

**Ireland**

**Member State Contribution**

European Commission Annual Rule of Law Report 2020

8 May 2020

## Contents

<i>1. Appointment and selection of judges and prosecutors</i> .....	3
<i>2. Irremovability of judges, including transfers of judges and dismissal</i> .....	4
<i>3. Promotion of judges and prosecutors</i> .....	4
<i>4. Allocation of cases in courts</i> .....	4
<i>5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)</i> .....	5
<i>6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules</i> .....	6
<i>7. Remuneration/bonuses for judges and prosecutors</i> .....	7
<i>8. Independence/autonomy of the prosecution service</i> .....	7
<i>9. Independence of the Bar (chamber/association of lawyers)</i> .....	8
<i>10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary</i> .....	9
<i>11. Other - please specify</i> .....	9
<i>12. Accessibility of courts (e.g. court fees, legal aid)</i> .....	10
<i>13. Resources of the judiciary (human/financial)</i> .....	12
<i>14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)</i> .....	13
<i>15. Other - please specify</i> .....	14
<i>16. Length of proceedings</i> .....	14
<i>17. Enforcement of judgements</i> .....	15
<i>18. Other - please specify</i> .....	15
<i>19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant)</i> .....	15
<i>20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)</i> .....	17
<i>21. Rules on preventing conflict of interests in the public sector</i> .....	18
<i>22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption</i> .....	19
<i>23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other)</i> .....	21
<i>24. Any other relevant measures to prevent corruption in public and private sector</i> .....	21
<i>25. Criminalisation of corruption and related offences,</i> .....	22
<i>26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)</i> .....	22

<i>27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation) .....</i>	<i>22</i>
<i>28. Independence, enforcement powers and adequacy of resources of media authorities and bodies.....</i>	<i>23</i>
<i>29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies .....</i>	<i>24</i>
<i>30. The transparent allocation of state advertising (including any rules regulating the matter)....</i>	<i>25</i>
<i>31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society) .....</i>	<i>25</i>
<i>32. Rules governing transparency of media ownership.....</i>	<i>26</i>
<i>33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities.....</i>	<i>26</i>
<i>34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists .....</i>	<i>27</i>
<i>35. Access to information and public documents .....</i>	<i>28</i>
<i>36. Other - please specify .....</i>	<i>29</i>
<i>37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions). .....</i>	<i>29</i>
<i>38. Regime for constitutional review of laws.....</i>	<i>30</i>
<i>39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies.....</i>	<i>31</i>
<i>40. modalities of publication of administrative decisions and scope of judicial review.....</i>	<i>33</i>
<i>41. Implementation by the public administration and State institutions of final court decisions ...</i>	<i>33</i>
<i>42. Measures regarding the framework for civil society organisations.....</i>	<i>34</i>
<i>43. Other - please specify .....</i>	<i>34</i>

---

## **I. Justice System**

### **A. Independence**

#### **1. Appointment and selection of judges and prosecutors**

##### **Judges**

In accordance with articles 13.9 and 35.1 of the [Irish Constitution](#), judicial appointments are made by the President acting on the advice of the Government. The appointment and selection of judges is covered in Part IV of the [Court and Court Officers Act, 1995](#).

The [Judicial Appointments Advisory Board](#) (JAAB) is the body tasked with selection of suitable candidates for appointment. The JAAB is made up of Court Presidents from all jurisdictions, the Attorney General, a representative from both the Law Society and the Bar Council, and three lay members.

##### **Prosecutors**

The Director is appointed by Government following a process prescribed in the Prosecution of Offences Act, 1974. The Director of Public Prosecutions (DPP) is a civil servant in the civil service of the State who is appointed by the government from a selection of candidates recommended to the government by a statutory committee, consisting of the Chief Justice, the Chairman of the General Council of the Bar of Ireland, the President of the Law Society, the Secretary to the Government and the Director General of the Office of the Attorney General. Tenure is a matter to be determined by the government on appointment, the current office holder being on a 10-year non-renewable term. All other prosecutors, although not civil servants, are appointed to the office under the rules applying to civil servants on permanent contract subject to an upper retirement age. State solicitors are currently appointed by the director, on the basis of a ten-year, renewable, contract for services.

Authority to appoint prosecutors rests with the Director of Public Prosecutions under the Prosecution of Offences Act 1974 as amended by the Civil Service Regulation (Amendment Act 2005). The Director is responsible for the appointment and promotion of prosecutors, however, the office is assisted by the Public Appointments Service to ensure independence and probity in the recruitment process. Recruitment is carried out in accordance with the Codes of Practice established by the Commission for Public Service Appointments. The director is responsible for the dismissal of prosecutors at the grade of principal officer and above, while the deputy director is responsible for dismissal of prosecutors of a lower grade.

In general prosecutors are recruited through competitive interview for which qualification as a solicitor/barrister is necessary to be eligible to complete. A very small number of appointments as prosecutor are made following training and subsequent qualification as a solicitor/barrister which is available to non-legal professionals in the Office. The initial recruitment of employees participating in this training is through open competition and the process for inclusion in the training programme is competitive.

Once it has been determined that a candidate be considered for appointment to the prosecution service, a comprehensive background check into such issues as integrity/propriety is conducted by the Garda Síochána, the Irish police service.

## ***2. Irremovability of judges, including transfers of judges and dismissal***

The removal of a judge is set out under Article 35 of the Constitution. However, no judge has ever been removed under Article 35. Article 35 applies by virtue of section 39 of the [Courts of Justice Act 1924](#), to a judge of the Circuit Court, and section 20 of the [Courts of Justice \(District Court\) Act 1946](#), to a judge of the District Court.

Under the [Judicial Council Act 2019](#), the Judicial Conduct Committee can invoke section 80 of the 2019 Act which is “*Referral by Judicial Conduct Committee to Minister of matter relating to conduct or capacity of judge for Article 35.4 purposes*”. This section outlines that upon investigation of a complaint or conduct by the Panel of inquiry and upon determination of the Judicial Conduct Committee, the independent committee can make a referral to the Minister to bring motions to the houses of the Oireachtas (Ireland’s legislature), seeking the removal of Judge in regards to conduct or capacity.

## ***3. Promotion of judges and prosecutors***

### **Judges**

In accordance with articles 13.9 and 35.1 of the Constitution, judicial appointments are made by the President acting on the advice of the Government.

Members of the judiciary may write to the Attorney General’s Office requesting a promotion to a higher Court e.g. from the Circuit Court to the High Court. Those expressions of interest are considered by the Government while nominating a candidate to fill a judicial vacancy in the relevant Court.

### **Prosecutors**

The Director of Public Prosecutions is responsible for the appointment and promotion of prosecutors, however, the office is assisted by the Public Appointments Service to ensure independence and probity in the recruitment process.

The procedure for the promotion of prosecutors is competitive interview. Criteria include professional skills, subjective criteria, specialist legal knowledge, expertise and self-development; judgement and decision making; management and delivery of results; and building relationships and communication.

## ***4. Allocation of cases in courts***

The Irish courts were set up by the [Courts \(Establishment and Constitution\) Act 1961](#) pursuant to Article 34 of the Constitution. Articles 34 to 37 of the Constitution deal with the administration of justice in general.

The Irish Constitution outlines the structure of the court system as comprising a court of final appeal (the [Supreme Court](#)), a [Court of Appeal](#), and courts of first instance which include a [High Court](#) with full jurisdiction in all criminal and civil matters and courts of limited jurisdiction, and the [Circuit Court](#) and the [District Court](#) organised on a regional and local basis.

In relation to criminal trials, minor offences are tried in courts of summary jurisdiction, while a person accused of a more serious offence cannot be tried without a jury. The Constitution also

makes provision for the establishment of Special Courts to secure the effective administration of justice where the ordinary courts would be unable to do so.

### **Allocation of Cases in the Courts**

In the Supreme Court and Court of Appeal the President of each Court allocates the caseload of the court. In the High Court, the President of the High Court has overall responsibility for allocation of cases and assigns judges to oversee the various High Court Lists. The Judges responsible for those Lists allocate cases.

The President of the Circuit Court, in consultation with the assigned judge of each Circuit, has responsibility for directing the sittings of the Circuit Court, as provided for in section 10 of the [Courts of Justice Act 1947](#). The President of the Circuit Court also arranges the sittings of the Circuit Court in Dublin.

The President of the District Court is responsible for the sittings of the District Court in Dublin. Outside Dublin, the sittings of the District Court are set out in Statutory Instrument enacted by the Courts Service pursuant to the [Courts of Justice Act 1953](#), as amended, after consultation with the President of the District Court. Subject to this, the judges assigned to the various Districts preside over the business of the District Court.

### ***5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)***

The Judicial Council was formally established on 17 December 2019 under the [Judicial Council Act 2019](#). All holders of judicial office are members of the Judicial Council. Its main functions are to ensure -

- excellence in the performance of judicial functions
- high standards of conduct among Judges
- an independent judiciary
- public confidence in the judiciary and in the administration of justice

The Judicial Council Members are set out in the Judicial Council Act 2019 under section 8 as follows:

- The Chief Justice and the ordinary judges of the Supreme Court;
- The President of the Court of Appeal and the ordinary judges of the Court of Appeal;
- The President of the High Court and the ordinary judges of the High Court;
- The President of the Circuit Court and the ordinary judges and specialist judges of the Circuit Court;
- The President of the District Court and the judges of the District Court other than the President of that Court.

The Board of the Judicial Council performs the functions of the Council on its behalf.

The Board is comprised of the following 11 members:

- The Chief Justice and each of the four Presidents;
- One judge elected by and from the judges of each of the five jurisdictions;
- One additional judge co-opted by the Board.

The Chief Justice shall be the chairperson of the Council and the President of the Court of Appeal shall be its vice-chairperson.

## ***6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.***

### **Judges**

The Judicial Council has a statutory obligation to establish the Judicial Conduct Committee under section 43 of the Judicial Council Act 2019. This committee will promote and maintain high standards of conduct among judges, including by the investigation and hearing of complaints. This Committee is independent in the performance of its functions. The committee will consist of 13 members, 8 judges and 5 lay members.

The Judicial Conduct Committee

- Can determine the admissibility of a complaint, establish a Panel of Inquiry to investigate a complaint
- Can provide a resolution of a complaint by informal means and determine if the complaint is substantiated
- will provide the Board with draft judicial conduct and ethical guidelines as per section 43 of the 2019 Act
- will prepare and publish guidelines for informal resolution of complaints as per section 43 of the 2019 Act
- has the power under section 61 of the Act to seek resolution of a complaint under informal means.

The Panel of Inquiry under section 69 of the 2019 Act has a number of powers to carry out its investigation

### **Prosecutors**

All prosecutors are to meet the obligations under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001. Requirements include the provision of an annual disclosure of any interests which could influence them in the performance of their official duties. Their terms and conditions of employment also require that they avoid conflicts of interest which might be inconsistent with their official positions or interfere with the performance of their work.

Furthermore, the Civil Service Code of Standards and Behaviour<sup>40</sup>, issued by the Minister for Finance pursuant to section 10 (3) of the Act of 2001, details the standards of integrity required, addressing issues such as improper influence, conflict of interest, rules regarding the acceptance of gifts etc. Non-adherence to the code is subject to disciplinary action in accordance with the Civil Service Disciplinary Code.

Chapter 3 of the Guidelines for Prosecutors contains the Code of Ethics and includes particular sections on independence, responsibility, integrity and competence.

### ***Supervision and enforcement***

As a starting point, in Ireland, prosecutors are, like any other person, criminally liable for their actions. There are no immunities or special procedures for prosecutors under Irish law in relation to prosecution for criminal offences. Prosecutors are included in the definition of “public official” for the purpose of corruption offences.

The supervision of the implementation of the Ethics Acts or the Civil Service Code, as far as the prosecution service is concerned, applies in respect of all prosecutors holding a delegated ability to direct the initiation or course of a prosecution (“designated positions”). Non-compliance with these instruments would be considered a matter to be dealt with under the Civil Service Disciplinary Code; the Standards in Public Office Commission is to investigate such matters and draw up a report of its investigation that will be furnished to the relevant public body. If the commission determines that there was a contravention and that the contravention was a serious matter, the report will be laid before parliament. A public body in receipt of such a report may take appropriate disciplinary action.

All other disciplinary proceedings against prosecutors are under the responsibility of the Director of Public Prosecutions, or where appropriate the Deputy Director of Public Prosecutions, following the procedures as set out by the Civil Service Disciplinary Code.

Complaints against prosecutors’ conduct are to be addressed to the DPP. To this end, the DPP has included in its website clear instructions aimed at the general public on how to file complaints against the Prosecution Service in case it does not meet expectations. Furthermore, descriptions aimed at the general public concerning the procedures within the DPP are also available on-line.

There is no dedicated internal department of the DPP to deal with complaints against prosecutors. In the current system, such complaints are, as a main rule, to be addressed by the prosecutor who delivered the service complained of and, subsequently, within his/her hierarchy. In October 2012, the DPP issued an internal policy document on a pilot basis concerning the handling of such complaints. This policy was reviewed in May 2013 and is currently in operation. It follows, inter alia, from the policy document that complaints are to be registered and dealt with by the division concerned (where the alleged problem occurred) and that the Private Office of the DPP and the Communication and Development Unit (CDU) of the Administration Division are to be kept informed of incoming complaints.

## ***7. Remuneration/bonuses for judges and prosecutors***

### **Judges**

Remuneration for judges is published in [S.I. No. 257/2019 - Courts \(Supplemental Provisions\) Act 1961 \(Judicial Remuneration\) \(Section 46\(9A\)\) Order 2019](#). [There are no bonuses.](#)

### **Public Prosecutors**

A public prosecutor at the beginning of their career receives a gross annual salary of €32,716, rising to €83,740 at the highest point in the scale as their career progresses. Public prosecutors do not receive any additional benefits. Public prosecutors are permitted to combine their work with other, remunerated, positions including: teaching, research and publication, arbitration, consulting and cultural functions.

## ***8. Independence/autonomy of the prosecution service***

The prosecution system in Ireland is grounded in the constitution and in statutory law, most notably the Prosecution of Offences Act, 1974. All crimes and offences prosecuted in any court, other than a court of summary jurisdiction, shall be prosecuted in the name of the people and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose. The Act of 1974 established the Director of Public Prosecutions (DPP) as the officer so authorised. A member of the Garda Síochána (national police) may institute and conduct prosecutions in a court of



summary jurisdiction, but only in the name of and in compliance with any directions issued by the DPP.

The Director of Public Prosecutions independently enforces the criminal law in the courts. To this end the DPP directs and supervises public prosecutions on indictment in the courts and gives general direction and advice to the Garda Síochána in relation to summary cases and specific direction in such cases where requested. The DPP decides whether to charge people with criminal offences, and what the charges should be. The Office has defined its mission as “To provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective”.

The Office of the Director of Public Prosecutions is not part of the judicial branch. The Director is, by virtue of statute, independent in the performance of the functions of the DPP. Section 6 of the Act of 1974 underscores that independence by making it unlawful for persons other than defendants or complainants in criminal proceedings, or persons likely to be defendants, or their legal or medical advisers, members of their family or social workers, to communicate with the DPP officers for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

The sole power to prosecute on indictment rests with the DPP (apart from cases still dealt with by the Attorney General). The Office of the Director of Public Prosecutions consists of two legal divisions, the directing division and the solicitors’ division. There is also an administration division that provides the organisational, infrastructural, administrative and information services required by the office.

The work of appearing for the director in court is carried out either by the full-time legal staff in the Solicitors’ Division in Dublin, or by the local State Solicitors in courts outside Dublin. The Solicitors’ Division is headed by the Chief Prosecution Solicitor, who acts as solicitor to the -Director, and is staffed by solicitors and legal executives. The conduct of trials on indictment is handled by barristers who are nominated by the director on a case by case basis and prosecute in accordance with the director’s instructions.

Most summary prosecutions brought in the district court are brought in the name of the director. In practice the great majority are presented by officers of the Garda Síochána without specific reference to the director’s office, except in cases where Gardaí seek or are required by general direction to seek, a direction. The institution and carriage of such prosecutions are monitored generally by senior members of the Garda Síochána. The director may assume the conduct of a prosecution instituted by a member of the Garda Síochána at any time.

In addition there are specialised investigating authorities in relation to certain particular categories of crime, including the Competition Authority, the investigation branch of the Revenue Commissioners, the Health and Safety Authority and the Office of Director of Corporate Enforcement, who retain power to prosecute summary offences within their functional area.

### ***9. Independence of the Bar (chamber/association of lawyers)***

In Ireland, the legal profession has two types of lawyer - solicitors and barristers. Most solicitors work in private practice offering services directly to the public. Other solicitors are “in-house” solicitors, employed for example by the State or by business. Barristers specialise in court advocacy and the provision of legal advice and opinions.

The Legal Services Regulatory Authority (LSRA), an independent body established in 2016, is Ireland's national statutory regulator for both branches of the legal profession – barristers and solicitors. The objectives of the Legal Services Regulatory Authority are set out in section 13(4) of the [Legal Services Regulation Act 2015](#):

(4) The Authority shall, in performing its functions of the regulation of the provision of legal services under this Act, have regard to the objectives of—

- (a) protecting and promoting the public interest,
- (b) supporting the proper and effective administration of justice,
- (c) protecting and promoting the interests of consumers relating to the provision of legal services,
- (d) promoting competition in the provision of legal services in the State,
- (e) encouraging an independent, strong and effective legal profession, and
- (f) promoting and maintaining adherence to the professional principles specified in subsection (5).

In 2018, the LSRA established the Roll of Practising Barristers which has expanded the traditional definition of barristers and now all barristers who are lawfully entitled to provide legal services as a barrister are on the Roll. In 2019, the LSRA introduced the new business model framework for Limited Liability Partnerships and in 2020 will be introducing the framework for Legal Partnerships (which can include barrister-barrister partnerships and barrister-solicitor partnerships).

The LSRA will also be revisiting the subject of multi-disciplinary practices (involving legal practitioners and other professions – e.g. architect, accountant, barrister practice). A Report on this was produced in 2017 and a further report will be undertaken starting end 2020 or into 2021.

These developments in the legal sector are introduced in line with the objectives, including encouraging an independent, strong and effective legal profession.

Other jurisdictions do not have separate barrister and solicitor professions. On that front, the LSRA has just opened a public consultation in relation to the possible unification of the professions. This is being undertaken in accordance with section 34(1)(b) of the 2015 Act.

#### ***10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary***

The Judicial Council under Section 7 of the Judicial Council Act 2019 enshrines its functions as being to promote and maintain respect for the independence of the judiciary, public confidence in the judiciary and the administration of justice. Therefore the establishment of the Judicial Council and its Committees under the 2019 Act can be seen as a significant development in terms of the perception of the general public has of the independence of the judiciary.

#### ***11. Other - please specify***

## ***B. Quality of justice***

### ***12. Accessibility of courts (e.g. court fees, legal aid)***

#### **Court Fees**

Court fees are not charged in criminal proceedings, nor in family law matters (divorce, judicial separation, nullity, maintenance, custody, access and child care).

Court fees are paid by applicants in civil court proceedings and also by persons availing of services provided in court offices, such as Probate and Enduring Power of Attorney applications. Court fees are fixed by the Minister for Justice and Equality with the agreement of the Minister for Finance and are published in documents known as court fees orders, the Supreme and High Court (Fees) Order, the Circuit Court Fees Order and the District Court Fees Order

#### Costs

##### Principle of costs following the event in civil matters

Section 169 of the Legal Services Regulation Act 2015 provides that a party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the nature and circumstances of the case, and the conduct of the proceedings by the parties.

##### Fixed costs in civil proceedings

The District Court Rules, Schedule E, as set out in Statutory Instrument No. 17 of 2014, provide for scales of costs payable to legal practitioners in a number of civil proceedings in the District Court. There is no statutory scale of costs in the Circuit Court. Appendix W of the Superior Courts Rules, as set out in Statutory Instrument No 584 o 2019 provide for a scale of costs in a limited number of matters. Other than the foregoing, costs are generally discretionary. Where costs are payable and cannot be agreed, the matter can be referred to the County Registrar for the taxation of costs (Circuit Court matters) or to the Legal Costs Adjudicator (Superior Court matters) for the adjudication of costs. <http://www.courts.ie/rules.nsf/LookupPageLink/index?OpenDocument>

##### Fixed costs in criminal proceedings

There are no fixed costs in criminal proceedings.

##### Discretionary costs in criminal proceedings

The District Court, in criminal proceedings, may make an order for costs against a party except the Director of Public Prosecutions or a prosecuting police officer. The Circuit Criminal Court and Central Criminal Court (the courts having jurisdiction to try on indictment) have a discretion to award costs:

- in the case of an acquittal (which award is appealable to the Court of criminal Appeal);
- where an indictment contains unnecessary matter, or is unnecessarily lengthy, or materially defective,
- where a trial is postponed due to amendment of an indictment; or
- where a separate trial on a count in an indictment is directed).

##### Fixed costs in constitutional proceedings

Jurisdiction in constitutional proceedings is confined to the High and Supreme Courts. No special costs or fees regime applies to such proceedings. The fixed costs allowable are those provided for in Appendix W, Rules of the Superior Courts.

### Costs in environmental cases

Under section 50B of the Planning and Development Act 2000 and Part 2 of the Environment (Miscellaneous Provisions) Act 2011 there are a special set of legal costs rules for certain environmental cases subject to the Public Participation Directive and the Aarhus Convention. These are designed to ensure that costs in such cases are “not prohibitively expensive”. The general rule is that if an applicant in a case wins, they get their costs, but if they lose the case no order for costs is made against them. This is subject to certain exceptions which would only apply in exceptional cases where a court decides the application is frivolous or vexatious, or because of the manner in which the applicant conducted the proceedings or if they were in contempt of court.

### **Legal Aid**

#### Civil Legal aid

The Legal Aid Board provides legal advice and legal aid in civil cases to persons who satisfy the requirements of the Civil Legal Aid Act, 1995 and Regulations made thereunder. The purpose is to provide for legal advice and where appropriate representation for persons of limited means. Legal aid means representation by a solicitor or barrister in civil proceedings in the District, Circuit, High and Supreme Courts. Proceedings before tribunals are excluded except for the purposes of asylum cases. Advice and assistance can, however, be provided to persons who are contemplating taking proceedings before any tribunal. Legal advice is any written or oral advice given by a solicitor of the Board or by a solicitor or barrister engaged by the Board on the application of Irish law to any particular circumstances which have arisen in relation to the person seeking legal services.

#### Applicable income threshold in the area of civil justice

The disposable income threshold in civil cases is €18,000 with disposable assets of less than €100,000. In addition fixed allowances will be applied in respect of dependants, accommodation, tax and social insurance payments. when calculating whether a person is financially eligible for legal aid. The Legal Aid Board will also assess at the merits of a case before it will grant eligibility for a solicitor or barrister to represent an applicant in Court. The criteria for granting civil legal aid and advice are set out in Sections 24-28 of the [Civil Legal Aid Act, as amended](#). In summary, the main criteria in respect of the merits of the case are that Civil Legal Aid will not be granted where:

- a reasonably prudent person who could afford the legal services would not pay for those services or
- would not be advised to do so at his or her own expense by a solicitor or barrister, acting reasonably;
- the applicant does not, as a matter of law, have reasonable grounds to institute/defend/be a party to the proceedings;
- the applicant is not reasonably likely to be successful.

The Legal Aid Board may also consider the cost to the taxpayer against the benefit the applicant might receive if the case is successful.

Where the welfare of a child is at stake – for example, in cases where the State is trying to take children into care, or a dispute over who has custody of a child, the Board will not take into account whether or not a person would be likely to win the case or conduct a cost/benefit analysis..

### Victims of Crime

The Legal Aid Board also provides legal aid in limited circumstances to victims/complainants in criminal cases. In certain sexual violence cases, complainants may apply for legal aid from the Legal Aid Board. In criminal cases where the prior sexual history of the complainant is to be raised in court by the defence, there is no disposable income threshold to be met. Legal aid is automatically granted in respect of complainants in certain sexual violence cases. Any other victim of crime must meet the same criteria as the general population.

### Criminal Legal Aid

The Criminal Legal Aid Scheme is administered by the Department of Justice and Equality and provides that free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings.

#### **Applicable income threshold in the area of criminal justice for defendants**

There is no set income threshold applied for defendants, except for the Garda Station Legal Advice Revised Scheme, where the threshold provides that persons can only receive the benefits of the scheme if their gross earnings are €20,316 or less. The grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, up to two counsel, in the preparation and conduct of their defence or appeal. The courts are responsible for the granting of legal aid.

An applicant for legal aid must establish to the satisfaction of the court that their means are insufficient to enable him/her to pay for legal aid him/herself. The court must also be satisfied that by reason of the 'gravity of the charge' or 'exceptional circumstances' it is essential in the interests of justice that the applicant should have legal aid. Where the charge is one of murder or where an appeal is one from the Court of Criminal Appeal to the Supreme Court, free legal aid is granted merely on the grounds of insufficient means. It is an offence for an applicant to knowingly make a false statement or conceal a material fact for the purpose of obtaining legal aid.

Currently some elements of the Criminal Legal Aid Scheme are administered on behalf of the Department of Justice and Equality by the Legal Aid Board. These are the Garda Station Legal Advice Revised Scheme, Legal Aid – Custody Issues, Criminal Assets Bureau (CAB) – Ad-hoc Legal Aid Scheme.

Further information on Legal Aid in Ireland can be found on the websites of the [Department of Justice and Equality](#) and the website of the [Legal Aid Board](#).

#### ***13. Resources of the judiciary (human/financial)***

All judges receive an allowance of €9,057.06 except ordinary judges of the Circuit Court and District Court who receive €2,730.02 and €1,365.01 respectively. This allowance is split over 12 months.

Since 2012, newly appointed Judges to the Supreme, Court of Appeal, High, Circuit Courts and the President of the District Court are provided with a Judicial Assistant in place of an usher or crier. A Judicial Assistant assists the Judge in Court, as well as assisting with legal drafting, proofing and any research support required.

The Judicial Council Act 2019 establishes the Judicial Studies Committee under section 17 of the 2019 Act. This committee shall facilitate the continuing education and training of judges with regard to their functions.

#### ***14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)***

The Strategic Plan 2017-2020 developed and adopted by the Courts Service Board following an extensive consultation exercise with internal and external users inter alia takes account of the Courts Service ICT Strategy. The plan identifies strategic priorities for the organisation in the three years to 2020.

In 2018 the Courts Service carried out a review of judicial ICT requirements to map the existing judicial ICT experience and recommend enhancements to optimise ICT services to the judiciary. The project, which commenced with members of the Supreme Court and Court of Appeal and continued with judges of the High Court, Circuit Court and District Court, culminated in a report to the ICT Governing Committee in September 2018. A proof of concept exercise to verify the suitability of the technology proposed was launched at the end of 2018.

The Service re-designed the Judges' Intranet site during 2018 to provide better, access, workflow and search facilities. The site will also be used to provide access to case documentation commencing with documents relating to applications for leave to appeal to the Supreme Court.

The Service continues to consult with user groups in the development of policies and initiatives on a formal and informal basis. These groups also provide valuable feedback and input into the ongoing work of the Service. Meetings afford the Service the opportunity to update users on developments including ICT.

The Courts Service Online (CSOL) project aims to deliver a single civil case management system to provide a common platform for the civil processes of all jurisdictions. The new system incorporates the facility to make applications and payments online, collect orders and file certain documents electronically. CSOL has replaced a number of existing systems and continues to be implemented on a modular basis. Areas of work benefiting from the new platform include insolvency and small claims, the Supreme Court and the Court of Appeal. Additions during 2018 included an online bankruptcy register, expansion of eLicensing functions, improvements to management of court lists and development of the system to facilitate online applications for leave to appeal to the Supreme Court. In 2019 CSOL was further extended to facilitate e-filing of applications to the Office of the Legal Costs Adjudicator.

The Courts Service has deployed a new platform for reporting on certain civil cases with familiarisation workshops and training delivered to key staff users. The platform has been rolled out for use in respect of District Court criminal cases since 2019.

The increased use of technology is key to meeting the challenge of maintaining services to judiciary, staff, the legal profession and the public, and to meet legislative requirements. Optimising the use of technology is one of the Strategic Goals of the Courts Service.

The Courts Service Long-Term Strategic Vision to 2030: *Supporting Access to Justice in a modern, digital Ireland* has the objectives of delivering and supporting the judiciary in a user-centric manner with a focus on accessibility using simplified services and processes for the timely administration of justice in an integrated manner with other justice partners, working in a collaborative manner to provide efficient value for money services for the citizen.

By managing the courts in a manner that minimises the number of cases that need be dealt with by the courts system, only requiring attendance at hearings where necessary, holding and managing hearing and case information digitally and adopting a digital-first model for the filing of court documents and case progression, the Courts Service's strategic vision for proactively managing the courts and supporting the judiciary will reduce delays for the user. It will also provide information to court users in a manner that allows them to interact with the Courts Service as easily as possible while being a trusted source of court system information. The Courts Service will work to simplify court practices and procedures and design our services based on the needs of those who use them.

**15. Other - please specify**

**C. Efficiency of the justice system**

**16. Length of proceedings**

**Civil** -The following table provides data on the annual length of civil proceedings in first instance Courts in 2017 and 2018 (Source Courts Service Annual Report 2018)

**Average length of proceedings - first instance courts**

**CIVIL: IN DAYS - FROM ISSUE TO DISPOSAL**

	High Court		Circuit Court		District Court	
	2018	2017	2018	2017	2018	2017
<b>All</b>	749	753	749	678	163	120
<b>Employment (dismissal)</b>	98	None			N/A	N/A
<b>Divorce</b>	615	629			N/A	N/A
<b>Commercial</b>	321	287			N/A	N/A
<b>Personal Injury</b>	983	994	----	----	----	----
<b>Judicial Review</b>	312	376	N/A	N/A	N/A	N/A

**CRIMINAL** - The following tables proved the average length of proceedings in criminal courts (excluding appeals)

<b>CRIMINAL: IN DAYS - FROM ISSUE TO DISPOSAL - BY OFFENCE : DISTRICT COURT</b>					
SUMMARY		INDICTABLE DEALT WITH SUMMARILY		RETURN FOR TRIAL	
2018	2017	2018	2017	2018	2017
278	260	356	366	92	100

**Summary:** time from issue of summons to disposal of offence in the District Court

**Indictable dealt with summarily:** time from lodgement of charge sheet to disposal of offence in the District Court

**Return for trial:** time from lodgement of charge sheet to transfer of offence to higher court for trial

<b>CRIMINAL: CIRCUIT COURT - AVERAGE LENGTH IN DAYS *</b>		
	2018	2017
All	547	404

\* Time from receipt of return for trial in Circuit Court to final order

<b>CRIMINAL: CENTRAL CRIMINAL COURT - AVERAGE LENGTH IN DAYS *</b>		
	2018	2017

All	382	542
-----	-----	-----

\* Time from receipt of return for trial to final order

<b>CRIMINAL: SPECIAL CRIMINAL COURT - AVERAGE LENGTH IN DAYS *</b>		
	2018	2017
All	557	1,039

\* Time from receipt of charge sheet to final order

### **17. Enforcement of judgements**

Judicial and certain non-judicial decisions are enforceable. As well as orders of the court, these include judgments in summary matters entered by a Registrar in the High Court or the County Registrar in the Circuit Court.

It is often necessary to obtain the authorisation of the court that granted the judgment in order to enforce the judgment. In some cases however, such as execution and registration of judgment, an application to court is not required. The authorisation can be given by the court office concerned.

A judgment certified as a European Enforcement Order issued under Regulation (EC) 805/2004 is recognised as, has the same effect as a High Court judgment, and is enforced accordingly. The High Court is the competent court for judgments from other jurisdictions to be enforced under EU Regulations. The competent court for enforcing a periodic maintenance payment certified as a European Enforcement Order is the District Court.

In the case of a judgment delivered on an uncontested claim to be enforced in another EU jurisdiction, the court that delivered the judgment has jurisdiction for applications in relation to its enforcement under [Regulation 805/2004](#) relating to European Enforcement Orders.

The Master of the High Court has been delegated the functions in relation to Regulation (EC) 44/2001 (replaced by [Regulation \(EU\) No 1215/2012](#) which applies to court settlements approved or concluded on or after 10 January 2015). An application can be made in open court for a declaration that a judgment is enforceable in Ireland and a subsequent Order made for its enforcement.

### **18. Other - please specify**

## **II. Anti-corruption framework**

### **A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)**

#### **19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).**

Responsibility for the development and implementation of anti-corruption policies in Ireland does not rest with any one single body. The competence to prevent, detect, investigate and prosecute corruption is spread across a number of bodies. Within the Justice remit, this task falls to the Garda National Economic Crime Bureau within An Garda Síochána.

An Garda Síochána is the national police service of Ireland. It has responsibility for carrying out all policing duties in the Irish State, including the fight against corruption.



As at end march 2020, the strength of An Garda Síochána is 14,750. In addition, there are 444 Garda Reserves.

In An Garda Síochána, the investigation of corruption offences is the responsibility of the Garda National Economic Crime Bureau (GNECB), which falls within the remit of the Assistant Commissioner with responsibility for Special Crime Operations and in 2019, the GNECB had a total manpower of 103 personnel.

In 2017, a dedicated Anti-Corruption Unit (ACU) was established within GNECB to act as organisational lead for the investigation of corruption and bribery. Its operational scope includes:

- The investigation of credible allegations of foreign bribery and corruption.
- The investigation of credible allegations of domestic bribery and corruption of national importance.
- Taking a proactive role in identifying possible cases of bribery and corruption.
- Supporting small and mid-range corruption investigations being carried out at Divisional level.
- Providing anti-corruption advice to businesses and the general public.

Corruption investigations conducted by the GNECB are supported where necessary by relevant national operational units, such as the Criminal Assets Bureau (CAB), regarding the seizure of assets deemed to be the proceeds of crime. All corruption investigations conducted by An Garda Síochána are referred on completion to the office of the Director of Public Prosecutions.

From an internal perspective, in 2019, An Garda Síochána established a dedicated National Anti-Corruption Bureau, which is focused on identifying, preventing and detecting corruption on the part of Garda members and Garda staff.

An Garda Síochána also has members on secondment to external agencies to support and coordinate the investigation of corruption and fraud, including the office of the Director of Corporate Enforcement, the Competition and Consumer Protection Commission, and the Department of Employment Affairs and Social Protection.

### **Review of Ireland's anti-corruption structures**

As part of the Government's "*Measures to enhance Ireland's corporate, economic, and regulatory framework*" strategy document, it was agreed that the Department of Justice and Equality would lead a review of anti-corruption and anti-fraud structures to ensure that all state bodies with a role in the prevention, detection, investigation and prosecution of fraud and corruption are working effectively together. The terms of reference were agreed by Cabinet in July 2018 and Mr. James Hamilton, former Director of Public Prosecutions and a member of a number of international anti-corruption bodies was appointed as the chair. The review group met for the first time in September 2018. The Review Group is due to present its findings later this year.

### **B. Prevention**

## ***20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)***

### **Rules on integrity (such as asset declarations) for decision makers**

Policy in Ireland for the prevention of corruption and promotion of integrity is set in a number of pieces of legislation including the Ethics Acts and the [Regulation of Lobbying Act 2015](#).

### **Current Ethics legislative framework**

The [Ethics in Public Office Act 1995](#) and the [Standards in Public Office Act 2001](#) are cited together as the Ethics Acts. The Minister for Public Expenditure and Reform has responsibility for these Acts.

### **Standards in Public Office Act 2001 (the 2001 Act)**

The 2001 Act amends the 1995 Act in several respects. It provides for the establishment of the Standards in Public Office Commission and confers on it all of the functions and powers of its predecessor, the Public Offices Commission, under the 1995 Act.

The principal functions of the Standards Commission, as inherited from the Public Offices Commission, are to publish guidelines, to give advice and to investigate and report in relation to possible contraventions of the Ethics Acts. These functions of the Standards Commission relate to office holders (including Ministers and Ministers of State), the Attorney General, special advisers and holders of designated directorships and occupiers of designated positions in the public sector. The same functions are discharged by the Committees on Members' Interests of the Dáil and Seanad in relation to members of those Houses who are not office holders.

The 2001 Act includes tax clearance obligations for Oireachtas Members, for the Attorney General and for persons who are appointed to senior office, i.e. designated positions or directorships in public bodies prescribed under the 1995 Act in relation to which the remuneration is not less than the lowest remuneration of a Deputy Secretary General in the civil service.

As compared to the 1995 Act, the 2001 Act provides for a wider range of circumstances in which a complaint can be made to the Standards Commission. A complaint can now be made to the Standards Commission not only in respect of an office holder, the Attorney General, a special adviser, a person who, at the relevant time, held a designated directorship of, or occupied a designated position of employment in, a public body, but also in respect of a person who held or occupied, at the relevant time, any directorship of or position of employment in a public body. This Act provides for complaints about 'specified acts', i.e. improper conduct which is of significant public importance. The 2001 Act provides for immunity for complainants and establishes a basis whereby the Standards Commission can appoint Inquiry Officers to carry out preliminary enquiries into complaints. This legislation provides for own initiative investigations, however, the Standards Commission cannot appoint an Inquiry Officer where no complaint has been received.

### **Functions of the Standards Commission under the Ethics Acts**

The principal ongoing functions of the Standards Commission under the Ethics Acts are to provide advice and guidelines on compliance with the Ethics Acts, to administer the disclosure of interests and tax clearance regimes and to investigate and report on possible contraventions of the legislation. These functions of the Standards Commission apply to office holders and to public servants and, in relation to tax compliance measures, to all members of the Houses. Apart from matters relating to tax clearance, the Committees on Members' Interests of both Houses have

functions similar to those of the Standards Commission in relation to members of the Houses who are not office holders.

The Standards Commission also has oversight responsibility for the Electoral Act 1997 (as amended), the Oireachtas (Ministerial and Parliamentary Offices)(Amendment) Act 2014 and the Regulation of Lobbying Act 2015.

### **Lobbying and transparency for decision makers**

The Regulation of Lobbying Act 2015 was commenced on 1 September 2015. This means that from that date there has been a requirement for those who lobby designated public officials to register and report on their lobbying activities every four months on the Register of Lobbying (the Register). The part of the Act which provides for investigation and enforcement provisions was commenced on 1 January 2017. The Act and related statutory instruments can be viewed at <https://www.lobbying.ie/about-us/legislation>

The Register, which is a web-based system, can be viewed at [www.lobbying.ie](http://www.lobbying.ie) and is overseen by the Standards Commission. There are currently just over 1,950 organisations and individuals who have registered on the Register, and more than 40,000 returns have been submitted and are available for

### **First statutory review of the Regulation of Lobbying Act**

In line with section 2 of the Regulation of Lobbying Act, the First Review of the operation of the Act was completed by the Department of Public Expenditure and Reform and a Report published in April 2017. The Report identified the main emerging issue as a need for further education and guidance.

While it was not recommended that any amendments be made to the Regulation of Lobbying Act, the First Review did set out a number of areas where further action was recommended. On foot of these recommendations for further action, the Standards Commission, for example, provided additional content on its existing Frequently Asked Questions section of the lobbying.ie website in relation to:

- grassroots communications and mass communication, and;
- communications between a political party and its elected representatives.

### **Second statutory review of the Regulation of Lobbying Act**

The second review of the Regulation of Lobbying Act was published in late February 2020.

<https://www.gov.ie/en/publication/7ef279-second-statutory-review-of-the-regulation-of-lobbying-act-2015/>

The third statutory review of the Regulation of Lobbying Act is required to commence by the 1st of September 2022.

## ***21. Rules on preventing conflict of interests in the public sector***

### **Conflicts of interest**

The general rules and procedures concerning conflicts of interest are set out in the Ethics Acts, the codes of conduct. In addition, the Standards Commission has published Guidelines on compliance with the provisions of these Acts.

The Ethics Acts provide a framework for the disclosure of interests by

1. Members of Dáil Éireann and Seanad Éireann (Members),
2. Office Holders (i.e. Ministers, Ministers of State, and the Chairman and Deputy Chairman of both Dáil Éireann and Seanad Éireann),
3. The Attorney General,
4. Special advisers,
5. Holders of Directorships in public bodies designated by the Minister for Public Expenditure and Reform as falling within the scope of the Ethics Acts (Designated Directors),
6. Occupiers of positions of employment in the Civil and Public Service designated by the Minister for Public Expenditure and Reform as falling within the scope of the Ethics Acts (Designated Positions).

## ***22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption***

### **Protected Disclosures - Regulatory Framework**

The Protected Disclosures Act 2014 provides robust statutory protections for workers in both the public and private sectors against the real or potential penalisation by their employers where they have brought concerns about wrongdoing in the workplace to light.

This legislation, which incorporates many of the recommendations in relation to whistleblower protection legislation made by international bodies such as G20, the OECD, the Council of Europe and Transparency International and meets the highest international standards, represents a new departure in Irish law.

### **Bodies/persons to which reports may be made / if reports can be made public directly**

The main objective of the Act is the protection of workers in all sectors of the economy – both public and private – against reprisals in circumstances where they make a disclosure of information relating to wrongdoing in the workplace.

It provides for a “stepped” disclosure regime in which a number of distinct disclosure channels are available – internal, “regulatory” (prescribed persons/bodies), to the relevant Minister in the case of workers employed in public bodies, and external (including publicly) – which the worker can access to acquire important employment protections. While the different channels require different evidential thresholds, and internal disclosure is encouraged where possible, it is not compulsory to use any one channel before another, although in the case of public disclosure this can only be done directly in limited circumstances, including where evidence is likely to be concealed or destroyed or the matter is of an exceptionally serious nature.

The Act seeks to safeguard the broadest possible range of workers from being subject to occupational detriment for having made a protected disclosure and also provides for immunity against civil liability. Disclosures made under existing sectoral legislation are given “protected disclosure” status to ensure a uniform standard of protection to all workers.

In terms of members of An Garda Síochána (the Irish Police Service) reports can be made internally within An Garda Síochána; to a prescribed person in the form of members of the Garda Síochána Ombudsman Commission; to the Minister for Justice and Equality; or externally if the higher evidential thresholds are met. However, external disclosures are restricted to specified procedures if the matter relates to issues concerning law enforcement or security and defence (including intelligence), and direct disclosures to the public are not permitted in such circumstances.

## **Anonymous reports**

While anonymous disclosures made by workers are not excluded from the protections provided under the Protected Disclosures Act, a worker cannot obtain redress under the Act without identifying themselves. Public bodies are encouraged to commit in their procedures that anonymous disclosures will be acted upon to the extent that this is possible.

## **Thresholds**

Depending on the channel chosen to disclose the information the level of belief demonstrated by the worker ranges from “reasonable belief” to “substantially true”. Disclosure to an employer is expected to be availed of most frequently.

In certain circumstances a protected disclosure may be made externally to other recipients such as the media or Members of the Houses of the Oireachtas (Parliament). In such a case the worker needs to meet stronger qualifying criteria.

## **Retaliation protected against**

Three forms of protection are available under the Act:-

- Protection from the retributive actions of an employer
- Protection from civil liability
- Protection from victimisation by a third party

In the event that a worker is penalised for having made a protected disclosure, a claim for redress through the normal industrial dispute resolution mechanisms may be made. Redress is available for penalisation (which is widely defined in the Act) falling short of dismissal and, in the case of a dismissal, under the Unfair Dismissal Act regardless of the length of service. In the case of a dismissal a provision is included in the Act which allows a worker to make a claim for interim relief to the Circuit Court.

## **Awareness raising /confidential advice**

All public bodies are obliged under the Act to have procedures in place to deal with protected disclosures and made available to their workers. The Department of Public Expenditure and Reform published comprehensive Guidance for public bodies on their implementation of the legislation in February 2016.

The Workplace Relations Commission, in consultation with staff and employer representatives, has also developed a Code of Practice (which has a statutory basis) giving guidance and setting out best practice to help employers, workers and their representatives understand the Protected Disclosures Act.

A Statutory Review of the Protected Disclosures Act was published in July 2018. A public consultation was held in 2017 as part of the review process and this elicited 25 submissions from public bodies, interest groups and members of the public. The Review Report considers the issues raised in the submissions made under the public consultation process. The Review makes it clear that, while awareness of the Act is increasing among workers and employers, it needs to increase further.

Financial support (€220,000 per annum) is provided by the Government to Transparency International Ireland to operate a “Speak Up” helpline and a legal advice centre (Transparency Legal Advice Centre) that offers information and advice to support whistleblowers and potential whistleblowers.

The advice centre offers information to people who wish to report concerns about wrongdoing (such as corruption, fraud, waste of public resources and harm to others), referral to legal advisors if feasible and support to individuals who wish to bring public attention to cases of systemic abuses of power, white collar crime or corruption. Transparency International Ireland also collect and publish statistical data from complaints/reports received, to help identify corruption risks and to have them addressed by those in a position to take action.

Transparency International Ireland also operate the Integrity at Work scheme, a multi-stakeholder, not-for-profit initiative for employers. Through training, best practice exchange, online resources and specialist advice and guidance, Integrity at Work promotes supportive environments for anyone reporting concerns of wrongdoing.

### **Future Developments**

The new EU Protected Disclosures Directive (EU) 2019/1937 will require substantial changes to the Protected Disclosures Act. The specifics of the changes required will be established via both public and targeted stakeholder consultation over the course of the transposition period. The Department of Public Expenditure and reform will also maintain close contact with the European Commission during the transposition period.

As the Protected Disclosures Act already provides for a high standard of protection for a number of matters addressed within Directive 2019/1937, the Act will be amended in order to transpose the additional provisions of the Directive into law. The deadline for transposition is 17<sup>th</sup> December 2021.

Some of the changes to be addressed include the expanded personal and material scope of the Directive when compared to the Protected Disclosures Act, the follow-up and feedback requirements for organisations who receive reports and on the supports which will be offered to those who make protected disclosures.

***23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).***

Measures described in responses above, including the *Protected Disclosures Act 2014*, *Ethics Acts*, the *Regulation of Lobbying Act 2015*, and the establishment of the Anti-Corruption Unit within the Garda National Economic Crime Bureau, have been taken with the aim of preventing corruption across all sectors.

***24. Any other relevant measures to prevent corruption in public and private sector***

## **C. Repressive measures**

### **25. Criminalisation of corruption and related offences,**

The main piece of legislation in Ireland dealing with corruption is the [Criminal Justice \(Corruption Offences\) Act 2018](#). This Act, signed into law on the 5 June 2018 consolidated Ireland's anti-corruption legislation by repealing and replacing legislation dating back to 1889.

The [Criminal Justice \(Corruption Offences\) Act 2018](#) was enacted to clarify and strengthen the main corruption offences in Ireland. The Act repealed and replaced 7 previous anti-corruption Acts while also introducing new offences and tougher penalties for those found guilty of corruption.

The six anti-corruption recommendations of the Mahon Tribunal (an inquiry into certain planning matters and payments to politicians) are addressed in this Act. This includes creating new offences such as making payments to a third party knowing that payment will be used for a bribe. It also includes extensions to the presumptions of corruption which had been included in the Prevention of Corruption Amendment Act 2001.

#### **Section 5 – Active and passive corruption**

This is the main corruption offence in Ireland. This section provides for the offences of corruptly-giving (active) and corruptly-receiving (passive). It is intended to cover all public and private sector positions, including those in voluntary bodies. This section covers a gift, consideration or advantage being given or received directly or indirectly, alone or with another person and it is not required that the bribe be actually given to fulfil the offence. Offering or agreeing to give or receive the bribe are also specified.

Notably, gifts, consideration or advantages must be “corruptly” offered or accepted. The definition of “Corruptly” includes acting with an improper purpose personally or by influencing other persons by means of making false or misleading statements, by means of withholding, concealing, altering or destroying a document or other information, or by other means which may be determined by the court. It is intended that the word be interpreted in line with these terms, but also in accordance with the general ordinary meaning of the word.

### **26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)**

The sanctions applicable under the [Criminal Justice \(Corruption Offences\) Act 2018](#) are set out in Section 17. Penalties that may be imposed in this legislation are wide-ranging, for example for the offences set out in sections, 5, 7, 8, 9 and 10, the penalties are on summary conviction a fine of up to €5000 and up to 12 months imprisonment. For conviction on indictment, an unlimited fine or up to 10 years imprisonment. The Court can also prohibit a person from seeking to hold public office for up to ten years.

### **27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation)**

The sophistication and complexity of high-level corruption cases creates additional difficulties for investigators. Such investigations, by their nature are resource-intensive and can be time-consuming. Specialised skills, such as forensic accounting, are often required and cases frequently

involve significant cross border cooperation. Therefore, one of the significant obstacles to their investigation relate to the availability of resources, staffing and financial.

It might be considered that the lack of a beneficial ownership register could constitute an obstacle to **“investigation and prosecution of high-level and complex corruption cases”** involving entities registered by the Register of Beneficial Ownership (RBO). However, compliance with the RBO is now at 82% which is considered to be quite high. In addition, RBO has made efforts to ensure that the information being filed is adequate, accurate and current as required by the Fourth Anti-Money Laundering Directive. This is done by verifying the identity of those who have been notified to the RBO as beneficial owners either through the use of the Personal Public Service Number for those to whom one has been allocated or by using the BEN2 process for third party identification of the identities of beneficial owners who do not have a Personal Public Service Number.

Under Irish law, no individual or office holder has immunity from criminal investigation and/or prosecution for non-summary offences. In addition, withholding information pertaining to a criminal investigation, including for corruption and related offences, is a specific offence under Section 19 of the Criminal Justice Act 2011, and carries a penalty of up to five years imprisonment.

Prior to 2018, the investigation by An Garda Síochána of corruption and related acts, such as money laundering and bribery, was complex and governed by a number of pieces of overlapping legislation. The Criminal Justice (Corruption Offences) Act, 2018 effectively consolidated these Acts in a single piece of legislation, and also gave effect to a number of international statutes.

Legislative developments attempt to mitigate against the difficulties with investigating, detecting and prosecuting incidents of corruption. Ireland's legislative framework seeks to combat this impediment to crime detection through its use of whistle-blower legislation and the introduction of the Protected Disclosures Act, 2014, which protects whistle-blowers in the context of making a disclosure of wrongdoing and also the Criminal Justice (Corruption Offences) Act 2018, which seeks to implement the terms of the OCDE Convention on the same topic.

---

### **III. Media pluralism**

#### **A. Media regulatory authorities and bodies**

##### **28. Independence, enforcement powers and adequacy of resources of media authorities and bodies**

The media regulatory authority in Ireland is the Broadcasting Authority of Ireland (BAI). The BAI is independent in its functions and has the required resources and enforcement powers to ensure compliance of broadcasting codes and rules by broadcasters.

Section 24 of the Broadcasting Act 2009 (the Act) states that the Authority and each statutory committee of the BAI, shall be independent in the performance of their functions.

In terms of the BAI's enforcement powers, section 50 of the Act states that the Compliance Committee may conduct an investigation into the operational, programming, financial, technical or



other affairs of a broadcaster. Under section 51 of the Act, on the recommendation of the Compliance Committee, the Authority may terminate or suspend a contract with a broadcaster.

### ***29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies***

As laid out in section 8 of the Broadcasting Act 2009 (the Act), there are 9 members of the Authority, the members of the Authority are appointed by the Government on the nomination of the Minister for Communications, Climate Action and Environment (the Minister). In the appointment of 4 out of the 9 members, the Joint Oireachtas Committee shall advise the Minister and propose members, the Minister shall have regard to this when nominating members. At least 4 members of the Authority must be women, and 4 members must be men.

Section 9 of the Act provides that members of the Authority must have experience or shown capacity in one of the following areas:

- a) media affairs,
- b) public service broadcasting, commercial broadcasting or community broadcasting,
- c) broadcast content production,
- d) digital media technologies,
- e) trade union affairs,
- f) business or commercial affairs,
- g) matters pertaining to the development of the Irish language,
- h) matters pertaining to disability,
- i) arts, music, sport or culture,
- j) science, technology or environmental matters,
- k) legal or regulatory affairs, and
- l) social, educational or community affairs or Gaeltacht affairs.

Section 12 provides that a person cannot become a member of the Authority if they hold employment or an interest in a broadcasting or publishing business.

Section 11 provides that the Government shall appoint a Chairperson of the Authority from its members on the nomination of the Minister.

The rules regarding the dismissal or removal of a member of the Authority are laid out in section 10 of the Act.

A member of the Authority may be removed, by the Government, if the member has become incapable of performing their duties through ill-health, has committed stated misbehaviour or if their removal appears to be necessary for the effective performance of the Authority. In such cases a call for the removal of a member must be approved by each House of the Oireachtas.

## ***B. Transparency of media ownership and government interference***

---

### ***30. The transparent allocation of state advertising (including any rules regulating the matter)***

Public Procurement is governed by EU legislation and national rules and guidelines. The aim of these rules is to promote an open, competitive and non-discriminatory public procurement regime which delivers best value for money. An award of media buying contracts is subject to the usual procurement rules and regulations. The procurement rules can be found in the Government's [national guidelines for goods and services](#).

Government Departments procure contracts dependent on their own media needs, and as such are best placed to decide how they go about it. Generally they would procure such services either by advertising a Request for Tender on eTenders or via a mini-competition under an Office of Government Procurement Framework (the [National Framework for Media Strategy, Planning and Buying Services: marketing, communications](#) which is in place until December 2020).

As regards the transparent allocation of state advertising, while there are competitive processes for advertising there is no state legislation around the allocation of advertising in regards to transparency.

### ***31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)***

The Referendum Act 1998 as amended provides for the establishment of a Referendum Commission which is an independent body whose primary role is to explain the subject matter of the referendum proposal, to promote public awareness of the referendum and to encourage the electorate to vote. For each new referendum, the Minister for Housing, Planning and Local Government may set up a new Referendum Commission. The most recent Commission was set up in September 2019 to advise citizens on an upcoming ballot on allowing Irish citizens in Northern Ireland and emigrants to vote in presidential elections.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on a broad range of public and social services. It provides information to the public about the Irish legal system and their legal entitlements. The Board provides an online service as well as a telephone service and local information centres.

The Courts Service of Ireland provides information to the public on the role and function of the Courts, including easy to read information booklets. It also has a dedicated page for schools with information on how the Courts operate, together with how to book educational tours, participate in mock trial competitions and a teaching resource pack for second-level students.

Civil, Social and Political Education is a mandatory post primary course taught to 12-14 year olds in second level schools. It provides students with an understanding of how the law, Government and civil society operate in Ireland. It helps them to understand the rights and responsibilities of the individual in society, and the workings and nature of democracy and human rights.

Media Literacy Ireland is an independent association of members committed to the promotion of media literacy across Ireland and is facilitated by the Broadcasting Authority of Ireland. Media

Literacy Ireland has launched a public information campaign called BeMediaSmart to help people tell the difference between reliable and accurate information and deliberately false or misleading information.

### ***32. Rules governing transparency of media ownership***

Broadcasters in the State must be licenced by the Broadcasting Authority of Ireland (BAI). Section 25 of the Broadcasting Act 2009, obliges the Broadcasting Authority of Ireland to ensure the provision of open and pluralistic broadcasting services. In this context the BAI operate an Ownership and Control Policy. The BAI use this policy when considering licence applications.

The Competition and Consumer Protection Act 2014 obliges the BAI to produce an Ownership and Control Report every 3 years which describes the ownership and control arrangements for media businesses in the States including any changes since the previous report and analyses the effects of any such changes on plurality of media in the State.

The Competition and Consumer Protection Act 2014 requires that the Minister for Communications, Climate Action and Environment assess the effect that a proposed media merger would have on plurality of media in the State, the Minister will then make a determination based on the assessment's findings.

## ***C. Framework for journalists' protection***

---

### ***33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities***

The Broadcasting Authority of Ireland (BAI) is the independent regulator for broadcasting in the State. Section 25 of the Broadcasting Act 2009 states that the BAI shall provide a regulatory environment that will sustain independent and impartial journalism. In this context the BAI developed the Code of Fairness, Objectivity and Impartiality in News and Current Affairs. The BAI maintain this code and have relevant enforcement powers in relation to non-compliance with the code.

The objectives of the code are:

- To set out clearly the minimum standards and practices that are expected of broadcasters in their treatment and broadcast of news and current affairs content;
- To provide general guidance to broadcasters to assist in their decision-making processes, as they pertain to news and current affairs content;
- To promote independent and impartial journalism in the provision of news and current affairs content;
- To inform and generate awareness among citizens with regard to standards they may expect in relation to news and current affairs content;
- To protect the interests of citizens, in their right to access fair, objective and impartial, news and current affairs content.

Article 85 of the GDPR provides that Member States shall by law reconcile the right to protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes and for the purposes of academic, artistic or literary expression. Ireland has

given effect to the requirement to reconcile these rights in section 43 of the Data Protection Act 2018, which reads as follows:

- **Data processing and freedom of expression and information**

*43. (1) The processing of personal data for the purpose of exercising the right to freedom of expression and information, including processing for journalistic purposes or for the purposes of academic, artistic or literary expression, shall be exempt from compliance with a provision of the Data Protection Regulation specified in subsection (2) where, having regard to the importance of the right of freedom of expression and information in a democratic society, compliance with the provision would be incompatible with such purposes.*

*(2) The provisions of the Data Protection Regulation specified for the purposes of subsection (1) are Chapter II (principles), other than Article 5(1)(f), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries and international organisations), Chapter VI (independent supervisory authorities) and Chapter VII (cooperation and consistency).*

*(3) The Commission may, on its own initiative, refer any question of law which involves consideration of whether processing of personal data is exempt in accordance with subsection (1) to the High Court for its determination.*

*(4) An appeal shall, by leave of the High Court, lie from a determination of that Court on a question of law under subsection (3) to the Court of Appeal.*

*(5) In order to take account of the importance of the right to freedom of expression and information in a democratic society that right shall be interpreted in a broad manner*

Particular attention is drawn to subsection (3), which provides that the Data Protection Commission may refer cases in which issues arise in relation to the importance of freedom of expression and information in a democratic society to the High Court for its determination. Moreover, subsection (5) provides that in order to take account of the importance of the right to freedom of expression and information in a democratic society, that right shall be interpreted in a broad manner.

#### **34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists**

No specific Garda provisions to ensure the safety of journalists are considered necessary at this time. An Garda Síochána protocols for responding to threats to individuals, and the provision of guidance to persons who have been threatened, are deemed suitable for the protection of journalists operating in Ireland.

Ireland does not have a significant history of journalistic intimidation or attacks on journalists. However, An Garda Síochána, Ireland's national police force, is well placed to deal with emerging threats against any individual's safety. Ordinarily, this is accomplished through the serving of Garda Information Message forms (GIM forms) accompanied by appropriate safety advice and, if necessary, the establishment of protective measures to ensure that individuals' safety is protected.

## ***35. Access to information and public documents***

### **Freedom of Information**

The Freedom of Information Act 2014 is a key national measure ensuring general access to information held by public bodies. The Act establishes a number of rights, including a right to access official records held by Government Departments or other public bodies as defined by the Act.

This right of access is exercised by making a request in writing, including in electronic form, to the relevant organization, specifying what records it is that are being sought. If the body holds the records sought, the requester must be granted access to them unless the FOI Act provides otherwise. In order to reconcile the goal of openness, transparency and accountability of public bodies with other rights or matters of public interest, such as privacy, data protection, or commercial sensitivity, the legislation contains a number of exemption provisions, which mandate refusal of an FOI request in clearly defined and limited circumstances.

Each Public Body has one or more FOI Officers whose responsibility it is to handle requests made under the Act. In general, decisions on FOI requests must be made within four weeks. Where a request for information is refused, a written explanation must be given to the requester setting out the reason for the decision, the relevant provision of the Act under which access is refused, and any material findings of fact. If a requester is dissatisfied with the decision, they may in the first instance seek an internal review within the organization, which involves the matter being escalated to an official at a higher grade to make a fresh decision on the request.

If the requester remains dissatisfied following the internal review, a further review may be sought by the Office of the Information Commissioner, an independent statutory body. The Commissioner has broad powers to require bodies to justify their decisions to him, and is entitled to access full, unredacted copies of records and other material necessary for the conduct of a review. If the Commissioner is not satisfied that a body was justified in refusing a request, he may direct the body to grant access. A further appeal from a decision of the Information Commissioner is available to the High Court.

In 2018, the latest year for which statistics are available, 36,896 FOI requests were received by public bodies. This represents an 8.5% increase year on year, and is almost double the amount of requests received in the last year of operation of the previous legislation. 83% of the requests decided on by public bodies were granted in full or in part. 3% of requests sought internal review, while a review by the Information Commissioner was sought in 1.2% of cases. Following review, the Commissioner overturned the body's decision in 24% of cases.

### **Access to environmental information**

The public may access environmental information held by public bodies pursuant to the Access to Environmental Information Directive 2003/4/EC and the European Communities (Access to Environmental Information) Regulations 2007 to 2018. If necessary, an applicant for such information who is dissatisfied may seek an internal review from the public body they applied to. They then have a right to appeal to the Commissioner for Environmental Information (the same person as the Commissioner for Information under FOI) and there is a further right to appeal on a point of law to the High Court.

### 36. Other - please specify

---

#### IV. Other institutional issues related to checks and balances

##### A. The process for preparing and enacting laws

*37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).*

Articles 15 to 25 of the Constitution of Ireland relate to the National Parliament known as the Houses of the Oireachtas. The sole and exclusive power of making laws for the State is vested in the Oireachtas. The Constitution defines the process followed when considering draft legislation.

As a general principle, the Constitution stipulates that the sittings of each House of the Oireachtas should be in public, including meetings when draft legislation is under consideration. Members of the public are able to attend in the Public Gallery of the respective Chambers and Committee Rooms. Meetings of both Houses and Committees are livestreamed on the Oireachtas [website](#) as well as on the dedicated Oireachtas TV Channel. The official record of all proceedings of both Houses and their Committees is published on the website.

A [section on the Oireachtas website](#) allows the public to follow the passage of all draft legislation. The stages that Bills have gone through are shown alongside the full text of the Bill; related documents; links to any amendments tabled; official record of debates on the Bill and the text of the final Act enacted. Acts are also published in a number of other places including the [Irish Statute Book](#) and copies can be purchased from Government Publications Sales Office.

The Oireachtas is not required to hold public consultations when it considers draft legislation, although it regularly chooses to do so by either a general call for submissions or by engaging with the most relevant stakeholders. When the national parliament does ask the public for input, it is usually prior to the Bill being scrutinised in detail at 'Committee Stage', or earlier in the process when, prior to the publication of a Bill, it is submitted for pre-legislative scrutiny, also by Oireachtas Committees. The [website details the calls for submissions currently open](#) and provides Submission Guidelines.

Before the Government publishes a Bill, there is usually a consultation process. The relevant Department may publish a Green Paper setting out the Government's ideas and inviting opinions from individuals and organisations. Before a Bill is finalised, a general scheme of the Bill may be published. The general scheme of a Government Bill undergoes scrutiny by an Oireachtas Committee before the text of the Bill is finalised. The relevant Committee may invite stakeholders to participate by attending meetings to discuss the general scheme of the Bill. At the end of the pre-legislative scrutiny, the Committee produces a report and lays it before the Houses of the Oireachtas. The report makes recommendations on the Bill based on the Committee's scrutiny. All documents laid before the Houses of the Oireachtas are available to the public [online](#). Private Members' Bills undergo a similar process of scrutiny by an Oireachtas Committee only if they pass Second Stage in the Dáil.

Article 24 of the Constitution provides a mechanism whereby the Taoiseach may request the Parliament to abridge the time that the Upper House (Seanad Éireann) spends considering a Bill if it is considered that the legislation “is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international”. This request must be agreed to by Dáil Éireann and the President. However, any legislation enacted on foot of this provision would only remain in force for 90 days unless both Houses agree that it should remain in force for a specified longer period. This mechanism has never been used.

Article 28.3.3° of the Constitution allows for the Houses of the Oireachtas to resolve that a “time of war or armed rebellion” exists, and during that time a small category of legislation passed (quite narrowly applied) can be removed from judicial oversight. The Houses of the Oireachtas first resolved that such a time of emergency existed in 1939, and its last use ended in 1995, arising out of the armed conflict in Northern Ireland. This has not been used since then.

Outside of these provisions, no other emergency procedures for legislation are envisaged under the Irish Constitution and Standing Orders of both Houses of Parliament; all draft public legislation must be considered under, and pass, all stages in both Houses. However, in cases of some urgency the Houses may decide to shorten the time allocated to table amendments, debate a Bill and vote on all remaining stages – this is known as applying a “guillotine”.

When draft legislation has successfully passed both Houses of the Oireachtas, it is required that the President sign it into law and the President then has the responsibility of promulgating every law made by the Oireachtas (Art 13 (3) (2) of the Constitution). This is done by publishing a statement in the Iris Oifigiúil (the official Irish State Gazette which is published twice weekly in paper and [electronic format](#)) that the legislation has been enacted.

### ***38. Regime for constitutional review of laws***

Article 15 of the Constitution of Ireland states that the Oireachtas (Legislative house of parliament) will not enact any law which is in any respect repugnant to the Constitution or any provision thereof. It further states that every law enacted by the Oireachtas which is in any respect repugnant to the Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid.

Article 26 of the Constitution applies to any Bill passed or deemed to have been passed by both Houses of the Oireachtas other than exceptions described (such as a Money Bill, or a Bill expressed to be a Bill containing a proposal to amend the constitution).

Article 34.3.2 of the Constitution provides that “... the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of the constitution...” with a right of appeal to the Court of Appeal and the Supreme Court.

Article 26 describes the process by which the President may, after consultation with the council of state, refer any Bill to which the article applies to the supreme court for a decision on the question as to whether such Bill or any specified provision or provisions of such Bill is or are repugnant to the Constitution or to any provision of the Constitution.

The Supreme Court, consisting of a minimum of five judges, shall consider every question put to it by the President under Article 26 for a decision, and, having heard arguments by or on behalf of the attorney General and by counsel assigned by the court, shall pronounce its decision on such

questions in open court as soon as may be, and in any case not later than sixty days after the date of such reference.

## ***B. Independent authorities***

### ***39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies***

#### Irish Human Rights and Equality Commission (IHREC)

IHREC is Ireland's National human rights institution and national equality body. It is an independent public body with a mandate established under the [Irish Human Rights and Equality Commission Act 2014](#) to protect and promote human rights and equality. Additionally they encourage the development of a culture of respect for human rights, equality and intercultural understanding in the state. Their mission is to build a just and inclusive society that protects and promotes human rights and equality in Ireland.

#### National Disability Authority

The National Disability Authority is an independent statutory body that provides information and advice to the Government on policy and practice relevant to the lives of people with disabilities. The main function of the NDA is to provide advice and information to the Minister for Justice and Equality on matters concerning policy and practice in relation to people with disabilities and to assist the Minister in the co-ordination of disability policy.

#### Mental Health (Criminal Law) Review Board

The Mental Health (Criminal Law) Review Board was established under the *Criminal Law (Insanity) Act 2006*, as amended by the *Criminal Law (Insanity) Act 2010*. The function of the Board is to review the detention of persons detained in designated centres who have been referred there by a Court having been found unfit to stand trial or not guilty of an offence by reason of insanity. The Board also reviews the detention of persons who are transferred to a designated centre from prison for care or treatment.

#### Garda Síochána Ombudsman Commission

The independent police complaints authority, the Garda Síochána Ombudsman Commission, is empowered to directly and independently investigate complaints against members of An Garda Síochána, or any matter where it appears that a Garda may have committed an offence or behaved in a manner that would justify disciplinary proceedings.

#### Data Protection Commission

The Data Protection Commission is responsible for upholding the rights of data subjects and enforcing the obligations of data controllers and processors, in particular the rights and obligations set out in the *General Data Protection Regulation (Regulation (EU) 2016/679)* and the *Data Protection Act 2018*. The Commission is completely independent in the performance of its functions and exercise of its powers. An individual who feels that his or her data protection rights have been, or are being,



infringed can complain to the Commission. The Commission has a range of investigative tools and sanctions at its disposal under both the Regulation and the 2018 Act.

#### Press Council and Press Ombudsman

The Press Council of Ireland (including the Press Ombudsman) is an independent non-statutory body which has been given statutory recognition under the Defamation Act 2009 (Press Council) Order 2010 (S.I. No. 163 of 2010). Membership of the Press Council is open to all periodicals (national, regional and local newspapers, magazines and digital editions of print publications) published in the State. The Council is made up of 7 independent members (including the chair) who represent the public interest and 6 members who provide senior editorial and journalistic expertise and perspectives reflective of the press industry. The Press Ombudsman is appointed by the Press Council following an open competition.

The Press Council has drawn up a Code of Practice which sets out 11 principles which members are required to adhere to, including ethical standards, rules and standards intended to ensure the accuracy of reporting where a person's reputation is likely to be affected and rules and standards intended to ensure that intimidation and harassment of persons does not occur and that the privacy, integrity and dignity of the person is respected.

The Office of Press Ombudsman and Press Council provide a complaints handling and appeals process which enables members of the public to seek redress (other than damages) if something is published in an Irish newspaper, magazine or online news publication which breaches the Code of Practice.

#### Ombudsman for Children's Office

The Ombudsman for Children's Office (OCO) was established in 2004 under the [Ombudsman for Children Act 2002](#). The Ombudsman for Children is appointed by the President of Ireland and is directly accountable to the Oireachtas (Ireland's parliament) in relation to the exercise of their statutory functions.

Section 6(1) of the 2002 Act provides for the statutory independence of the Ombudsman for Children in exercising their statutory functions. These functions are:

- to promote the rights and welfare of children up to 18 years of age
- to examine and investigate complaints made by or for children about the administrative actions of schools, hospitals and public bodies that have, or may have, adversely affected a child.

Further information about the OCO, including reports published by the OCO in 2019, is available on the OCO's website, [www.oco.ie](http://www.oco.ie).

#### Ombudsman for the Defence Forces (ODF)

The ODF was established as an independent statutory office, under the Ombudsman (Defence Forces) Act 2004. The ODF generally deals with appeals from personnel who have made complaints under the Redress of Wrongs system and are dissatisfied with the outcome of the internal Redress of Wrongs appeals mechanism within the Defence Forces.

The function of the ODF is to act as the ultimate point of appeal for, and investigation into, complaints made by members and former members of the Defence Forces. Section 114 of the

Defence Acts 1954 - 2011 provides that any member of the Defence Forces, who consider themselves to have been wronged in any matter, may make a complaint and have it investigated and redressed. The Defence Forces are required to notify the ODF of every Redress of Wrongs complaint initiated under Section 114 of the Defence Acts 1954-2011. Former members of the Defence Forces may make the complaint directly to the ODF.

#### Financial Services and Pensions Ombudsman

The Office of the Financial Services and Pensions Ombudsman (FSPO) was established on 01 January 2018 under the Financial Services and Pensions Ombudsman Act 2017. The FSPO provides a free service to resolve complaints from consumers against financial service or pension providers, as an alternative to the Courts system.

#### Offices of the Ombudsman, Information Commissioner and Commissioner for Environmental Information.

The Offices of the Ombudsman and Information Commissioner are independent both by law and in practice. Their tenure cannot be terminated other than on grounds of stated misbehaviour, incapacity or bankruptcy, and following resolutions of both Houses of the Oireachtas calling for their removal.

The Ombudsman and Commissioner are accountable directly to the Oireachtas. Annual reports of both offices are presented to the Houses, as well as any special reports at their discretion are laid before the Houses, and both office holders appear regularly before Oireachtas Committees. In addition, where the Ombudsman has made recommendations to a public body and these have not been implemented to his satisfaction, they may lay a special report before the Houses in this regard.

Both Offices have extensive powers to require that information is provided as required for their investigations, and may require individuals to attend in order to give evidence, while the Information Commissioner may enter on to premises in order to secure information or records if required.

The role of the Commissioner for Environmental Information is to carry out independent reviews of decisions made by public authorities on requests for environmental information.

### ***C. Accessibility and judicial review of administrative decisions***

---

#### ***40. modalities of publication of administrative decisions and scope of judicial review***

In addition to the FOI request mechanism detailed at item 35 above, section 8 of the Freedom of Information Act 2014 requires FOI bodies to prepare a publication scheme based on a central model detailing classes of information that will be published on a routine basis. This scheme, and the relevant information, must be published on the organisation's website.

Furthermore, the Freedom of Information Act also provides that individuals must be provided, on request, with a statement of the reasons for and any material findings of fact on a decision that affected them in a manner set out in the legislation.

#### ***41. Implementation by the public administration and State institutions of final court decisions***

Article 34 .1 of the Constitution provides that "Justice shall be administered in courts established by law by judges appointed in the manner provide for by this Constitution, and save in such special and limited circumstances as may be prescribed by law shall be administered in public." Article 34.3.1 provides for a High Court to have "full original jurisdiction in and power to determine all matters and

questions whether of law or fact civil or criminal.” The High Court also has jurisdiction on “the question of the validity of any law having regard to the provision of this Constitution” as does the Court of Appeal and Supreme Court.

Final decisions of the courts directed at State institutions and public administration are respected and are invariably complied with. Thus e.g. if compensation is awarded payments are generally made within weeks. Orders setting aside administrative decisions are respected and complied with. If decisions have to be remade they are remitted to the decision making body but generally will be remade by different personnel. Legislation that is declared to be unconstitutional automatically falls and amending legislation may be required and if required will with the co-operation of parliament be put in place.

If there are difficulties in securing implementation or timely implementation, the beneficiary of any court decision can go back to court to secure orders enforcing compliance such as injunctions and mandamus. Ultimately the courts have the power to treat any failure to comply with a court order as contempt of court with the sanction being imprisonment until the “offender” purges his or her contempt by undertaking to comply with court order. Having to resort to such a sanction against a State institution or public administration would be very unusual.

#### ***D. The enabling framework for civil society***

##### ***42. Measures regarding the framework for civil society organisations***

###### Charities Regulatory Authority

The Charities Regulatory Authority (“the Regulator”) was established on 16 October 2014 under the provisions of the Charities Act 2009. It is an independent authority, responsible for the registration, regulation and protection of all charities that carry out activities in Ireland.

The Register of Charities, which can be accessed via the Regulator’s website, [www.charitiesregulator.ie](http://www.charitiesregulator.ie), was established on the same date. All charities that intend to operate or carry on activities in Ireland are required to apply for inclusion on the Register of Charities.

Under the *Code of Practice for the Governance of State Bodies*, non-commercial state bodies are subject to a Periodic Critical Review every five years. The review is conducted by a working group who report to the Minister of the relevant Government Department, and its objectives are to secure improvements in accountability, efficiency and effectiveness, to scrutinise objectively the case for rationalisation / consolidation and assess the governance structure of the public body and the Department’s oversight to ensure they are consistent with legislation and aligned to business needs. The Department engaged the Charities Regulator for its first periodic review, commencing in late 2019.

Appointments to the Board of the Regulator are made in line with the *Guidelines on Appointments to State Boards* which require that appointments are advertised openly on the State Boards portal [www.stateboards.ie](http://www.stateboards.ie) operated by the Public Appointments Service.

##### ***43. Other - please specify***

In response to the outbreak of the Covid-19 virus, the Government of Ireland introduced two Acts.

The *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020*, was signed into law by the President of Ireland on 20 March 2020. The Act provides powers to the Minister for Health to make regulations to introduce measures to slow down the spread of the virus. These include the power to: restrict travel to and from and within Ireland; restrict gatherings of people; ensure that businesses implement safeguards to protect staff and customers; and close premises, such as schools. The full text is here:

<http://www.irishstatutebook.ie/eli/2020/act/1/enacted/en/pdf>

The *Emergency Measures in the Public Interest (Covid-19) Act 2020* was signed into law on 27 March 2020 by the President of Ireland. The Act provides the Government with the means to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or reduce the risk of persons being infected with Covid-19. Under the Act, measures can be introduced in areas such as housing and planning, health and social care, mental health, defence, temporary wage subsidies, redundancies and other areas. The full text is here:

<http://www.irishstatutebook.ie/eli/2020/act/2/enacted/en/pdf>