

SURVEY OF ANTI-CORRUPTION MEASURES IN THE PUBLIC SECTOR IN OECD COUNTRIES: IRELAND

1. What anti-corruption mechanisms exist for the public sector in your country?

a) *Legislation proscribing corrupt activities and establishing sanctions*

The body of legislation proscribing corrupt and establishing sanctions is as follows:

- Public Bodies Corrupt Practices Act, 1889
- Prevention of Corruption Act, 1906
- Prevention of Corruption Act, 1916
- Prevention of Corruption Acts, 1889 to 1916, Adaptation Order, 1928
- Ethics in Public Office Act, 1995

The legal definition of corruption in Irish law is contained in the Prevention of Corruption Acts 1889 to 1916 as adapted by Adaptation Order No. 37 of 1928 and amended by the Ethics in Public Office Act 1995. The first of these acts - the Public Bodies Corrupt Practices Act, 1889 -- applied only to local authorities and created an offence of corruptly giving or receiving any consideration as an inducement or reward for exercising official authority in a particular manner. Simply stated, this Act made it an offence for members or servants of such bodies to accept or seek bribes.

The second of these Acts - the Prevention of Corruption Act, 1906 redefined the offences and extended the provisions to all agents whether in the private or public sector. The 1928 Order made it an offence for anyone employed by or acting for another, or anyone holding an office remunerated out of the Central Fund or out of moneys provided by the Oireachtas (legislature) to accept or request bribes. The Act also made it an offence for anyone to bribe or attempt to bribe such persons.

The third Act - the Prevention of Corruption Act, 1916 - provided that, where it is proved that any consideration was given, directly or indirectly, to an official, or received, directly or indirectly, by an official from, a person holding or seeking to obtain a contract from the public authority concerned, the consideration is presumed to have been given and received corruptly as an inducement or reward unless the contrary is proved. This Act was designed to strengthen the previous two Acts in relation to the holding or seeking of contracts with Ministers or certain public bodies. A far more serious penalty was provided for than in the case of any other offences under the Acts.

The Acts were adapted in 1928 so as to have full force and effect in the State. However, having regard to the passage of time, the development and growth of the public sector in the interim and the archaic language of the Acts, the opportunity was taken in the Ethics in Public Office Act 1995 to ensure the effectiveness of the legislation through amendments to all three Acts. Section 38 of the Ethics in Public Office Act 1995 extends the application of the Acts to special advisers personally appointed by the office holders (Ministers), directors and persons employed in public bodies.

Offences

The effect of the 1995 Act amendments is to provide that an office holder, special adviser, director and persons employed in public bodies shall be guilty of a misdemeanour punishable by imprisonment or fine or both, if he or she:

- corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the affairs or business of his Department, or for showing or forbearing to show favour or disfavour to any person in relation to such affairs or business;
- corruptly gives or agrees to give or offers any gift or consideration to an official as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the affairs or business of State or for showing or forbearing to show favour or disfavour to any person in relation to the affairs of the State;
- knowingly gives to an official or (if he is an official) knowingly uses with intent to deceive the Head of his Department, any receipt, account or other document in which the Department is interested, and which contains any statement which is false or erroneous or defective in any material particular and which, to his knowledge, is intended to mislead the Head of his Department.

Penalties

The penalty on summary conviction is a fine not exceeding £1,000 and/or imprisonment up to 12 months. On conviction on indictment, the penalty is a fine not exceeding £50,000 and/or imprisonment up to 7 years.

Ethics in Public Office Act, 1995

The main purpose of the Ethics in Public Office Act, 1995 is to provide for disclosure of interests by the holders of designated positions of employment in the public service and the directors of designated public bodies. It establishes the Public Offices Commission to provide guidelines and advice, and to undertake investigations and report on possible contravention. The Act also established Select Committees in both Houses of the Oireachtas which publish guidelines, provide assistance and advice to members in relation to compliance and are empowered to investigate and report on possible contraventions of the Act.

The key provisions of the Act are:

- requirements that annual written statements be made by certain persons holding public employment in respect of certain personal interests (and those interests of a spouse, child or step-child of which they are aware) which could materially influence them in the performance of their official duties. These interests include: gifts from one source exceeding £500 in value, salaried positions, large shareholdings in a company (above £10,000 value), directorships, ownership of land (valued at £10,000 or more) other than personal dwellings, and public service contracts.

- requirements that ad hoc declarations be made where a potential conflict of interests could directly arise in the performance of official duties between the public interest and the interests of the individual concerned or those of connected persons e.g. close relatives or business partners.

The positions and directorships in the civil and broader public service which have been designated for the purposes of the Act are contained in the Ethics in Public Office (Designated Positions in Public Bodies) Regulations 1996 [S.I. no. 57 of 1996] and the Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) Regulations 1997 [S.I. no. 32 of 1997].

The Secretary General of a Department is the relevant authority to whom annual statements of interests, as well as ad hoc statements, are furnished by every established civil servant, occupying a designated position below Secretary General level. The Secretary General, Public Service Management and Development, in the Department of Finance is the relevant authority to whom Secretaries General furnish their statements of interests. Senior special advisers furnish their statements of interest to the Minister who appointed them, as well as to the Public Offices Commission.

Penalties

A person found guilty of an offence under the Act would be liable, on summary conviction, to a fine of up to £1 000 and/or imprisonment for up to 6 months and, on indictment to a fine of up to £20 000 and/or imprisonment for up to 3 years.

b) Other anti-corruption regulations or orders

The anti-corruption regulations are the Ethics in Public Office (Designated Positions in Public Bodies) Regulations 1996 [Statutory Instrument no. 57 of 1996], and the Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) Regulations 1997 [Statutory Instrument no. 32 of 1997].

Statutory Instrument (SI) no. 57 of 1996 applied the provisions of the Ethics Act to civil servants at the level of Principal Officer and above, and also applied it to holders of posts in lower grades which were deemed to be sensitive (such as posts having authorisation to purchase supplies and/or enter into contracts). SI no. 32 of 1997 applied the Act to holders of similar executive positions in non-civil service public sector bodies and state-owned commercial companies, as well as to political appointees to the Boards of these bodies.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

The Oireachtas Committee of Public Accounts oversees all public expenditure.

d) Investigation systems or bodies with powers to investigate corrupt activity

The Public Offices Commission, established under section 21 of the Ethics in Public Office, has the right to investigate allegations of corrupt activity. It is independent of Government, and is composed of the

Comptroller and Auditor General, the Ombudsman, the Chair of the lower House of parliament and senior Parliamentary civil servants.

e) *Supreme financial audit authority*

The Comptroller and Auditor General. Article 33 of the Constitution sets out the two basic functions of the Comptroller and Auditor General as:

- to ensure that no money is issued from the Central Fund except for purposes approved by the Oireachtas, and
- to audit Government accounts for accuracy and regularity.

This role was extended over the years, on a non-statutory basis, to encompass identifying and reporting to the Dáil (lower house of Parliament) on instances where it appears that there has been loss, waste or uneconomic expenditure by Government Departments. This role was given statutory basis in the Comptroller and Auditor General (Amendment) Act 1993 which empowers the Comptroller and Auditor General at his or her discretion, to carry out examinations of economy, efficiency and management effectiveness. The Comptroller and Auditor General is given full access to all official papers in carrying out his duties. Where the Comptroller and Auditor General is dissatisfied with the manner in which expenditure has been incurred by a Department, a query is raised on the Annual Appropriation Account for that Department. This device can be used to query the manner in which a contract has been placed where the Comptroller and Auditor General considers that proper procedures have not been followed. Depending on the response to an audit query, the Comptroller and Auditor General may qualify the certificate on the Appropriation Account and report the matter to the Dáil.

The Appropriation Accounts are examined by the Oireachtas Committee of Public Accounts which meets in public and at which the Comptroller and Auditor General attends. The Committee questions each Accounting Officer about matters arising in the Appropriation Account, Value For Money Reports, of that Department and pays particular attention to any query which has been raised by the Comptroller and Auditor General.

f) *Ombudsman*

The Office of the Ombudsman was established under the Ombudsman Act 1980. He or she investigates complaints about administrative actions or delays in public service bodies. The office is independent of Government.

g) *Bodies to enforce sanctions and prosecute corrupt activity, e.g. specialised prosecutors, investigators, courts, tribunals, etc.*

Tribunals of enquiry, which are invested with the status of the High Court and have the power to compel evidence, can investigate corrupt activity, but the standard court system is used to prosecute.

h) Human resources management procedures intended to prevent corruption

In addition to the statutory provisions in the Prevention of Corruption Acts there is the prohibition in the staff regulations on the use of official information for personal gain (Department of Finance Circular 15 of 1979 "Official Secrecy and Integrity").

In Ireland, recruitment to the civil service is undertaken by the Civil Service Commission. This is an independent body which selects personnel for appointment to a wide range of clerical, executive, administrative, professional and technical posts in the civil service. The Commissioners are committed to the principles of selection on merit, fair and open procedures and equality of opportunity. Their independence is enshrined in legislation which has ensured that selection to civil service posts is free from patronage and political interference.

Under the laws governing superannuation of civil servants, there are provisions for the reduction of an official's superannuation entitlements in cases of corruption involving financial loss to the State.

i) Financial management controls intended to prevent or deter corrupt practices

In regard to contracts with, purchase from or sales to Government Departments the following regulations apply:

- No Government contract may be let to a civil servant, to any partnership of which a civil servant is a member or to any company of which a civil servant is a director (except as a nominee of the Minister);
- No purchase may be made from and no sale may be made to a civil servant, any partnership of which a civil servant is a member or any company of which a civil servant is a director unless (a) the transaction is such as occurs in the ordinary course of business (e.g. the purchase of Government publications) or (b) sanction has been obtained from the Department in which the transactions arises following consultation with the Department in which the civil servant is serving;
- A civil servant who enters into any undertaking, holds any outside interests or participates in any outside business affecting, or likely to affect, a State contract for the purchase or sale of State property should immediately disclose the nature and extent of his or her interest to the Head of the Department ;
- A civil servant should not accept a directorship of any company holding a Government contract (except as a nominee of the Minister);
- Civil servants should not negotiate or arbitrate in any matter affecting a Government contract or the purchase form or sale to of goods to the State where, in their private capacities, they are interested either as principals or as shareholders in a company being one of the principals in the matter under consideration.

In relation to bankruptcy and insolvency the following regulations apply:

- A civil servant who becomes bankrupt or insolvent must immediately report the matter to the Head of the Department;
- The official concerned must submit a complete statement of the facts of the case to the Head of the Department;
- Under no circumstances should the official concerned be allowed to remain on duties involving the handling of public money or property.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

In relation to conflicts of interest generally, the following regulations apply:

- Civil servants may not at any time engage in or be connected with any outside business or activity which would in any way conflict with the interests of their Departments, or be inconsistent with their official positions or tend to impair their usefulness as public servants.
- Any doubt concerning the propriety of engaging in any outside business or activity must be referred by the official concerned to the Head of the Department.

There is a strong ethos that civil servants should never be seen to derive a benefit from their employment other than the remuneration proper to their positions or to put themselves in a position where they might reasonably be seen to be compromised in the discharge of their duties. Officers who contravene this ethos are considered to have brought the civil service into disrepute; sanctions up and including dismissal are applied in such cases.

k) Transparency mechanisms e.g. independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity.

The application of the Ethics in Public Office Act to all high level posts, and any commercially sensitive posts at a lower level, ensures systematic reporting of potentially conflicting interests to the head of department.

The Freedom of Information Act 1997 came into operation on 21 April 1998. The key feature of this legislation is the creation of a legal right of access by the public to information held by public bodies, to be exercised both as an individual right and as an effective means of scrutinising and evaluating decisions by public bodies. The FOI Act 1997 provides for public interest disclosures of official records. It also confers the right on members of the public to seek reasons for decisions. This right can be exercised by a person who is affected by an act of a public body and who has a material interest in the matter.

The Public Service Management Act 1997 introduces a statutory basis for the creation of a new management structure for the civil service. Its purpose is to enhance the management, effectiveness and transparency of operations of Departments and Offices and to put in place mechanisms for increased accountability of civil servants.

The Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunity of Witnesses) Act 1997 confers powers on Oireachtas committees to send for papers and persons, to require witnesses to

attend meetings and to respond to questioning when they attend on matters relevant to the investigating Committee's terms of reference.

The Electoral Acts provide, *inter alia*, for the payment of state funds to political parties and reimbursement of expenses of candidates at elections; the disclosure of substantial donations received by political parties, members of both Houses of Parliament and the European Parliament and candidates at elections and limits on election expenditure by candidates and by political parties on behalf of candidates. The Public Offices Commission established under the Ethics in Public Office Act 1995 also has responsibility in respect of these matters. These Acts also prohibit electoral fraud or interference.

A significant body of legislation has been enacted in Ireland in recent years aimed, *inter alia*, at combating illegal financial transactions, money laundering etc. For example the Criminal Justice Act 1994 creates specific offences in relation to money laundering. These provisions are wide ranging and relate to both persons laundering their own proceeds of crime and to those who assist them to do so. A number of Acts (Criminal Justice Act 1994; Finance Act 1995; Investment Intermediaries Act 1995; Disclosure of Certain Information for Taxation and other Purposes Act 1996) place disclosure and reporting obligations on professionals, financial institutions, investment intermediaries, etc., in relation to transactions, including where there is a suspicion that offences are being committed.

1) Guidance and training for public officials or politicians (e.g., codes of conduct, ethics awareness training)

There are Department of Finance circulars setting out appropriate behaviour for civil servants, and a comprehensive Code of Conduct is under active consideration. Internal Audit is an independent appraisal within a Department of the effectiveness of internal control systems. It is the responsibility of each Department to establish appropriate internal audit arrangements and the Department of Finance has issued guidelines setting out the standards which should apply in all cases. Responsibility for the adequacy of control systems remains with line management as does responsibility for correcting any deficiencies which may arise. The purpose of the internal audit unit is to supply an independent source of expertise for the review of systems and procedures and the identification of improvements.

The internal audit function undoubtedly plays a role in the guarding against irregularity and impropriety, although more particularly in relation to fraud than corruption. Its function relates more to prevention of corruption than detection. The Department of Finance guidelines provide that an internal auditor who discovers evidence of, or suspects, malpractice should report firm evidence, or reasonable suspicions, to the appropriate level of management. It is a management responsibility to determine what further action to take.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

No one mechanism should be singled out as more important than any other, but the evolving Ethics in Public Office legislation may emerge as the most powerful investigative tool available.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

The effectiveness of the administrative mechanisms are monitored continuously by the Department of Finance and new circulars are issued to amend practice or introduce innovations if and when it is thought necessary.

4. What if any new actions against corruption in the public sector is your country currently considering?

On foot of a report of a Tribunal of Enquiry into payments to politicians by a major company, amendments to the Ethics in Public Office Act are being considered which may reconstitute the Public Offices Commission and give it additional investigative powers. Also under consideration is the creation of offences for certain contraventions of the Ethics in Public Office Act 1995 and a legal requirement for the provision of tax clearance certificates and a related statutory declaration by those elected to either House of the Oireachtas.

An integrated programme of change known as "*Delivering Better Government*" (DBG) was launched in May 1996. DBG is an outgrowth of, and is situated within, the Strategic Management Initiative (SMI), a programme for improving the management of the civil service which was introduced in 1994. Key features of DBG are:

- delivery of quality services;
- regulatory reform;
- open and transparent service delivery;
- effective management of cross cutting issues;
- devolving authority and accountability;
- new approaches to human resource management;
- more effective financial management; and
- more effective use of IT to meet business and organisational needs.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

Significant legislation, as indicated in replies above, has been enacted in recent years and its effects remain to be assessed. Separately, the Government has appointed a number of quasi-judicial Tribunals to address matters of public concern.