competitive process, they must justify the reasons and obtain the approval of the GCC. The GCC cannot permit departures from E. U. rules or obligations.

87. During the visit, it was made clear to the GET that each Government Department has the right to open tendering procedure including the Local Authorities. There is no central Body or Authority which is responsible for the Public Procurement.

88. The Government Contracts Committee (GCC) has power to approve contracts when a Department proposes to depart from normal national contracting procedures, as explained

above. It must be consulted in cases where a matter or principle of major importance is involved, with policy implications. It is composed of Officials drawn from Departments concerned with purchasing and construction contracts and chaired by an Official from the Department of Finance.

89. Within the central Government sector, the Government Supplies Agency (GSA) has responsibility for the central management of Government Procurement for the following items: printing and binding, paper, publications, stationary, clothing, transport equipment and vehicles, cleaning materials and general office supplies. Each Department is required to order their requirements for the foregoing items through the GSA.
 90. Given the limited role of the aforementioned bodies, it could be said that, outside of Central Government, they do not represent a national central Public Procurement Body.
 91. As far as the possible ways to challenge public tender procedures and decisions are concerned, any tenderer must be notified that he or she did not get the contract and the reasons for the same. An appeal procedure applies in the case of contracts above E. U. directive thresholds.
 92. There is no appeal procedure to the Committee (GCC), but tenderers can ask for information. Aggrieved tenderers can file civil actions before the High Court, which has the power to award damages. For contracts above the EU threshold levels, bidders who feel their rights have been infringed have resorted to the High Court, with the possibility of appeals to the Supreme Court and the European Court of Justice. Aggrieved bidders may also appeal directly to the European Commission who will take up complaints with Member States and may, if not satisfied with the response, refer it to the European Court of Justice.
- vi) *The Comptroller and Auditor General*
93. The Constitution of Ireland (article 33) provides that "there shall be a Comptroller and Auditor General (hereafter "CAG") to control on behalf of the State all disbursement and to audit all accounts of moneys administered by or under the authority of the Oireachtas (Parliament)".
 94. The CAG is appointed by the President on the nomination of the Prime Minister and holds office until the retiring age (65) prescribed by law. This Official cannot be a member of the Parliament and cannot hold any other office or position of emolument. The independence of the Office is secured by the constitutional requirement that he cannot be removed from office except for stated misbehaviour or incapacity and then only upon resolutions passed by both Houses of the Parliament.
 95. The Constitution provides that otherwise the terms and conditions of the office of the CAG are to be determined by law. The main statute is the Audit Departments Acts, 1866 and the Comptroller and Auditor General (Amendment) Act, 1993.
 96. The CAG conducts the external audit of accounts of all central Government Departments and State sponsored bodies.
 97. Upon completion of his audit, the CAG is obliged to attach to each account a certificate stating whether, in his opinion, the account properly presents the receipts and expenditure of the Department concerned and to refer to any material case in which a Department has failed to apply expenditure recorded in the account for the purposes for which the appropriations made

by the Parliament were intended, or where transactions recorded in the account do not conform with the authority under which they purport to have been carried out. These accounts are published annually.

98. All Reports of the CAG are laid before the *Dáil* (House of Representatives) every year, and the Public Accounts Committee considers such Report on behalf of the Parliament and reports its findings to it. Additionally, from time to time the CAG may report on certain matters to the Parliament, e.g. any case where the amount granted has been exceeded, instances of internal control weaknesses and their consequences, instances of irregularities etc.
99. Each Department or Office is responsible for instituting a system of internal financial control and internal audit. For this purpose, the Secretary General or Civil Service head of a Government Department or Office is also designated by the Minister of Finance as the Accounting Officer, with the duty of preparing the annual Appropriation Account for each Vote under their charge.
100. Accounting Officers are also responsible for the safeguarding of public funds and property under their control, for the efficiency and economy of administration in their Departments and for the regularity and propriety of all transactions in the Appropriation Accounts.

vii) The Committee of Public Accounts (Dáil)

101. This Committee, comprised of members of the *Dáil* and chaired by an Opposition Party member, examines and reports to the *Dáil* on the Annual Appropriation Accounts of Departments and on other reports prepared by the Comptroller and Auditor General (CAG). The Secretary General of each Department is also that Department's Accounting Officer, directly accountable to the Oireachtas.
102. A recent, major inquiry by the Committee, partly by means of a special sub-Committee established for the purpose, concerned allegations of tax evasion and was carried out using extensive new powers under the Committees of the Houses of the Oireachtas (Compellability Privileges and Immunity of Witnesses) Act, 1997 and the Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act, 1998. The Recommendations arising from this process will have implications not only for the State and its agencies but also for Deposit Taking Institutions, as well as affecting Oireachtas Reform and Parliamentary Inquiries.

viii) Department of the Environment and Local Government

103. Ireland has a local government system. Local government bodies include Regional Authorities, County Councils, Corporations and Urban District Councils.
104. At regional level, there are 8 Regional Authorities, which aim to integrate and co-ordinate some aspects of county/city and sub-county activities. These authorities monitor, *inter alia*, the use of European Union (EU) funds. At county/city level, there are 29 County Councils and 5 City Authorities that are the main providers of local Government services around the country. At sub-county level, there are 80 Town Authorities.
105. The Department of the Environment and Local Government oversees the operation of the local government system and implements policy in relation to local government structures, functions, human resources and financing.

106. Senior management and professional staff are recruited for the local authorities through the Local Appointments Commission, an independent body which was established to ensure impartiality in selection of candidates. The Local Appointments Commissioners are then responsible for the selection of persons to be appointed to Chief Executive Officers and certain other Officers in Local Authorities, Health Boards, Harbour Authorities and Vocational Educational Committees, in accordance with the Local Authorities (Officers and Employees) Acts.

ix) The Office of the Civil Service and Local Appointments Commissioners

107. The Civil Service Commissioners have statutory responsibility for the recruitment of Civil Servants in accordance with the Civil Service Commissioners Act, 1956. The Office of the Civil Service and Local Appointments Commissioners assists both sets of Commissioners in carrying out their statutory responsibilities for the appointment to positions in the Civil Service, in *An Garda Síochána* and within the Local Authorities.

108. The vacant positions are advertised and the appointments are made after a certain selection procedure, which includes competitive examinations. Promotions are made by the Departments, but the Office of the Civil Services and Local Appointments Commissions undertake the selection activity necessary to support the inter-departmental schemes for promotion. Disciplinary action, ranging from the deferral of an increment to dismissal, is taken against civil servants in certain circumstances including misconduct and unsatisfactory behaviour. During the visit, the GET was informed that disciplinary measures are taken within each Department according to circulars issued by the Minister for Finance. The Civil Service Disciplinary Code Appeal Board (chaired by an independent non-civil servant appointed by the Minister for Finance) can be asked to review disciplinary proceedings in certain circumstances. The Board can advise management to amend its proposed disciplinary action.

109. The GET was informed that new Codes of Conduct for the Civil Servants and the staff and elected members of local authorities will be adopted, updating existing regulations concerning the behaviour of civil servants and members of Local Authorities. The Local Government Act, 2001, recently enacted, contains a new statutory ethics framework for staff and elected members of local authorities. In this context, new codes of conduct for staff and members will be drawn up.

110. Furthermore, it was clarified, during the visit, that there is no legal provision imposing upon members of the Public Service a general obligation to report suspicions of corruption. The new Code however, will include a provision that they should act according to the Law.

x) Local Government Audit Service

111. External audit of the accounts of local authorities is carried out by the Local Government Audit Service. Local Government Auditors are assigned their work from the Inspector of Audits. All auditors are independent in the exercise of their professional functions. The main outputs from the regularity audit process are:

- the issue of audit opinions on the annual financial statements,
- public audit reports on general matters coming to attention at audit,
- the issue of internal control memoranda to management.

112. As explained to the GET during the visit, the main reason for having the separate Audit Service for local authorities is the recognition of the Local Government dimension as distinct from that of Central Government. Local Government was granted specific constitutional recognition by the addition of Article 28A to the Constitution in 1999.
113. The GET was also informed during the visit that some Officials are of the opinion that the Local Government Audit Service should be accountable to the Parliament as well and that the whole issue was examined in the past and the decision was to retain the existing situation. However, recently, a working group was set up within the Parliament in order to re-examine the question. It should be noted that at present copies of the Local Government Auditors' Reports are forwarded, as a matter of course, to the Comptroller and Auditor General. Matters raised in these reports can be incorporated in the Comptroller and Auditor General's report to Parliament.

c. Immunities from investigation, prosecution and adjudication for corruption offences

114. In Ireland only the President and the members of the Parliament (House of Oireachtas) benefit from immunities in criminal proceedings.
115. Specifically, according to art. 13.8 of the Constitution, "the President shall not be answerable to either House of the *Oireachtas* (Parliament) or to any Court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions."
116. Furthermore, according to article 15.13 of the Constitution "the members of each House of the Oireachtas (Parliament) shall, except in the case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from and while in the precincts of, either House, and shall not in respect of any utterance in either House, be answerable to any court or any authority other than the House itself".
117. In the case of the President, these immunities are related to the performance of his/her official functions only. In the case of members of the Oireachtas, they are designed to prevent interference with the performance of their duties as members of either House.
118. Thus, in Ireland, there are no legislative provisions enabling any person in corruption cases, to benefit from specific privileges allowing them to be prosecuted or tried in accordance with a procedure constituting an exception to general law.
119. According to the Vienna Convention on Diplomatic Relations and Immunities, the diplomatic agent's immunity may be waived by the sending State. Any case where there is a question of waiving immunity would have to be considered on an individual basis at the highest level and would ultimately be a decision of the Minister for Foreign Affairs. However, it is the Irish authorities' view that any case involving 'corruption' would be one where diplomatic immunity would be waived. Moreover, the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him/her from the jurisdiction of the sending State. In the event of an Irish diplomat being accused of acts of corruption, the allegation would have to be examined by the competent authorities in the light of all the circumstances of the case. Clearly, the rights under natural justice of all concerned would have to be protected. In addition, the

Prevention of Corruption (Amendment) Bill, 2000* will provide for the extension of Irish jurisdiction extra-territorially to corruption abroad involving Irish office holders or officials⁷.

III. ANALYSIS

a. **General policy on corruption**

120. Ireland seems to be affected by corruption at very low levels. A few cases of corruption have been reported and detected over the past years. Among representatives of state and civil society there is a perception of a low level of corruption. Because of the perception that corruption is not a serious problem in Ireland, no detailed statistics or research had been elaborated to measure the extent of the phenomenon in the country. The general assertion was that no problem of corruption exists in Ireland. Respondents cited the low number of incidents and the absence of "whistle blowing" from within the community as supporting evidence. Nonetheless, the absence of an accurate intelligence picture could raise doubts as to the reliability of this claim. Throughout the evaluation visit, it was made clear to the GET that matters under investigation by the Tribunals have raised much public interest and have drawn considerable media attention.
121. Any attempt to evaluate the effectiveness of the response of the law-enforcement and criminal-justice mechanism to the threat of corruption presupposes the existence of detailed statistics concerning crime detection, prosecution and punishment analysed against the baseline of an accurate intelligence picture which sits securely outside of any mainstream intelligence system. Therefore, the GET recommended the development of a detailed corruption picture which sits securely outside of any mainstream intelligence system and detailed statistics and research to measure more clearly the extent of the corruption phenomenon in the country. This measure will assist in a proper evaluation of the response of the law-enforcement and criminal justice mechanism to the threat of corruption.

b. **Legislation**

122. The Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Acts of 1906 and 1916 ensure that corruption is criminalised and provide a strong legislative backcloth for the country. During the 1990s, there was an acknowledgement of a need for greater checks and balances which led to the amendment of these Acts through the Ethics in Public Office Act 1995. The increase in penalties for corruption offences is substantial being set at a maximum fine of £ 50,000 (63,487 €) and/or up to seven years' imprisonment. This has certainly to be seen as a strong deterrent against corruption activities.
123. The Prevention of Corruption (Amendment) Bill 2000⁸ will further reinforce this position. This Bill will ensure that Ireland can ratify the Council of Europe's Criminal Law Convention on Corruption in this area. This is an important development for Ireland as it ensures that it meets the needs of the Council of Europe Convention.
124. The GET welcomed very much the proposed legislative amendments being introduced in Ireland such as the Prevention of Corruption (Amendment) Bill 2000, the Whistleblowers

⁷ The Bill has since passed all Parliamentary stages and has been enacted as the Prevention of Corruption (Amendment) Act, 2001.

⁸ Now the Prevention of Corruption (Amendment) Act, 2001.

Protection Bill and the new Civil Service Code of Standards and Behaviour. This new Code however, does not include a general obligation of the civil service employees to report existing signs of corrupt practices to the authorities in charge of detecting, investigating and prosecuting corruption offences. There is a general obligation of "Respect of the Law", which does not cover explicitly the obligation to report. Therefore the GET recommended to examine the possibility to include such a provision in the new Code.

125. One aspect of the European Conventions, which provides an important ingredient within any anti-corruption strategy, is that of whistle blowing, more commonly known as the reporting of wrongdoing. The GET noted with satisfaction that the new Bill is broadening the application of the whistle blowing legislation within Article 9 by including an aspect which provides protection to 'persons' who are whistle blowing, whereas the Article 9 is restricted to employees.

c. Investigation and prosecution of corruption

126. The GET noted that criminal investigations of corruption cases fall under the sole responsibility of *An Garda Síochána* and that files are transmitted to the Director of Public Prosecution (« DPP ») only after the investigation has been completed. It was clear therefore that the Office of the DPP is not empowered to direct or influence the manner in which criminal investigations are conducted. Moreover, it is for *An Garda Síochána* to decide whether or not the investigation of a given case is to be continued or abandoned and whether or not the case is to be transmitted to DPP's Office or not. The GET further noted that *An Garda Síochána* performs its functions under the general direction and control of the Commissioner of *An Garda Síochána*, who is appointed by the Government. The GET did not receive any indications that *An Garda Síochána* might have been subject to political interference in the investigation of a case involving members of Government, political leaders or high government officials. However, police independence in the investigation of individual (corruption) cases did not seem to be guaranteed in the law or through specific institutional arrangements. Therefore the GET observed that the independence that *An Garda Síochána* seems to enjoy in practice when handling criminal investigations on corruption should be better guaranteed either by specific legal provisions or through adequate institutional safeguards.
127. Ireland has a population of 3 ½ million and therefore in comparison with other European States is a relatively small country. This size is conducive to developing a close-knit community culture, which can engender a self-policing philosophy. That said, organised crime does exist within the country. Throughout the evaluation visit, professionals described how Irish nationals make up the majority of organised crime groups in Ireland. This is based on the premise that the Irish community does not appear to have easy access to membership of other international groups. If this is true, it is unclear how long this position can remain given that the major criminal groups operating in Ireland focus on drugs, armed robbery, theft of computer components and prostitution which are all crimes that have an international interface.
128. As already said in the descriptive part of the present report (paragraph 14 above), the GET was told by the Irish authorities that there is no evidence of a connection between corruption and organised crime in Ireland but further details on this statement were not provided. This claim was based on the premise that being a closely-knit community, Ireland is able to identify and flush out any corrupt relationships between criminals and public office officials. It was further argued that the nature of criminal gangs in Ireland is that membership of the gangs continually changed. For example, an organised group may be formed, conduct a crime, and at its

conclusion would disband with the members forming part of different groups to commit other crimes (or not commit crimes anymore).

129. In the GET's opinion, this flies in the face of international trends: as a matter of fact, it is generally recognised that organised crime requires corrupt links for it to exist. The GET was not convinced that there are sound arguments to support the idea that no link can be made between criminals and public officials. In fact, throughout the evaluation visit, the GET identified indications that there may be a link between organised crime and corruption. Indeed, a criminal that has a corrupt relationship is more likely to be in demand by organised crime groups as he or she can potentially provide access to important sources of information or activity. Furthermore, whilst the close knit community can act as a self policing function it can equally be interpreted as a community that is able to be discreet about criminal activity with the community choosing not to highlight or report any criminality. Comparisons can be drawn with some other European small countries: despite low crime levels and the benefits of policing close knit communities, the experience shows that corrupt activity is ever present regardless of the size or culture. The GET felt that this position is likely to be compounded further with *An Garda Síochána's* (the police) current approach to investigating public complaints and internal affairs. Whilst the use of divisional staff may be appropriate for investigating the majority of internal matters, it is the strong view of the GET that their use is not appropriate for investigating corruption especially within such a close-knit community. Furthermore, with the current level of resources dedicated to internal affairs there is a degree of inevitability that *An Garda Síochána* (the police) will only be able to react to the problem.
130. The number of recent incidents of corruption, which have been uncovered does start to cast doubt on the sustainability of the current proposition that firstly, there is no corruption problem and secondly, there are no links between organised crime and corrupt public officials. Whilst these high profile cases may be isolated they could also be the tip of an iceberg. In the absence of an intelligence picture to support either position an accurate assessment is difficult. It appears that some cases are coming to light where public officials are involved in corrupt activity which, although in the main, is at the lower end of the scale, nevertheless start to provide a persuasive argument for the authorities to investigate further the degree to which there is a corruption problem and whether there are any links with organised crime groups. It is suggested that whilst professional judgement can offer a degree of analysis this becomes more persuasive if complemented with a specific anti-corruption strategy, which could be achieved from an intelligence picture. The GET recommended therefore to launch within the law-enforcement agencies (notably *An Garda Síochána* (the police) and the Public Prosecutors Office) and other private and public bodies which could be involved in the anti-corruption policies, a specific anti-corruption plan that should introduce a multi-agency focus and more proactive investigative strategies to help preventing and detecting criminal conduct or wrong doing and create a specialised body to make relevant suggestions in order to coordinate the anti-corruption measures.
131. The absence of a formal informant handling policy was of concern to the GET. Experience has already shown that the handling of informants needs to be closely managed to avoid problems of corruption. For those who seek to create corrupt links being an informant provides opportunities to corrupt a public official. Therefore there is a strong case to provide robust checks and balances to reduce the risk and vulnerability that could exist within the handling of informants. For *An Garda Síochána* not to have an informant handling policy is seen by the GET as a significant point of weakness where corrupt activity could flourish. The GET noted that *An Garda Síochána* is currently reviewing the issue of informant handling. The GET felt strongly

that this is a pressing priority for *An Garda Síochána* and therefore recommended that a formal informant handling policy be introduced.

132. During the meeting with *An Garda Síochána*, it was made clear to the GET that the *Gardaí* do not have the legal authority to negotiate a form of immunity for bribe-givers and bribe-takers who wish to cooperate with them. Only the Director of Public Prosecutions can grant an immunity. This is a discretionary power. However, in practice the *Gardaí* and suspected wrongdoers can, and do, ask the Director during the course of an investigation to consider the question of immunity. However, the decision on whether or not to grant immunity is taken by the Director after consideration of all relevant factors.

i) Inspection and Review within An Garda Síochána (the police)

133. Internal audits and inspection are a prominent feature within the force but there is a lack of evidence to demonstrate changes in policy or processes following either an internal audit and inspection or an internal affair investigation that have been changed post-investigation. A good illustrative example is where a financial fraud had been uncovered which centred on the abuse of working practices and processes. During the evaluation visit, senior staff could not identify how the learning had been highlighted to the organisation or indeed show how working practices and procedures had changed. The GET felt there was a contradiction in the evidence that was provided by those they interviewed. It was strongly argued by *An Garda Síochána* that their organisation through its internal audits was able to identify abuse or lack of integrity and yet those incidents of corruption that have emerged during the past five years revealed that abuses of systems had been present for anything up to seven to eight months before the corrupt activity was detected. Furthermore, in most cases it was not the inspection and review process, which detected the unethical behaviour. It is pertinent to highlight that whilst this approach may be deemed as appropriate for the policing style in Ireland, this reactive approach did not either uncover or prevent the police corruption cases that have emerged during the last five years. In any case this approach lacks independence and objectivity, concerns which can be partially offset by the existence of the Police Complaints Board⁹.

134. The GET did not formally examine the inspection and review process but based on the questionnaire and interviews conducted during the evaluation visit was left with an impression that learning from uncovered corrupt behaviour could not easily be identified. The GET therefore recommended that *An Garda Síochána* (the police) review and strengthen its current approach to inspection and review to ensure firstly that the learning, which may be identified from corruption investigations, can be audited as being introduced back into the organisation and secondly that points of vulnerability within working practices and processes can be quickly identified and acted upon.

ii) Training

135. Even though the GET was informed that persons responsible to prevent, investigate, prosecute and adjudicate corruption offences participate in training seminars or programmes it was not clear whether the training on corruption issues is given the necessary priority or is up to a desirable level. Therefore the GET recommended that, in addition to the existing initiatives, appropriate training - in particular on the typologies of corruption and the unique challenges of

⁹ The GET acknowledged after the visit that an Internal Audit Unit is being introduced. The GET considers that this should be evaluated.

investigation, including its international dimension – be organised for police officers and prosecutors dealing with corruption and connected offences.

iii) *The judiciary*

136. The GET acknowledged that the Judiciary, the Attorney General, the Director of Public Prosecutions enjoy the necessary independence, which is constitutionally safeguarded.
137. The GET noted that the prosecution of corruption offences is handled by barristers from the private sector according to the system of Ireland. Some concerns were raised by the evaluators about the possibility of undue influence, which was strongly denied and refuted by the Irish authorities, as mentioned above, in paragraph 54. Therefore the GET did not intend to suggest any changes to the system in this respect.
138. The Director of the Public Prosecutions, as already mentioned, has the discretionary power to institute or discontinue a criminal prosecution. The GET considered that such a power can raise questions in politically or otherwise sensitive corruption cases. The GET noted that the DPP is an independent legal officer which is a safeguard against possible interferences. The Professional Officers of the Office of the DPP give reasons in writing to the Gardaí for not prosecuting and also note the reasons on the file. Where a decision is made to enter a *nolle prosequi* it is the invariable practice to note the reasons on the file also. This applies to all criminal prosecutions including corruption cases. However, the GET underlined the importance of transparency in the exercise of discretionary powers and observed that in all corruption related cases the reasons for not instituting or discontinuing criminal proceedings should continue to be recorded in the relevant file with sufficient clarity, as a normal practice. With this in mind, it further observed that the Irish authorities could usefully examine whether to confirm the existing practice by adopting standard setting provisions to that effect.
139. The setting up of Tribunals to investigate allegations of corruption also raised some concerns for the GET although they acknowledged the positive aspects of this procedure. The investigations carried out by 3 Tribunals started in 1997 (see paragraph 16) and they are still continuing. Therefore, the GET recommended that consideration be given to whether it is preferable to initiate and carry on, at least in some serious cases involving corruption offences, parallel criminal *Garda* investigations in order to safeguard the necessary evidential material. It is likely that the work of the Tribunals will continue for some time.

d. **Public procurement and local authorities**

140. In the vulnerable area of public procurement, the GET raised concerns about the lack of a central authority or body responsible for all public procurement procedures in Ireland. Given the fact that public procurement is one of the most vulnerable areas for corruption, the lack of a central and independent Body to deal with this sensitive issue should be addressed. The same applies for the appeal procedure which is equally important for all levels of public procurement. Therefore, the GET recommended that consideration should be given to the possibility of assigning to the Government Contracts Committee more powers in order to meet the aforementioned concerns, or to examine the possibility to establish another central and independent Body responsible solely to the Public Procurement Procedure.
141. The Local Authorities are audited by the Local Government Audit Service, which is independent in the exercise of its duties. Their Reports are submitted to the Minister for the Environment and

Local Government and to the audited bodies. Copies of these reports are also forwarded, as a matter of course, to the Comptroller and Auditor General. Matters raised in these reports can be incorporated into the annual report of the Comptroller and Auditor General, which is presented to Parliament.

142. Consideration should be given to proceed with some changes in order to establish a system of accountability of the Local Authorities Audit Service to the Parliament or to assign the external audit of the Local Authorities to the Comptroller and Auditor General, whose independence in constitutionally safeguarded.

e. Immunities

143. The Irish Constitution provides for certain immunities for specific categories of persons (President and members of the Oireachtas) by virtue of the office they hold, but these immunities are strictly circumscribed. As already indicated in the descriptive part of the report (para. 114 to 119), the immunities and privileges provided for the President and the members of the Oireachtas are exclusively designated to prevent interference with the exercise of their duties.
144. The GET noted that, according to the general interpretation of the relevant constitutional provisions referred to above, no member of Oireachtas could rely on his/her immunity as a defence against accusation and investigation of corruption.
145. The privileges referred to do not extend to a privilege against prosecution. They only prevent (if applicable) an arrest while going to or returning from parliament. Members of parliament are not answerable either civilly or criminally for utterances in either house. The issue as to whether evidence could be given as to the fact of such an utterance having been made or as to the motivation for the same has not been judicially considered in Ireland¹⁰.
146. The GET considered therefore that the immunities offered to the President and privileges of the members of the Parliament (House of Oireachtas) are generally acceptable and within the guiding principle 6, concerning the undertaking to limit immunities to the degree necessary in a democratic society.

IV. CONCLUSIONS

147. Ireland appears to belong to the group of those GRECO members that are least affected by corruption. According to the more recent official statistics (1999), only very few cases of corruption or related to corruption have been detected between 1994 and 1999. There is a general perception among the representatives of the Irish State authorities that corruption is not a major problem in Ireland and therefore there is no evidence of a connection between corruption and organised crime. It has to be noted with great satisfaction that various important legislative measures exist in Ireland which can be certainly seen as a strong deterrent against corruption activities. Moreover, legislation on corruption and other related matters which will update Irish legislation and enable Ireland to ratify international legal instruments in the field of

¹⁰ The provision is not very dissimilar to the American Constitutional position. In that regard, it is interesting to note that in an American case called Brewster it was held that their "speech or debate" clause interposed no obstacle to the prosecution of members for accepting a bribe to be 'influenced in his performance of official acts in respect of their action, vote and decision'.

corruption are under consideration. However, the perception of the danger represented by corruption has considerably increased in Irish civil society because of some allegations of corruption involving a high ranked official, politicians and former members of the Irish Government under investigation by Tribunals, which attracted much media and public interest.

148. In view of the above, GRECO addressed the following recommendations to Ireland:

- i. developing a precise picture of the corruption situation in the country which sits securely outside of any mainstream intelligence system and detailed statistics and research to measure more clearly the extent of the corruption phenomenon in the country. This measure will assist in a proper evaluation of the response of the law-enforcement and criminal-justice mechanism to the threat of corruption;
- ii. establishing an obligation on civil servants to report cases of corruption known to them in the exercise of their duties to the authorities in charge of detecting, investigating and prosecuting corruption offences;
- iii. launching within the law-enforcement agencies [notably *An Garda Síochána* (the Police) and the Public Prosecutors Office] and other private and public bodies which could be involved in the anti-corruption policies, a specific anti-corruption plan that should introduce a multi-agency focus and more proactive investigative strategies to help preventing and detecting criminal conduct or wrong doing and create a specialised body to make relevant suggestions in order to coordinate anti-corruption measures;
- iv. introducing a formal informant handling policy within *An Garda Síochána* (the police);
- v. that *An Garda Síochána* (the police) review and strengthen its current approach to inspection and review to ensure firstly that the learning, which may be identified from corruption investigations, can be audited as being introduced back into the organisation and secondly that points of vulnerability within working practices and processes can be quickly identified and acted upon;
- vi. organising, in addition to the existing initiatives, appropriate training - in particular on the typologies of corruption and the unique challenges of investigation, including its international dimension - for police officers and prosecutors dealing with corruption and connected offences;
- vii. giving consideration to whether it is preferable to initiate and carry on, with regard to serious allegations of corruption, parallel criminal *Garda* investigations in order to safeguard the necessary evidential material;
- viii. considering assigning to the Government Contracts Committee 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.

149. Moreover, the GRECO invites the authorities of Ireland to take account of the observations made by the experts in the analytical part of this report.

150. Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Ireland to present a report on the implementation of the above-mentioned recommendations before 30 June 2003.

APPENDIX I

LEGAL PROVISIONS ON CORRUPTION

THE PUBLIC BODIES CORRUPT PRACTICES OF 1889

CHAPTER LXIX

An Act for the more effectual Prevent and Punishment of Bribery and Corruption of and by Members, Officers, or Servants of Corporations, Councils, Boards, Commission or other Public Bodies.[¹¹]

[30th August 1889]

[*Preamble*]

Corruption in Office a misdemeanour. **1.** – (1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanour.

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

Penalty for offences **2.** Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted, -

(a) be liable to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a fine not exceeding five hundred pounds, or to both such imprisonment and such fine; and

(b) in addition be liable to be ordered to pay such body, and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof; and

[¹¹Short title, "The Public Bodies Corrupt Practices Act, 1889." See s. 10].

(c) be liable to be adjudged incapable of being elected or appointed to any public office for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction, and to forfeit any such office held by him at the time of his conviction; and

(d) in the event of a second conviction for a like offence he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office, and to be incapable for seven years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting; and

(e) if such person is an officer or servant in the employ of any public body upon such conviction he shall, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled.

THE PREVENTION OF CORRUPTION ACT OF 1906

CHAPTER 34

An Act for the better Prevention of Corruption

[4th August 1906]

Punishment of corrupt transactions
with agents

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

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or for borne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal^[12]:

He shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years^[13], or to a fine not exceeding five hundreds pounds, or to both such imprisonment and such fine, or on summary conviction^[14] to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine.

Prosecution of offences

2. – (1) A prosecution for an offence under this Act shall not be instituted without the consent, in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland^[15].

22 & 23 Vict. C. 17

(2) The Vexatious Indictments Act, 1859, as amended by any subsequent enactment, shall apply to offences under this Act as if they were included among the offences mentioned in section 1 of that Act.

(3) Every information for any offences under this Act shall be upon oath.

^[16](4) The expenses of any prosecution on indictment under this Act shall be defrayed as in cases of indictment for felony.]

[¹² For the presumption of corruption in certain cases, see 6 & 7 Geo. 5 c. 64, s. 2]

[¹³ For the increase of maximum penalty in certain cases, see 6 & 7 Geo. 5 c. 64 s. 1]

[¹⁴ For the time within which summary proceedings may be commenced see 6 & 7 Geo. 5 c. 64 s. 3]

[¹⁵ Or under a public body as defined by 52 & 53 Vict. C. 69 s. 7, or local and public authorities of all descriptions: see 6 & 7 Geo. 5 c. 64 s. 4 (2) (3).]

(5) A court of quarter sessions shall not have jurisdiction to inquire of, hear, and determine prosecutions on indictments for offences under this Act.

(6) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions.

4. – (1) This Act may be cited as the Prevention of Corruption Act, *Short titles 1906*.

[Subs. (2) repealed by 17 & 18 Geo. 5. c. 42 (S.LR)]

[¹⁶ S. 2 (4) is repealed as to England by 8 Edw. 7. c. 15. s. 10, Sch.]

THE PREVENTION OF CORRUPTION ACT OF 1916

CHAPTER 64

An Act to amend the Law relating to the Prevention of Corruption.

[22nd December 1916.]

Increase of maximum penalty
in certain cases. 6 Edw. 7. c. 34.
52 & 53 Vict. C. 69.

1. A person convicted on indictment of a misdemeanour under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any Government Department or any public body or a sub-contract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding seven nor less than three years: Provided that nothing in this section shall prevent the infliction in addition to penal servitude of such punishment as under the above-mentioned Acts may be inflicted in addition to imprisonment, or prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the said Acts.

Presumption of corruption
in certain cases.

2. Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any Government Department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from His Majesty or any Government Department or public body, the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

Time for taking proceedings

3. Notwithstanding anything in the Summary Jurisdiction Acts proceedings under the Prevention of Corruption Act, 1906, instituted with a view to obtaining a summary conviction for an offence there-under may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor.

Short title and interpretation

4. – (1) This Act may be cited as the Prevention of Corruption Act, 1916, and the Public Bodies Corrupt Practices Act, 1889, the Prevention of Corruption Act, 1906, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 1916.

(2) In this Act and in the Public Bodies Corrupt Practices Act, 1889, the expression “public body” includes, in addition to the bodies mentioned in the last-mentioned Act, local and public authorities of all descriptions.

(3) A person serving under any such public body is an agent within the meaning of the Prevention of Corruption Act, 1906, and the expressions “agent” and “consideration” in this Act have the same meaning as in the Prevention of Corruption Act, 1906, as amended by this Act.

ETHICS IN PUBLIC OFFICE ACT, 1995

38. The prevention of Corruption Acts, 1889 to 1916, shall be amended as follows:

(A) In the Public Bodies Corrupt Practices Act, 1889 –

(i) in section 1 –

(I) by the substitution for “any member, officer or servant of”, in each place where it occurs in subsection (1) and (2), of “an office holder or his or her special adviser or a director of, or occupier of a position of employment in”, and

(II) the substitution for “public body”, where it secondly occurs in subsection (1) and (2), of “office holder or public body”,

and

(ii) in section 2, by the substitution of the following paragraph (a):

“(I) if the conviction is a summary conviction, be liable to a fine not exceeding £ 1,000 or to imprisonment for a term not exceeding 12 months or to both, or

(II) if the conviction is on indictment, be liable to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 7 years or to both,

and paragraphs (b) to (e) of this subsection shall apply only if the conviction is on indictment ;
and”,

(iii) in section 7, by the substitution of the following definitions for the definitions of “public body” and “public office”;

“public office” means any office or employment of a person as an office holder or special adviser or as a director of, or occupier of a position of employment in, a public body;

“director”, “office holder”, public body” and “special adviser” have the meaning assigned to them by the Ethics in Public Office Act, 1995:”,

(B) In section 1 of the Prevention of Corruption Act, 1906 –

(i) in subsection (1), by the substitution for the words from “and shall be liable” to the end of the subsection, of “and shall be liable” –

(I) on summary conviction, to a fine not exceeding £ 1, 000 or to imprisonment for a term not exceeding 12 months or to both, or

(II) on conviction on indictment, to a fine not exceeding £ 50,000 or to imprisonment for a term not exceeding 7 years or to both.”,

(ii) by the substitution of the following subsection (3):

“In this Act, ‘agent’ also includes an office holder or a director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid).”,

and

(C) In the Prevention of Corruption Act, 1916 –

- (i) by the deletion of section 1,
- (ii) by the substitution of the following section for section 2:

“Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, as amended, or the Public Bodies Corruption Practices Act, 1889, as amended, it is proved that any money, gift or other consideration has been paid or given to or received by an office holder or special adviser or a director of, or occupier of a position of employment in, a public body by or from a person or agent of a person holding or seeking to obtain a contract from a Minister of the Government or a public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mention in such Act unless the contrary is proved.”, and

- (iii) in section 4, by the substitution of the following subsection (2) and (3):

“In this Act ‘director’, ‘office holder’, ‘special adviser’ and ‘public body’ have the meanings assigned to them by the Public Bodies Corrupt Practices Act, 1889, as amended, and ‘agent’ and ‘consideration’ have the meanings assigned to them by the Prevention of Corruption Act, 1906, as amended.”,

and the said section 1, as amended by this section, of the Public Bodies Corrupt Practices, 1889, is set out in the Table to this section.

TABLE

(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of an office holder or his or her special adviser or a director of, or occupier of a position of employment in, a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said office holder or public body is concerned, shall be guilty of a misdemeanour.

(2) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit or that person or of another person, as an inducement to or reward for or otherwise on account of an office holder or his or her special adviser or a director of, or occupier of a position of employment in, any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such office holder or public body as aforesaid is concerned, shall be guilty of a misdemeanour.

Section 2.

PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2001

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Amendment of section 1 of Act of 1906.
3. Presumption of corruption from failure to disclose political donations.
4. Presumption of corruption.
5. Search Warrant.
6. Corruption occurring partially in State.
7. Corruption occurring outside State.
8. Corruption in office.
9. Offences by bodies corporate.
10. Short title, collective citation and construction.

Prevention of Corruption [2001.]
(Amendment) Act, 2001.

Acts Referred to

Electoral Act, 1997	1997, No. 25
European Parliament Elections Act, 1997	1997, No. 2
Local Elections (Disclosure of Donations and Expenditure) Act, 1999	1999, No. 7
Planning and Development Act, 2000	2000, No. 30
Prevention of Corruption Act, 1906	1906, c. 34
Prevention of Corruption Acts, 1889 to 1995	
Public Bodies Corrupt Practices Act, 1889	1889, c. 69

PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2001

AN ACT TO GIVE EFFECT TO THE CONVENTION DRAWN UP ON THE BASIS OF ARTICLE K 3(2)(c) OF THE TREATY ON EUROPEAN UNION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION DONE AT BRUSSELS ON THE 26th DAY OF MAY, 1997, THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS DRAWN UP UNDER THE AUSPICES OF THE ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT AND ADOPTED AT PARIS ON THE 21st DAY OF NOVEMBER, 1997, AND THE CRIMINAL LAW CONVENTION ON CORRUPTION DRAWN UP UNDER THE AUSPICES OF THE COUNCIL OF EUROPE AND DONE AT STRASBOURG ON THE 27th DAY OF JANUARY, 1999, AND FOR THAT PURPOSE TO AMEND CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS. [9th July, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.– (1) In this Act “the Act of 1906” means the Prevention of Corruption Act, 1906. Interpretation

(2) References in this Act to an act include references to an omission and references to the doing of an act include references to the making of an omission.

(3) References in this Act to any enactment shall be construed as references to that enactment as amended, adapted or extended by any subsequent enactment including this Act.

2.– The Act of 1906 is hereby amended by the substitution of the following section for section 1:

Amendment of section 1
of Act of 1906

“1.– (1) 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.

(2) 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.

(3) A person who knowingly gives to any agent, or an agent who knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years or to both.

(5) In this Act—

‘agent’ includes—

- (a) any person employed by or acting for another,
- (b)
 - (i) an office holder or director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid),
 - (ii) a member of Dáil Éireann or Seanad Éireann,
 - (iii) a person who is a member of the European Parliament by virtue of the European Parliament Elections Act, 1997,
 - (iv) an Attorney General (who is not a member of Dáil Éireann or Seanad Éireann),
 - (v) the Comptroller and Auditor General,
 - (vi) the Director of Public Prosecutions,
 - (vii) a judge of a court in the State,
 - (viii) any other person employed by or acting on behalf of the public administration of the State, and
- (c)
 - (i) a member of the government of any other state,
 - (ii) a member of a parliament, regional or national, of any other state,
 - (iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997),
 - (iv) a member of the Court of Auditors of the European Communities,
 - (v) a member of the Commission of the European Communities,
 - (vi) a public prosecutor in any other state,
 - (vii) a judge of a court in any other state,
 - (viii) a judge of any court established under an international agreement to which the State is a party,
 - (ix) 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
 - (x) any other person employed by or acting on behalf of the public administration of any other state;

‘consideration’ includes valuable consideration of any kind;

'principal' includes an employer."

3.– (1) Where in any proceedings against a person to whom this section applies for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that–

Presumption of corruption
from failure to disclose
political donations

(a) the person received a donation exceeding in value the relevant amount specified in the Electoral Act, 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate,

(b) the person failed to disclose the donation in accordance with that Act to the Public Offices Commission or the local authority concerned as appropriate, and

(c) the donor had an interest in the person 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,

the donation shall be deemed to have been given and received corruptly as an inducement to or reward for the person 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 unless the contrary is proved.

(2) This section applies to the following:

(a) a person required by section 24 of the Electoral Act, 1997, to furnish a donation statement to the Public Offices Commission,

(b) a person required by section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, to furnish to the local authority concerned a statement of donations under subsection (1) of that section.

(3) In this section–

"donation"

(a) in relation to persons referred to in section 24 of the Electoral Act, 1997, has the meaning assigned to it by section 22 of that Act,

(b) in relation to persons referred to in section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, has the meaning assigned to it by section 2 of that Act;

"donor" means the person who makes a donation or on whose behalf a donation is made.

4.– (1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 (inserted by section 2 of this Act) of the Act of 1906 for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that–

Presumption of
corruption

(a) any gift, consideration or advantage has been given to or received by a person,

(b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given had an interest in the discharge by the person of any of the functions specified in this section,

the gift or consideration or advantage shall be deemed to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of the functions aforesaid unless the contrary is proved.

(2) This section applies to the following functions:

(a) the granting, refusal, withdrawal or revocation by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State by or under any statute of any licence, permit, certificate, authorisation or similar permission,

(b) the making of any decision relating to the acquisition or sale of property by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State,

(c) any functions of a Minister or an officer of a Minister or of any other person employed by, acting on behalf of, or a member of a body that is part of the public administration of the State under the Planning and Development Act, 2000.

(3) In this section—

“functions” includes powers and duties and references to the performance of functions includes as respects powers and duties references to the exercise of functions and the carrying out of duties;

“Minister” means a person who is a Minister of the Government or a Minister of State.

5.— (1) A judge of the District Court, on hearing evidence on oath given by a member of the Garda Síochána, or a member of the Garda Síochána not below the rank of superintendent, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the Prevention of Corruption Acts, 1889 to 2001, punishable by imprisonment for a term of 5 years or by a more severe penalty (“an offence”) is to be found in any place, issue a warrant for the search of that place and any persons found at that place.

Search Warrant

(2) A member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied—

(a) that the search warrant is necessary for the proper investigation of an offence, and

(b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for the issue of the warrant.

(3) A warrant under this section shall be expressed, and shall operate, to authorise a named member of the Garda Síochána, accompanied by such other members or persons as the member thinks necessary, to enter, within one month of the date of issue of the warrant, if necessary by the use of reasonable force, the place named in the warrant, to search it and any persons found at that place and to seize and to retain anything found at that place, or anything found in the possession of a person

present at that place at the time of the search, which the said member reasonably believes to be evidence of or relating to the commission of an offence or suspected offence.

(4) A search warrant issued by a member of the Garda Síochána under this section shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

(5) A member of the Garda Síochána acting under the authority of a warrant under this section may—

(a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct that member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under paragraph (a), or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(6) A person who obstructs or attempts to obstruct a member acting under the authority of a warrant under this section, who fails to comply with a requirement under paragraph (a) of subsection (5), or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a period not exceeding 12 months or to both.

(7) The power to issue a warrant under this section is without prejudice to any other power conferred by statute for the issue of a warrant for the search of any place or person.

6.— A person may be tried in the State for an offence under the Public Bodies Corrupt Practices Act, 1889, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State. Corruption occurring partially in State

7.— (1) Subject to subsection (2) of this section, where a person does outside the State an act that, if done in the State, would constitute an offence under section 1 (inserted by section 2 of this Act) of the Act of 1906, he or she shall be guilty of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State. Corruption occurring outside State

(2) Subsection (1) shall apply only where the person concerned is a person referred to in subsection (5)(b) of the said section 1.

8.— (1) A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence and shall be liable— Corruption in office

(a) on summary conviction, to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or

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

(2) In this section—

“consideration” includes valuable consideration of any kind;

“public official” means a person referred to in subsection (5)(b) of section 1 (inserted by section 2 of this Act) of the Act of 1906.

9.— (1) Where an offence under the Prevention of Corruption Acts, 1889 to 2001, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Offences by
bodies corporate

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

10.— (1) This Act may be cited as the Prevention of Corruption (Amendment) Act, 2001.

Short title,
collective citation
and construction

(2) The Prevention of Corruption Acts, 1889 to 1995, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 2001, and shall be construed together as one.

(3) This Act shall come into operation on such day or days as, by order or orders made by the Minister for Justice, Equality and Law Reform under this section, may be fixed therefore either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.