

General Scheme of the Criminal Justice (Corruption) Bill 2012

Regulatory Impact Analysis

1. Summary RIA

| Summary of Regulatory Impact Analysis (RIA) | |
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| Department/Office: Department of Justice and Equality | Title of Legislation: Criminal Justice (Corruption) Bill 2012 |
| Stage: General Scheme | Date: June 2012 |
| Related Publications: No specific related publications. However, the State is party to a number of international instruments relating to corruption, including the Council of Europe Criminal Law Convention and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the United Nations Convention against Corruption, and our various anti-corruption laws and measures reflect the content of those Conventions. | |
| Available to view or download at: http://www.justice.ie | |
| Contact for enquiries: Criminal Law Reform Division | Telephone: 01 602 8202 |
| What policy objectives have been pursued? What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified. | |
| 1. Do nothing. 2. Introduce a Bill to consolidate the existing anti-corruption law, only. 3. Introduce legislation both to consolidate the anti-corruption legislation and to provide for improvements generally in the law on corruption. This option is in line with the commitment in the Programme for Government to this effect. | |

Preferred Option:

Having considered the options examined in the review, the Minister considers that in addition to the need for consolidation of the corruption laws, to facilitate ease of access to the legislation, there is also a need to update and reform certain aspects of the law in line with the Programme for Government, and accordingly, the preferred option is to both to consolidate and update the corruption laws (Option 3 above)..

| OPTIONS | | | |
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| | COSTS | BENEFITS | IMPACTS |
| 1. | <ul style="list-style-type: none">• Opportunity for amendment and making the law more accessible and transparent not taken;• No improvement to current situation.• Failure to carry out the promised commitment in the Programme for Government. | <ul style="list-style-type: none">• None. | <ul style="list-style-type: none">• Corruption legislation would be unchanged and not reformed and practitioners and interested parties would have to look in a number of areas to find the applicable law. |
| 2. | <ul style="list-style-type: none">• An opportunity for improvement of the legislation would be missed. | <ul style="list-style-type: none">• Anti-corruption law made more accessible by being available in one statute | <ul style="list-style-type: none">• Existing law made more readily available to practitioners and interested parties |
| 3. | <ul style="list-style-type: none">• Extra resources needed to prepare a more substantial Bill. | <ul style="list-style-type: none">• Opportunity for input from interested parties, following broader proposals available for consideration by the Public, and, a more comprehensive reform possible . | <ul style="list-style-type: none">• Greater focus on amendment of the anti-corruption legislation, and increased targeting of white-collar crime. |

2. Policy Context and Objectives

The existing law on corruption - the Prevention of Corruption Acts 1889 to 2010 – comprises several different Acts, and includes statutes dating back to the late nineteenth century. The key corruption offence is contained in the Prevention of Corruption Act 1906, as amended, and the 2 most recent measures are the Prevention of Corruption (Amendment) Acts of 2001, and 2010. It is important that the legislation is consolidated so that all of the relevant anti-corruption measures are made more accessible for everyone, and of course, at the same time, the opportunity to reform and modernise the legislation has been taken. The Draft Scheme of the Criminal Justice (Corruption) Bill 2012, reflects the commitment in the Programme for Government “to enact a new consolidated and reformed anti-corruption law, to punish white collar crime and end the impunity from consequences for corporate behaviour that threatens the economy”. This measure represents another part of the focus on attacking and preventing white collar crime, along with the Criminal Justice Act 2011. The Act of 2011 which relates to investigations into serious offences in the areas of banking and finance, and fraud, as well as corruption, provided for improvements in certain procedural matters, for instance in facilitating Garda access to essential information, documentation and electronically held information, and making it a criminal offence to fail to furnish information to the Gardaí which could prevent the commission of white collar crime or assist the Gardaí in relevant investigations. Its purpose is to assist in tackling white collar crime more quickly and effectively.

The objective of the Scheme of the Criminal Justice (Corruption) Bill 2012, is to clarify and strengthen the law criminalising corruption by replacing and updating 7 different statutes dating back to Victorian times, so that the legislation is essentially in one statute. It simplifies and modernises the language relating to the offences of giving and receiving bribes, and, for clarity, omits the use of the terminology of “agent” and “principal” in these core active and passive bribery definitions. The offence of bribery, given that the corrupt bargain is normally made in secret, is particularly difficult to investigate and prosecute. In order to facilitate investigations, as regards certain domestic public office holders, in proceedings under the Prevention of Corruption Acts 1889 to 2010, where there is proof that certain persons in public office have received monies or other benefit from a person who has an interest in the outcome of their decisions, there is already a presumption that such payments were given and received corruptly. The range of functions to which this presumption applies has been expanded under the Scheme, and it is proposed to now include any of the functions of the National Asset Management Agency (NAMA) and the Central Bank, and also to extend the presumption to encompass the functions of relevant officials relating to the investigation or prosecution of an offence. This Head of the Bill may be one where interested parties might wish to offer comment or suggest additional public sector functions which may be suitable for inclusion in this part.

The Scheme also provides for new offences of active and passive trading in influence. These offences, contained in the Criminal Law Convention on Corruption, 1999 (a Council of Europe measure) essentially relate to a prohibition on the promising of an undue advantage to a person who asserts that they can exert an improper influence over another person's decision making. The origin of the inclusion of this specific provision lies in a recommendation made during an evaluation by the Council of Europe of Ireland's implementation of the 1999 Convention, when the evaluators recommended that the existing corruption legislation should be amended so that this offence was covered explicitly.

Ireland is party to a number of international instruments on corruption, including the Council of Europe measure, mentioned above, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997). The OECD evaluators of Ireland considered that it is desirable that there should be a clear provision for the liability of corporate bodies for corrupt criminal acts. Up to now, we have not provided specifically in statute in this area, relying instead on the common law in this regard. The Heads include a new provision setting out that a corporate body can be held liable where an officer or employee of the body commits a corruption offence with the intention of obtaining a business advantage for the body. It is considered that this will provide greater clarity for companies as regards their criminal liability in this regard. The Head makes provision for a defence by a body corporate to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

Ireland is also a party to the UN Convention against Corruption, and our corruption laws and implementation of that Convention are also likely to be evaluated by that body, in the future. Given the degree of interest, both nationally and internationally in the area of corruption prevention, it is hoped that the publication of the Heads will result in debate and valuable contributions from a variety of different sources.

3. Identification and Description of Options

The following options were considered:

1. Do nothing.
2. Introduce a Bill to consolidate the existing anti-corruption law, only.
3. Introduce legislation both to consolidate the anti-corruption legislation and to provide for improvements generally in the law on corruption. This option is in line with the commitment in the Programme for Government to this effect

4. Analysis of Costs, Benefits and Impacts for ALL Options

1. Do nothing.

This would mean that no improvement in the existing situation, as well as failing to address the recommendations of the Council of Europe's GRECO anti-corruption group, and the OECD evaluators who recommended updating and modernising of this legislation.

2. Introduce a Bill to consolidate the existing prevention of corruption law, only. This would be helpful to a degree for practitioners and interested parties in that the legislation would be available in one statute, as opposed to the various measures forming part of the existing Prevention of Corruption Acts 1889 to 2010. However, it is important not to miss the opportunity to update and strengthen the law, while carrying out the consolidation exercise, which, would, of course, require considerable time and resources, in any event.

3. The Minister considers that the best option is to introduce legislation both to consolidate the anti-corruption legislation and to provide for improvements generally in the law on corruption, in line with the commitment in the Programme for Government to this effect. Consultation on and preparation of the anti-corruption legislation will also highlight the Minister's commitment to tackling white collar crime, and focus the attention of the media and the public on this area.

5. Consultation

The draft General Scheme of the Bill has been circulated to the Office of the Attorney General and all Government Departments, and is being published to allow the Joint Oireachtas Committee on Justice, Defence and Equality and all interested parties to have an input prior to the drafting of the Bill.

The scheme is available on the website www.justice.ie. All submissions which the Minister receives will be considered in the overall context of providing effective legislation to tackle corruption and meet our international obligations in this regard.

6. Enforcement and compliance

The provisions of the Bill concern the criminal law. Enforcement is therefore a matter for the Garda Síochána, the Director of Public Prosecutions and the courts.

7. Review

The Heads of the Bill have been sent to the Joint Oireachtas Justice Committee on Justice, Defence and Equality, for observations, and, of course, to enable public discussion of the proposals, and to give all interested parties an opportunity to offer their comments on this important measure, aimed at

the prevention of corruption, and assisting in strengthening the ability to prosecute white collar crime, in line with the Government commitments in this regard. During the drafting process, further consultation, in particular with the Office of the Attorney General, will be carried on, in the usual way.