

NATIONAL INTEGRITY SYSTEMS

TRANSPARENCY
INTERNATIONAL
COUNTRY STUDY
ADDENDUM

Ireland 2012



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Transparency International Ireland

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Note for Readers

Comments and observations on this report are very welcome and can be sent to Transparency International Ireland at research@transparency.ie.

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LIST OF ACRONYMS AND ABBREVIATIONS

BAI	Broadcasting Authority of Ireland
C&AG	Comptroller and Auditor General
Cathaoirleach	Chair of either Seanad Éireann or a Local Authority
Ceann Comhairle	Speaker or Chair of Dáil Éireann
CPI	Corruption Perceptions Index
Dáil Éireann	Lower House of Parliament
DPP	Director of Public Prosecutions
FAC	Fiscal Advisory Council
FÁS	Irish Training and Employment Authority
FATF	Financial Action Task Force
FOI	Freedom of Information
GBFI	Garda Bureau of Fraud Investigation
Garda Síochána	National Police Force
Gardaí	Members of National Police Force
GRECO	Group of States Against Corruption (Council of Europe anti-corruption body)
IMF	International Monetary Fund
INM	Independent News and Media
JAAB	Judicial Appointments Advisory Board
NAMA	National Asset Management Agency
NDFA	National Development Finance Agency
NGO	Non-Governmental Organisation
NIS	National Integrity Systems
NPPPU	National Public Procurement Policy Unit
NPRF	National Pensions Reserve Fund
NPS	National Procurement Service
NTMA	National Treasury Management Agency
NUJ	National Union of Journalists
ODCE	Office of the Director of Corporate Enforcement
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
Oireachtas	(Houses of the Oireachtas) Parliament
PAC	Committee of Public Accounts
RTÉ	Radio Telefís Éireann (State broadcaster)
Seanad Éireann	Upper House of Parliament
SIPO	Standards in Public Office Commission
Taoiseach	Prime Minister
TASC	Think-tank for Action on Social Change
TD	Teachta Dála (Member of Parliament)
TI	Transparency International
TI Ireland	Transparency International Ireland
UNCAC	United Nations Convention against Corruption

ABOUT THE NIS ASSESSMENT

This report is part of a pan-European anti-corruption initiative supported by the Directorate-General Home Affairs of the European Commission. The initiative looks to assess the National Integrity Systems of 25 European States and to advocate for sustainable and effective reform, as appropriate, in different countries.

The National Integrity Systems (NIS) assessment approach provides a framework to analyse the robustness and effectiveness of a country's institutions in preventing and fighting corruption. The NIS concept has been developed and promoted by Transparency International (TI) as part of its holistic approach to countering corruption. A well-functioning national integrity system provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation. However, when institutions are characterised by a lack of appropriate regulations and unaccountable behaviour, corruption is likely to thrive, with negative consequences for sustainable economic development and social cohesion. Strengthening the NIS promotes better governance and ultimately contributes to a more just society.

IRELAND'S NIS ADDENDUM

This report is an addendum to a NIS assessment for Ireland published in 2009 by Transparency International Ireland (TI Ireland).¹ As a supplement to the original country study, this report provides an update on the current status of Ireland's integrity system as well as taking stock of progress since 2009. It examines the principal institutions responsible for enhancing integrity and combating corruption in Ireland. These institutions comprise 'pillars' believed to make up the integrity system of the country. The 2009 study examined 16 such pillars. However, in an effort to reflect the most recent NIS methodology, this addendum contains 14 pillars (see NIS Methodological Note).

Accordingly, updated information on two pillars included in the original 2009 study – the public contracting system and international institutions – is merged with other chapters. Information on public contracting is contained in the Public Sector chapter, while new developments in relation to international institutions are included throughout the study where relevant.

NIS PILLARS

- Executive
- Legislature
- Political Parties
- Electoral Management Body
- Anti-Corruption Agency
- Judiciary
- Ombudsman
- Civil Service/Public Sector Agencies
- Local and Regional Government
- Law Enforcement Agencies
- Media
- Supreme Audit Institution
- Civil Society
- Business Sector

¹ See Transparency International Ireland, Transparency International National Integrity Systems Country Study – Ireland 2009 (2009) http://transparency.ie/sites/default/files/NIS_Full_Report_Ireland_2009.pdf

NIS METHODOLOGICAL NOTE

The purpose of a NIS study is to assess safeguards and efforts against corruption. The pillar sections also highlight those systems and dynamics that affect the State's ability to prevent the abuse of power more generally. The rationale for this is that measures designed to promote overall good governance are supportive of those aimed at preventing corruption in the narrower sense of the word. The definition of corruption used in this study is 'the abuse of entrusted power for private gain'.² Integrity can be defined as 'behaviour consistent with a set of moral or ethical principles and standards'³ or 'the use of entrusted power for publicly justified ends'.⁴

A National Integrity System can be compared to a Greek temple that is supported by a row of pillars and rests on society's values and an awareness of those values. Each 'integrity pillar' represents a different social institution or sector that is seen as integral to the stability of the temple. If one of these pillars is weakened or removed – such as a free media, or the private sector – the temple collapses, and with it the three balls that represent quality of life, rule of law and sustainable development (see Figure 1).⁵

Each NIS pillar in the 2009 study was assessed along four dimensions that are essential to its ability to prevent corruption. These are 'Role and Structure'; 'Accountability, Integrity and Transparency Mechanisms'; 'Complaints and Enforcement Mechanisms'; and 'Relationship with other NIS pillars'. Since then, the NIS methodology has been updated to both make it more rigorous and include greater focus on consultation with key stakeholders. It now looks at the 'Capacity' of each pillar, its 'Governance' and its 'Role within the Governance System'. This addendum incorporates elements of both the old and the new methodologies where possible. Its primary purpose is to provide a selective progress update on key strengths and weaknesses identified in the original study.

2 TI definition. See http://www.transparency.org/whoweare/organisation/faqs_on_corruption

3 Transparency International National Integrity Systems Country Study – Ireland, 2009, op cit: 14

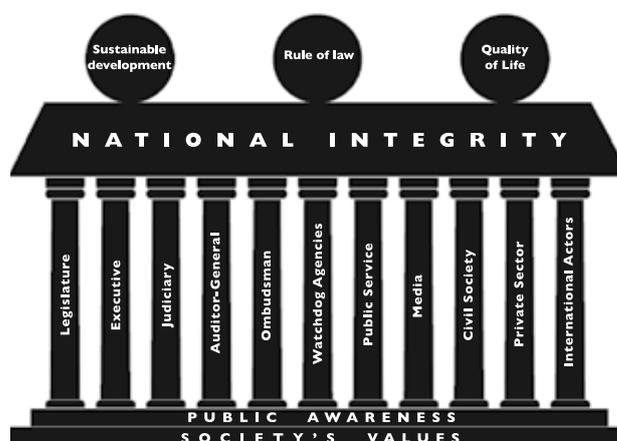
4 Sampford, Charles, 'From National Integrity Systems to Global Integrity Systems', Paper presented at the International Anti-Corruption Conference 'Global Transparency: Fighting Corruption for a Sustainable Future' (Athens, 2008)

5 Transparency International, TI Source Book 2000 – Confronting Corruption: The Elements of a National Integrity System (2000): 31-45 <http://archive.transparency.org/publications/sourcebook>

The NIS assessment does not seek to offer an in-depth evaluation of each pillar. Rather, it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between institutions to understand why some are more robust than others and how they influence each other. The NIS presupposes that weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars also helps to prioritise areas for reform. In order to take account of important contextual factors, the evaluation of the governance institutions is embedded in a concise analysis of the overall political, social, economic and cultural conditions, the foundations on which these pillars are based.

This NIS research is based on both objective and subjective sources of information. It includes desk research and face-to-face and phone interviews. It also has a strong consultative component involving key anti-corruption actors in Government, civil society and academia with a view to building momentum, political will and civic demand for relevant reform initiatives. As part of this consultation process, TI Ireland hosted four stakeholder meetings/expert advisory group workshops in Dublin, Galway and Cork, in addition to extensive consultations on drafts of this study. Quality control was directed by Susanne Kühn and Suzanne Mulcahy at TI Secretariat in Berlin.

Figure 1:
The National Integrity System Temple⁶



6 The integrity pillars can vary from country to country. This graphic represents the most usual integrity pillars of a country which seeks to govern itself in an accountable fashion. Ibid: 35

EXECUTIVE SUMMARY

Ireland's integrity system, while relatively strong by global standards, was found by TI Ireland's 2009 NIS study to have significant gaps that undermine the quality of Irish democracy and standards of governance.⁷ Many of these gaps played a critical role in Ireland's unprecedented banking and fiscal crisis.

This report is an addendum to the 2009 study. Its purpose is to provide an overview of key anti-corruption related developments since then. It covers legislative progress as well as changes in government policy, law enforcement activities, business practice and corruption perceptions. It also assesses the impact of draft laws and commitments made in the Programme for Government 2011-2016 in terms of their likely impact on controlling abuse of power.⁸

Corruption is a multi-faceted phenomenon. Effective anti-corruption efforts therefore require a holistic approach, encompassing preventative measures as well as detection and enforcement across a range of areas. As opportunities for corruption continuously evolve, likewise anti-corruption efforts should be subject to regular monitoring and review.

The 2009 study made 39 recommendations to address underlying governance issues, reform the political system and strengthen legal and institutional safeguards against maladministration and corruption in all its manifestations. Regrettably, none of these reforms have been implemented in full, although this addendum notes that partial progress has been made in 20 areas (see Table 1, page 9 and Appendix, page 50).

The original study criticised a tradition of **self-regulation** and a **crisis-led approach** to fighting corruption within Ireland's public services, business sector, professions and civil society. In particular, it highlighted the **weak enforcement** of a principles-based approach to financial regulation which led to Ireland being branded the 'Wild West of European finance' by The New York Times.⁹

This addendum notes efforts since 2009 to address **systemic failures** in macroeconomic and fiscal policy making as well as financial regulation. In particular, the discredited principles-based approach to financial regulation has been replaced with a more assertive 'risk-based' model. The enforcement powers and resources of a reformed **Central Bank of Ireland** have been enhanced, and Irish banks placed in public ownership in the wake of the banking crisis are being restructured.

Since 2009, Ireland has strengthened its anti-corruption legislation by passing several key **anti-bribery** and **white collar crime** laws, some of which give significant new powers to law enforcement agencies. Ireland has also ratified the **United Nations Convention against Corruption (UNCAC)** – one of the key recommendations of the original study.

Failures of the political system were a key contributor to Ireland's financial crisis. The 2009 study identified the **excessive discretion** of the Executive in a number of democratic functions as a barrier to legal and institutional reform. This addendum notes several modest reforms introduced since then aimed at empowering the Legislature. However, these are not sufficiently far-reaching to tackle fundamental weaknesses in democratic governance and accountability structures.¹⁰

A lack of transparency in **political party funding** was highlighted as a corruption risk area in the 2009 report. A new requirement for political parties to publish annual audited accounts is among a set of disclosure measures which should improve transparency. However, additional reforms are needed to address the risk of **improper influence** on policy making by sectoral interests.

The risk of **patronage and corruption** in the appointments process to boards of public bodies was highlighted in the 2009 study. While some modifications have been made in this area, this report finds them to be inadequate. Likewise, despite some minor changes in recent years to the **parliamentary expenses and allowances regime**, the system remains unduly complicated and opaque.

The central role of the Irish media in exposing and preventing corruption was recognised in the 2009 study. This report welcomes **libel law reforms** which should afford journalists greater freedom in reporting in the public interest.

7 Transparency International National Integrity Systems Country Study – Ireland 2009, op cit: 16-17

8 Department of the Taoiseach, Programme for Government: Government for National Recovery 2011-2016 (March 2011) http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/Programme_for_Government_2011.pdf

9 Lavery, Brian and O'Brien, Timothy L., 'For Insurance Regulators, Trails Lead to Dublin', The New York Times, 1 April 2005 http://www.nytimes.com/2005/04/01/business/worldbusiness/01irish.html?_r=0

10 See Hardiman, Niamh, ed., Irish Governance in Crisis (Manchester: Manchester University Press, 2012)

The original study observed that the **public contracting system** was exposed to the possibility of significant abuse and waste. This report finds that efforts are being made to strengthen oversight of procurement practice.

Current measures to control **conflicts of interests** are noticeably inadequate. In addition, **political lobbying** remains entirely unregulated, while comprehensive **whistleblower safeguards** have yet to be introduced throughout the public and private sectors.

Freedom of Information laws remain curtailed and bodies which control significant public assets still fall outside their scope. There is no statutory body to **handle complaints against judges** for misconduct. Fraud and corruption risks in **local government** identified in the 2009 study have not been fully addressed. Additionally, plans to establish a regulatory authority to oversee the **charities sector** have been set aside.

This report also notes with regret that some significant recommendations in the 2009 study have not been acted upon and do not form the basis of reform proposals. These recommendations include the establishment of an officer corps or **fast-track system** within An Garda Síochána and a **corruption immunity programme** aimed at encouraging conspirators to ‘break ranks’. In addition, an **inter-agency task force on corruption** has not been created. Thorough evaluation of the performance of law enforcement agencies continues to be impeded by the lack of detailed and fully consolidated **statistics** on investigations and prosecutions for corruption-related offences.

The 2009 NIS noted that Ireland already has a sound legal and institutional framework upon which future progress can be made. The ratification of UNCAC since then provides both an important blueprint for future anti-corruption efforts and a framework for civil society to promote and monitor the implementation of the Convention.

Given that it has been only three years since the original research was published, it might be unreasonable to expect significant developments in all areas identified as problematic in 2009. The Government is working on a number of reforms which, if implemented to international standards, would go some way towards curbing corruption risks and reinforcing existing safeguards against the abuse of power.

As the 2009 study noted, concerted multi-agency and cross-departmental efforts must be underpinned by political leadership. On taking office in March 2011, the current administration pledged transformative measures to introduce more transparency and accountability into all walks of public life. The onus is on political leaders to deliver systemic reforms that place the values of integrity, accountability and transparency at the centre of all efforts to build a fairer and more prosperous Ireland.

Table 1:
State of progress on the six main recommendations from NIS Country Study Ireland 2009

Recommendation	Progress ¹¹	
	Some	None
Introduce whistleblower protection for all private and public sector employees	X	
Ratify international conventions against corruption – chiefly the UN Convention against Corruption & the Council of Europe Civil Law Convention on Corruption	X	
Establish a Register of Lobbyists	X	
Additional resources should be allocated for law enforcement agencies such as the Office of the Director of Corporate Enforcement, the Competition Authority, the Criminal Assets Bureau and the Garda Bureau of Fraud Investigation		X
Introduce a Corruption Immunity Programme		X
Remove fees for Freedom of Information appeals and reviews and extend the scope of the act to all public and semi-state bodies, including An Garda Síochána	X	

¹¹ Some progress includes administrative reforms, the publication of policy papers and draft legislation, as well as the enactment of new laws. Where it is not clear whether there has been progress on a recommendation, it has been marked as ‘none’.

SUPPLEMENTARY RECOMMENDATIONS¹²

This study makes the following recommendations, which are supplementary to the 39 recommendations made in the 2009 NIS:

- 1. Increase education and awareness-raising on corruption and anti-corruption**

More emphasis should be placed on education and awareness-raising on the risks and costs associated with corruption and measures aimed at stopping corruption. This should include sustained public-awareness raising initiatives involving civil society organisations; ongoing ethics training and advice for public officials including elected representatives; and continuous research on the efficacy of existing anti-corruption measures.
- 2. Promote civil society participation in anti-corruption measures including UNCAC monitoring**

Transparent and inclusive mechanisms should be established to actively promote the inclusion of civil society organisations in anti-corruption efforts, pursuant with Article 13 of UNCAC. Information about the Government's obligations under UNCAC and its implementation plans should also be widely publicised. This should include details on government anti-corruption measures, including prevention and enforcement efforts, and the publication of clear and coherent statistics on prosecutions.
- 3. Join the Open Government Partnership**

Ireland should participate in the Open Government Partnership, a global initiative that aims to secure commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.
- 4. Sign and ratify the Council of Europe Convention on Access to Official Documents**

Ireland should sign and ratify the Council of Europe Convention on Access to Official Documents, the first binding international treaty on access to official information. It requires signatory states to recognise the right of access for requesters to official documents held by all public authorities and to take necessary measures in domestic law to meet its minimum standards.
- 5. Enhance the efficacy of agencies combating corruption**

The resources and working practices of all agencies dealing with corruption and white collar crime should be reviewed with a view to enhancing their intelligence gathering abilities, improving inter-agency cooperation and identifying areas where additional resources should be targeted.
- 6. Consider measures to encourage self-reporting of white collar offences**

Measures should be introduced to encourage self-reporting of corruption-related offences. These should include the use of Deferred Prosecution Agreements, whereby prosecution of individuals and companies can be waived or delayed where they have fully disclosed an offence that has not already been detected.
- 7. Implement stronger anti-corruption safeguards at local government level**

As part of a wider reform of the ethics framework, stronger anti-corruption safeguards should be introduced to address corruption risks in local government. These should include transparency measures as well as more emphasis on prevention through training, education and research. Fraud and Corruption Alert and Contingency Plans should be independently reviewed every two years to measure progress, with reviews published online. All expenses and allowances should be vouched and claims published online. The Standards in Public Office Commission should be given an oversight role in enforcing conflicts of interest provisions at local government level.
- 8. Disclosure of interests for public officials should be more comprehensive**

Disclosure rules for public officials aimed at preventing conflicts of interests should be more comprehensive. All public officials should be required to declare all of their personal and business-related assets and liabilities, as well as those of family members. These declarations of interest should be monitored by the relevant oversight agency. Declarations for members of both the national parliament and local authorities should be published online and in 'machine-readable'¹³ format.

¹² For a full list of NIS 2009 recommendations, see Appendix, page 50

¹³ Machine readable data is generally data which is not in PDF format. Preferred formats which are open and machine readable include XML and XSLT.

9. Ensure maximum disclosure in political party annual accounts

The annual accounts of political parties should be published in a format which allows maximum disclosure of their financial affairs. They should include income and expenditure and debts and assets of the entire party organisation at all levels, including local branches. In addition, they should include details of loans at both commercial and non-commercial rates.

10. Establish a Charities Regulator

A Charities Regulator should be established to help set and monitor corporate governance standards within the sector and help curb corruption risks associated with poor financial management.

11. Ensure greater transparency in appointments to State bodies

An online public database of all members of State boards and bodies should be established, including details of their qualifications, experience and remuneration levels.

12. Safeguard media diversity

Media diversity and plurality should be safeguarded through regulation of cross-media ownership.

13. Strengthen media codes of conduct

All media organisations should supplement the Press Council's Code of Practice with their own internal guidelines. The Press Council and media organisations should also set clear guidance on the use of payments to sources and prohibit payments to public officials.

CORRUPTION PROFILE

Ireland scores well on World Bank governance indicators relating to accountability, rule of law, regulatory quality and control of corruption.¹⁴ The scores show a decline in government effectiveness in the decade from 2000 and an increase in control of corruption.¹⁵ Ireland was also rated as 'strong' overall by the Global Integrity Report 2011.¹⁶

While international indicators¹⁷ suggest that Ireland does not have a serious problem with **petty corruption**,¹⁸ successive tribunals of inquiry over the past several decades have revealed near systemic levels of **grand corruption**¹⁹ in politics, government and business.²⁰

The recent final report of a long-running corruption tribunal found 'endemic and systemic' corruption in Irish political life and exposed corrupt and inappropriate payments from businesspeople to politicians.²¹ The Mahon tribunal said **corruption** affected every level of Government in the decade up to the late 1990s, from some holders of top ministerial offices to some local councillors. It found that its existence was widely known and tolerated.

14 The World Bank Group, *The Worldwide Governance Indicators* http://info.worldbank.org/governance/wgi/sc_country.asp

15 *Control of corruption captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests.* See Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *The Worldwide Governance Indicators – Methodology and Analytical Issues*, World Bank Policy Research Working Paper No. 5430 (September 2010) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682130

16 Global Integrity, *Global Integrity Report: Ireland – 2011* <http://www.globalintegrity.org/report/Ireland/2011/>

17 Transparency International, *Corruption Perceptions Index 2011* http://cpi.transparency.org/cpi2011/in_detail/ and Transparency International, 2010/2011 *Global Corruption Barometer* http://gcb.transparency.org/gcb201011/in_detail/

18 TI defines petty corruption as everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.

19 TI defines grand corruption as acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good.

20 The Tribunal of Inquiry into the Beef Processing Industry (1991-1994), the Tribunal of Inquiry into Payments to Politicians and Related Matters (1997-2011) (Moriarty tribunal) and the Tribunal of Inquiry into Certain Planning Matters and Payments (1997-2012) (Flood, now Mahon tribunal)

21 The Mahon tribunal published its fifth and final report in March 2012.

While this corruption was occasionally investigated or subject to adverse comment, 'those involved operated with a justified sense of impunity and invincibility'.²²

The Moriarty tribunal, which examined the circumstances surrounding the awarding of the biggest State licence to date, found in its final report²³ that a former Minister received payments and loan support from the businessman whose company won the tender (see also Political Parties).²⁴

It remains uncertain whether the final reports of either of these tribunals will provide a basis for any further criminal investigations. In addition, the slow pace of criminal investigations arising from the 2008 banking crisis has been criticised.²⁵ Delay or inaction in prosecuting corruption and white collar crime can foster a culture of impunity which fuels already high levels of mistrust in political leaders.

The publication of these landmark tribunal reports prompted intense public and political debate about the need for better corruption prevention measures, as well as greater openness and enhanced accountability in government.²⁶ The Government has accepted many of the Mahon tribunal's recommendations, either fully or partially, and implementation is at various stages.²⁷

PERCEPTIONS OF CORRUPTION

Given the backdrop of these reports, it is not surprising that the latest surveys show that citizens believe corruption is a major and growing problem in Ireland and that the Government is failing to tackle it.

TI's 2010/11 Global Corruption Barometer showed that more than six out of 10 Irish people believe corruption has increased since 2007.²⁸ Political parties and members of the Legislature were perceived to be most affected by corruption, followed by religious bodies, business and public officials. Eight out of ten Irish people surveyed said political parties are corrupt or extremely corrupt.²⁹

Similarly, in a 2012 Eurobarometer poll, 86 per cent of Irish people said corruption was a major problem – considerably higher than the European average of 74 per cent. This finding is partly attributed to the belief that relations between politicians and business are too close.³⁰ In addition, there is a perception that the way in which public money is spent and political parties funded lacks transparency (see also Political Parties).³¹

More than two thirds of those surveyed (65 per cent) said bribery and abuse of position for personal gain was widespread among politicians at national level.³² In addition, eight out of ten people agreed that corruption was part of the business culture in Ireland – significantly more than the European average of 67 per cent.³³ The same poll showed that Irish people trust the police to solve a corruption case much more than they do prosecution services and the courts.³⁴

22 Mahon, Justice Alan, *The Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments* (Government Publications Office, 2012): 1 <http://www.planningtribunal.ie/images/finalReport.pdf>

23 The Moriarty tribunal issued its second and final report in March 2011.

24 Moriarty, Justice Michael, *Report of the Tribunal of Inquiry into Payments to Politicians and Related Matters: Part II Volume 1* (Dublin: Stationery Office, 2011): 451 http://www.moriarty-tribunal.ie/images/sitecontent_427.pdf

25 See Minister for Justice, Equality and Defence, *Statement on white collar crime by the Minister for Justice, Equality and Defence* (8 April 2012) <http://www.justice.ie/en/JELR/Pages/PR12000097>

26 A three day Dáil debate on the final report of the Mahon tribunal was held in March 2012.

27 See Tribunal of Inquiry into Certain Planning Matters and Payments (Mahon Tribunal): *Response to Final Report Recommendations* (July 2012) <http://www.environ.ie/en/Publications/DevelopmentandHousing/Planning/FileDownload,30749,en.pdf>

28 2010/11 Global Corruption Barometer, op cit

29 This finding places Ireland at the upper end of the scale, alongside Greece, Ireland, Italy, Romania and Spain.

30 European Commission, *Special Eurobarometer 374: Corruption* (February 2012): 14, 68 http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

31 Ibid: 68, 88

32 Ibid: 134

33 Ibid: 32

34 Ibid: 103

The correlation between high levels of perceived political corruption and low levels of public trust in government have been well documented.³⁵ The 2012 Edelman Trust Barometer found that seven in ten Irish people do not trust government leaders to tell them the truth.³⁶ The annual trust and credibility survey showed that overall trust in government in Ireland stood at only 35 per cent in 2012.³⁷

International indicators consistently suggest that Ireland does not have a serious problem with **petty corruption**.³⁸ Only four per cent of respondents in TI's 2010/11 Global Corruption Barometer said they had paid a bribe in the last year.³⁹ This puts Ireland in the tier of countries least affected by petty bribery.

However, Ireland compared poorly to other northern European nations in TI's Corruption Perceptions Index (CPI) 2011.⁴⁰ Ireland ranked 19th out of 183 countries in the 2011 CPI with a score of 7.5 out of 10.⁴¹ In 2010, Ireland held 14th position with a score of 8 out of ten. The annual CPI, while not an indicator of absolute levels of corruption, is an indicator of a country's relative levels of official and political corruption.

The CPI does not account for what may be termed '**legal corruption**' which takes many forms and includes cronyism, patronage and state 'capture' – when powerful groups manipulate policy formation to serve their own interests rather than the public interest.⁴²

The 2009 NIS reported that perceptions of legal corruption in Ireland are higher than perceptions of corruption prohibited in legislation.⁴³ Legal corruption is facilitated when there are no legal barriers in place to curb undue influence over public policy making, prevent regulatory 'capture' and ensure political accountability.

Legal corruption played a role in the poor regulation and weak oversight of financial institutions which led to Ireland's banking crisis.⁴⁴ The crisis has been described by a parliamentary committee as 'the greatest challenge to the State since it was founded in 1922'.⁴⁵

35 See Smith, Gillian, 'Political Corruption in Ireland: A Downward Spiral', in John Hogan, Paul F. Donnelly and Brendan K. O'Rourke, eds., *Irish Business and Society: Governing, Participating and Transforming in the 21st Century* (Dublin: Gill and Macmillan, 2010)

36 Edelman, 2012 Edelman Trust Barometer <http://www.edelman.ie/index.php/insights/trust-barometer/>

37 Ibid

38 TI defines petty corruption as everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.

39 2010/11 Global Corruption Barometer, op cit

40 The CPI is a 'poll of polls' and measures perceptions of business leaders (both domestic and international), political analysts and journalists towards the prevalence of official and political corruption in respective countries. A score of 10 denotes a country that is 'highly clean', while a score below 3 denotes a country that is seen as 'highly corrupt'.

41 Corruption Perceptions Index 2011, op cit

42 Kaufmann, Daniel and Vicente, Pedro C., 2011, 'Legal Corruption', *Economics & Politics*, 23 (2011): 195-219

43 As measured by the CPI, which almost exclusively measures perceptions of acts of public sector corruption that are criminalised. See Transparency International National Integrity Systems Country Study – Ireland 2009, op cit: 37

44 See Transparency International Ireland, Submission to the Department of Public Expenditure and Reform – 2012 Consultation on the Regulation of Lobbyists (2012) <http://per.gov.ie/wp-content/uploads/Transparency-Ireland.pdf>; see also Igan, Deniz, Mishra, Prachi and Tressel, Thierry, *A Fistful of Dollars: Lobbying and the Financial Crisis*, IMF Working Paper WP/09/287 (International Monetary Fund, 2009) <http://www.imf.org/external/pubs/ft/wp/2009/wp09287.pdf>

45 Houses of the Oireachtas Committee of Public Accounts, Report on the crisis in the domestic banking sector: A preliminary analysis and a framework for a banking inquiry (2012): 12 <http://www.oireachtas.ie/parliament/media/committees/pac/PAC-Report---FINAL.pdf>

ANTI-CORRUPTION ACTIVITIES

Ireland's anti-corruption framework has been significantly strengthened in recent years with the adoption of several key pieces of legislation as well as the ratification of **UNCAC**, which was signed in 2003.⁴⁶ The ratification of UNCAC obliges Ireland to implement a wide range of measures to prevent and criminalise corruption in the public and private sectors, including the establishment of a preventive anti-corruption body or bodies.⁴⁷

The **Criminal Justice Act 2011** was introduced to aid investigations into financial wrongdoing arising from the 2008 banking crisis. These had been hampered by the refusal of key witnesses to cooperate. The Act increases the powers of law enforcement officials to investigate white collar crime, allowing them to compel individuals to produce documents or answer questions to assist an investigation.

The legal framework addressing bribery was considerably improved by the **Prevention of Corruption (Amendment) Act 2010**.⁴⁸ The Act was introduced in an effort to meet the terms of the Anti-Bribery Convention of the **Organisation for Economic Co-operation and Development** (OECD) which Ireland ratified in 2003.⁴⁹ It closes a loophole which had allowed Irish nationals to bribe public officials overseas so long as no evidence was available that any part of the offence was conducted in Ireland. It defines the term 'corruptly', expands the types of bribes that are prohibited, introduces whistleblower protection for those reporting specified offences and extends the law to cover offences committed by unincorporated bodies. However, it remains unclear whether the law fully meets the requirements of the OECD Convention.⁵⁰

The OECD Working Group on Bribery in 2010 recommended that Ireland codify and clarify the liability of legal persons for bribery offences.⁵¹ Comprehensive corporate liability is also vital for the credibility of Ireland's measures against bribery, which have been criticised in international evaluations in the past.⁵² Neither of these issues appears to have been addressed by the 2010 Act.

Overall, the Prevention of Corruption (Amendment) Act 2010 continues the fragmented approach to modernising Ireland's bribery laws. However, many of these shortcomings may be addressed in proposed legislation to reform and consolidate the seven overlapping statutes that make up the Prevention of Corruption Acts 1889 to 2010. The draft scheme of the **Criminal Justice (Corruption) Bill 2012** strengthens and clarifies the main bribery offences and extends the offence of corruption in office.⁵³ It creates several important new offences, including a specific offence of trading in influence.⁵⁴

The draft Bill incorporates several of the recommendations of the Mahon tribunal in relation to corruption, including the creation of a new offence of bribing through an intermediary.⁵⁵ For the first time, it makes companies liable for the corrupt acts of their staff or agents. A company can avoid conviction if it shows that it took 'reasonable steps' and exercised 'all due diligence' to guard against the commission of offence. This provision addresses concerns by domestic and international experts regarding the lack of clarity surrounding corporate liability for corruption offences under Irish law.⁵⁶

The draft Bill also creates presumptions that public officials who have accepted gifts or undisclosed political donations have acted corruptly.

46 Ireland ratified UNCAC in November 2011.

47 United Nations Convention Against Corruption, Article 6 (2004) http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

48 Transparency International, Progress Report 2011: Enforcement of the OECD Anti-Bribery Convention (2011): 41-42 http://www.transparency.org/whatwedo/pub/progress_report_2011_enforcement_of_the_oecd_anti_bribery_convention

49 The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997) <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/38028044.pdf>

50 See Higgins, Imelda, 'The Prevention of Corruption (Amendment) Act 2010: Things Done, But Things Left to Do (Part One)', Irish Criminal Law Journal, 21 (4) (2011): 86-91 and 'The Prevention of Corruption (Amendment) Act 2010: Things Done, But Things Left to Do (Part Two)', Irish Criminal Law Journal, 22 (1) (2012): 2-7

51 OECD Directorate for Financial and Enterprise Affairs, Ireland: Phase 2 and 2bis – Follow-Up Report on the Implementation of the Phase 2 and 2bis Recommendations (OECD, 2010): 18 <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/44856334.pdf>

52 See Transparency International Ireland, Submission to the Department of Justice and Law Reform – Consultation on Organised and White Collar Crime (2011) http://transparency.ie/sites/default/files/11.02.TII_Submission_on_White_Collar_Crime.pdf

53 Criminal Justice (Corruption) Bill 2012 – Draft Scheme <http://www.justice.ie/en/JELR/20120620%20General%20Scheme%20Corruption%20Bill.pdf/Files/20120620%20General%20Scheme%20Corruption%20Bill.pdf>

54 In line with Article 12 of the Criminal Law Convention on Corruption. See GRECO, Third Evaluation Round Compliance Report on Ireland – 'Incriminations', 'Transparency of Party Funding' (Council of Europe, December 2011): 12 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)10_Ireland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)10_Ireland_EN.pdf)

55 Mahon, op cit: 2643-2645, 2651

56 Ibid: 2651

In addition it allows courts to remove public officials from office – including local authority councillors, TDs (MPs), Senators and Ministers – if convicted of a corruption offence, and to bar them from seeking or holding office for up to ten years.

The legislative framework to fight money laundering was strengthened by the **Criminal Justice (Money Laundering and Terrorist Financing) Act 2010**, which creates broader money laundering offences and extends anti-money laundering regulatory systems.⁵⁷ The aim of the Act is to give effect in national law to the Third EU Money Laundering Directive 2005. The Act consolidates Ireland's anti-money laundering legislation. It imposes new monitoring obligations in respect of bodies most likely to be used for money laundering purposes. Monitoring is carried out by a number of competent authorities, including the Central Bank, designated accountancy bodies, lawyers' organisations and the Minister for Justice. An **Anti-Money Laundering Compliance Unit** has been established to administer the functions of the Minister for Justice under the Act. The Act makes it an offence for a person to fail to disclose to An Garda Síochána information they may have concerning money laundering offences.

Proposed amendments to the Act were published in 2012 in the **Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2012**. The aim of this Bill is to enhance Ireland's compliance with standards set by the Financial Action Task Force (FATF), an inter-governmental body established to fight money laundering and terrorist finance.⁵⁸ The Government has said that this Bill will eventually also include provisions to deal with the heightened risk of money laundering posed by transactions involving 'politically exposed persons' in Ireland.⁵⁹

While whistleblower protections are included in numerous individual laws and in a range of sectors, there is currently no single overarching law providing for comprehensive pan-sectoral safeguards.⁶⁰ In the context of Ireland's banking crisis, it is notable that only a small number of individuals with knowledge of serious malpractice and corporate governance failures came forward with information. Although cultural factors may have contributed to this silence, there is also substantial evidence to suggest that fear of retaliation is a significant factor inhibiting people from speaking out in the public interest.⁶¹

The draft scheme of the **Protected Disclosure in the Public Interest Bill 2012** protects all workers in the private and public sectors, including some contractors and agency staff, against reprisals for disclosing information in relation to a wrongdoing. The draft Bill provides for a number of distinct disclosure channels, including within the workplace, to designated bodies including the Revenue Commissioners and National Employment Rights Authority, as well as to the media and An Garda Síochána. In order to qualify for protection, different evidential thresholds must be met, depending on which disclosure channels are used. This stepped approach is aimed at encouraging workers to initially use internal whistleblowing channels. The draft Bill lists the categories of disclosure to be protected. These include criminal offences or miscarriages of justice; the unlawful, corrupt, or irregular use of public monies; or the existence of damage to the environment. Redress is provided for workers who suffered as a consequence of having made a 'protected disclosure'.

57 OECD, *Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions – Ireland* (June 2011) <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/42099388.pdf>

58 Financial Action Task Force, *Third Mutual Evaluation/ Detailed Assessment Report: Anti-Money Laundering and Combating the Financing of Terrorism – Ireland* (2006) <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Ireland%20full.pdf>

59 'Politically exposed persons' are defined by FATF as individuals who are or have been entrusted with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. See FATF, *Glossary* <http://www.fatf-gafi.org/pages/glossary/n-r/>

60 Articles 32 and 33 of UNCAC require protection of witnesses, reporting persons and victims of corruption. Additionally, the Council of Europe Civil Law Convention on Corruption (1999) provides for whistleblower protection. Ireland signed this convention in 1999 and is currently one of only nine Council of Europe signatory countries not to have ratified it. See <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>. See also Transparency International, *Alternative to Silence: Whistleblower Protection in 10 European Countries* (2009) http://www.transparency.org/whatwedo/pub/alternative_to_silence_whistleblower_protection_in_10_european_countries

61 Buckley, Conor, Cotter, Derry, Hutchinson, Mark and O'Leary, Conor, 'Whistleblowing – The Case of a Financial Services Company', *Corporate Ownership and Control*, 7 (3) (2010): 275–283

Table 2 provides an update of key legislative reforms as well as various inquiries and other initiatives undertaken to combat corruption, fraud and abuse of power. It also provides a chronology of developments relating to ethical standards in Ireland and partly illustrates the length and complexity of the reform process.⁶²

Table 2:
Selected Anti-Corruption Timeline 2009-2012

Year	Development
2009	Electoral (Amendment) (No. 2) Act
2009	Defamation Act
2009	Companies (Amendment) Act
2010	Central Bank Reform Act
2010	Prevention of Corruption (Amendment) Act
2010	Criminal Justice (Money Laundering and Terrorist Financing) Act
2011	Criminal Justice Act
2011	UN Convention against Corruption ratified
2011	Electoral (Amendment) Act
2011	Legal Services Regulation Bill
2011	Central Bank (Supervision and Enforcement) Bill
2012	Electoral (Amendment) (Political Funding) Act
2012	Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill
2012	Draft General Scheme Criminal Justice (Corruption) Bill
2012	Draft General Scheme Freedom of Information Bill
2012	Draft General Scheme Protected Disclosure in the Public Interest Bill
2012	Competition (Amendment) Act
2012	Fiscal Responsibility Bill
2012	Ombudsman (Amendment) Bill (2008)

⁶² Table 2 updates Table 5 which appears in the 2009 NIS Report. See Transparency International National Integrity Systems Country Study – Ireland 2009, op cit: 42-44

ENFORCEMENT AND INVESTIGATION

The financial crisis has demonstrated a clear link between the economic welfare of the State and the need to enforce well designed laws and regulations.⁶³

While the rate of prosecution for corruption offences remains low, there has been a modest increase in corruption and money laundering prosecutions in recent years.⁶⁴ However, there have been no criminal prosecutions to date in certain corruption-related categories. For example, no cases have been brought against Irish nationals or companies for bribing foreign public officials.⁶⁵ In addition, there have not been any successful prosecutions to date for market manipulation or insider trading.

Full analysis of trends is impeded by an absence of clear and consolidated statistics on investigations or prosecutions for corruption-related offences by law enforcement agencies and the various regulatory bodies. For example, the ODCE's statistics on convictions under the Companies Acts are at odds with those supplied by the Central Statistics Office, which takes its data mostly from the Garda Síochána record management system.

There have been two high profile convictions in recent years under the Prevention of Corruption Acts, both related to corruption in the local government planning system.

The first public official convicted of a corruption offence in recent decades was sentenced in June 2012. Fred Forsey Jnr, a former town councillor, was jailed for six years, with two years suspended, on six counts of receiving corrupt payments totalling €80,000 from a property developer in 2006.⁶⁶

⁶³ Mendes, Errol P., *Legal Corruption: the Cause of the Global Economic Crisis?*, Peace and Conflict Monitor Special Report (2009) http://www.monitor.upeace.org/innerpg.cfm?id_article=599

⁶⁴ See Hamilton, James, 'Prosecuting Corruption in Ireland', Address to Burren Law School (1 May 2010): 7 http://www.dppireland.ie/filestore/documents/Director's_Speech_at_Burren_Law_School_-_1_May_2010.pdf

⁶⁵ See Transparency International, *Exporting Corruption? Country Enforcement of the OECD Anti-Bribery Convention Progress Report 2012* (2012) http://www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_conventio

⁶⁶ Ni Bhraonain, Eimear, 'Ex FG Cllr Fred Forsey jnr sentenced to six years in jail for pocketing €80k in bribes', *Irish Independent*, 27 June 2012 <http://www.independent.ie/national-news/courts/ex-fg-cllr-fred-forsey-jnr-sentenced-to-six-years-in-jail-for-pocketing-80k-in-bribes-3152022.html>

The fact that this prosecution only arose after Mr Forsey's estranged wife exposed his corrupt activities once again highlights the difficulties in detecting conspiratorial offences such as bribery.

In May 2009, former lobbyist Frank Dunlop was sentenced to two years, with the final six months suspended, after pleading guilty to five sample charges of bribing Dublin city councillors on behalf of property developers in the early 1990s.⁶⁷ Mr Dunlop, a former government press secretary, had admitted to paying bribes in his evidence to the Mahon tribunal in 2000.⁶⁸ In addition, criminal proceedings for corruption have begun against three former councillors, one serving councillor and a businessman named in the final report of the Mahon tribunal.⁶⁹

It is worth noting that Mr Dunlop's is the only corruption-related conviction to date arising from a series of tribunals into corruption in public life dating back several decades.⁷⁰ Several other individuals against whom adverse tribunal findings have been made have been convicted on a range of charges, including obstructing a tribunal, tax evasion and breaches of electoral laws. In addition, a number of company directors and other parties faced civil disqualification proceedings under the Companies Acts arising from various tribunal reports.⁷¹

The criminal enforcement activities of the **Office of the Director of Corporate Enforcement** (ODCE) declined in recent years. This is largely due to the fact that most of its resources over this period were spent investigating Anglo Irish Bank, the lender that was central to the banking crisis. That investigation, now in its fourth year, is the biggest and most complex undertaken by the ODCE to date.⁷²

The first charges were brought in July 2012 against three former bank executives accused of breaches of section 60 of the Companies Act 1963 – the first prosecutions under this provision to date.⁷³ The accused are alleged to have provided unlawful financial assistance to 16 investors to enable them to buy shares in the bank, which has since been nationalised.⁷⁴ In addition to these alleged company law offences, the **Garda Bureau of Fraud Investigation** (GBFI) is also investigating events at Anglo Irish Bank for possible market abuse and false accounting offences.⁷⁵

The ODCE, in a detailed submission to Government on white collar crime in 2010, identified a range of issues which hamper criminal prosecutions in this area. Its recommendations included creating new fraud-related offences; improving the ability of An Garda Síochána and regulatory bodies to work together; greater use of immunity programmes; exploring the use of plea bargaining and deferred prosecution agreements; and introducing whistleblower protection to help enforce company law.⁷⁶ In addition, the fight against white collar crime was prioritised for the first time in An Garda Síochána's Annual Policing Plan for 2012.⁷⁷

67 RTÉ, 'Dunlop sentenced to two years for corruption', 26 May 2009 <http://www.rte.ie/news/2009/0526/dunlop.html>

68 Cullen, Paul, 2002, *With a Little Help from my Friends: Planning Corruption in Ireland* (Dublin: Gill & Macmillan, 2002): 257-265

69 Irish Examiner, 'Kennedy and councillors sent for trial', 28 October 2010 <http://www.irishexaminer.com/breakingnews/ireland/kennedy-and-councillors-sent-for-trial-479484.html>

70 See Smith, Michael, 'Why no prosecutions?', *Village Magazine*, 26 July 2012 <http://www.villagemagazine.ie/index.php/2012/07/why-no-prosecutions-until-seanie-this-week/>

71 Office of the Director of Corporate Enforcement, *Annual Report 2011* (Government of Ireland, 2012): 5 http://www.odce.ie/en/media_general_publications_article.aspx?article=a59cffe6-1435-4969-a97d-ca1822c64c21

72 Ibid: 18

73 Section 60 of the Companies Act 1963 prohibits a company from providing financial assistance for the purchase of the company's own shares, unless the company undergoes the 'whitewash procedure'. See <http://www.irishstatutebook.ie/1963/en/act/pub/0033/print.html>

74 Anglo Irish Bank was merged in 2011 with Irish Nationwide Building Society. The entity was subsequently renamed the Irish Bank Resolution Corporation.

75 Under Market Abuse (Directive 2003/6/Ec) Regulations 2005 <http://www.irishstatutebook.ie/2005/en/si/0342.html> and Sections 6 and 10 of the Criminal Justice (Theft and Fraud Offences) Act 2001 <http://www.irishstatutebook.ie/2001/en/act/pub/0050/index.html>

76 Office of the Director of Corporate Enforcement, *Submission on White Collar Crime* (November 2010) http://www.odce.ie/en/media_general_publications_article.aspx?article=acc2923b-9e90-4f9d-8d85-f67ab0d93103

77 See An Garda Síochána, *Policing Plan 2012* (2012) <http://www.garda.ie/Documents/User/An%20Garda%20S%C3%ADochána%20Policing%20Plan%202012%20English%20.pdf>

EXECUTIVE

Following a general election in February 2011, a new executive was formed – a coalition between Fine Gael and the Labour Party. A number of government departments were reconfigured and two new departments created,⁷⁸ although the number of Ministers remained the same, at 14.⁷⁹

The lack of transparency and accountability in the system of **ministerial appointments to the boards of public bodies** has led to persistent allegations of cronyism and the widespread perception that unaccountable elite groups have undue influence on public policy.⁸⁰ The outgoing Government made a flurry of appointments to the boards of semi-State bodies ahead of the 2011 general election. In their respective election manifestos, both Labour and Fine Gael pledged to tackle cronyism on State boards.⁸¹ No such commitments were contained in the subsequent joint Programme for Government. However, under changes introduced in April 2011, vacancies on State boards and bodies must now be advertised online. Final decisions on appointments are still taken by Ministers, who are not confined to appointing from those who apply. Chairpersons of State bodies continue to be nominated by the Minister but must appear before the relevant Oireachtas committee to face questioning before the appointment is ratified.⁸² Parliamentarians have no veto powers over appointments of chairpersons. An analysis published in November 2011 revealed that a significant number of individuals with identifiable links to the ruling coalition parties had been appointed to State boards since the current Government took office.⁸³

Former senior civil servants and senior local authority officials are currently precluded from taking private sector jobs or consultancy work in sensitive areas for 12 months after resigning or retiring, without prior approval.⁸⁴ However, such **'revolving door'** restrictions do not apply to elected 'office holders',⁸⁵ including Ministers and Ministers of State. Instead, Ministers are only required to be 'careful to avoid any real or apparent conflict of interest' with their former area of public employment when they leave office.⁸⁶ In addition, there are no regulations preventing Oireachtas members and local authority councillors from accepting employment or other contracts after they have left office.⁸⁷

Lobbying of the Executive remains opaque and unregulated.⁸⁸ The power of Ireland's financial industry lobby in influencing economic policy has been well documented and was highlighted again in recent materials released under the Freedom of Information (FOI) Act in April 2012.⁸⁹ However, the Government has pledged to introduce a statutory **register of lobbyists** and rules concerning the practice of lobbying.⁹⁰

78 The Department of Children and Youth Affairs and the Department of Public Expenditure and Reform

79 There are 16 government departments and 15 ministers. Minister Alan Shatter T.D. is in charge of both the Department of Justice and Equality and the Department of Defence.

80 See Clancy, Paula and O'Connor, Nat, Public Appointments: Options for Reform (TASC, July 2011): 12 <http://www.tascnet.ie/upload/file/PublicAppointments180711.pdf>

81 See Labour Party, One Ireland Jobs, Reform, Fairness (Labour Party manifesto, 2011) http://www.labour.ie/download/pdf/labour_election_manifesto_2011.pdf and Fine Gael, Let's Get Ireland Working (Fine Gael manifesto 2011) <http://www.finegae2011.com/pdf/Fine%20Gael%20Manifesto%20low-res.pdf>

82 Houses of the Oireachtas, Dáil Debates, Vol. 747 No. 3, 22 November 2011 <http://debates.oireachtas.ie/dail/2012/07/10/00018.asp>

83 Cullen, Paul, 'Government picks backers for posts despite promise', The Irish Times, 14 November 2011 <http://www.irishtimes.com/newspaper/ireland/2011/11/14/1224307527510.html>

84 Standards in Public Office Commission, Civil Service Code of Standards and Behaviour (Revised Edition) (2008): 21-22 <http://www.sipo.gov.ie/en/CodesofConduct/CivilServants/File,727,en.pdf>

85 Office Holders are defined as the Taoiseach, the Tánaiste, Ministers, Ministers of State, an Attorney General who is a member of the Oireachtas and the Chair and Deputy Chair of Dáil and Seanad Éireann.

86 Standards in Public Office Commission, Code of Conduct for Office Holders (2003): 6-7 <http://www.sipo.gov.ie/en/CodesofConduct/OfficeHolders/File,729,en.pdf>

87 Article 12(2)(e) of UNCAC suggests that State Parties prevent conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure. See http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf. See also OECD, Post Public Employment: Good Practices for Preventing Conflicts of Interest (2010) http://www.planejamento.gov.br/secretarias/upload/Arquivos/seges/arquivos/OCDE2011/OECD_Post_Public.pdf

88 See Transparency International Ireland 2012, Submission to the Department of Public Expenditure and Reform, op cit

89 Childers, Nessa, FOI request on IFSC Govt. lobbying reveals need for transparency, 25 April 2012 <http://www.nessachilders.ie/press/national/13353602667914346.html>

90 A global study concluded that regulating lobbying helps foster 'transparency, accountability and good governance' in democratic societies. See Chari, Raj, Hogan, John and Murphy, Gary, Regulating Lobbying: A Global Comparison 2010 (Manchester: Manchester University Press, 2011): 160

There are proposals for a two-year moratorium or ‘cooling off’ period for senior public servants, Ministers and special advisers to prevent them working in any position in the private sector that could create a conflict of interest.⁹¹ Draft legislation to regulate lobbying scheduled for publication in early 2013 is also expected to include a provision for this moratorium.⁹²

In an effort to address Executive dominance of the fiscal policy making process, an expert **Fiscal Advisory Council** (FAC) was appointed in July 2011.⁹³ A **Fiscal Responsibility Bill 2012** provides a statutory basis for the Council.⁹⁴ The establishment of the FAC is part of a package of measures aimed at improving the management of public finances, which is required under the 2010 EU/IMF financial aid programme.⁹⁵ The FAC’s role is to conduct public analysis and assessments of the government’s budgetary plans and forecasts and help it to adhere to targets and obey fiscal rules. The government is not obliged to accept its recommendations. Some FAC recommendations at odds with Government policy have already been rejected by the Government, raising questions as to the Council’s role.⁹⁶ The FAC is composed of five part-time members and staff seconded from the Central Bank and the Economic and Social Research Institute, a public think-tank.⁹⁷

It is doubtful whether such a body can provide any meaningful counterweight to disproportionate ministerial discretion in policy making without wider political reform.⁹⁸

The Constitution requires ‘strict confidentiality’ regarding the detail of discussions at Cabinet meetings.⁹⁹ Thus, details of events leading to a Cabinet decision in September 2008 to provide a blanket State guarantee to rescue the banking system from collapse have not been published.¹⁰⁰ A pledge to ‘legislate on the issue of Cabinet confidentiality’ is contained in the Programme for Government. No draft law or other proposal in relation to this commitment has been published. The Taoiseach (Prime Minister) has said a Constitutional referendum to change the Cabinet confidentiality provision is not proposed.¹⁰¹

The Programme for Government also includes a pledge to amend the **Official Secrets Act 1963**, retaining a criminal sanction only for breaches which involve a serious threat to the vital interests of the State. The Act gives ministers significant powers to declare any information ‘secret’. An offence under it is punishable by a fine or up to six months imprisonment. Research on open policy making claims that the Act created ‘strong hegemony’ within the Irish public service in general and the civil service in particular. It argues that this led to blind obedience to the Government of the day and absolute secrecy regardless of the harm to the public.¹⁰² At the time of writing, work was underway on a bill to replace the Official Secrets Act, but there was no timetable for publication of a draft law.¹⁰³ The proposed introduction of a whistleblower protection bill in 2013 will also necessitate some amendments to the Official Secrets Act to allow for the reporting of public interest concerns by civil and public servants.

91 Government Reform Unit, *Regulation of Lobbying: Policy Proposals* (Department of Public Expenditure and Reform, 2012): 83 <http://www.per.gov.ie/wp-content/uploads/Regulation-of-Lobbying-Policy-Proposals.pdf>

92 Department of Public Expenditure and Reform, correspondence with author, September 2012

93 The Commission of Investigation into the Banking Sector found that the Government actively supported an overheating of the property market over a long period against the ‘fairly weak but clear’ opposition of the Department of Finance. See Nyberg, Peter, *Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland – Report of the Commission of Investigation into the Banking Sector in Ireland* (Dublin: Government Publications Office, 2011): 11 <http://www.bankinginquiry.gov.ie/Documents/Misjudging%20Risk%20-%20Causes%20of%20the%20Systemic%20Banking%20Crisis%20in%20Ireland.pdf>

94 See *Fiscal Responsibility Bill 2012* <http://www.finance.gov.ie/documents/pressreleases/2012/mn109append.pdf>

95 EU/IMF Programme of Financial Support for Ireland (Department of Finance, 2010) <http://www.finance.gov.ie/documents/publications/reports/2011/euimfrevised.pdf>

96 McArdle, Pat, ‘Fiscal advisory council failing to impress with flawed figures’, *The Irish Times*, 4 November 2011 <http://www.irishtimes.com/newspaper/finance/2011/1104/1224307040115.html>

97 For more on this topic, see Calmfors, Lars and Wren-Lewis, Simon, *What Should Fiscal Councils Do?*, University of Oxford, Department of Economics, Discussion Paper Series, 537 (February 2011) <http://www.economics.ox.ac.uk/Research/wp/pdf/paper537.pdf>

98 See Considine, John and Reidy, Theresa, ‘The Department of Finance’ in Eoin O’Malley and Muir MacCarthaigh, eds., *Governing Ireland: From Cabinet Government to Delegated Governance* (Dublin: Institute of Public Administration, 2012); see also Hardiman, Niamh, ed., *Irish Governance in Crisis* (Manchester: Manchester University Press, 2012): 220

99 Constitution of Ireland (Bunreacht na hÉireann), 1937, Article 28.4.3 <http://www.constitution.ie/reports/ConstitutionofIreland.pdf>

100 In addition, the doctrine of Cabinet confidentiality may potentially be a barrier to criminal prosecutions involving certain senior politicians, according to legal experts consulted by TI Ireland in the preparation of this report.

101 Houses of the Oireachtas, *Dáil Debates*, Vol. 772 No. 1, 10 July 2012 <http://debates.oireachtas.ie/dail/2012/07/10/00018.asp>

102 O’Connor, Nat, *The Role of Access to Information in Ireland’s Democracy* (TASC, July 2010): 10 <http://www.tascnet.ie/upload/file/Role%20of%20Access%20to%20Info.pdf>

103 Department of Justice and Equality, correspondence with author, September 2012

LEGISLATURE

Executive dominance of the Legislature is believed to inhibit meaningful scrutiny of government policies and legislation.¹⁰⁴ A set of modest reforms aimed at making the Executive more accountable to the Legislature were included in the Programme for Government. Changes implemented to date include additional Oireachtas sitting days to allow private members' bills to be introduced and daily 'topical issues' debates to give backbench and Opposition TDs a regular chance to raise matters of concern. New procedures have also been introduced to allow for scrutiny of draft legislation at a much earlier stage by Oireachtas committees. The number of Oireachtas committees has been reduced from 25 to 16 in a bid to bring greater focus to their work (although the number of sub-committees has increased).

A bi-partisan **Joint Committee on Public Service Oversight and Petitions** was established in 2011 to oversee public services delivery and a public petitions system similar to those operating in other parliaments. It also provides a formal channel of consultation and communication between the Oireachtas and the Ombudsman. This committee had been expected to hold a major investigation into the causes of the 2008 banking crisis, pending the passage of a Constitutional referendum to give it and other parliamentary committees greater powers of inquiry into matters of general public importance. However, the Committee's proposed remit had to be scaled back after that referendum was defeated in October 2011.¹⁰⁵

The Government acknowledged that a degree of public mistrust of politicians played a role in the defeat of the referendum.¹⁰⁶

The vote was held amid considerable public uncertainty and unease about the wording of the amendment and after an official public information campaign lasting only a fortnight.¹⁰⁷ At the time of writing, the Committee of Public Accounts (PAC) was seeking new statutory powers to allow it to hold an inquiry into the events that led to the introduction of the State's 2008 blanket guarantee of the liabilities of the banking system.¹⁰⁸

Revisions to the **expenses and allowances regime** for parliamentarians were introduced in March 2010. This followed a series of controversies which saw the Ceann Comhairle (Speaker of the House) stand down amid newspaper disclosures of extravagant spending while travelling on State business.¹⁰⁹ The new regime comprises a monthly tax-free Parliamentary Standard Allowance paid to legislators in two parts; an unvouched Travel and Accommodation Allowance and a Public Representation Allowance which can be either vouched or unvouched. The Travel and Accommodation Allowance is paid at fixed rates based on the distance from a representative's residence to the Oireachtas. Oireachtas members must be present for a minimum of 120 days per year (80 per cent of Dáil sitting days) to receive the full tax-free allowance, with attendance verified through a daily clock-in procedure.¹¹⁰ At least 10 per cent of members opting to claim the Public Representation Allowance on a vouched basis may be subject to random annual audit. Details of all payments are now published online on a monthly basis on the website of the Houses of the Oireachtas Commission. The new regime was proposed by the Houses of the Oireachtas Commission and agreed by the Minister for Finance with cross-party support. However, the Commission did not refer its proposal in advance to its own audit committee for comment.

104 See O'Malley, Eoin and MacCarthaigh, Muiris, eds., *Governing Ireland: From Cabinet Government to Delegated Governance* (Dublin: Institute of Public Administration, 2012)

105 The Referendum on the 30th amendment to the Constitution was defeated in October 2011, with 51.9 per cent voting against it. Had it passed, it would have reversed the effect of a landmark 2002 Supreme Court ruling in *Maguire and Ors v Ardagh and Ors* [2002] 1 IR 385, which restricted the powers of Oireachtas committees. The Supreme Court ruling arose out of an inquiry by an Oireachtas sub-committee into events surrounding the fatal shooting of John Carthy by gardaí in Abbeylara, Co Longford, in 2000.

106 Collins, Stephen and Carr, Aoife, 'Howlin apologises for 'sight' to Referendum Commission', *The Irish Times*, 31 October 2011 <http://www.irishtimes.com/newspaper/breaking/2011/1031/breaking8.html>

107 See Marsh, Michael, Suiter, Jane and Reidy, Theresa, *Report on Reasons Behind Voter Behaviour in the Oireachtas Inquiry Referendum 2011* (The Department of Public Expenditure and Reform, 2012) <http://per.gov.ie/wp-content/uploads/OIReferendum-Report-Final-2003-corrected.pdf>

108 Houses of the Oireachtas Committee of Public Accounts, *Report on the crisis in the domestic banking sector: A preliminary analysis and a framework for a banking inquiry* (2012) <http://www.oireachtas.ie/parliament/media/committees/pac/PAC-Report--FINAL.pdf>

109 See Kerr, Áine and Molony, Senan, 'O'Donoghue claims €250,000 expenses in last two years', *Irish Independent*, 3 October 2009 <http://www.independent.ie/national-news/odonoghue-claims-250000-expenses-in-last-two-years-1903463.html>

110 Ministers, Ministers of State and the Ceann Comhairle are not entitled to the Travel and Accommodation Allowance.

This was described as 'quite unprecedented' by the former chairman of the audit committee, who resigned in July 2009 stating that 'without further transparency and vouching the current and proposed arrangements still retain the potential for reputational damage to the Houses, the Commission, and the members'.¹¹¹

After many years of debate over reform of the upper house of parliament, **Seanad Éireann**, the Programme for Government contains a commitment to instead hold a referendum to abolish it. The Government has not yet indicated when this referendum will be held. Although the upper house has the power to initiate and review legislation, it does not exert significant control on the business of the lower house, the Dáil. The number of TDs and electoral constituencies will be reduced at the next parliamentary elections. This follows a Constituency Commission report in June 2012 which recommended a reduction in the number of TDs by eight to 158, as well as significant boundary revisions and a reduction in the number of constituencies from 43 to 40.¹¹²

There were several controversies involving the business affairs of lawmakers in 2012. They included an admission by an Independent TD that his company made a false declaration to the tax authorities¹¹³ and the listing of a serving Minister in a debtors' journal for failure to pay a court-ordered debt.¹¹⁴ Details have also emerged in recent years of senior politicians receiving loans on lenient terms from Irish Nationwide Building Society, one of the lenders at the centre of the banking crisis.¹¹⁵ These cases highlight the need for more extensive disclosure by public officials of their assets, liabilities and business dealings (see also Anti-Corruption Agency).¹¹⁶

111 'Full text of letter from Tom O'Higgins to Kieran Coughlan: Secretary General of the Houses of the Oireachtas Commission, 27 July 2009', cited in Irish Election, Oireachtas Auditor Resigned over Lack of Expenses Reform (8 October 2009) <http://www.irishelection.com/2009/10/oireachtas-auditor-resigned-over-lack-of-expenses-reform/>

112 This could lead to increased Executive dominance of the Legislature. See Constituency Commission, Constituency Commission Report 2012: Dáil and European Parliament Constituencies (Dublin: Stationery Office, 2012) <http://www.constituency-commission.ie/docs/report2012.pdf>

113 Cullen, Paul, 'Mick Wallace makes €2.1m Revenue settlement', The Irish Times, 7 June 2012 <http://www.irishtimes.com/newspaper/frontpage/2012/0607/1224317444365.html>

114 O'Donovan, Donal and Sheahan, Fionnan, 'Reilly left red-faced as he's named on debt-default list', Irish Independent, 10 July 2012 <http://www.independent.ie/national-news/reilly-left-red-faced-as-hes-named-on-debtdefault-list-3165020.html>

115 Lyons, Tom and McConnell, Daniel, 'Nationwide's 'soft' loan to Hogan', Irish Independent, 8 July 2012 <http://www.independent.ie/business/irish/nationwides-soft-loan-to-hogan-3161567.html>

116 See OECD, Managing Conflict of Interest in the Public Sector: A Toolkit (2005) <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/49107986.pdf>

POLITICAL PARTIES

There are currently 18 political parties registered in Ireland, although only six of these, along with independents, are represented in the Dáil following the 2011 general election.¹¹⁷ The centre-right Fianna Fáil party, which had been in power for 13 consecutive years, was severely weakened as a political force in the 2011 general election.¹¹⁸

Recent polls show that Irish political parties are widely perceived as corrupt. In TI's 2010/11 Global Corruption Barometer eight out of ten Irish people stated that political parties are corrupt or extremely corrupt.¹¹⁹ This finding places Ireland at the upper end of the scale when it comes to negative public perceptions of political parties in Europe.¹²⁰ In addition, a 2012 Eurobarometer poll found that two thirds of Irish people think there is insufficient transparency and supervision in the financing of political parties.¹²¹

The significant corruption risks that result from inadequate regulation of party political financing by business were highlighted in the final reports of two long-running tribunals of inquiry.¹²² The Mahon tribunal, which inquired into corruption in the planning process from the late 1980s to the late 1990s, published its final report in March 2012. It criticised the involvement of senior Cabinet figures in seeking financial contributions from a businessman who was in turn lobbying government to support a commercial venture. It found that a former EU Commissioner, Mr Pádraig Flynn, corruptly sought a donation from a developer for his political party but proceeded to use the money for his personal benefit.¹²³ It also found that the behaviour in 1993 of the then Taoiseach Albert Reynolds and Minister for Finance Bertie Ahern in pressurising a developer for a party donation was 'an abuse of political power and government authority'.¹²⁴

117 The six parties represented in the Dáil are Fine Gael, Labour, Fianna Fáil, Sinn Féin, Socialist Party and People Before Profit. The Progressive Democrats party was wound up in 2009 after 23 years, following a series of sustained electoral defeats.

118 Its leader, Bertie Ahern, resigned in May 2008, following damaging allegations at the Mahon tribunal.

119 2010/2011 Global Corruption Barometer, op cit

120 See Transparency International, Money, Politics and Power: Corruption risks in Europe (2012) <http://www.transparency.org/enis/report>

121 European Commission, op cit: 88

122 Article 7 of UNCAC calls on governments to enhance transparency in the funding of political parties and candidates for elected public office. See http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

123 Mahon, op cit: 245

124 Ibid: 730

The tribunal said Mr Ahern failed to 'truthfully account' for substantial cash deposits in bank accounts connected to him in the early to mid-1990s.¹²⁵ It also found that 11 local government councillors in the Dublin area received corrupt payments from a lobbyist and a developer to secure their support for decisions on planning matters. All six Fianna Fáil party members against whom the tribunal made adverse findings, including Mr Ahern, quit the party before they could be expelled. One of two Fine Gael councillors whom the tribunal found had acted inappropriately was disciplined by the party and resigned.¹²⁶

Separately, the Moriarty tribunal into payments to politicians published its final report in March 2011. It found that former Minister Michael Lowry received secret payments from businessman Mr Denis O'Brien after helping Mr O'Brien's Esat Digifone consortium win a national mobile phone licence in 1995.¹²⁷ The tribunal also detailed a 'campaign of contributions' to Fine Gael from Mr O'Brien's companies totalling around £22,140 in a period before and after the awarding of the mobile phone licence.¹²⁸ No findings of corruption were made against Mr Lowry and Mr O'Brien in relation to the licence award. Both men strongly reject the tribunal's findings.

In addition, the tribunal criticised Fine Gael for not revealing the clandestine nature of a donation of \$50,000 made to the party by Esat Digifone via the Norwegian telecommunications company Telenor some two months after the mobile licence award.¹²⁹ Telenor was a key member of the Esat Digifone consortium which won the licence competition, the largest contract awarded by the State to date.

Mr Lowry was subsequently expelled from the Fine Gael party but remains in the Dáil as an Independent TD, despite a unanimous parliamentary motion of censure calling on him to resign. Two of the unsuccessful bidders in the licence contest have initiated court proceedings against the State for damages.¹³⁰

Since the publication of the tribunal's findings, Fine Gael's public appearances with Mr O'Brien have been the subject of much negative public comment, including from Labour Party members of the ruling coalition.¹³¹

Political funding laws have been revised since the periods inquired into by both the Mahon and Moriarty tribunals.¹³² Both tribunals made recommendations for further reforms to minimise the extent to which political finance can be used as a cover for corruption.

While donations from large corporations are associated with higher corruption risks, neither tribunal recommended a complete ban on corporate donations. The Government pledged to ban corporate donations to political parties in the Programme for Government. However, it subsequently claimed that such a prohibition could face a Constitutional challenge.¹³³

The **Electoral (Amendment) (Political Funding) Act 2012** instead bans corporate donations of more than €200 unless the donor is registered with the oversight agency, the Standards in Public Office Commission (SIPO), and shows the recipient that the donating body has approved the donation.¹³⁴ Membership fees paid to a political party are also treated as donations under the Act. This provision eliminates the scope for membership fees to be used as a means to circumvent the new restrictions on corporate donors.

125 Ibid: 1470-1472

126 Irish Examiner, 'Devitt quits Fine Gael', 26 March 2012 <http://www.irishexaminer.com/breakingnews/ireland/ojeyoajumhgb/>

127 They included £147,000 stg paid by Mr O'Brien to Fine Gael fundraiser Mr David Austin and then given to Mr Lowry; £300,000 stg drawn from an O'Brien account by accountant Mr Aidan Phelan and used in connection with two UK property deals involving Mr Lowry; and a 'benefit equivalent to a payment' in the form of O'Brien's support for a loan of £420,000 stg. See Moriarty, Part II Volume 1, op cit: 94-220, 1056

128 Moriarty, Justice Michael, Report of the Tribunal of Inquiry into Payments to Politicians and Related Matters: Part II Volume 2 (Dublin: Stationery Office, 2011): 147-148 http://www.moriarty-tribunal.ie/images/sitecontent_426.pdf

129 Moriarty, Part II Volume 1, op cit: 44-69

130 They are Persona Digital and the Comcast Group. See RTÉ, 'Court allows Esat Digifone appeal to go ahead', 18 July 2012 <http://www.rte.ie/news/2012/0717/court-allows-esat-digifone-appeal-to-go-ahead-business.html>

131 Houses of the Oireachtas, Dáil Debates, Vol. 761 No. 1, 28 March 2012 <http://debates.oireachtas.ie/dail/2012/03/28/00007>

132 Under the Electoral Act 1997, as amended by the Electoral (Amendment) Act 2001; the Local Elections (Disclosure of Donations and Expenditure) Act 1999; and the Standards in Public Office Act 2001

133 Houses of the Oireachtas, Dáil Debates, Vol. 733 No. 4, 31 May 2011 <http://debates.oireachtas.ie/dail/2011/05/31/00017.asp>

134 This is to include all incorporated and unincorporated bodies, including companies, trade unions, trusts, partnerships, societies, associations, clubs and NGOs – in other words, all bodies and organisations other than natural persons. See Electoral (Amendment) (Political Funding) Act 2012 <http://www.irishstatutebook.ie/pdf/2012/en.act.2012.0036.pdf>

Most significantly, the Act requires all registered political parties (although not electoral candidates or elected representatives) to submit independently audited accounts to SIPO for review within six months of the end of the financial year.¹³⁵ Parties which do not comply with these requirements will lose their State funding. The absence of any requirement for political parties to disclose and publish their accounts had been widely seen as one of the most serious deficiencies in the rules governing political finance regulation.¹³⁶ This new disclosure provision brings Irish law more into line with international good practice.¹³⁷

The Act significantly reduces the amount of money that can be accepted as a political donation as well as the threshold above which donations must be disclosed. The new maximum allowable donation to a political party has been reduced from €6,349 per year to €2,500, with maximum allowable donations to candidates reduced from the current €2,539 to €1,000.¹³⁸ Political parties must now disclose donations above €1,500 to SIPO (the previous disclosure threshold was €5,080), and candidates must disclose donations above €600 (the previous amount was €635).

The Act bans cash donations of more than €200; previously the limit on the amount that a party or candidate could receive was the same for both cash and non-cash donations. The amount of money that can be accepted as an anonymous donation is reduced to €100 (from €127). It also prohibits anonymous indirect donations by requiring that the identity of the person on whose behalf an indirect donation is made be provided to the recipient.

Overall, the Act should increase transparency in political funding. It addresses some, although not all, of the corruption risks identified by the Mahon tribunal and the Council of Europe's peer review group, Group of States Against Corruption (GRECO).¹³⁹ One of several significant remaining loopholes stems from the fact that the Act does not limit the overall amount which an individual can give to a party and its members or candidates in any given year. This means that the same donor can now lawfully give €2,500 to a political party as well as €1,000 to each of its members in the same calendar year. An individual could therefore make hundreds of thousands of Euros in political donations each year. The Mahon tribunal noted that such significant amounts of money are 'capable of giving rise to corruption or the appearance of corruption'.¹⁴⁰

In addition, there is no specific limit on the overall amount of money that can be accepted by way of anonymous or cash donations – an anomaly that could allow a donor to circumvent the donation amount restrictions by splitting a single contribution into numerous small amounts.¹⁴¹

Timing is important when preventing or detecting the abuse of political donations for private gain. Long gaps between the receipt of a donation and its disclosure make it difficult to identify a causal link between a political donation and a favour rendered. The Moriarty tribunal recommended that donations be disclosed in something approaching a real time-frame.¹⁴² For its part, the Mahon tribunal recommended that electoral donations be disclosed prior to elections.¹⁴³ Current disclosure obligations fall short of these recommendations.

The Government has said that it will examine outstanding recommendations from both GRECO and the tribunals in legislation scheduled for publication in 2013.¹⁴⁴

135 GRECO recommended requiring political parties to publish independently audited annual accounts, including financial information on the income and expenditure of local branches. See GRECO, Third Evaluation Round: Evaluation Report on Ireland – Transparency of Party Funding (Council of Europe, December 2009): 22-26 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)4_Ireland_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)4_Ireland_Two_EN.pdf)

136 Mahon, op cit: 2624; see also GRECO 2009, ibid: 22-23

137 See Van Biezen, Ingrid, Financing political parties and election campaigns – guidelines (Council of Europe, December 2003) http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/Financing_Political_Parties_en.pdf

138 The maximum donations apply to the aggregate amount received from any one source in the same calendar year.

139 See GRECO, Third Evaluation Round Compliance Report on Ireland – 'Incriminations', 'Transparency of Party Funding' (Council of Europe, December 2011) [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)10_Ireland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)10_Ireland_EN.pdf)

140 Mahon, op cit: 2526

141 See GRECO 2009, op cit: 23

142 Moriarty, Part II Volume 2, op cit: 1159

143 Mahon, op cit: 2609

144 The Electoral (Amendment) (Referendum Spending and Miscellaneous Provisions) Bill, see Department of the Taoiseach, Government Legislation Programme for Autumn Session 2012, 18 September 2012 http://www.taoiseach.gov.ie/eng/Taoiseach_and_Government/Government_Legislation_Programme/SECTION_C11.html

These recommendations include introducing administrative sanctions, such as fines, for minor breaches of political finance measures, as well as further sanctions for those who deliberately circumvent political finance requirements.¹⁴⁵

Significant anti-corruption measures targeting both politicians and other public officials are included in the draft scheme of the **Criminal Justice (Corruption) Bill 2012**. The draft Bill allows courts to remove from office officials, including TDs and Ministers, who have been convicted of corruption offences, and to bar them from seeking office for up to ten years. It also provides for a presumption of corruption to arise from the receipt of a donation that is prohibited under electoral legislation, including the 2012 Act. (See Anti-Corruption Activities)

ELECTORAL MANAGEMENT BODY

The Programme for Government reiterates the commitment of the previous Government to establish a permanent **Electoral Commission** to subsume the functions of existing bodies that manage elections. A recent Government-commissioned report noted a relatively high degree of fragmentation in the present system, with various individuals and bodies responsible for different areas.¹⁴⁶ The Government Legislative Programme for 2012 does not list an Electoral Commission Bill, although the Government has said it will be published in 2013.¹⁴⁷ SIPO, which currently supervises election spending, has said that the establishment of a permanent election management body should prompt a complete review of electoral legislation.¹⁴⁸

A consistent pattern has emerged in recent years showing a wide gap between the amount of money which political parties and candidates say they spend on elections and the amounts they declare that they have received in donations. For example, for the 2011 general election, candidates and political parties disclosed that they incurred **€9.28 million** in expenses, with no candidate reported to have exceeded the statutory spending limits.¹⁴⁹ In the same year, all political parties combined declared the total sum of €30,997 in donations to SIPO.¹⁵⁰ This is the lowest amount since disclosure rules were introduced in 1997. The two coalition parties – Fine Gael and Labour – did not disclose any donations for 2011, while opposition parties Fianna Fáil and Sinn Féin disclosed €6,348 and €12,000 respectively. Parties are required to disclose all donations exceeding €5,078.95.

¹⁴⁶ Sinnott, Richard, Coakley, John, O'Dowd, John and McBride, James, Preliminary study on the establishment of an Electoral Commission in Ireland (Dublin: Geary Institute, University College Dublin, 2008) <http://www.environment.ie/en/Publications/LocalGovernment/Voting/FileDownload,19472,en.pdf>

¹⁴⁷ Houses of the Oireachtas, Dáil Debates, Vol 769, No 1, 19 June 2012 <http://debates.oireachtas.ie/dail/2012/06/19/00024.asp>

¹⁴⁸ Standards in Public Office Commission, Dáil General Election 25 February 2011: Report to the Chairman of Dáil Éireann (Ceann Comhairle) in accordance with the Electoral Acts (2011) <http://www.sipo.gov.ie/en/Reports/Elections/171011-ReporttoCeannComhairlereDailGeneralElectionof25February2011pdf-textversions/File,14478,en.pdf>

¹⁴⁹ Ibid

¹⁵⁰ Standards in Public Office Commission, Donation Statements furnished by Political Parties for 2011 (29 May 2012) <http://www.sipo.gov.ie/en/Reports/AnnualDisclosures/DisclosurebyPoliticalParties/290512-DonationStatementsfurnishedbyPoliticalPartiesfor2011/Name,15672,en.htm>

¹⁴⁵ Mahon, op cit: 2631 and GRECO 2009, op cit: 27

As public funds received by political parties may not be used for electoral purposes, these figures suggest that the bulk of the €9.28 million general election spend was composed of donations which were not disclosed to SIPO.

Parties appear to routinely solicit donations below current disclosure limits, a practice which violates the spirit, if not the letter, of the law. In addition, SIPO has also repeatedly raised concerns about the fact that limits on campaign spending apply only once an election date is announced, despite the fact that actual spending begins well in advance of the start of the official campaign period. In its report on the 2011 general election, SIPO stated that such 'front-loading' of campaign expenditure undermines the effectiveness of expenditure limits and may create the perception that accounting for expenditure at elections is little more than a paper exercise.¹⁵¹

The Programme for Government pledged to introduce spending limits for 'a period' in advance of all scheduled elections, which would help address the front-loading problem.¹⁵² The Government says this issue will be addressed in legislation scheduled for publication in 2013.¹⁵³

SIPO has also said the use of public funds for electoral purposes is a major issue which should be re-evaluated and brought within the electoral code. This includes the use of Oireachtas services and facilities like IT equipment, telephones and secretarial staff by outgoing TDs. Currently, Oireachtas members have to reimburse any publicly-funded services they certify they have used for election purposes. However, it is difficult to distinguish expenditure for electoral purposes from other public representative activity. SIPO has said it would be fairer if access to Oireachtas facilities ceased once parliament is dissolved, which is generally some four weeks ahead of an election.¹⁵⁴

Currently, when a referendum is scheduled, a Referendum Commission is constituted afresh as an independent body to promote public awareness and encourage voting.¹⁵⁵ The Commission established for the 2011 Oireachtas inquiries referendum argued that the conduct of referendums in Ireland is not consistent with Council of Europe standards, particularly in relation to the contracted amount of time it was given to fulfil its mandate.¹⁵⁶

The Programme for Government acknowledged that government is too centralised and unaccountable and pledged to radically shift power from the State to the citizen. One of the purported means to do so is through a proposed **Constitutional Convention** which would report on a pre-defined set of possible reforms, including a reduction in the voting age from 18 to 17 and a reduction in the term of the directly-elected President from seven years to five.¹⁵⁷ This Convention is due to be established in 2012 and to report within 12 months.¹⁵⁸

151 Standards in Public Office Commission, Dáil General Election 25 February 2011, op cit

152 GRECO 2011, op cit: 8

153 The Electoral (Amendment) (Referendum Spending and Miscellaneous Provisions) Bill, op cit

154 Standards in Public Office Commission, Dáil General Election 25 February 2011, op cit

155 Referendum Commission Website, www.refcom.ie/en/

156 De Bréadun, Deaglan, 'Time for Referendums 'Inadequate' ', The Irish Times, 16 April 2012 <http://www.irishtimes.com/newspaper/breaking/2012/0416/breaking4.html>

157 Programme for Government: Government for National Recovery 2011-2016, op cit

158 Houses of the Oireachtas, Dáil Debates, Vol. 747 No. 3, 22 November 2011 <http://debates.oireachtas.ie/dail/2011/11/22/00047.asp>

ANTI-CORRUPTION AGENCY

There is no unitary Anti-Corruption Commission in Ireland. The Standards in Public Office Commission (SIPO) most closely resembles Anti-Corruption Commissions in other jurisdictions. SIPO oversees political finance regulations and enforces the Ethics Acts, which regulate conflicts of interest at national level, largely through disclosure rules.¹⁵⁹

The number of complaints received by SIPO alleging breaches of the laws on ethics in public office has been traditionally low. In 2011, it received 22 valid complaints.¹⁶⁰ This compares with 31 in 2010 and six in 2009. On foot of complaints under the Ethics Acts, SIPO can initiate investigations. It concluded three such investigations in 2011. This represents an increase in its workload, as it has concluded a total of only 11 investigations under the Ethics Acts since 1995.¹⁶¹

One of the most serious recent SIPO investigations followed a complaint from the Committee on Members' Interests of the upper house of parliament, Seanad Éireann, in 2010. It concerned allegations that then Fianna Fáil Senator Ivor Callely had made irregular claims for mobile phone expenses.¹⁶² Following an investigation, SIPO concluded that Mr Callely may have committed a criminal offence. It forwarded a file to the Director of Public Prosecutions (DPP). Mr Callely was arrested in January 2012 in relation to his irregular expenses claims, but no charges have been brought to date.¹⁶³

SIPO has repeatedly – and thus far unsuccessfully – called for additional powers to allow it to work more efficiently.¹⁶⁴

It seeks the power to appoint an Inquiry Officer to undertake preliminary investigations into suspicions of misconduct on its own initiative, in the absence of a complaint. It also wants to be able to hold an investigation hearing or make a decision on an investigation with a quorum of three of its six ex-officio members, rather than all six as at present.

The Mahon tribunal in March 2012 also recommended substantial increases in SIPO's remit and powers of investigation in relation to the conflict of interest provisions in the Ethics Acts at both national and local level. Nationally, it said SIPO should have a supervisory role over the Select Committees of the Dáil and Seanad, which currently operate what is essentially a self-regulatory regime for parliamentarians. It also recommended that SIPO be given a supervisory role in relation to the enforcement of conflict of interest provisions at local government level.¹⁶⁵ These are primarily the responsibility of local authorities.

The tribunal expressed concern that existing conflict of interest measures do not sufficiently identify or otherwise regulate certain types of conflicts of interest at both national and local levels (see also Local & Regional Government).¹⁶⁶ For example, it said disclosure rules should include overall assets and liabilities, as well as the interests of family members and corporate entities in which a public official or his or her relatives have a controlling legal or beneficial interest.¹⁶⁷ It also proposed that it should be a criminal offence for Oireachtas (Parliament) members to fail to make required disclosures or make false or misleading disclosures.

A review of ethics legislation at both national and local government level is examining the Mahon tribunal's recommendations in relation to conflicts of interest.¹⁶⁸ The Government has said it aims to develop a single, comprehensive legislative framework.¹⁶⁹

SIPO currently has nine staff and its annual budget for 2011 was €1million.¹⁷⁰

¹⁵⁹ SIPO has a supervisory role under the Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, (the Ethics Acts); the Electoral Act 1997, as amended, and the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001.

¹⁶⁰ Standards in Public Office Commission, Annual Report 2011 (2012): 17 http://www.sipo.gov.ie/en/Reports/AnnualReports/AnnualReport2011/std_eng/media/sipo_annual_eng_2011.pdf

¹⁶¹ SIPO, correspondence with author, September 2012. This figure also includes investigations by SIPO's predecessor, the Public Offices Commission.

¹⁶² The complaints followed a newspaper report that Mr Callely claimed expenses for mobile phones in 2007 from a company which had ceased trading at the time. See Byrne, Luke, 'Ivor Callely claimed expenses on forged invoices... Taxpayer defrauded in phone scam', The Mail on Sunday, 1 August 2010 <http://www.dailymail.co.uk/news/article-1299333/Ivor-Callely-claimed-expenses-forged-invoices--Taxpayer-defrauded-phone-scam.html>

¹⁶³ Carty, Ed, 'Former FF TD Ivor Callely arrested by fraud squad', Irish Independent, 25 January 2012 <http://www.independent.ie/national-news/former-ff-td-ivor-callely-arrested-by-fraud-squad-2999300.html>

¹⁶⁴ For the latest summary, see Standards in Public Office Commission, Annual Report 2011, op cit: 49-52

¹⁶⁵ Mahon, op cit: 2569

¹⁶⁶ Ibid: 2520

¹⁶⁷ Ibid: 2566-2567

¹⁶⁸ See Tribunal of Inquiry into Certain Planning Matters and Payments (Mahon Tribunal): Response to Final Report Recommendations, op cit

¹⁶⁹ Minister for Public Expenditure and Reform, Brendan Howlin TD, Response to Policy Recommendations – Mahon Report (19 July 2012) <http://per.gov.ie/2012/07/19/minister-for-public-expenditure-and-reform-brendan-howlin-td-response-to-policy-recommendations-mahon-report/>

¹⁷⁰ SIPO, correspondence with the author, September 2012

JUDICIARY

The absence of formal mechanisms for disciplining judges – short of impeachment by both houses of the Oireachtas¹⁷¹ – has been highlighted in high profile cases involving judicial misconduct in recent years.¹⁷² In addition, the absence of a training and standard-setting body for the Irish judiciary sets it apart from most other European nations.¹⁷³ The Programme for Government includes a pledge to establish a statutory body with lay representation to handle complaints against judges.¹⁷⁴ Draft legislation is due to be published in 2012.¹⁷⁵ Audio recording facilities are due to be established in all courts ahead of the establishment of any complaint handling body. Pending the introduction of new legislation, the judiciary itself in December 2011 set up an interim **Judicial Council** to work on principles and guidelines for judges.

A successful constitutional amendment in 2011 paved the way for emergency public service pay cuts and pension levies to be extended to judges.¹⁷⁶ Judges' salaries are being cut by between 16 per cent and 23 per cent as a result of the new measures.¹⁷⁷

The judiciary had previously been exempted from the emergency measures on the grounds that this was prohibited by the Constitution.¹⁷⁸ Senior judges claimed the constitutional amendment would compromise judicial independence – an essential component of the concept of separation of powers – because it did not provide for an independent body to decide on judges' pay.¹⁷⁹ However, the Government insisted that the changes would not affect judicial independence.¹⁸⁰

The poor state of public finances has impacted on the budget of the Courts Service, which provides administrative support for courts and judges. The non-pay element of its budget decreased by 28 per cent between 2008 and 2012, from €38.5 million to €27.6 million.¹⁸¹ The Courts Service says there has been a 37 per cent increase in productivity in handling cases between 2005 and 2011.¹⁸² This has been achieved through a number of measures, including better use of technology, the amalgamation of some court offices and an increase in sittings of some courts.

A 2010 European Commission for the Efficiency of Justice report found that the annual public budget for all Irish courts stands at just under €70 per inhabitant, which is within the average and median for Eurozone countries.¹⁸³ However, significant **court delays** are believed to be a problem. Most decisions against Ireland at the European Court of Human Rights in Strasbourg relate to delays in legal proceedings in both criminal and civil cases.¹⁸⁴

171 Article 35.4.1 of the Constitution states: A judge of the Supreme Court or High Court can be removed from office only by resolution of Dáil Eireann and Seanad Eireann for stated misbehaviour or incapacity. This has never happened. See <http://www.constitution.ie/reports/ConstitutionofIreland.pdf>

172 In 2004, a Circuit Court judge, Mr Justice Brian Curtin was acquitted of possessing child pornography, on the basis of an invalid search warrant. In 1999, a Supreme Court judge, Mr Justice Hugh O'Flaherty, resigned after he was found to have acted inappropriately.

173 See European Network of Councils for the Judiciary (ENCJ) <http://www.encj.eu>

174 Programme for Government: Government for National Recovery 2011-2016, op cit

175 Department of Justice and Equality, correspondence with author, September 2012

176 The Financial Emergency Measures in the Public Interest Act 2009 introduced a pension levy of up to 10.5 per cent, and the Financial Emergency Measures in the Public Interest Act (No.2) 2009 reduced basic salaries by between 5 and 15 per cent. The Financial Emergency Measures in the Public Interest (Amendment) Act 2011 makes provision for the application of the two Financial Emergency Measures in the Public Interest Acts of 2009 to serving members of the judiciary on the same basis as other public sector employees. See <http://www.irishstatutebook.ie/pdf/2011/en.act.2011.0039.PDF>

177 For details of judges' new salary rates, see Department of Justice and Equality, Minister Shatter formally publishes the 29th Amendment of the Constitution (Judges' Remuneration) Bill 2011 (4 August 2011) <http://www.justice.ie/en/JELR/Pages/PR11000163>

178 Article 35.5 of the Constitution states: The remuneration of a judge shall not be reduced during his continuance in office. See <http://www.constitution.ie/reports/ConstitutionofIreland.pdf>

179 Re: Proposed Referendum on Article 35.5 of the Constitution: Memorandum on the Proposed Amendment (7 July 2011) <http://www.irishtimes.com/focus/2011/judicialpay/index.pdf>

180 Houses of the Oireachtas, Dáil Debates, Vol. 740 No. 1, 14 September 2011 <http://debates.oireachtas.ie/dail/2011/09/14/00027.asp>

181 Interview with Courts Service, August 2012. See also Courts Service, Press Release – Courts Service Annual Report 2011 (17 July 2012) <http://www.courts.ie/courts.ie/library3.nsf/16c93c36d3635d5180256e3f003a4580/5429b2c7c7b74bd180257a3e004ecf1d?OpenDocument>

182 Interview with Courts Service, August 2012

183 Jean, Jean-Paul and Scherer, Barbara (European Commission for the Efficiency of Justice [CEPEJ]), 2010 CEPEJ report – European Union comparable countries (Council of Europe, March 2011): 1 http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/EU_comparable_countries_2010_report_en.pdf. Note: this report does not make the distinction between civil and common law countries.

184 Under Article 6.1 of the European Convention on Human Rights, member states are obliged to accord to individuals a fair and public hearing within a reasonable time. See Farrell, Michael, Senior Solicitor FLAC, Justice Delayed – Decisions against Ireland at the European Court of Human Rights, Public Interest Law Alliance Bulletin (16 May 2012) http://pelorous.totallyplc.com/media_manager/public/138/Delay%20decisions%20against%20Ireland%20at%20ECTHR.pdf

In criminal cases, there are trial lead-in times of at least a year at the Central Criminal Court in Dublin, which is a division of the High Court.¹⁸⁵ The DPP recently called for the introduction of 'pre-trial procedures' in criminal cases in order to save time and money.¹⁸⁶ The Chief Justice in June 2012 said the current situation of the Supreme Court, the country's highest appellate court, was 'unsustainable', with even priority cases waiting for nine months.¹⁸⁷

Despite budgetary constraints, the Government in July 2012 approved in principle a series of major reforms to the courts' structure.¹⁸⁸ They include setting up new courts, including a Civil Court of Appeal and a dedicated family law court.

The current system of **appointments of judges** by the government has been tainted by evidence of political patronage and intense private lobbying of politicians, including Cabinet ministers, for promotions to the bench.¹⁸⁹ The majority of appointees to the bench by the current Government have had links with one or other coalition party.¹⁹⁰ A survey in 2011 revealed that a third of judges appointed since 1995 had personal or political connections to political parties before being appointed to the bench.¹⁹¹

Lobbying of successive Ministers for Justice to have particular lawyers appointed as judges to lower courts was also revealed in correspondence obtained by a newspaper through the FOI Acts in 2011.¹⁹² Judges are currently appointed by the Cabinet from a list supplied by the **Judicial Appointments Advisory Board** (JAAB) which screens judicial candidates. The Government may accept or ignore the JAAB's recommendations. In May 2012, Ireland's Chief Justice endorsed a declaration from the European Network of Councils for the Judiciary that judicial appointments should be based only on merit and capabilities and made in a transparent manner by bodies which are independent of governments.¹⁹³ The Department of Justice in 2012 began a review of the appointments process and the composition of the JAAB, with particular reference to other jurisdictions. This was due for completion by the end of 2012.¹⁹⁴

185 Loftus, Claire, Director of Public Prosecutions, Opening Remarks at 13th Annual National Prosecutors' Conference, 19 May 2012 http://www.dppireland.ie/filestore/documents/Director%27s_Opening_Address_190512.pdf

186 Ibid

187 Denham, Justice Susan, 'Some thoughts on the Constitution of Ireland at 75', Lecture presented at Conference 'The Irish Constitution: Past, Present & Future' (Royal Irish Academy, Dublin, 28 June 2012) <http://cdn.thejournal.ie/media/2012/06/20120629cj-speech.pdf>

188 See Department of Justice and Equality, Government approves in principle a future Referendum on Article 34 of the Constitution (17 July 2012) <http://www.justice.ie/en/JELR/Pages/PR12000214>

189 See Irish Council for Civil Liberties, Justice Matters: Independence, Accountability and the Irish Judiciary [Parts 1 and 2] (July 2007) www.iccl.ie/-/justice-matters-independence-accountability-and-the-irish-judiciary-parts-1-and-2--%28july-2007%29-.html

190 Coulter, Carol, 'Merit-based selection process key', say judges', The Irish Times, 4 June 2012 <http://www.irishtimes.com/newspaper/ireland/2012/0604/1224317207550.html>

191 McDonald, Dearbhail and McQuinn, Cormac, 'Revealed: judges and their links to political parties', Irish Independent, 17 November 2011 <http://www.independent.ie/national-news/revealed-judges-and-their-links-to-political-parties-2937571.html>

192 Office of the Information Commissioner Ireland, Case 100263 – Sunday Times & Department of Justice and Equality (the Department) (9 August 2011) <http://www.oic.gov.ie/en/DecisionsoftheCommissioner/LongFormDecisions/Name,14327,en.htm>

193 Coulter 4 June 2012, op cit

194 Department of Justice and Equality, correspondence with author, September 2012

OMBUDSMAN

The Programme for Government pledges to extend the Ombudsman's remit to third level institutions, all statutory bodies and all bodies 'significantly funded from the public purse'.¹⁹⁵ The Government says it plans to introduce amending legislation in 2013 to extend the Ombudsman's remit in the first instance to all appropriate public bodies and the third level education sector. This would bring the Ombudsman's remit broadly into line with what is also proposed for the Information Commissioner,¹⁹⁶ whose remit currently extends to some 520 public bodies.¹⁹⁷

The Office of the Ombudsman received 3,602 valid complaints in 2011. This was a slight drop on the 2010 figure, which was the highest in ten years.¹⁹⁸ The Ombudsman has said these recent upswings are not necessarily an indication of increased wrongdoing by public bodies but are likely due to the economic downturn which has brought more members of the public into contact with State agencies for benefits and other supports.¹⁹⁹

Relations between the Ombudsman and the Executive and Legislature were severely strained in 2010 after the then Government used the party whip system to repeatedly ignore and finally reject the findings and recommendations of an Ombudsman's 'special report' on a fishing compensation package.²⁰⁰ It was only the second time in 26 years that the Ombudsman had made a special report to the Oireachtas – an option available to the watchdog when a public body rejects its recommendations.

While the Ombudsman's recommendations are not legally binding, this was the first time they were not accepted by parliament since the office was created in 1984.²⁰¹

In 2011, a bi-partisan parliamentary committee was set up as a designated channel of consultation and communication between the Oireachtas and the Ombudsman, who is to be a regular committee witness. The **Joint Committee on Public Service Oversight and Petitions** is responsible for receiving and debating Ombudsman's reports, which previously were not routinely debated in parliament. The Committee is also responsible for ensuring that appropriate action is taken on foot of the Ombudsman's criticisms and recommendations. In an introductory address to the Committee, the current Ombudsman, Emily O'Reilly, said that while she fully accepted its right to reject her findings or recommendations in any particular case, it would be 'less than satisfactory' if the Government applied the party whip on the Committee's votes.²⁰²

The current Ombudsman also holds the positions of **Information Commissioner** and **Commissioner of Environmental Information**.²⁰³ The use of FOI requests by journalists in the public interest in recent years has led to the exposure of significant abuses, including financial mismanagement at the national training and employment agency, FÁS, as well as the improper use of parliamentary expenses.²⁰⁴ However, a significant number of bodies exercising public authority currently remain outside the scope of FOI legislation.²⁰⁵

195 Programme for Government: Government for National Recovery 2011-2016, op cit

196 See Department of Public Expenditure and Reform, Information Note on the Ombudsman Amendment Bill 2008 (2012) <http://per.gov.ie/wp-content/uploads/Information-Note-Ombudsman-Amendment-Bill-2008.pdf>

197 See Freedom of Information Website: Bodies listed by category which are subject to the Freedom of Information Act <http://foi.gov.ie/bodies-covered-by-foi/>

198 Office of the Ombudsman, Annual Report 2011 (Government of Ireland, 2012): 18 <http://www.ombudsman.gov.ie/en/Publications/Annual-Reports/2011-Annual-Report/AnnualReport2011/media/ombudsman-ar-2011-eng.pdf>

199 Joint Committee on Investigations, Oversight and Petitions, Discussion with Ombudsman (20 July 2011) <http://debates.oireachtas.ie/NVJ/2011/07/20/printall.asp>

200 The Ombudsman, Special Report by the Ombudsman: Lost At Sea Scheme (2009) <http://www.ombudsman.gov.ie/en/Publications/Investigation-Reports/Government-Departments-other-Public-bodies/Lost-at-Sea/Lost-at-Sea.pdf>

201 The fact that this sort of conflict has arisen so rarely and attracted such publicity may suggest that the office generally operates effectively. See Walsh, Brendan, Mitchell, Paul and Bandelow, Nils C., Sustainable Governance Indicators 2011: Ireland Report (Bertelsmann Stiftung, 2011): 47 http://www.sgi-network.org/pdf/SGI11_Ireland.pdf

202 Joint Committee on Investigations, Oversight and Petitions, op cit

203 Article 13(b) of UNCAC calls on governments to ensure that the public has effective access to information. See http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

204 See O'Malley, Joseph, 'Government and the Media', in Eoin O'Malley and Muiris MacCarthaigh, eds., *Governing Ireland: From Cabinet Government to Delegated Governance* (Dublin: Institute of Public Administration, 2012): 257-258

205 The Freedom of Information Act 1997 <http://www.irishstatutebook.ie/pdf/1997/en.act.1997.0013.pdf>, and the Freedom of Information (Amendment) Act 2003 <http://www.irishstatutebook.ie/pdf/2003/EN.ACT.2003.0009.pdf>

They include the major public financial bodies which control significant levels of public funds and assets, such as the National Asset Management Agency (NAMA), the National Treasury Management Agency (NTMA), the National Pensions Reserve Fund (NPRF) and the National Development Finance Agency (NDFA), as well as the Central Bank of Ireland, whose role has been extended to encompass financial regulation.²⁰⁶ Furthermore, Ireland remains virtually unique in Europe in excluding the police service, An Garda Síochána, from the scope of FOI legislation.²⁰⁷

In addition, certain public bodies previously covered by FOI legislation have been removed from its scope, either entirely or in part, since the original 1997 Act came into force. These include the main functions of the Medical Bureau for Road Safety and the enforcement functions of the Health and Safety Authority. This has been done in two ways: either by expressly excluding new bodies or some of their functions from FOI when they were created, or by transferring functions of bodies covered by FOI to new agencies outside the scope of the Acts. These removals have taken place without any prior notification to or consultation with the Information Commissioner. She has strongly criticised this trend, which she says undermines the ability of FOI to promote openness and transparency in Irish society.²⁰⁸

A Programme for Government commitment to ensure that 'all statutory bodies, and all bodies significantly funded from the public purse' are covered by the FOI Acts would significantly expand the scope of the Acts and reverse these exclusions.

The Government says that public financial bodies including NAMA, the NTMA, the NPRF and the NDFA will be brought within the jurisdiction of the Act, 'subject to the maintenance of strict confidentiality of their engagement with commercial counterparties'.²⁰⁹ In the case of An Garda Síochána, the Government plans to extend the FOI Acts only to its administrative records, subject to 'security exemptions', in line with its Programme for Government commitment.

The Information Commissioner in 2011 urged the Government to extend the remit of the FOI Acts to new public bodies swiftly by way of Ministerial Regulation, while leaving more complex reforms to future legislation.²¹⁰ The Government has instead indicated that it will extend the FOI Acts in legislation.²¹¹

The Programme for Government also pledged to 'restore the FOI Act to what it was before it was undermined by the outgoing Government'.²¹² However, a draft scheme of the proposed legislation provides for only a partial restoration of the original FOI Act of 1997, which was substantially curtailed by an amending Act in 2003.²¹³ Significant restorations in the draft scheme of the **Freedom of Information Bill 2012** include a reduction of the period after which Cabinet records can be considered for release under FOI to the original five years, from ten. However, an exemption for records relating to parliamentary briefings and draft parliamentary questions remains in place.

A restoration of the 1997 Act would entail the removal of up-front fees for non-personal requests that were introduced in 2003. However, the Government instead proposes retaining a request fee of €15 while reducing fees for internal reviews from €75 to €30 and fees for appeals to the Information Commissioner from €150 to €50.²¹⁴

206 Information Commissioner, 'Transparency in the Economy', Address by Emily O'Reilly, Information Commissioner at Fifth Joint Meeting of Archives and Records Association Ireland and Information & Records Management Society Ireland (9 June 2011) <http://www.oic.gov.ie/en/MediaandSpeeches/Speeches/2011/Name,14130,en.htm>

207 Ombudsman & Information Commissioner, 'Open Government – Where are we now?', Address by Emily O'Reilly, Ombudsman & Information Commissioner at the National Association of Citizens Information Centres and Services AGM (27 June 2012) <http://www.oic.gov.ie/en/MediaandSpeeches/Speeches/2012/Name,15853,en.htm>

208 Information Commissioner, Address by Information Commissioner, Emily O'Reilly, on the occasion of the launch of her Annual Report 2010 (4 May 2011) <http://www.oic.gov.ie/en/MediaandSpeeches/Speeches/2011/Name,13942,en.htm>

209 Department of Public Expenditure and Reform, 'Government committed to greater openness, transparency and accountability' Howlin (25 July 2012) <http://per.gov.ie/2012/07/25/government-committed-to-greater-openness-transparency-and-accountability-howlin/>

210 Information Commissioner 4 May 2011, op cit

211 Department of Public Expenditure and Reform 25 July 2012, op cit; see also Freedom of Information Briefing Note, op cit

212 Programme for Government: Government for National Recovery 2011-2016, op cit

213 Freedom of Information Bill 2012 Draft General Scheme <http://per.gov.ie/wp-content/uploads/Draft-consolidated-heads-9-Aug-12-21.pdf>

214 Department of Public Expenditure and Reform 25 July 2012, op cit; see also Freedom of Information Briefing Note, op cit

There has been a steady upward trend in FOI requests in the past three years. A total of 16,517 requests were made to public bodies under the FOI Acts in 2011 – an increase of 8 per cent on the 2010 figure and a 15 per cent increase since 2009. The Office of the Information Commissioner has said it is likely that this increase is at least partially driven by the continuing economic downturn.²¹⁵ Conversely, the number of appeals to the Information Commissioner from people dissatisfied with decisions of public bodies continued to decline over the same period. In 2011, the Office accepted 174 appeals, a decrease of 21 per cent over the 2010 figure and a 28 per cent decrease since 2009.²¹⁶

Table 3 shows that the rate of annual FOI requests has almost recovered to levels reached before the introduction of fees in 2003, which led to an instant drop in usage of the Act.²¹⁷ However, the number of internal reviews within public authorities and appeals to the Information Commissioner remain significantly reduced compared to pre-2003 levels.

Since FOI laws were introduced, there have been signs of a disconnect between their public interest goals and perceptions within the public sector of how they operate in practice.²¹⁸ The stated rationale for introducing fees in 2003 was to prevent abusive or irresponsible requests and appeals and to recover costs.²¹⁹ However, recent evidence suggests that the fees regime costs more to administer than it generates and 'is likely to pose a real barrier to ordinary citizens seeking non-personal information'.²²⁰

According to the think-tank TASC, the estimated €6.9 million administrative costs of operating FOI in 2009 were outweighed by the increased economic efficiencies arising from more transparent decision making.²²¹

The Information Commissioner recently urged public bodies to make more information publicly available through their websites so as to reduce resources required to process FOI requests, including internal and external reviews. While satisfied overall with the 'high level' of cooperation by public bodies with FOI requests, the Commissioner noted some practices that cause concern, including unacceptable delays in releasing records.²²² A review of the management of FOI requests by public bodies, by the Department of Public Expenditure and Reform, began in 2012. This is aimed at improving the operation of FOI and promoting good practice.²²³

The proposed extension of the remits of both the Ombudsman and the Office of the Information Commissioner to a larger number of public bodies will inevitably increase their workload. Both offices are already facing cutbacks as part of wider public sector spending reductions.

In 2011, the Office of the Ombudsman put in place a new organisational structure and significantly reorganised its work processes in order to improve productivity.²²⁴ It said this allowed it to deal with 38 per cent more complaints in 2011 than in 2010.²²⁵ The Ombudsman and the Information Commissioner, as well as SIPO, share corporate service and IT staff. The total number of staff for the three bodies in 2012 was 86, down from 93 in 2009.²²⁶ Their combined budget allocation has fallen from €8.5 million in 2009 to €7.5 million in 2012.²²⁷

215 Office of the Information Commissioner Ireland, Annual Report 2011 (Government of Ireland, 2012): 15 <http://www.oic.gov.ie/en/Publications/AnnualReports/AnnualReport2011/online/index.html>

216 Ibid: 66

217 Information Commissioner, Review of the Operation of the Freedom of Information (Amendment) Act 2003 – An investigation by the Information Commissioner into the effects of the Amendment Act and the introduction of fees on access requests by members of the public (2004) <http://www.oic.gov.ie/en/Publications/SpecialReports/InvestigationsComplianceReportsSection36/File,571,en.pdf>

218 See MacCarthaigh, Muiris, 'Governance and Accountability: The Limits of New Institutional Remedies', in Niamh Hardiman, ed., Irish Governance and Crisis (Manchester: Manchester University Press, 2012): 36

219 Minister for Finance, 'Freedom of Information: The First Decade', 'Opening of 10th Anniversary Conference' Speech by Brian Lenihan, TD, Minister for Finance (15 May 2008) <http://www.oic.gov.ie/en/Reference/10thAnniversaryConference15May2008-FreedomofInformationTheFirstDecade/Name,8529,en.htm>

220 O'Connor, Nat, An Economic Argument for Stronger Freedom of Information Laws in Ireland (TASC, July 2010): 14 <http://www.tascnet.ie/upload/file/An%20Economic%20Argument.pdf>

221 Ibid

222 Office of the Information Commissioner, Annual Report 2010 (Government of Ireland, 2011): 43 http://www.oic.gov.ie/en/Publications/AnnualReports/AnnualReport2010/online/media/information_commissioner_ar_english_web.pdf

223 Department of Public Expenditure and Reform 25 July 2012, op cit; see also Freedom of Information Briefing Note, op cit

224 Office of the Ombudsman, Annual Report 2011, op cit: 29

225 Office of the Ombudsman, Ombudsman Emily O'Reilly submits her Annual Report for year 2011 to both Houses of the Oireachtas (26 June 2012) <http://www.ombudsman.gov.ie/en/News/Media-Releases/2012-Media-Releases/Ombudsman-Emily-O'Reilly-submits-her-Annual-Report-for-year-2011-to-both-Houses-of-the-Oireachtas.html>

226 Office of the Ombudsman, correspondence with author, August 2012. Staff numbers are whole-time equivalent.

227 Office of the Ombudsman, correspondence with author, September 2012

Table 3: FOI Requests, Internal Reviews and Appeals to the Information Commissioner 2000 – 2011

FOI Requests, Internal Appeals and External Reviews 2000 – 2011												
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
FOI Requests Made	13,705	15,428	17,196	18,443	12,597	14,616	11,804	10,704	12,672	14,290	15,249	16,517
Internal Reviews Sought	919	1,274	1,755	1,580	783	581	706	592	622	609	595	589
Appeals Accepted by Information Commissioner	422	387	585	922	333	285	254	248	176	242	220	174

Source: All statistics taken from Annual Reports of the Office of the Information Commissioner

Ireland has not signed the **Council of Europe Convention on Access to Official Documents 2009**, the first binding international treaty on access to official information.²²⁸ The Convention requires signatory states to recognise the right of access for requesters to official documents held by all public authorities and to take necessary measures in domestic law to meet its minimum standards. The Department of Public Expenditure and Reform said in July 2012 that it aims to ratify the Convention as soon as possible.²²⁹ However, it is unclear whether Ireland will be in a position to sign or ratify this Convention while FOI application fees remain in place.²³⁰

Ireland has also not announced its intention to become a member of the recently established global Open Government Partnership (OGP). The OGP requires participating countries to deliver a country action plan developed with public consultation and to commit to independent progress reporting.²³¹

228 Council of Europe Convention on Access to Official Documents (2009) <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>

229 Department of Public Expenditure and Reform, correspondence with author, July 2012

230 Article 7(2) of the Convention states that a fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. See Council of Europe Convention on Access to Official Documents, op cit. See also O'Connor, An Economic Argument for Stronger Freedom of Information Laws in Ireland, op cit: 8

231 See Open Government Partnership <http://www.opengovpartnership.org/>

CIVIL SERVICE/ PUBLIC SECTOR AGENCIES

The depth of the economic and fiscal crisis has prompted calls for fundamental reform of structures of public governance.²³² A new **Department of Public Expenditure and Reform** was created in July 2011, reflecting the political priority lent to increased public sector productivity and efficiency in the management of public finances. This department has taken over the Department of Finance's public expenditure functions and is charged with delivering substantial public service reform.²³³ It includes a **Government Reform Unit** responsible for key Programme for Government commitments, including legislation to protect whistleblowers, restore and extend FOI, establish a statutory register of lobbyists and overhaul and consolidate ethics laws.

The capacity of the Department of Finance has been subject to considerable scrutiny since the financial crisis, given its responsibility for fiscal policy formation. A 2010 expert review of the Department, the Wright report, found that advice it prepared for Cabinet ahead of the 2008 economic crisis provided clear warnings on the risks of pro-cyclical fiscal policy and an over-heated construction sector. However, it also found that the Department lacked sufficient numbers of staff with technical economic skills, was poorly structured, poor on human resources management and often operated in silos with limited information sharing.²³⁴

The Department of Finance announced a major reorganisation of its work in May 2012, including the creation of a banking unit and an economic planning unit with greater focus on risk management, better communications and increased transparency.²³⁵

The Wright report supported the public release of substantially more economic analysis by the Department of Finance. However, it said policy advice to the Minister for Finance in the preparation of the budget should not be subject to release under FOI provisions for at least five years, as public airing of serious policy differences between a Minister for Finance and his advisors could have serious implications for financial markets.²³⁶ The Information Commissioner has challenged this recommendation,²³⁷ arguing that current FOI legislation offers sufficient safeguards to balance the financial and economic interests of the State with the public interest.²³⁸

In 2009, NAMA was set up as a 'bad bank' to acquire and manage largely impaired loans from the main Irish banks in order to achieve maximum return for the taxpayer. It is currently believed to be one of the biggest property companies in the world.²³⁹ Questions about the transparency of NAMA arose in 2011 after a review of the agency was withheld from publication. The review was subsequently released²⁴⁰ following public criticism.²⁴¹

The Commissioner for Environmental Information ruled in 2011 that NAMA is subject to FOI requests under the **Environmental Information Regulations 2007**.²⁴² NAMA is appealing the ruling to the High Court. Regardless of the outcome of this case, NAMA is one of a number of public financial bodies which are to be brought within the scope of FOI laws, subject to strict commercial confidentiality.²⁴³

232 See Boyle, Richard and MacCarthaigh, Muirís, *Fit for Purpose? Challenges for Irish Public Administration and Priorities for Public Service Reform*, State of the Public Service Series, Research Paper No 4 (Dublin: Institute of Public Administration, April 2011) http://www.ipa.ie/pdf/Fit_For_Purpose_New_Report.pdf

233 See Howlin, Brendan, T.D., Minister for Public Expenditure and Reform, 'Reform of the public service', *Administration* 60(1) (2012) <http://www.ipa.ie/pdf/Howlin.pdf>

234 Wright, Rob, *Strengthening the Capacity of the Department of Finance: Report of the Independent Review Panel* (2010, Dublin: Department of Finance): 6 <http://www.finance.gov.ie/documents/publications/reports/2011/deptreview.pdf>

235 Department of Finance, *Department of Finance Statement of Strategy 2011-2014: 2012 revision* (2012) <http://www.finance.gov.ie/documents/publications/reports/2012/finstratstateng.pdf>

236 Wright, op cit: 29-30

237 Information Commissioner 4 May 2011, op cit

238 Under Section 31 of the FOI Act, a request may be refused if access to the record would be expected to have a serious adverse effect on the financial interests of the State or on the ability of the Government to manage the national economy. See Freedom of information Act 1997 <http://www.irishstatutebook.ie/pdf/1997/en.act.1997.0013.pdf>

239 Smyth, Jamie, 'Bad Bank can work for Spain, says NAMA', *Financial Times*, 28 May 2012 <http://www.ft.com/intl/cms/s/0/82c87c36-a5b5-11e1-a3b4-00144feabdc0.html#axzz27n1Qf9IG>

240 Geoghegan, Michael, *Review – Letter and Report to the Minister for Finance*, 6 December 2011 (NAMA, December 2011) http://www.nama.ie/publications/?wpfb_list_page=3

241 See, for example, O'Toole, Fintan, '€72bn Nama 'investment' just none of our business', *The Irish Times*, 1 November 2011 <http://www.irishtimes.com/newspaper/opinion/2011/1101/1224306842630.html>

242 In two separate decisions, the Commissioner for Environmental Information ruled that NAMA and Anglo Irish Bank were both public authorities subject to freedom of information requests under Environmental Information Regulations 2007. See Office of the Commissioner for Environmental Information Ireland, *Decisions of the Commissioner: CEI/10/0005 – Mr Gavin Sheridan & NAMA*, 13 September 2011 <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name,14411,en.htm> and *Case CEI/10/0007- Mr Gavin Sheridan & Anglo Irish Bank*, September 2011 <http://www.ocei.gov.ie/en/DecisionsoftheCommissioner/Name,14410,en.htm>

243 Department of Public Expenditure and Reform 25 July 2012, op cit

A **National Procurement Service** (NPS) set up in 2009 brings some centralised oversight of procurement practice in the public sector. The NPS operates within the Office of Public Works as a central operational body responsible for procuring common goods and services across the public sector. Its remit is to achieve greater value for money and efficiency; provide professional procurement advice to central Government and non-commercial public sector bodies; and develop training and education, as well as web-based e-procurement.²⁴⁴ The NPS replaces the Government Supplies Agency. The National Public Procurement Policy Unit (NPPPU) attached to the Department of Finance remains responsible for procurement policy. The Comptroller and Auditor General (C&AG) in 2010 found that, while the NPS had been slow in becoming established, it had set challenging targets and started to identify spending areas to be targeted.²⁴⁵ A recent Public Service Reform Plan sets out further plans to accelerate procurement reform,²⁴⁶ some of which are already being implemented.²⁴⁷

In 2010, procurement guidelines were amended to allow small and medium enterprises to compete for more public contracts advertised on the eTenders website, the principle portal for public sector contracts.²⁴⁸ The NPS has provided training for procurement officers on this issue.²⁴⁹ Reform of public sector construction work procurement has been carried by the NPPPU.²⁵⁰

The **Competition Authority** has reported an increase in complaints about the procurement practices of local authorities, government departments and other public agencies. The authority said the complaints did not appear to show breaches of competition law. However, it was concerned that public agencies were not dealing with complaints about pre-qualification criteria in a consistent manner.²⁵¹ Contracting authorities are expected to set pre-qualification criteria that are justifiable and proportionate to the needs of the contract.²⁵²

The poor state of public finances has led to substantial reductions in public sector funding, which has impacted on the anti-corruption efforts of all publically funded bodies, including law enforcement agencies and watchdog authorities. A moratorium on recruitment introduced in 2009 has already led to reductions in public service staff numbers in key oversight agencies, and more staff reductions are planned (see also Ombudsman, Law Enforcement Agencies, Supreme Audit Institution, Anti-Corruption Agency).²⁵³

244 In 2001, GRECO expressed concerns about the absence of a central body responsible for all public procurement procedures. See GRECO, First Evaluation Round: Evaluation Report on Ireland (Council of Europe, December 2001): 26 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2001\)9_Ireland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2001)9_Ireland_EN.pdf)

245 Comptroller and Auditor General, Accounts of the Public Services 2010: Central Government and Revenue – Report of the Comptroller and Auditor General Volume 1 (Government of Ireland, 2011): 99 http://www.audgen.gov.ie/documents/annualreports/2010/2010_Volume_1_EN%281.01%29.pdf

246 Department of Public Expenditure and Reform, Public Service Reform (17 November 2011) <http://reformplan.per.gov.ie/files/2012/01/Public-Service-Reform-28112011.pdf>

247 Department of Public Expenditure and Reform, Circular --06/12: Public Procurement (Framework Agreements) (25 July 2012) http://www.procurement.ie/sites/default/files/dper_circular_6-2012-1_public_procurement_framework_agreements.pdf

248 eTenders Public Procurement, <http://www.etenders.gov.ie>

249 Monitoring Committee, Action Plan for Jobs 2012 – Second Progress Report, http://www.djei.ie/publications/2012APJ_Secund_Progress_Report.pdf

250 See Construction Procurement Reform, Capital Works Management Framework <http://constructionprocurement.gov.ie/capital-works-management-framework/>

251 Competition Authority, correspondence with author, November 2011

252 Department of Finance, Circular 10/10: Facilitating SME Participation in Public Procurement (13 August 2010) http://www.procurement.ie/sites/default/files/circular_10-10_guidance_for_public_contracting_authorities.pdf

253 The Government plans to reduce the number of public service employees by 37,000 by 2015. This is approximately 12 per cent of the workforce.

LOCAL AND REGIONAL GOVERNMENT

The risk of fraud and corruption within local government is heightened by a lack of robust safeguards against planning corruption and inadequate measures to combat fraud and control conflicts of interest.

The Mahon tribunal, which focused on corrupt transactions within the planning system in county Dublin in the decade up to the late 1990s, identified ‘systemic weaknesses’ in the **planning system** which facilitated corrupt activities.²⁵⁴ In its final report in 2012 it found that eleven local government councillors received corrupt payments from various lobbyists and developers to secure their support for land rezoning in the early 1990s.²⁵⁵

Elected members of local authorities play a key role in rezoning land for development purposes which can greatly increase its value for developers. The tribunal said that the role of elected members in regulating planning and development has since been significantly curtailed and is subject to more checks and balances.²⁵⁶ In addition, the imposition of an 80 per cent windfall tax on profits or gains resulting from land rezoning in the **National Asset Management Agency Act 2009** is likely to reduce incentives to make corrupt payments to influence land zonings.²⁵⁷

While gaps in transparency and accountability in planning at local level have been reduced in recent years, the tribunal found that they have not been eliminated. In particular, the tribunal expressed concern about changes in the planning system that have resulted in the over-centralisation of power in the hands of the Minister for the Environment, without sufficient checks and balances.²⁵⁸ To address this, it said the Minister’s planning enforcement powers should be transferred to an independent Planning Regulator empowered to investigate possible systemic problems, including those raising corruption risks. The tribunal said the Regulator should also train elected members on planning and development.

The Government accepted ‘in principle’ the tribunal’s recommendation for an independent Planning Regulator and said it would publish outline proposals in 2012.²⁵⁹ However, it has rejected several of the tribunal’s other recommendations in relation to planning matters.

The existing self-regulatory system for implementing **conflict of interest** provisions at local government level has been found by the Mahon tribunal to lack independence, credibility and effectiveness.²⁶⁰ Currently, local authorities are primarily responsible for supervising and enforcing conflict of interest provisions as part of their ethics framework.²⁶¹ Under the **Local Government Act 2001**, each local authority is obliged to appoint an **Ethics Registrar** who is responsible for familiarising those subject to the Act with its provisions and maintaining declaration of interests. The Registrar must notify possible breaches of the ethics framework to the Manager and/or Cathaoirleach (Chair) who in turn must consider what action, if any, should be taken. There is no compulsion on local authority members or employees, other than the Ethics Registrar or Manager, to report suspicions of corruption or breaches of any of the relevant codes or legislation. Managers/Cathaoirleach do not have any specific statute-based investigative powers and there is no formal complaint system or whistleblower protection. The tribunal said it was ‘extremely doubtful’ that a Cathaoirleach or Manager has the necessary experience and/or resources to investigate a possible infringement.²⁶²

All local government councillors and certain employees are required to furnish annual statements of declarable interests to their local Ethics Registrar. This disclosure requirement is seen as one of the main ways of identifying possible conflicts of interests. The statements are maintained in registers which are available for inspection by the public.

254 Mahon, op cit: 2546

255 See Mahon, Justice Alan, *The Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments* (Government Publications Office, 2012) <http://www.planningtribunal.ie/images/finalReport.pdf>

256 Ibid: 2517

257 Ibid: 2546

258 Ibid: 2519

259 See *Tribunal of Inquiry into Certain Planning Matters and Payments* (Mahon Tribunal) – Response to Final Report Recommendations, op cit

260 Mahon, op cit: 2605

261 Conflicts of interest at local level are regulated by Part 15 of the *Local Government Act 2001* and its related codes of conduct.

262 Mahon, op cit: 2605

As of July 2012, only five of the 34 local authorities surveyed by TI Ireland had published councillors' declarations of interests online.²⁶³

The Mahon tribunal recommended a radical overhaul of the system for enforcing conflict of interest measures in local government, as well as increased emphasis on prevention through training, education and research (at both local and national level).²⁶⁴

The recommendations include giving SIPO a supervisory role in the enforcement process, with the power to both take over existing investigations and initiate its own; introducing a formal complaint procedure with whistleblower protection; and requiring local authorities to publish information on the application and enforcement of conflicts of interest measures in their annual reports. The Government has said elements of these recommendations could be considered as part of its action plan for a revised ethical framework (see also Anti-Corruption Agency).²⁶⁵

Ireland's property bubble was fuelled by poor planning decisions which resulted in excessive zoning of land for development and created a substantial oversupply of housing, offices, hotels and retail space. In addition, housing developments were built on inappropriate sites and to poor construction standards. Following a series of complaints about planning irregularities, the Government ordered an external review into planning at seven local authorities in 2010. This process was downgraded by the current administration to an internal review. In 2012, that review found 'deficiencies', including maladministration and weaknesses in implementing planning law, a lack of transparency over decisions by planning authorities and an over-emphasis on the input of developers into local area plans.²⁶⁶

263 Results of a survey of the 34 local authority websites carried out by TI Ireland in July 2012. The five local authorities that had their Register of Interests online were Dublin City Council, Galway County Council, Monaghan County Council, Waterford City Council and Wicklow County Council. Although the law provides that these declarations of interest are to be made available to the public, it does not oblige local authorities to make them available online.

264 Mahon, op cit: 2606

265 See Tribunal of Inquiry into Certain Planning Matters and Payments (Mahon Tribunal): Response to Final Report Recommendations, op cit

266 Department of the Environment, Community and Local Government, Planning Review Report (2012) <http://www.environ.ie/en/DevelopmentHousing/PlanningDevelopment/Planning/News/MainBody,30479,en.htm>

However, the review found no evidence of systemic corruption or abuse of public office by officials in the planning system. The Government said it would implement the review's 12 proposals for reform of the planning system, including legislative changes aimed at making the planning process more transparent.²⁶⁷

Local authorities are expected to develop and publish effective **Fraud and Corruption Alert and Contingency Plans** setting out their strategy and corporate policy as well as providing a guide to members, management, employees and others.²⁶⁸ A 2010 internal audit found that 23 out of 34 local authorities had such plans in place, with some only in draft format.²⁶⁹ In addition, a TI Ireland survey in July 2012 found that only two of the 34 local authorities had such plans available on their websites.²⁷⁰

The first local government official convicted of a corruption offence in recent decades was sentenced in June 2012.²⁷¹ Fred Forsey Jnr, a former town councillor, was jailed for six years, with two years suspended, on six counts of receiving corrupt payments totalling €80,000 from a property developer in 2006.²⁷²

267 See Department of the Environment, Community and Local Government, Minister O'Sullivan Publishes Planning Review Report and Announces Planned Appointment of Independent Expert (12 June 2012) <http://www.environ.ie/en/DevelopmentHousing/PlanningDevelopment/Planning/News/MainBody,30479,en.htm>

268 A 2006 Report by the Value for Money Unit at the Department of the Environment recommended that local authorities develop fraud and corruption alert and contingency plans. See Value for Money Unit, Local Government Audit Service (Department of the Environment, Heritage and Local Government), Follow Up Report on the Development of Internal Audit in Local Authorities, (Dublin: Stationery Office, 2006) <http://www.environ.ie/en/LocalGovernment/LocalGovernmentAuditService/PublicationsDocuments/FileDownload,1909,en.pdf>

269 Value for Money Unit, Local Government Audit Service, Progress Report on the Implementation of the Recommendations Contained in VFM Report No.23 – Follow Up Report on the Development of Internal Audit in Local Authorities (Department of the Environment, Heritage and Local Government, 2010) <http://www.environ.ie/en/LocalGovernment/LocalGovernmentAuditService/PublicationsDocuments/FileDownload,23179,en.pdf>

270 In July 2011, TI Ireland surveyed the websites of all 34 local authorities. This found that two local authorities – Roscommon County Council and Westmeath County Council – had published their Fraud and Corruption Alert and Contingency Plans online.

271 'Ex-FG councillor gets six-year jail term for taking €80,000 in bribes', The Irish Times, 28 June 2012 <http://www.irishtimes.com/news/paper/ireland/2012/0628/1224318890576.html>

272 Ibid

LAW ENFORCEMENT AGENCIES

Irish law enforcement agencies have undertaken a number of important investigations since 2009. The 2008 banking crisis led to criminal investigations into the affairs of **Anglo Irish Bank** by both the GBFI and the ODCE.²⁷³ By June 2012, the ODCE had sent nine files to the DPP in relation to six separate but interlinked issues arising from the Anglo investigations. The investigations have focused largely on a series of loans to directors and a so-called 'golden circle' of business investors to allow them to buy the bank's own shares.²⁷⁴ They relate to suspected breaches of company law as well as fraud-related offences of false accounting, deception and market abuse.

The first charges were pressed in July 2012 when three former Anglo Irish bankers were charged with breaches of section 60 of the **Companies Act 1963**.²⁷⁵ These are the first charges to date under this section of the legislation. More charges are expected arising from the Anglo investigation, which was nearing completion in mid-2012.²⁷⁶ The three men were Mr Seán Fitzpatrick, the bank's former chairman and chief executive; Mr William McAteer, its former finance director; and Mr Pat Whelan, its former head of operations.

The ODCE said it allocated most of its resources in 2010 to the Anglo Irish Bank investigation, the largest and most complex it has undertaken in its eleven year history.²⁷⁷

Frustration at the slow pace of progress in the four year investigation has been voiced by the Commercial Court's most senior judge, Mr Justice Peter Kelly, as well as other senior public figures.²⁷⁸ The Director of Corporate Enforcement defended his office's handling of the investigation, pointing out that its counterpart in the UK, the Serious Fraud Office, takes on average four to six years to complete its investigations.²⁷⁹

The demands of the Anglo Irish investigation, as well as high levels of corporate insolvency rates, impacted on the ODCE's overall results for 2010, which it described as 'subdued'.²⁸⁰ This is borne out by the sizeable drop in the number of criminal enforcement cases that the Office has been involved in in recent years for breaches of company law. These fell from 16 in 2007 to four in 2010 and six in 2011.²⁸¹ In 2011, the Office also secured its first custodial sentence to date in relation to a company law offence.²⁸²

The Office was allocated five additional administrative staff and five additional gardaí to assist in the Anglo investigation. It had 45 full time staff in 2008 and 50 in 2011, including 12 gardaí seconded from the GBFI. Its annual expenditure has decreased from €4.34 million in 2008 to €3.4million in 2011.²⁸³

New powers for law enforcement agencies to investigate corporate or white collar crime were contained in the **Criminal Justice Act 2011**.²⁸⁴ The legislation was fast-tracked in a bid to help the Anglo Irish Bank investigations which had been hampered by the refusal of 'reluctant witnesses' to cooperate with the ODCE.

273 Anglo Irish Bank was merged in 2011 with Irish Nationwide Building Society. The entity was subsequently renamed the Irish Bank Resolution Corporation.

274 Office of the Directorate of Corporate Enforcement, Annual Report 2010 (Dublin: Stationery Office, 2011): 19 http://www.odce.ie/en/media_general_publications_article.aspx?article=408716b9-159a-464f-9cc3-aebf9204178a

275 Section 60 of the Companies Act 1963 prohibits a company from providing financial assistance for the purchase of the company's own shares, unless the company undergoes the 'whitewash procedure'. See <http://www.irishstatutebook.ie/1963/en/act/pub/0033/print.html>

276 Office of the Director of Corporate Enforcement, Annual Report Press Statement: Launch of the ODCE Annual Report for 2011, 1 June 2012 http://www.odce.ie/en/media_press_releases_article.aspx?article=978aa26f-3871-4aa3-956b-98e75f45d8cb

277 Office of the Director of Corporate Enforcement, Press Statement: Launch of the ODCE Annual Report for 2010, 2 June 2011 http://www.odce.ie/en/media_general_publications_article.aspx?article=408716b9-159a-464f-9cc3-aebf9204178a

278 See Kilfeather, Vivion, 'Judge voices concern at delays in Anglo probe', *The Irish Examiner*, 5 May 2011 <http://www.irishexaminer.com/ireland/kfojmhojcwau/rss2/> and Minister for Justice, Equality and Defence 8 April 2012, op cit

279 Office of the Director of Corporate Enforcement, Press Statement: Launch of the ODCE Annual Report for 2010, op cit

280 Office of the Director of Corporate Enforcement, Annual Report 2010, op cit: 3

281 Figures taken from ODCE Annual Reports 2009-2011, see <http://www.odce.ie>

282 The case included the filing of false information in the Companies Registration Office contrary to Section 242 of the Companies Act 1990. See Office of the Directorate of Corporate Enforcement, Annual Report 2011 (Government of Ireland, 2012): 4 http://www.odce.ie/en/media_general_publications_article.aspx?article=a59cffe6-1435-4969-a97d-ca1822c64c21

283 ODCE, interview with author, August 2012

284 The Act was commenced on 8 August 2011.

The Act compels people with information or evidence in relation to the commission of specific crimes to cooperate with an investigation. It also allows gardaí to make more effective use of detention periods.²⁸⁵

The ODCE said the new powers led to 'substantial cooperation' with its investigation by reluctant witnesses by the end of 2011.²⁸⁶ The Act also introduces protection for **whistleblowers** reporting suspected white-collar offences covered by the law, regardless of what sector they work in. It provides sanctions of up to two years in prison for employers who penalise employees – but not contractors – for whistleblowing. The Act creates a new offence of withholding information from gardaí, which carries a five-year maximum prison term.²⁸⁷ However, expert concerns have been raised that this withholding offence is much too broad.²⁸⁸

In addition, a measure to assist juries in understanding complex evidence and financial information in fraud trials was introduced in August 2011.²⁸⁹ Juries can now be provided with copies of documents, including charts, graphs and transcripts, to assist them in their deliberations. An equivalent provision in the **Company Law Enforcement Act 2001** was commenced in September 2011.²⁹⁰ A similar provision for juries during trials for breaches of competition law was introduced in July 2012.²⁹¹

The ODCE was given extended powers of access, search and seizure in the **Companies (Amendment) Act 2009**, which was also introduced to help it with the Anglo investigation (see also Business Sector).²⁹²

An Garda Síochána was criticised by the Mahon tribunal for failing to adequately investigate allegations of corruption and bribery against politicians and senior public officials in 1989 and 1990, part of the period when the tribunal found corruption in public life was rampant. In the case of the now deceased TD, Mr Liam Lawlor, the tribunal said it was likely that his position as a parliamentarian was a factor in the decision taken by investigating gardaí not to interview him.²⁹³ The tribunal found that, while an elected representative, Mr Lawlor conducted a personal business in the course of which he corruptly sold his expertise, knowledge and influence as both a local government councillor and a TD for personal financial reward.²⁹⁴ According to one expert commentator, the reason for apparent Garda inaction over so many years in relation to corruption in public life is that the force has almost always seen itself in a 'hands-off' position regarding the political establishment.²⁹⁵

It should also be noted that the findings of the final reports of the Moriarty and Mahon tribunals have been reviewed separately by senior Garda teams. However, any future criminal prosecutions may be hampered by the fact that evidence given by an individual before a tribunal cannot be used against the person in any subsequent criminal proceedings.²⁹⁶

An Garda Síochána is currently directly answerable, through the Minister for Justice, to central government. The Government also retains control over Garda Síochána appointments from the rank of Superintendent. In the wake of the Mahon tribunal report, middle ranking gardaí called for measures to protect the force from Government interference.

285 Section 15 enables a member of An Garda Síochána to apply to the District Court for an order requiring a person to produce specified documents and to prepare answers to questions relating to the commission of certain offences. See Criminal Justice Act 2011 <http://www.irishstatutebook.ie/pdf/2011/en.act.2011.0022.PDF>

286 Office of the Director of Corporate Enforcement, Annual Report 2011, op cit: 20 http://www.odce.ie/en/media_general_publications_article.aspx?article=a59cffe6-1435-4969-a97d-ca1822c64c21

287 Criminal Justice Act 2011, Section 19 <http://www.irishstatutebook.ie/pdf/2011/en.act.2011.0022.PDF>

288 McDowell, Michael, 'Law means we are all informers', Sunday Independent, 21 August 2011 <http://www.independent.ie/opinion/analysis/law-means-we-are-all-informers-2853784.html>

289 This measure is provided for under Section 57 of the Criminal Justice (Theft and Fraud Offences) Act 2001, which was commenced on 1 August 2011 by the Criminal Justice (Theft and Fraud Offences) Act 2001 (Commencement) Order 2011 (S.I. No. 394 of 2011). See <http://www.irishstatutebook.ie/pdf/2001/en.act.2001.0050.pdf>

290 S.I. No. 487 of 2011 – Company Law Enforcement Act 2001 (Section 110) (Commencement) Order 2011 <http://www.irishstatutebook.ie/pdf/2011/en.si.2011.0487.pdf>

291 Section 10 of the Competition Act 2002 was commenced in July 2012.

292 Companies Amendment Act 2009 <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0020.pdf>

293 Mahon, op cit: 203

294 Ibid: 2514

295 Brady, Conor, 'Garda must be freed from control of politicians', The Irish Times, 28 March 2012 <http://www.irishtimes.com/newspaper/opinion/2012/0328/1224314008364.html>

296 Under Section 5 of the Tribunals of Inquiry (Evidence) (Amendment) Act 1979, any statement or admission made by a person before a tribunal is not admissible as evidence against that person in any subsequent criminal proceedings. See <http://www.irishstatutebook.ie/1979/en/act/pub/0003/index.html>

The Association of Garda Sergeants and Inspectors proposed the establishment of an **independent policing authority** to run the force, including appointing senior officers and allocating budgets.²⁹⁷ The Department of Justice said it has no plans to introduce such an authority.²⁹⁸ While politicians are prohibited from interfering with the course of justice,²⁹⁹ the susceptibility of An Garda Síochána to political interference was highlighted in February 2010 when it emerged that a serving politician had contacted gardaí about a case involving a constituent. Mr Trevor Sargent promptly resigned as Minister of State, acknowledging that his behaviour could be 'deemed not lawful'.³⁰⁰

For the first time, the fight against white collar crime is prioritised in An Garda Síochána's Annual Policing Plan 2012.³⁰¹ However, it is inevitable that ongoing public service staff reductions will have implications for the anti-corruption efforts of all law enforcement agencies. The number of staff working for An Garda Síochána is to be reduced to 13,000 by the end of 2014 – a return to 2006 staffing levels.³⁰² The strength of An Garda Síochána at the end of 2011 was just under 13,900.³⁰³

MEDIA

Ireland's restrictive libel laws were reformed with the **Defamation Act 2009**. It creates a new statutory defence of 'fair and reasonable publication on a matter of public interest'. It also allows a newspaper to publish an apology without this being regarded as an admission of liability.³⁰⁴ This change has the potential to promote out of court settlements by allowing a defendant to publish an apology without fearing that it will undermine any substantive defence offered in a future court hearing. The **Press Ombudsman** has stated that the apology clause 'represents a sea-change that has the possibility to create new levels of trust and credibility between publications and their readers'.³⁰⁵

The **Press Council of Ireland** and the **Office of the Press Ombudsman** have been operating since 2007/8 but were given formal legal recognition under the **Defamation Act 2009**.³⁰⁶ The **Press Council** oversees professional principles embodied in a voluntary **Code of Practice** for newspapers and magazines. Complaints from members of the public about breaches of this code are investigated by the **Press Ombudsman**, who seeks to resolve them by conciliation. If conciliation is unsuccessful, the complaint is then referred to the Press Ombudsman for adjudication. Formal decisions by the Press Ombudsman on complaints can be appealed by either party to the Press Council, whose decision is final. The number of annual complaints to the Press Ombudsman has remained relatively steady since 2008. It received 343 complaints in 2011, bringing the total in its first four years of operations to 1,381.³⁰⁷ The largest single category of complaints made since 2008 relates to breaches of the Code of Practice requirement for truth and accuracy in reporting.

A **Privacy Bill 2006** was put on hold in 2008 in order to give the two new bodies the opportunity to prove their effectiveness in defending citizens against media intrusion on a self-regulatory basis.³⁰⁸

297 O'Keeffe, Cormac, Gardai claim Government has too much power over policing, Irish Examiner, 4 April 2012 <http://www.irishexaminer.com/archives/2012/0404/ireland/gardai-claim-government-has-too-much-power-over-policing-189358.html>

298 Houses of the Oireachtas, Dáil Debates, Vol. 764 No. 3, 8 May 2012 <http://debates.oireachtas.ie/dail/2012/05/08/00041.asp>

299 Under Section 6(1)(a) of the Prosecutions of Offences Act 1974, it is unlawful to communicate with a member of the Garda Síochána for the purposes of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings. See <http://www.irishstatutebook.ie/1974/en/act/pub/0022/print.html>

300 Trevor Sargent, Sargent resigns as Minister of State (3 February 2010) <http://trevorsargent.ie/2010/02/23/sargent-resigns-as-minister-of-state/>

301 See An Garda Síochána, Policing Plan 2012 (2012) <http://www.garda.ie/Documents/User/An%20Garda%20S%20C3%ADoch%20A1na%20Policing%20Plan%202012%20English%20.pdf>

302 Houses of the Oireachtas, Dáil Debates, Vol. 753 No. 3, 7 February 2012 <http://debates.oireachtas.ie/dail/2012/02/07/00003.asp>

303 An Garda Síochána, Annual Report 2011 (2012): 14 <http://www.garda.ie/Documents/User/Annual%20Report%202011%20English.pdf>

304 The Defamation Act 2009 <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0031.pdf>

305 Press Ombudsman, Speech by Professor John Horgan, Press Ombudsman, at launch of 2009 Annual Report (24 May 2010) <http://www.pressombudsman.ie/press-releases/speech-by-professor-john-horgan-press-ombudsman-at-launch-of-2009-annual-report-.1896.html>

306 See S.I. No 163/2010 – Defamation Act 2009 (Press Council) Order 2010 <http://www.irishstatutebook.ie/2010/en/si/0163.html>

307 Press Council of Ireland and Office of the Press Ombudsman, 2011 Annual Report (2012): 20 http://www.presscouncil.ie/_fileupload/PCI-PO%20Annual%20Report%202011.pdf

308 Minister of Finance, Address by Minister Lenihan at Official Launch of PCI (9 January 2008) <http://www.presscouncil.ie/press-releases/address-by-minister-lenihan-at-official-launch-of-pci.1110.html>

While a privacy law is not contained in the current Programme for Government, the Government has said that it would re-examine the issue in 2013.³⁰⁹ The original Bill included a new tort of violating the privacy of the individual, with remedies including injunctions and damages.

In the broadcast media arena, a new statutory body was established in 2009 to regulate commercial and public service broadcasting and handle public complaints.³¹⁰ The **Broadcasting Authority of Ireland (BAI)** can investigate and rule on complaints relating to issues of fairness, objectivity and impartiality. The BAI conducted an inquiry into State broadcaster Radio Telefís Éireann (RTÉ) in 2011 after it falsely accused a priest of rape and fathering a child in Africa. The inquiry found significant failure of editorial and managerial controls in the making of the Prime Time Investigates programme, Mission to Prey.³¹¹ It determined that RTÉ had breached its statutory responsibilities relating to fairness and privacy and imposed a €200,000 fine. The broadcaster responded to the BAI's recommendations with new editorial standards, guidelines and structures.³¹²

Signs of concentration of ownership in the Irish media market have been noted in recent years, with indications that they may be accelerated by the economic downturn.³¹³ In 2012, telecoms businessman Denis O'Brien became the largest shareholder in Ireland's biggest newspaper group, Independent News and Media (INM), which owns the country's two best-selling newspapers, the Irish Independent and the Sunday Independent, as well as other national and regional titles. He increased his 22 per cent stake to 29.9 per cent – the maximum he is allowed to own without being obliged to make an outright bid for the group.

Mr O'Brien also owns the Communicorp group, which owns or part-owns six Irish radio stations.³¹⁴

The recent departure of two high-profile radio hosts from sister stations owned by Mr O'Brien led to concerns about **editorial independence**.³¹⁵ Investigative journalist Sam Smyth was dismissed from Today FM in 2011.³¹⁶ The company insisted the decision was due to falling ratings and was not linked to a court action taken against the journalist by Mr O'Brien over remarks he made regarding the Moriarty tribunal.³¹⁷ Mr Smyth, who also worked for the Irish Independent, has written extensively about Mr O'Brien's involvement with the tribunal. The tribunal found that Mr O'Brien made payments to a Minister who had helped his business win a state mobile phone licence competition (see also Political Parties).³¹⁸ Mr O'Brien has rejected the tribunal's findings. He has also threatened or initiated legal actions against some 17 journalists and media groups since 1998, according to the National Union of Journalists (NUJ).³¹⁹

Within weeks of Mr Smyth's dismissal, another broadcaster, Eamon Dunphy, quit his job at Newstalk 106, accusing Mr O'Brien of despising journalism.³²⁰ He also alleged that journalists were being encouraged to put a positive spin on the news agenda.³²¹ Station management rejected Mr Dunphy's claims and maintained that they were made as a direct result of a request to Mr Dunphy to take a reduction in his fees.³²²

309 Minister for Justice, Equality and Defence, Private Members Business, Seanad Éireann – 28 March 2012 Privacy Bill 2012 (Second Stage) Speech by Mr. Alan Shatter, T.D., Minister for Justice, Equality and Defence (28 March 2012) <http://www.justice.ie/en/JELR/Pages/SP12000079>

310 It replaces the Broadcasting Commission of Ireland and the Broadcasting Complaints Commission.

311 The Broadcasting Authority of Ireland, Statement of Findings Issued Pursuant to Section 55 (2) of the Broadcasting Act 2009, (4 May 2012) http://www.bai.ie/wordpress/wp-content/uploads/20120504_StatementofFindings_vFINAL_SO.pdf

312 RTÉ, RTÉ accepts BAI Findings and implements reforms (4 May 2012) <http://www.rte.ie/documents/about/RTE-STATEMENT-on-BAI-Findings-Mission-To-Prey.pdf>

313 Advisory Group on Media Mergers, Report to the Tanaiste and Minister for Enterprise, Trade and Employment, Mary Coughlan T.D. (2008) <http://www.djei.ie/publications/commerce/2008/advisorygrouponmediamergersreport2008.pdf>

314 The company controls Today FM, Newstalk, Spin 103.8 and 98FM and has a substantial interest in Spin South West and Phantom FM.

315 Cullen, Paul, 'Fear and Loathing as Fear and loathing as heavyweight presenters quit O'Brien radio empire', The Irish Times, 5 November 2011 <http://www.irishtimes.com/newspaper/ireland/2011/1105/1224307105254.html>

316 Taylor, Charlie, 'Smyth show to end on Today FM', The Irish Times, 16 October 2011 <http://www.irishtimes.com/newspaper/breaking/2011/1016/breaking9.html>

317 Taylor, Charlie, 'Today FM says decision to drop Smyth from show is not linked to court case', The Irish Times, 17 October 2011 <http://www.irishtimes.com/newspaper/ireland/2011/1017/1224305920570.html>

318 Moriarty, Part II Volume 1, op cit, 94-220

319 RTÉ Radio 1, Drivetime, 4 November 2011

320 Taylor, Charlie, 'Dunphy launches attack on O'Brien', The Irish Times, 30 October 2011 <http://www.irishtimes.com/newspaper/breaking/2011/1030/breaking12.html>

321 O'Doherty, Caroline, 'Newstalk hits back at Dunphy's 'false and malicious' claims', Irish Examiner, 1 November 2011 <http://www.irishexaminer.com/ireland/politics/newstalk-hits-back-at-dunphys-false-and-malicious-claims-172470.html>

322 Ibid

Mr O'Brien has said allegations against him of improper editorial influence are malicious.³²³ He also claimed that hostility within INM over his shareholding led to him being 'punished' by a nasty campaign of coverage by the company's newspapers. INM has rejected Mr O'Brien's charges and insisted that the businessman sought to interfere with its coverage of the Moriarty tribunal by Mr Smyth in 2010.³²⁴ Leaked INM memos detail efforts by one of Mr O'Brien's representatives on the board of INM to influence coverage of the tribunal in its final stages.³²⁵

These disputes aside, Mr O'Brien's dominant market position has provoked intense discussion about the need to ensure diversity and plurality in the media landscape by regulating cross-media ownership.³²⁶ Concerns have also been voiced that Mr O'Brien's dominant market position could prevent thorough examination and discussion of his extensive business affairs in Ireland.³²⁷

The BAI in July 2012 examined Mr O'Brien's interests in INM as part of its obligations under the **Broadcasting Act 2009** to guard against undue concentration of communications **media ownership**.³²⁸ It decided that it did not have grounds to take any immediate action, on the basis that Mr O'Brien does not 'control' INM but rather has a substantial interest in the company.³²⁹ Had Mr O'Brien been found to have control of INM, he could have been ordered by the broadcast regulator to sell some of his radio holdings.

The NUJ expressed concerns that, despite Mr O'Brien's significant media interests, the BAI was powerless to take any action. It said the BAI's decision underlined the need for an urgent review of media ownership policy, including new legislation and the replacement of the 'deeply flawed' Broadcasting Act 2009.³³⁰

Difficulties with the present system to control undue concentration of media ownership were identified in a 2008 report by a Government-appointed Advisory Group on Media Mergers. These include concerns about the primary role played by the Competition Authority despite its lack of expertise in issues of plurality or diversity and the absence of clear statutory mechanisms to protect the public interest in media plurality.³³¹ It recommended a statutory definition of media plurality in terms of diversity of both ownership and content and a clear statutory test to be applied to media mergers by the relevant Minister in the public interest. The Government has said draft legislation in this area will be published in 2012.³³²

In a landmark case involving protection of **journalists' sources**, the Supreme Court in 2009 overturned a High Court order requiring The Irish Times to disclose to the Mahon tribunal the source of a leaked tribunal document.³³³ The document showed that the tribunal was investigating payments to former Taoiseach (Prime Minister) Mr Bertie Ahern. Despite winning its Supreme Court appeal, The Irish Times had costs awarded against it.³³⁴ The newspaper is challenging the costs order before the European Court of Human Rights, pointing to its 'chilling effect' on the exercise of **press freedom**.³³⁵

Three Irish newspapers closed in 2011. The Sunday Tribune and the Irish Daily Star Sunday ceased publishing due to deteriorating market conditions, while the Irish office of the British News of the World closed following a major phone hacking scandal in the UK. The Press Council of Ireland has stated that there is no evidence of the systemic use of phone hacking by the media in Ireland.³³⁶

323 O'Brien, Denis, 'Depiction of me as enemy of journalism undeserved', *The Irish Times*, 15 November 2011 <http://www.irishtimes.com/newspaper/opinion/2011/1115/1224307583083.html>

324 Hancock, Ciarán, 'INM rejects O'Brien claims he is being 'punished' by company's coverage', *The Irish Times*, 17 November 2011 <http://www.irishtimes.com/newspaper/finance/2011/1117/1224307704921.html>

325 Broadsheet.ie, 'A Smoking Gun, You Say?' (28 May 2012) [Leaked phone transcripts and correspondence between the then CEO of INM, Mr Gavin O'Reilly and Mr Leslie Buckley, who was then Mr O'Brien's representative to the INM board] <http://www.broadsheet.ie/tag/denis-obrien/page/2/>

326 RTÉ, 'Government concerned over diversity of Irish media ownership', 20 April 2012 <http://www.rte.ie/news/2012/0420/govt-voices-concern-over-irish-media-ownership.html>

327 Keena, Colm, 'Home-grown media baron casts a long shadow over Irish society', *The Irish Times*, 21 April 2012 <http://www.irishtimes.com/newspaper/opinion/2012/0421/1224315007548.html>

328 Sections 66(2)(i) and 137(2)(i) of the Act require the BAI to have regard to 'the desirability of allowing any person, or group of persons, to have control of, or substantial interests in, an undue amount of the communications media in' a specified area. See the Broadcasting Act 2009 <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0018.pdf>

329 BAI, BAI Statement on the media interests of Mr Denis O'Brien (26 July 2012) <http://www.bai.ie/?p=2649>

330 NUJ, BAI statement on O'Brien sparks call for urgent review (27 July 2012) <http://www.nuj.ie>

331 Advisory Group on Media Mergers, op cit: 5, 56

332 Edwards, Elaine, 'Media law to 'reflect public interest' ', *The Irish Times*, 27 July 2012 <http://www.irishtimes.com/newspaper/breaking/2012/0727/breaking2.html>

333 Mahon Tribunal v Keena & anor [2009] 2 ILRM 373, [2009] IESC 64 (31 July 2009)

334 Mahon Tribunal v Keena & anor [2009] IESC 78 (26 November 2009)

335 European Convention on Human Rights, Article 10. See http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf

336 Press Council of Ireland and Office of the Press Ombudsman, 2011 Annual Report, op cit: 4

SUPREME AUDIT INSTITUTION

The Comptroller and Auditor General (C&AG) is Ireland's supreme audit institution and represents a key pillar in its National Integrity System. The C&AG's office is constitutionally independent and is responsible for the financial auditing of **public bodies**, including all government departments and agencies, and reports to parliament on the management of public business and resources.

The Programme for Government pledges to give the C&AG extra powers to carry out value-for-money audits of State programmes.³³⁷ At the time of writing, this commitment had yet to be implemented pending the completion of a review of both the C&AG and the Local Government Audit Service.³³⁸

In 2009, the C&AG's remit was extended to cover NAMA, the State asset management company.³³⁹ The C&AG received an additional budget allocation, but no additional staff, to undertake this auditing.³⁴⁰ In its first review of the agency's management of loans in 2010, the C&AG said NAMA faced 'considerable challenges' in recovering its costs.³⁴¹ Following sustained revelations about financial mismanagement at the national training and employment agency, FÁS, its internal control and governance was scrutinised by the C&AG in 2010. It found repeated breaches of internal procurement and payment procedures at the agency, which was at the time the second largest executive agency in the country.³⁴²

The C&AG does not regularly report on the financial management of all public bodies, but instead engages in selective monitoring. A 2011 report on governance in Ireland said recent high-profile cases seemed to show that this system often discovers failings and shortcomings only after they have occurred.³⁴³

The C&AG's annual budget has been reduced over the past four years, from €14.4 million in 2008 to €12.9 million in 2011.³⁴⁴ There has been a corresponding decline in staff numbers, from 155 in 2008 to 146 in 2011.³⁴⁵ The C&AG in 2012 said additional reductions in its staffing levels will place further pressure on the Office, while planned radical changes in the Irish public sector will also increase demand for its services.³⁴⁶

The public sector changes include significant moves to shared services operations for many administrative processes, changes in the governance arrangements for some bodies and reform of the annual Estimates process. The C&AG said that while some of these changes might present opportunities for greater audit efficiencies in the long term, in the short term they will present it with 'significant challenges' in managing financial audit work.³⁴⁷

337 Programme for Government: Government for National Recovery 2011-2016, op cit

338 Department of Public Expenditure and Reform, correspondence with author, September 2012

339 Section 57 of the NAMA Act 2009, which was enacted in 2009, provides that NAMA is to be audited by the C&AG. See <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0034.pdf>

340 C&AG correspondence with the author, November 2011

341 Comptroller and Auditor General, Special Report of the Comptroller and Auditor General: National Asset Management Agency – Management of Loans (Government of Ireland, 2012): 9 <http://www.audgen.gov.ie/documents/vfmreports/NAMA-Mgmt-Loans-Special-Report-79.pdf>

342 Comptroller and Auditor General, Special Report: Internal Control and Governance in FÁS (Government of Ireland, 2009) http://www.audgen.gov.ie/documents/vfmreports/73_Internal_Control_in_FAS1.pdf

343 Walsh, Brendan, Mitchell, Paul and Bandelow, Nils C., op cit: 42

344 C&AG, correspondence with author, August 2012

345 Ibid. Staff numbers are whole time equivalent. The approved allocation for 2011 was 150.

346 Office of the Comptroller and Auditor General, Corporate Report 2011 (2012): 6 http://www.audgen.gov.ie/documents/corporate%20reports/CorporateReport_2011_En.pdf

347 Office of the Comptroller and Auditor General, Statement of Strategy 2012 2014, <http://www.audgen.gov.ie/viewdoc.aspx?DocID=1352&CatID=23&StartDate=1+January+2012>

CIVIL SOCIETY

A planned statutory framework for the regulation of charities received a significant setback in 2012. A **Charities Regulatory Authority** was to have been established to oversee a public register of charities and investigate and prosecute those accused of misconduct or mismanagement. However, in May 2012, the full implementation of the **Charities Act 2009**, including the establishment of a Regulatory Authority, was deferred. The Government said this was because of the high costs entailed.³⁴⁸

In the absence of such an authority, charities continue to be governed by different regulations, depending on their legal structures. Information about the non-profit sector is available only from disparate sources including the individual non-profits themselves and regulatory authorities such as the Companies Registration Office.

Irish charities have made efforts to strengthen transparency and accountability within the sector. These include the publication in June 2012 of a voluntary governance code for community, voluntary and charitable organisations.³⁴⁹ In addition, a public database of regulatory information about Irish non-profits – charities, non-governmental organisations (NGOs) and community and voluntary sector organisations – was established on a pilot basis in November 2011.³⁵⁰ However, the company that established the database, Irish Nonprofits Knowledge Exchange, closed in June 2012, citing funding problems.³⁵¹

After a recent period of expansion, the non-profit sector is facing considerable financial uncertainty.³⁵² There have also been a series of revelations of poor corporate governance and lack of transparency at two of the largest overseas development NGOs in recent years. In February 2012, the Government threatened to withdraw State support from the charity GOAL unless it addressed corporate governance concerns raised in a 2011 audit.³⁵³ The state-funded Irish Red Cross has also been obliged to initiate significant internal reforms after sustained allegations of financial irregularities and poor corporate governance significantly damaged its reputation.³⁵⁴ A 2012 report found a ‘big awareness gap’ in the non-profit sector in relation to codes of practice and financial reporting best practice. It said there was an urgent need for regulation of financial reporting in the sector, supported by enforcement.³⁵⁵ Despite these reports, the Irish public perceives NGOs to be more trustworthy than government, business and the media, according to the 2012 Edelman Trust Barometer.³⁵⁶

Draft legislation currently before parliament establishes a new regulatory regime for solicitors and barristers to replace the current self-regulatory model, which has been criticised for serving the interests of the legal profession rather than consumers.³⁵⁷ The **Legal Services Regulation Bill 2011** provides for three new bodies to handle public complaints about alleged misconduct, discipline barristers and solicitors and adjudicate on legal costs. A **Legal Services Regulatory Authority** is to be responsible for oversight of both barristers and solicitors. The Authority’s **Complaints Committee** will handle public complaints and may impose minor sanctions. For more serious complaints, a **Legal Practitioners Disciplinary Tribunal** will hold misconduct inquiries and refer legal practitioners to the High Court for sanction.³⁵⁸

348 Houses of the Oireachtas, Dáil Debates, Vol. 764 No. 3, 8 May 2012 <http://debates.oireachtas.ie/dail/2012/05/08/00044.asp>

349 The Governance Code: A Code of Practice for Good Governance of Community, Voluntary and Charitable Organisations in Ireland (2012) https://www.wheel.ie/sites/default/files/Composite%20Code%20FINAL%20VERSION%20-%20%2020%20March%202012_0.pdf

350 The database was established by the Irish Non-Profits Knowledge Exchange.

351 Minihan, Mary, ‘Funding crisis closes knowledge exchange body for non-profits’, *The Irish Times*, 29 June 2012 <http://www.irishtimes.com/newspaper/ireland/2012/0629/1224318966385.html>

352 Madden, Michele, Violi, Caterina and Saxton, Joe, *Funding and Human Rights in Ireland – A report for Atlantic Philanthropies on the state of the funding environment for the Human Rights sector in Ireland* (nfpSynergy, 2009): 23

353 Keane, Kevin ‘GOAL funding under threat following audit’, *Irish Independent*, 6 February 2012 <http://www.independent.ie/national-news/goal-funding-under-threat-following-audit-3010670.html>

354 Houses of the Oireachtas Committee of Public Accounts, *Report on the Irish Red Cross (2012)* <http://www.oireachtas.ie/parliament/media/Report-on-the-Irish-Red-Cross-%28FINAL%29.pdf>

355 Grant Thornton, *Not for Profit Survey 2012 (2012)*: 24 <http://www.grantthornton.ie/db/Attachments/The-Grant-Thornton-Ireland-not-for-profit-survey-Report.pdf>

356 Edelman, op cit

357 *The Competition Authority, Competition in Professional Services: Solicitors and Barristers (2006)*: 42 <http://www.tca.ie/images/uploaded/documents/Solicitors%20and%20barristers%20full%20report.pdf>

358 Sanctions can include suspension and disqualification.

The original draft of the Legal Services Regulation Bill 2011 stated that a majority of the members of both the **Legal Services Regulatory Authority** and the **Legal Practitioners Disciplinary Tribunal** would be appointed by Government on the recommendation of the Minister for Justice. Members of the **Legal Services Regulatory Authority** could also be removed from office by Government.

However, lawyers' representative bodies and human rights groups in Ireland and overseas have expressed strong concerns that the draft law would make the regulatory authorities subservient to the Executive and threaten the independence of the legal professions.³⁵⁹ The Council of Bars and Law Societies in Europe said the proposals could make Ireland unique in Europe by affording the Government disproportionate control over the legal profession. The Minister for Justice said in April 2012 that he is considering amendments to the Bill to put the regulatory regime beyond Executive interference.³⁶⁰

BUSINESS SECTOR

Ethical shortcomings in Irish business culture were highlighted in three recent opinion polls. In 2011, Ernst & Young reported that a 'significant number' of Irish professionals believed it was acceptable to win business by using **inducements**. The Ernst & Young European Fraud survey found that 'over a quarter of all senior managers and over a third of employees confirmed that activity including offering personal gifts, offering free entertainment and even offering cash payments was acceptable in order to win or retain new business'.³⁶¹ Such ambivalence towards bribery and corruption is reflected in poor public attitudes towards Irish business. A Eurobarometer survey in 2012 found that eight out of ten Irish people perceived that corruption was part of the business culture – significantly more than the European average of 67 per cent.³⁶² Four out of ten people in the same survey ranked an unduly **close relationship between business and politics** as one of the chief reasons for corruption in Ireland.³⁶³

In addition, Irish business executives polled by the World Economic Forum in 2011 had a relatively low opinion of corporate governance standards and the ethical behaviour of firms in their interactions with public officials, politicians and other enterprises.³⁶⁴

Business is seen as close to political life in Ireland.³⁶⁵ This proximity gives rise to both real and perceived corruption risks, some of which have been exposed in recent years by both the financial crisis and tribunal reports. For example, close links between the Government and the construction and property sectors played a role in ill-advised policy decisions that led to a decade-long property bubble.³⁶⁶

359 Submissions from the Competition Authority, the Irish Council for Civil Liberties, the Bar Council of Ireland, the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe

360 Coulter, Carol, 'Legal Bill amendments considered', *The Irish Times*, 14 April 2012 <http://www.irishtimes.com/newspaper/breaking/2012/0414/breaking14.html>

361 Ernst & Young, *Ernst & Young European Fraud Survey 2011* <http://www.ey.com/IE/en/Newsroom/News-releases/Press-release-2011---Ernst---Young-European-Fraud-survey>

362 European Commission, op cit: 32

363 Ibid: 140

364 World Economic Forum, *The Global Competitiveness Report 2011-2012* (2011): 406, 408 <http://www3.weforum.org/docs/GCR2011-12/13.GCR2011-2012DTIInstitutions.pdf>

365 McMenamin, Iain, 'Business Financing of Politics in Ireland: Theory, Evidence and Reform', Working Papers in International Studies, Centre for International Studies, Dublin City University, 12 (2011): 8 <http://doras.dcu.ie/16667/1/1211.pdf>

366 Byrne, Elaine, *Political Corruption in Ireland 1922-2010: A Crooked Harp?* (Manchester: Manchester University Press, 2012): 201-202

Ireland's corporate world is small and dominated by a limited number of inter-connected businesspeople. The risk this poses to corporate governance standards was highlighted in a 2010 report by TASC.³⁶⁷ It found that a small pool of well-connected individuals sat on the boards of the country's top 40 public organisations and private businesses, including financial institutions, between 2005 and 2007.

Systemic governance failures in financial institutions contributed significantly to Ireland's recent banking crisis. In 2008, a collapse of the entire banking system was averted by a blanket State guarantee of all depositors in the main banks and building societies as well as covered bonds, senior debt and certain subordinated debt.³⁶⁸ Five banks were subsequently nationalised.³⁶⁹

Two Government-commissioned reports on the **regulatory and banking failures** of the financial crisis sharply criticised the regulatory regime, bank lending practices and State fiscal policy.³⁷⁰ A report by Central Bank Governor Patrick Honohan identified a 'major failure' of bank regulation of a systemic nature.³⁷¹ An unduly deferential approach by the **Financial Regulator** to the banking industry may have contributed to a reluctance to second guess bankers in any aggressive manner. These might have partly constituted 'regulatory capture'.³⁷² Honohan also found that bank directors comprehensively failed to maintain safe and sound banking practices. Instead banks incurred huge external liabilities to support a credit-fuelled property market and construction frenzy.³⁷³

367 Clancy, Paula, O'Connor, Nat and Dillon, Kevin, Mapping the Golden Circle (TASC, May 2010) <http://www.tascnet.ie/upload/file/MtGC%20ISSU.pdf>

368 OECD, OECD Economic Surveys: Ireland – Overview (October 2011): 17 <http://www.oecd.org/economy/economicsurveysandcountryveillance/48861848.pdf>

369 Anglo Irish Bank, Irish Nationwide and EBS have been fully nationalised, while AIB and Irish Life & Permanent have been effectively nationalised, with the State owning more than 99 per cent of each.

370 Regling, Klaus and Watson, Max, A Preliminary Report on the Sources of Ireland's Banking Crisis (Dublin: Government Publications Office, 2010) <http://www.bankinginquiry.gov.ie/Preliminary%20Report%20into%20Ireland%27s%20Banking%20Crisis%2031%20May%202010.pdf> and Honohan, Patrick, The Irish Banking Crisis: Regulatory and Financial Stability Policy 2003-2008 – A Report to the Minister for Finance by the Governor of the Central Bank (Dublin: Government Publications Office, 2010) <http://www.bankinginquiry.gov.ie/The%20Irish%20Banking%20Crisis%20Regulatory%20and%20Financial%20Stability%20Policy%202003-2008.pdf>

371 Honohan, *ibid*: 7-8

372 *Ibid*: 9

373 *Ibid*: 15

A subsequent statutory Commission of Investigation into the Banking Sector criticised the 'herd' mentality that saw financial institutions copy risky lending practices and found 'groupthink' within banks.³⁷⁴

It is worth noting that many of the shortcomings in financial regulation and the activities of banks identified in these banking crisis reports echo the findings of the Moriarty tribunal which inquired into illegal financial transactions involving banks some thirty years earlier.³⁷⁵ In particular, the tribunal found that the Central Bank at the time had ample regulatory powers but failed to use them. In its final report issued in March 2011, it stressed that strong action by regulators should be seen as a key element in the promotion of a healthy financial sector, rather than an obstacle. This must be accompanied by 'a culture in which forthright regulation is valued'.³⁷⁶ It is also worth noting that the statutory investigation into the banking crisis focused entirely on the banking sector and excluded political events leading up to the crisis. Specifically, it did not examine any undue influence by vested interests over regulation and political decision making.³⁷⁷

Most of the reforms introduced in the wake of the banking crisis are aimed at improving regulatory control as well as corporate governance standards in financial institutions. Since October 2011, the **Central Bank of Ireland** is responsible for both central banking and financial regulation on the basis of a risk-based model of financial supervision.³⁷⁸ Previously, financial regulation was the responsibility of a separate division of the Central Bank, with its own chairman, chief executive and board. The risk-based regulatory model includes a more intrusive supervision and enforcement regime to replace the now discredited pre-crisis 'principles-based' approach. The number of regulatory staff in the Central Bank has been almost doubled – from 385 in 2009 to 622 in 2011 – to allow it to increase its supervisory activities.³⁷⁹

374 Nyberg, *op cit*: 48

375 Moriarty, Part II Volume 2, *op cit*: 1170

376 *Ibid*: 1056

377 Byrne, Elaine, *op cit*: 205

378 The new body incorporates both the Irish Financial Services Regulatory Authority and the Central Bank with a unitary board, the Central Bank Commission. It was established under the Central Bank Reform Act 2010, commenced on 1st October 2011.

379 This is below the target figure for 2012 of 714. See Deputy Governor of the Central Bank of Ireland, Matthew Elderfield, Opening Remarks at the Central Bank of Ireland Stakeholder Conference (Central Bank of Ireland, 27 April 2012) <http://www.centralbank.ie/press-area/speeches/Pages/OpeningremarksbyDeputyGovernorMatthewElderfieldattheCentralBankofIrelandStakeholderConference.aspx>

The entire staff complement at the bank in 2011 was 1,372, somewhat short of the Government-approved complement of 1,559.³⁸⁰

An **Enforcement Directorate** set up in 2010 has statutory powers to conduct investigations to determine the ‘fitness and probity’ of staff and to suspend or remove individuals from senior positions. Staff must meet new statutory and industry-wide fitness and probity standards, including an obligation to be competent and capable; act honestly, ethically and with integrity; and to be financially sound.³⁸¹ Employers must attest that staff meet these standards, both upon recruitment and during their careers.³⁸² Senior executives and board members can only be appointed with pre-approval from the **Central Bank**. The new regime covers not only new entrants but also incumbents, who can be investigated and suspended or removed from their jobs.

The Programme for Government pledged to **re-structure bank boards** and replace directors who presided over failed lending practices that led to the near collapse of the banking system in 2008. However, most senior executives and board members of Irish banks prior to the banking crisis resigned before there was any possibility of action being taken against them under the new fitness and probity regime.³⁸³ A few individuals who remained in their positions were cleared in June 2012 by the Central Bank, which said it had no reason to suspect their fitness and probity based on current evidence.³⁸⁴

A statutory **Code of Corporate Governance** introduced in 2011 sets out minimum requirements for both banks and insurance companies for the first time.³⁸⁵ It obliges institutions to have a minimum of five directors, at least two independent non-executive directors and an independent and suitably qualified non-executive chairman. Boards are also required to have audit and risk committees and to prepare conflict of interest policies. Monitoring of adherence with the code is largely self-regulatory, with institutions required to submit annual compliance statements to the Central Bank.

A statutory basis for corporate governance for the entire business sector has been recommended by TASC as a means to ensure directors’ independence and capacity, as well as board diversity and remuneration limits. Similarly, the Moriarty tribunal recommended new legal provisions to enshrine corporate social responsibility concepts.³⁸⁶

The role of **external auditors** in failing to identify and warn of the risky lending practices at Irish banks ahead of the 2008 crisis was criticised by the Commission of Investigation into the Banking Sector.³⁸⁷ It found that the banks’ external auditors – three of the Big Four international auditing firms³⁸⁸ – took a narrow interpretation of their job description and remained ‘silent observers’ during the excesses of the property boom.³⁸⁹ Some of the banks rescued by the 2008 Government guarantee had been given clean audit opinions some six months earlier.³⁹⁰

380 Central Bank of Ireland, Annual Report 2011 (2012): 21 <http://www.centralbank.ie/publications/Documents/Central%20Bank%20Annual%20Report%202011.pdf>

381 The Fitness and Probity Standards Code is issued under Section 50 of the Central Bank Reform Act 2010. See <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0023.PDF>

382 Section 21 of the Central Bank Reform Act 2010 requires that a Regulated Financial Services Provider satisfies itself on reasonable grounds that a person complies with the fitness and probity standards. See <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0023.PDF>

383 See Central Bank of Ireland, Annual Performance Statement (Financial Regulation) 2011–2012 (2012): 4 <http://www.centralbank.ie/publications/Documents/Annual%20Performance%20Statement%20Financial%20Regulation%202011%20-%202012.pdf>

384 Central Bank of Ireland, Fitness and Probity (Statement, 28 June 2012) <http://www.centralbank.ie/press-area/press-releases/Pages/Statement-FitnessandProbity.aspx>

385 The Corporate Governance Code for Credit Institutions and Insurance Undertakings took effect from January 2011. The Code is introduced as conditions to which institutions are subject pursuant to Section 10 of the Central Bank Act 1971, Section 16 of the Asset Covered Securities Act 2001, Section 17 of the Building Societies Act 1989, Section 24 of the Insurance Act 1989 and Regulation 12 of the European Communities (Reinsurance) Regulations 2006 (S.I No. 380 of 2006). See <http://www.financialregulator.ie/press-area/press-releases/Pages/NewCorporateGovernanceRulesforBanksandInsurers.aspx>

386 The tribunal recommended a provision similar to Section 172 of the UK Companies Act 2006. See Moriarty, Part II Volume 2, op cit: 1161 <http://www.moriarty-tribunal.ie/asp/detail.asp?ObjectID=310&Mode=0&RecordID=545>

387 Nyberg, op cit: 58

388 The banks’ auditors were not named in the report of the Commission of Investigation. According to media reports, the banks were primarily audited by KPMG, Pricewaterhouse Coopers and Ernst & Young. See Webb, Nick and Burke, Roisin, ‘Were the bank auditors conflicted?’, Sunday Independent, 25 April 2010 <http://www.independent.ie/business/irish/were-the-bank-auditors-conflicted-2151671.html>

389 Nyberg, op cit: vi-vii

390 Ibid: vi

Questions about the capacity of external auditors to fulfil their important oversight role arose again in May 2012, when it emerged that Ireland's oldest stockbroking firm, Bloxham, had overstated its income in its annual accounts for several years.³⁹¹ The Central Bank published a non-statutory Auditor Protocol in 2011 as an agreed way for auditors to comply with their regulatory and statutory obligations.³⁹² In addition, several of the State's biggest accountancy firms agreed a new industry code in 2012 aimed at improving oversight and governance in relation to audits of 'public interest entities' such as banks and quoted companies.³⁹³ Despite these reforms, the Central Bank must still rely on audited accounts to ensure financial institutions provide an accurate report of their financial status.

The Central Bank itself has new internal accountability measures requiring it to produce annual performance statements and to undergo a peer review of its regulatory performance at least every four years.³⁹⁴ The **Central Bank (Supervision and Enforcement) Bill 2011** strengthens and expands the Bank's powers to impose and supervise compliance with regulatory requirements.³⁹⁵ It doubles the maximum level of fines for breaches of regulatory requirements to €1 million for individuals and €10 million, or 10 per cent of turnover, for a corporate or unincorporated body.

The Bill provides protection from civil liability and penalisation for whistleblowers making a 'protected disclosure' in good faith.³⁹⁶ The Central Bank is not permitted to identify whistleblowers without their agreement unless it was necessary to do so 'to ensure proper investigation'.³⁹⁷ The OECD said the Bill's provisions would underpin the credible enforcement of Irish financial services legislation in line with international best practice.³⁹⁸

The **Companies (Amendment) Act 2009**³⁹⁹ amends certain shortcomings in the regulation of the banking sector highlighted by the Anglo case. It improves transparency of certain loans made by banks to their directors, and people connected with directors, and also makes important changes that affect all companies. It makes a breach of company law by company officers in relation to directors' loans easier to prosecute by removing the need for proof that the breach was wilful.⁴⁰⁰ It also imposes new statutory obligations on banks to disclose directors' loans in their annual accounts in the same way as non-banking companies.

Proposed reforms of Ireland's corruption laws would have significant implications for Irish businesses and their overseas operations. The **Criminal Justice (Corruption) Bill 2012** requires companies to 'take all reasonable steps' and 'exercise all due diligence' to prevent bribery and corrupt behaviour by directors, employees, subsidiaries and agents anywhere in the world. Bribery and corrupt practices by employees and agents of a company are to be automatically imputed to the company, if committed for its benefit. This means an Irish company with foreign subsidiaries would have a responsibility to ensure that adequate measures are taken against corruption throughout the organisation.

391 Irish Independent, 'Elderfield must leave no stone unturned – and publish findings', Irish Independent, 29 May 2012 <http://www.independent.ie/national-news/elderfield-must-leave-no-stone-unturned-and-publish-findings-3122931.html>

392 Central Bank of Ireland, Protocol between the Central Bank of Ireland and the Auditors of Regulated Financial Service Providers – 'The Auditor Protocol' (2011) <http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP56%20Protocol%20between%20the%20Central%20Bank%20of%20Ireland%20and%20Auditors%20of%20Regulated%20Financial%20Service%20Providers/Auditor%20Protocol%20Final.pdf>

393 The Irish Audit Firm Governance Code published by the industry regulator, the Chartered Accountants Regulatory Board, is to apply to financial years commencing on or after 1 January 2013. See Chartered Accountants Regulatory Board, The Irish Audit Firm Governance Code (2012) <http://www.carb.ie/Documents/Rules%20and%20Regulations/Audit/Irish%20Audit%20Firm%20Governance%20Code%201-Jan-13.pdf>

394 Section 32 of the Central Bank Act 1942 (inserted by Section 14 of the Central Bank Reform Act 2010) <http://www.irishstatutebook.ie/1942/en/act/pub/0022/index.html>

395 The legislation was a requirement of the EU/IMF Programme of Financial Support for Ireland. See EU/IMF Programme of Financial Support for Ireland, op cit

396 Central Bank (Supervision and Enforcement) Bill 2011 <http://www.oireachtas.ie/documents/bills28/bills/2011/4311/B4311D.pdf>

397 Ibid

398 OECD Economic Surveys: Ireland – Overview, op cit: 20

399 Companies Amendment Act 2009 <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0020.pdf>

400 Section 31 of the Companies Act 1990 prohibits directors' loans, subject to certain exceptions. See <http://www.irishstatutebook.ie/1990/en/act/pub/0033/index.html>

Businesses found guilty of competition offences face increased prison sentences and fines under the **Competition (Amendment) Act 2012**.⁴⁰¹ The Act doubles the maximum jail term for so-called 'hardcore' offences such as cartels or price-fixing, from five to 10 years, and increases fines from €4 million to €5 million. Significantly, a person convicted of a criminal offence may now be liable for costs and expenses incurred in the investigation, detection and prosecution of the offence. However, the Act does not give power to the courts to order 'civil fines' in cases involving 'non-hardcore' competition law infringements. The Competition Authority maintains that this is a 'serious weakness' in the Irish competition law enforcement regime.⁴⁰²

CONCLUSION

Despite the centralised nature of governance in Ireland, the Irish National Integrity System was described as relatively strong in 2009. However, the original study found a number of fundamental weaknesses in the country's integrity system that posed significant risks of systemic abuses of power.

In particular, it highlighted the absence of controls to check or prevent undue influence by sectoral interests on both government policy and the regulation of the private sector and professions.

As this addendum notes, the pace of progress in tackling Ireland's integrity shortcomings has been mixed. New measures aimed at increasing transparency in political party funding should go some way to preventing corporate and individual donors from buying political influence. However, the risk of improper influence on policy making by sectoral interests has not been adequately addressed. In addition, the political decision making process remains opaque and closed to public scrutiny. This poses a heightened risk of state capture and other forms of legal corruption.⁴⁰³

The 2009 study observed that the risk of corruption is particularly acute in local government, most notably in local authority planning. This remains the case. Not enough has been done to prevent and control conflicts of interest and to implement coherent anti-corruption and fraud alert plans in all local authorities.

As noted in the original research, few NIS pillars could be described as meeting their full potential in fighting corruption. Of the public sector pillars or bodies charged with promoting transparency and accountability in public life, the Supreme Audit Institution, the Committee of Public Accounts (PAC) and the Ombudsman appear to be working effectively within their remits, albeit with increasingly constrained budgets.

The Office of the Director of Corporate Enforcement, An Garda Síochána and the Competition Authority have been given enhanced statutory powers, and some additional resources, to tackle corruption and white collar crime. However, increased workloads arising from the complex investigations into the banking crisis have placed strains on many law enforcement agencies and led to under-enforcement in other areas.

401 The legislation was a requirement of the EU/IMF Programme of Financial Support for Ireland. See EU/IMF Programme of Financial Support for Ireland, op cit

402 FitzGerald, Gerald and McFadden, David, Filling a gap in Irish competition law enforcement: the need for a civil fines sanction (The Competition Authority, 2011): 2 <http://www.tca.ie/images/uploaded/documents/2011-06-09%20Filling%20a%20gap%20in%20Irish%20competition%20law%20enforcement%20-%20the%20need%20for%20a%20civil%20fines%20sanction.pdf>

403 Kaufmann and Vicente, op cit

Efforts have been made to strengthen the powers of a reformed Central Bank, which now incorporates the Financial Regulator. However, it remains to be seen whether these measures will break the historical tendency of the regulator to be a 'servant of the banks, not a master'.⁴⁰⁴

In the financial services industry, as well as the wider business sector, ongoing governance risks remain a cause for concern. Irish businesses also continue to lag behind other countries in terms of their commitment to fraud and corruption risk management.

Pillars or institutions such as the Standards in Public Office Commission, Civil Society and the Media remain well placed to play a more proactive role in fighting corruption. However, in order to do so, their independence from political or private interests must be assured and the necessary resources made available to them.

Ireland has lost its economic sovereignty and is in the midst of an unprecedented financial crisis. It also faces a fundamental crisis of governance. There is a compelling need for the country to break with dysfunctional habits of the past. One key test of this administration's commitment to transformative change will be whether it delivers more open and accountable government. While the wider public has a role to play in this process, building trust and integrity in Ireland's institutions is ultimately the responsibility of its political leadership.

404 Ross, Shane, *The Bankers: How the Banks Brought Ireland to its Knees* (Dublin: Penguin Ireland, 2009): 69

APPENDIX – PROGRESS UPDATE ON NIS 2009 RECOMMENDATIONS

No	Category	Recommendation	Progress ⁴⁰⁵	
			Some	None
1.	General	Introduce whistleblower protection for all private and public sector employees.	X	
2.	General	Ratify international conventions against corruption – chiefly the UN Convention against Corruption and the Council of Europe Civil Law Convention on Corruption.	X	
3.	General	Establish a Register of Lobbyists.	X	
4.	General	Additional resources should be allocated for law enforcement agencies such as the Office of the Director of Corporate Enforcement, the Competition Authority, the Criminal Assets Bureau and the Garda Bureau of Fraud Investigation.		X
5.	General	Introduce a Corruption Immunity Programme.		X
6.	General	Remove fees for Freedom of Information appeals and reviews, and extend the scope of the act to all public and semi-state bodies including An Garda Síochána.	X	
7.	Local Govt	Local authorities should ensure that all members' declarations of interest are posted in a prominent and accessible area of every local authority website.	X	
8.	Local Govt	Fraud and anti-corruption alert plans should be implemented and placed online, with periodic progress reports.	X	
9.	Local Govt	Adequate funding should be made available for ongoing training and resourcing for an effective internal audit function in every local authority.		X
10.	Local Govt	Government should consider how economic incentives for corruption in planning and rezoning can be mitigated and move to address them promptly.	X	
11.	Political Parties	The threshold for the disclosure of donations to political parties should be reduced significantly. Spending limits should also be set for electoral spending in local elections by an independent Electoral Commission.	X	
12.	Political Parties	Political parties should be compelled by law to submit annual independently audited accounts to the Standards in Public Office Commission and/or any new Electoral Commission and to publish those accounts on their websites in a timely manner.	X	
13.	Political Parties	Any increase in reporting thresholds under the Ethics Acts for gifts and loans to politicians should be set in line with inflation.	X	
14.	Public Contracting	Greater centralised coordination of procurement policy, reporting and monitoring of public procurement practice is needed. An independent national procurement body should be established.	X	

⁴⁰⁵ Some progress includes administrative reforms, the publication of policy papers and draft legislation, as well as the enactment of new laws. Where it is not clear whether there has been progress on a recommendation, it has been marked as 'none'.

No	Category	Recommendation	Progress	
			Some	None
15.	Public Contracting	The Comptroller and Auditor General should publish an annual report on compliance with procurement policy on contracts over a certain value.		X
16.	Public Contracting	In order to prevent conflicts of interests, those staff responsible for establishing criteria for public contracts over a certain value should not be involved in the evaluation of the same contracts.		X
17.	Public Contracting	Shelf companies established for the term of the contract should show that they have sufficient collateral to cover any risk associated with the performance or failure to deliver on the terms of contract.		X
18.	Public Contracting	Public sector benchmarks and evaluations should be subject to the terms of the Freedom of Information Acts after a specified length of time in order to help build public and business confidence in the integrity of Public Private Partnerships.		X
19.	Executive	Appointments to the Boards of State bodies should be subject to open competition, with the recruitment process managed by the Public Appointments Service. An Oireachtas committee could have a role in monitoring potential conflicts of interest and assessing the suitability of candidates for board membership in key state bodies.	X	
20.	Executive	In line with good practices in other jurisdictions, a moratorium or 'cooling off' period of one year should be set for former Ministers entering the private sector where an appointment would pose a real or reasonable perception of a conflict of interest.	X	
21.	Executive	Government should undertake an assessment of the potential effects of new ethics, electoral and anti-corruption legislation, regulations or regulatory amendments through a full Regulatory Impact Analysis.		X
22.	Legislature	An overhaul of the expense and allowance system for members of the Legislature is needed. Receipts should be presented to the Oireachtas Commission Secretariat for all claimable expenses.	X	
23.	Legislature	The codes of conduct for Oireachtas members should be reinforced by regular training of persons who have obligations under the Ethics and Electoral Acts.		X
24.	Legislature	Chairs of Oireachtas Committees should be designated as 'Office Holders' for the purposes of the Ethics Acts.		X
25.	Anti-Corruption Agencies	The Standards in Public Office commission should be granted the authority to make initial inquiries into apparent breaches of the Electoral and Ethics Acts by Office Holders without a formal complaint.		X
26.	Judiciary	A Judicial Ethics Bill, to establish an independent statutory-based Judicial Council and clear disciplinary procedures to regulate judicial conduct and ethics, should be published and open to consultation.	X	
27.	Civil Service/ Public Sector Agencies	The Official Secrets Act should provide for a defence of reporting of public interest concerns in good faith by civil servants. In addition, the commercial interests of public contractors should not be held as grounds for preventing an individual from reporting evidence of irregularities or wrongdoing to his employers or the authorities.	X	

No	Category	Recommendation	Progress	
			Some	None
28.	Law Enforcement Agencies	An adequately resourced, specialised Anti-Corruption Unit should be established within An Garda Síochána with responsibility for investigating all offences under the prevention of Corruption Acts (and related legislation).		X
29.	Law Enforcement Agencies	Coordination of agency efforts could also be enhanced by establishing an inter-agency task force on corruption (similar to that already established to tackle money laundering and foreign bribery).		X
30.	Law Enforcement Agencies	An officer corps or fast-track system should be introduced within An Garda Síochána to allow suitably qualified individuals contribute in specialised roles.		X
31.	Media	Newspaper organisations and journalist associations/unions should include clear no-bribe and conflict of interest policies or standards in professional codes of conduct.		X
32.	Business Sector	Business leaders need to foster a culture of zero-tolerance towards corruption by investing more in anti-corruption controls, internal reporting systems, education, and training.	X	
33.	Business Sector	Safeguards should be integrated into company law that protect employees in the private sector against reprisals for reporting issues of public/stakeholder concern to their employers or the authorities.	X	
34.	Business Sector	A system of financial penalties for civil breaches of competition law should be introduced to complement criminal prosecution as a deterrent to anti-competitive activity.		X
35.	Civil Society	Political activity under the Electoral Act and Charities Bill should be more clearly defined to refer exclusively to any activity undertaken to advance the goals or interests of a political party or a political cause during an electoral or referendum campaign.		X
36.	Civil Society	Civil society organisations need to diversify sources of funding. This is particularly the case for advocacy organisations that must remain independent of any one or a collection of donors.		X
37.	Civil Society	Audited accounts for all civil society organisations with annual income over €100,000 should be published on their websites.		X
38.	Civil Society	A fully independent Legal Services Ombudsman should be established with the power to initiate investigations into alleged misconduct by solicitors and barristers upon a complaint by a client; and the power to make awards in favour of clients. Further consideration should also be given to how legal fees could be reduced to facilitate a higher number of successful economic crime prosecutions through the courts.	X	
39.	Civil Society	Religious organisations, professional organisations and trade unions should take a leadership role in promoting the principles of trust, transparency and responsibility across government, business and civil society.	X	

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