

# **Criminal Justice (Corruption) Bill 2012 – Draft Scheme**

## **Introduction**

The Programme for Government contains a commitment to “enact a new consolidated and reformed anti-corruption law to punish white collar crime and end the impunity from consequences for corporate behaviour that threatens the economy”. This draft scheme provides for a consolidated corruption statute to replace and reform the provisions of the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, section 38 of the Ethics in Public office Act 1995, Part 5 of the Proceeds of Crime (Amendment) Act 2005, the Prevention of Corruption (Amendment) Act 2001, and the Prevention of Corruption (Amendment) Act 2010. The scheme also aims to amend relevant provisions in other legislation such as the reference to corrupt conduct in section 16B of the proceeds of Crime Act 1996 and the confidential reporting of corruption and malpractice provisions in section 124 of the Garda Síochána Act 2005.

The draft scheme makes renewed provision for the main requirements of a number of international agreements relating to corruption to which Ireland is a party including the Council of Europe Criminal Law Convention on Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention Against Corruption.

As the scheme was being finalised for consideration by the Government, the Mahon Tribunal published its final report. The scheme has been revised to take account of the relevant recommendations of the Tribunal.

The scheme includes a head providing for whistleblower protection based on that provided in the 2010 Act. It is included in case the Bill is enacted prior to the Protected Disclosures in the Public Interest Bill which will provide for whistleblower protection generally. The relevant head will be removed if the

Disclosures Bill is enacted first, and can be repealed by the Disclosures Bill if it is enacted after the Corruption Bill.

This scheme is not simply a consolidation of the old provisions. It aims to clarify and strengthen the main corruption offences, to provide greater clarity regarding trading in influence offences and to provide for the specific liability of companies for the corrupt acts of their officers and employees.

It strengthens the penalties for corruption, reflecting the damage it can do to society and the economy. To ensure that public officials who breach the public's trust through corruption are no longer able to abuse their position, this scheme empowers courts to remove such officials from office and to bar them from holding office in the future.

The scheme aims to extend to trials for all criminal offences the power of a judge to order transcripts, recordings, diagrams and summaries of evidence to be given to juries to assist them in their deliberations where appropriate. This can be especially helpful in complex white-collar crime trials.

The draft scheme of the Bill is being published to allow the Joint Oireachtas Committee on Justice, Defence & Equality and the public to consider and comment on the scheme before the Bill is drafted by Parliamentary Counsel to the Government.

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## Long Title

(to be settled)

## Head 1 - Interpretation

Provide that -

In this Act –

“civil partner” has the meaning assigned to it by the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*;

“corruptly” includes doing any act or making any omission -

- a) in breach of duty,
- b) without due impartiality,
- c) without lawful authority,
- d) in breach of a relevant code of ethics or discipline,
- e) in pursuit of undue benefit,
- f) in a deceitful, dishonest or misleading manner, or
- g) with an improper purpose ;

“*director*” means a director within the meaning of the Companies Acts, but includes, in the case of a public body that is not a company (within the meaning of the Companies Acts) and is specified in *subparagraph (8), (10) or (14)*, or stands prescribed for the purposes of *subparagraph (18)*, of *paragraph 1 of the First Schedule* , a person who is a member of it or a member of any board or other body that controls, manages or administers it;

“foreign public official” means

- a) a member of the government of any other state,
- b) a member of a parliament, regional or national, of any other state,
- c) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act 1997),
- d) a member of the Court of Auditors of the European Communities,
- e) a member of the Commission of the European Communities,
- f) a public prosecutor in any other state,
- g) a judge of a court in any other state,
- h) a judge of any court established under an international agreement to which the State is a party,
- i) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party,
- j) any other person employed by or acting on behalf of the public administration of any state (other than the State), including a person under the direct or indirect control of the government of any such state, and
- k) a member of, or any other person employed by or acting for or on behalf of, any international organisation established by an international agreement between states to which the State is not a party;

“Irish public body” shall be construed in accordance with the *First Schedule*;

“Irish Public Official” means -

- a. a person who is a Minister of the Government or a Minister of State,
- b. an Attorney General,
- c. a person who is Chairman or Deputy Chairman of Dáil Éireann or Chairman or Deputy Chairman of Seanad Éireann, and
- d. a person who holds—
  - i. the office of chairman of a committee of either House, being an office that stands designated for the time being by resolution of that House, or
  - ii. (ii) the office of chairman of a joint committee of both Houses, being an office that stands designated for the time being by resolution of each House,
- e. a member of Dáil Éireann or Seanad Éireann,
- f. a director,
- g. an officer, employee or member of an Irish public body,
- h. a person who is a member of the European Parliament by virtue of the European Parliament Elections Act 1997,
  - i. the Comptroller and Auditor General,
  - j. the Director of Public Prosecutions,

- k. a judge of a court in the State,
- l. any other person employed by or acting on behalf of the public administration of the State;

“Minister” means the Minister for Justice and Equality;

“state”, in relation to a state other than the State, includes—

- (a) a territory, whether in the state or outside it, for whose external relations the state or its government is wholly or partly responsible,
- (b) a subdivision of the government of the state, and
- (c) a national, regional or local entity of the state.



## **Head 2 - Active and Passive Corruption**

Provide that -

(1) A person who, either directly or indirectly, by himself or herself or with another person, corruptly offers, gives, attempts or agrees to give any gift, consideration or advantage to a person as an inducement to, or reward for, or otherwise on account of any person doing any act or making any omission in relation to his or her office, employment, position or business shall be guilty of an offence.

(2) A person who either directly or indirectly, by himself or herself or with another person, corruptly accepts or obtains or corruptly agrees to accept or attempts to obtain for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of any person doing any act or making any omission in relation to his or her office, employment, position or business shall be guilty of an offence.

### **Head 3 - Active and Passive Trading in Influence**

Provide that-

(1) A person who directly or indirectly, by himself or herself or with another person, corruptly offers, gives, attempts or agrees to give any gift, consideration or advantage in order to induce another person to exert an improper influence over the acts or omissions of an Irish public official or a foreign public official shall be guilty of an offence.

(2) Any person who directly or indirectly, by himself or herself or with another person, corruptly accepts or obtains or corruptly agrees to accept or attempts to obtain for himself or herself, or for any other person, any gift, consideration or advantage on account of any person promising, attempting or asserting the ability, to improperly influence an Irish public official or a foreign public official to do any act or make any omission in relation to his or her office, employment, position or business shall be guilty of an offence.

(3) It is immaterial whether or not the alleged ability to exert an improper influence existed, whether or not the influence is, or is attempted to be, exerted or whether or not the supposed influence leads to the intended result.

(4) It is immaterial whether or not the intended or actual recipient of the gift, consideration or advantage is the person whom it is intended to induce to exert influence.

## **Head 4 - Corruption in Office**

Provide that –

(1) An Irish public official who directly or indirectly, by himself or herself or with another person, does any act or makes any omission in relation to his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence.

(2) An Irish public official who uses confidential information obtained in the course of his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence.

## **Head 5 - Bribery of a Foreign Public official**

Provide that –

(1) A person who, either directly or indirectly, by himself or herself or with another person, corruptly offers, gives, attempts or agrees to give any gift, consideration or advantage to a person as an inducement to, or reward for, or otherwise on account of a foreign public official doing any act or making any omission in relation to his or her office, employment, position or business shall be guilty of an offence.

(2) In proceedings for an offence under subhead (1) it shall be a defence to prove that the gift, consideration or advantage was required by the law of the state of the foreign public official.

## **Head 6 – Making Reckless Payments**

Provide that –

A person who gives any gift, consideration or advantage to another person knowing, or reckless as to whether, that gift, consideration or advantage or part of it will be used to facilitate the commission of an offence under this Act shall be guilty of an offence.

## **Head 7 - Using a Document to Deceive**

Provide that –

(1) A person who corruptly uses a document, which he or she knows or believes to contain any statement which is false or erroneous or defective in any material particular, with the intention of inducing another person to do some act, or to make some omission, or to provide some service, relating to his or her office, employment, position or business to the prejudice of that person or any other person is guilty of an offence.

(2) In this head 'document' includes any document, disk, tape, audio or video recording, internet page, or other device or system on or in which information is recorded or stored by mechanical, electronic or other means.

## **Head 8 - Intimidation**

Provide that –

(1) A person who:

(a) either directly or indirectly, by himself or herself or with another person, corruptly threatens harm to a person with the intention to influence any person doing any act or making any omission [or on account of the person having done any act or made any omission] in relation to his or her office, employment, position or business shall be guilty of an offence.

(2) In this section “harm” means loss, disadvantage or injury.

## Head 9 - Corruption Occurring Outside the State

Provide that -

(1) Subject to subhead (2) of this head, where a person, does outside the State an act, or makes outside the State an omission, that if done or made in the State would constitute an offence under this Act, he or she shall be guilty of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act or made the omission in the State.

(2) *Subhead (1)* shall apply where -

- a) the person concerned is an Irish public official,
- b) the person concerned is an Irish citizen,
- c) the person concerned is an individual who has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence concerned,
- d) the person concerned is a company registered under the Companies Acts,
- e) the person concerned is any other body corporate established under a law of the State,
- f) a request for the person's surrender, for the purpose of trying him or her for an offence in respect of the conduct, has been made under Part II of the *Extradition Act 1965* by any country and the request has been finally refused (whether or not as a result of a decision of a court), or
- g) a European arrest warrant has been received from an issuing state for the purpose of bringing proceedings against the person for an offence in respect of the conduct, and a final determination has been made that—
  - (i) the European arrest warrant should not be endorsed for execution in the State under the European Arrest Warrant Act 2003 , or



(ii) the person should not be surrendered to the issuing state.

(3) In this section, “European arrest warrant” and “issuing state” have the same meanings as they have in the European Arrest Warrant Act 2003 .

## **Head 10 - Presumptions of corrupt gift, consideration or advantage**

Provide that-

(1) Where in any proceedings for an offence under this Act it is proved that—

(a) any gift, consideration or advantage has been -

- (i) given to an Irish public official or a connected person of the official,
- (ii) given to any person while intended to be for the benefit of an Irish public official or a connected person of the official, or
- (iii) received by or on behalf of an Irish public official or a connected person of the official,

and

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

the gift or consideration or advantage shall be presumed to have been given and received corruptly as an inducement to or reward for or otherwise on account of an Irish public official doing any act or making any omission in relation to any of the functions aforesaid unless the contrary is proved.

(2) Where in any proceedings for an offence under this Act it is proved that—

(a) any gift, consideration or advantage has been -

(j) given to an Irish public official or a connected person of the official,

(ii) given to any person while intended to be for the benefit of an Irish public official or a connected person of the official, or

(iii) received by or on behalf of an Irish public official or a connected person of the official,

and

(b) the Irish public official performed or omitted to perform any function so as to give rise to an undue benefit or advantage to the person who gave the gift, consideration or advantage, or on whose behalf the gift, consideration or advantage was given,

the gift or consideration or advantage shall be presumed to have been given and received corruptly as an inducement to or reward for or otherwise on account of an Irish public official doing any act or making any omission in relation to any of the functions aforesaid unless the contrary is proved.

(3) Where in any proceedings for an offence under this Act it is proved that—

(a) any gift, consideration or advantage has been -

(I) given to an Irish public official or a connected person of the official,

(II) given to any person while intended to be for the benefit of an Irish public official or a connected person of the official, or

(III) received by or on behalf of an Irish public official or a connected person of the official,

and

(b) the receipt of the gift, consideration or advantage is otherwise than in accordance with a relevant code,

the gift or consideration or advantage shall be presumed to have been given and received corruptly as an inducement to or reward for or otherwise on account of an Irish public official doing any act or making any omission in relation to his or her office, employment, position or business unless the contrary is proved.

(4) Subheads (1) and (2) apply to the following functions of Irish public officials:

(a) the making of any decision or the taking of any steps relating to –

(I) a tender for goods or services,

- (II) a contract ,
- (III) the appointment of a person to an office or a position of employment,
- (IV) the acquisition, letting or sale of any property or land by any means,
- (V) a grant, payment, loan, or a credit facility of any sort,
- (VI) a licence, permit, certificate, warrant, authorisation or similar permission or instrument,
- (VII) a passport, visa, or immigration permission or status,
- (VIII) a designation affecting the treatment of any property or income for the purposes of any tax or any rate of taxation,

(b) any functions of an Irish public official under the Planning and Development Act 2000,

(c) any functions of an Irish public official relating to the investigation or prosecution of an offence, or

(d) any functions of the National Asset Management Agency or the Central Bank of Ireland.

(5) In this head—

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

(6) In this head “connected person” in relation to an Irish Public Official means

-

(a) any individual who has joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with the Irish public official;

(b) any individual who has sole beneficial ownership of a legal entity or legal arrangement set up for the actual benefit of the Irish public official;

(c) any spouse or civil partner of the Irish public official;

(d) any person who is considered to be equivalent to a spouse or civil partner of the Irish public official under the national or other law of the place where the person or Irish public official resides;

(e) any child of the Irish public official;

(e) any spouse or civil partner of a child of the Irish public official;

(f) any person considered to be equivalent to a spouse or civil partner of a child of the Irish public official under the national or other law of the place where the person or child resides;

(g) any parent of the Irish public official;

(7) In subhead (3) “relevant code” means any code of ethics, code of discipline, disciplinary regulations or other similar instrument relating to the ethical standards of behaviour applicable to an Irish public official that has been prescribed for the purposes of this head.

(8) The Minister, with the approval of the Government, may by regulation prescribe a relevant code for the purposes of this head.

## Head 11 - Presumption of corrupt donation

Provide that -

1) Where in any proceedings against a person to whom this head applies for an offence under this Act it is proved that—

(a) a donation exceeding in value the relevant amount specified in the Electoral Act 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act 1999, as appropriate, was given to or received by the person or a political party of which he or she is a member,

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

(c) the donor had or has an interest in the person doing any act or making any omission in relation to his or her office, employment, position or business,

the donation shall be presumed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office, employment, position or business unless the contrary is proved.

2) Where in any proceedings against a person to whom this head applies for an offence under this Act it is proved that—

(a) a donation was given to or received by the person or a political party of which he or she is a member, and

(b) the giving or receipt of the donation was in contravention of [prohibited by] [otherwise than in compliance with] –

(I) section 23(1) of the Electoral Act 1997,

(II) section 23(2) of the Electoral Act 1997,

(III) section 23A (2) of the Electoral Act 1997,

(IV) section 24A (2) of the Electoral Act 1997,

(V) section 19F (1) of the Local Elections (Disclosure of Donations and Expenditure) Act 1999, or

(VI) section 19B (2) of the Local Elections (Disclosure of Donations and Expenditure) Act 1999

the donation shall be presumed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office, employment, position or business unless the contrary is proved.

(3) This head applies to the following:

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

(b) a person required by section 13 (1) or Section 19E of the Local Elections (Disclosure of Donations and Expenditure) Act 1999 to furnish to the local authority concerned a statement of donations.



(c) a donor

(4) In this head—

“donation”

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

(b) in relation to persons referred to in section 13 (1) and section 19E of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999 , has the meaning assigned to it by section 2 of that Act;

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

“political party” means a political party which may be registered in the Register of Political Parties pursuant to an application under section 25(3) of the Electoral Act 1992.

## **Head 12 - Presumption of Corrupt Enrichment**

Provide that –

(1) Where in proceedings against an Irish public official for an offence under this Act it is proved that -

(a) he or she maintains a standard of living above that which is commensurate with his or her official emoluments and interests as declared in his or her statement of registrable interests, or

(b) is in control of property of a value disproportionate to his or her official emoluments and interests as declared in his or her statement of registrable interests,

It shall be presumed that the standard of living or the property in question derives directly or indirectly from a gift or gifts, consideration or an advantage or advantages received as an inducement to, or reward for, or otherwise on account of any person doing any act or making any omission in relation to his or her office, employment, position or business unless the contrary is proved.

(2) In this head “registrable interests” shall be construed in accordance with the Ethics in Public Office Acts, 1995 and 2001.

(2) In this head “statement of registrable interests” means any statement or declaration of registrable interests, if any, which an Irish public official to whom this head applies is or was required to make in accordance with the Ethics in Public Office Acts, 1995 and 2001.

## **Head 13 - Offences by Bodies Corporate and Unincorporated Bodies**

Provide that-

(1) Where an offence under this Act has been committed by a director, manager, secretary, officer, employee, subsidiary or agent of a body corporate with the intention of obtaining or retaining business for the body corporate or to obtain or retain an advantage in the conduct of business for the body corporate, that body corporate shall also be guilty of an offence.

(2) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, a person who was either—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

that person shall also be guilty of an offence and liable to be proceeded against and punished as if the person were guilty of the first-mentioned offence.

(3) Where the affairs of a body corporate are managed by its members, subhead (2) shall apply in respect of the acts or defaults of a member in

connection with the member's functions of management as if the member were a director or manager of the body corporate.

(4) It is a defence to an offence under subhead (1) for the defendant body corporate to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(5) Subheads (1) to (4) shall, with any necessary modifications, apply to an unincorporated body.

(6) The liability of bodies corporate provided by subhead (1) is in addition to any rule of law concerning liability of bodies corporate.

(7) Notwithstanding the provisions of the Interpretation Act 2005, references in this Act to a person shall be construed as including unincorporated bodies.

## **Head 14 - Corruption Occurring Partially in State**

Provide that –

- (1) A person may be tried in the State for an offence under this Act if any of the acts alleged to constitute the offence was committed –
- a. in the State,
  - b. on board an Irish ship, within the meaning of section 9 of the Mercantile Marine Act 1955, or
  - c. on an aircraft registered in the State,

notwithstanding that other acts constituting the offence were committed outside the State.

- (2) The jurisdiction over offences conferred by subhead (1) is in addition to the jurisdiction conferred over offences by head 7 (Corruption occurring outside the State) or by any other provision of law.

## Head 15 - Prosecution of Offences

Provide that –

(1) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act to which that provision applies may be instituted—

(a) within 12 months from the date on which the offence was committed, or

(b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge,

whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(1) For the purposes of subhead (1), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subhead came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subhead and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

## Head 16 - Evidence

Provide that –

1. In any proceedings for an offence under this Act,

(i) a certificate that is signed by an officer of the Minister for Foreign Affairs and Trade and stating that a passport was issued by that Minister of the Government to a person on a specified date, and

(ii) a certificate that is signed by an officer of the Minister and stating that, to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

shall be evidence that the person was an Irish citizen on the date on which the offence concerned is alleged to have been committed, unless the contrary is shown.

(iii) A document purporting to be a certificate under subhead (i) or (ii) of this head is deemed, unless the contrary is shown -

(I) to be such a certificate, and

(II) to have been signed by the person purporting to have signed it.

**OR**

(1) In any proceedings for an offence under this Act, a certificate purporting to be signed by an officer of the Department of Foreign Affairs and stating that—

(a) a passport was issued by that Department to a person on a specified date, and

(b) to the best of the officer's knowledge and belief, the person has not ceased to be an Irish citizen,

is evidence that the person was an Irish citizen on the date on which the offence is alleged to have been committed, and is taken to have been signed by the person purporting to have signed it, unless the contrary is shown.

(2) In any proceedings for an offence under this Act, a certificate purporting to be signed by the Minister and stating any of the matters referred to in that paragraph is evidence of those matters, and is taken to have been signed by the Minister, unless the contrary is shown.



## Head 17 - Provision of Information to Juries

(1) In a trial on indictment of an offence [under this Act or otherwise], the judge may order that copies of any or all of the following documents shall be given to the jury in any form that the court considers appropriate:

- a) any document admitted in evidence at the trial,
- b) the transcript or recording in any form of:
  - i. the whole or any part of any speech of counsel,
  - ii. the whole or any part of the evidence given at the trial,
  - iii. the whole or any part of the trial judge's charge to the jury
- c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,
- d) any affidavit of an accountant summarising any financial accounts or transactions which are relevant to the offence.
- e) any other document, recording, chart, diagram, graphic, schedule or other item that in the opinion of the trial judge would be of assistance to the jury in its deliberations.

(2) If the prosecutor proposes to apply to the trial judge for an order that a document mentioned in *subhead (1)(d)* shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance and, on the hearing of the application, the trial judge shall take into account any representations made by or on behalf of the accused in relation to it.

(3) Where the trial judge has made an order that an affidavit mentioned in *subhead (1)(d)* shall be given to the jury, the accountant concerned—

(a) shall be summoned by the prosecutor to attend at the trial as an expert witness, and

(b) may be required by the trial judge, in an appropriate case, to give evidence in regard to any relevant accounting procedures or principles.

(4) Section 57 of the Criminal justice (Theft and Fraud Offences) Act 2001 is hereby repealed.

(5) This head shall not affect the validity of any order made by a judge in accordance with Section 57 of the Criminal justice (Theft and Fraud Offences) Act 2001 prior to the commencement of this head.

## Head 18 - Penalties

Provide that –

(1) A person guilty of an offence under this Act, other than an offence under head 3 (Active and Passive Trading in Influence), shall be liable-

(a) on summary conviction to a Class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment to

(i) imprisonment for a term not exceeding 10 years,

(II) a fine,

(III) forfeiture of any gift consideration or advantage offered, given or agreed to be given, accepted, obtained, agreed to be accepted or attempted to be obtained in connection with the offence; or, in the alternative, forfeiture of property of equivalent value to such a gift, consideration or advantage, or

(iv) any combination of the penalties in subparagraphs (i) to (iii).

(2) Where a person is convicted on indictment of an offence under this Act, other than an offence under head 3 (Active and Passive Trading in Influence), in relation to an office, position or employment as a public official held by that person at the time the offence was committed, a court may, in addition to the penalties provided in subhead (1), order the forfeiture of any office, position or employment as a relevant Irish public official held by that person.

(3) Where a court orders the forfeiture of any office, position or employment as a relevant Irish public official held by a person under subhead (2) the court may make an order excluding the person from seeking or holding any office, position or employment as an Irish public official for a specified period not exceeding 10 years.

(4) The penalties provided by subheads (2) and (3) may only be applied by a court where it is in the interest of maintaining or restoring public confidence in the public administration of the State and where it is in the interest of justice to do so.

(5) A person guilty of an offence under head 3 (Active and Passive Trading in Influence) shall be liable-

(a) on summary conviction to a Class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine or both.

(6) In this head “relevant Irish public official” means an Irish public official other than a judge or a member of the Garda Síochána Ombudsman Commission.

## Head 19 - Seizure of Suspected Bribe

Provide that –

(1) A member of the Garda Síochána may seize any gift or consideration which the member suspects to be a gift or consideration within the meaning of heads 2, 3, 4, 5, 7, 8 or 9.

(2) The seized property may not be detained for more than 48 hours unless its detention for a further period is authorised by order of a judge of the [District] Circuit Court.

(3) Such an order—

(a) shall not be made unless the judge is satisfied—

(i) that there are reasonable grounds for suspecting that the seized property is a gift or consideration within the meaning of the said heads,

(ii) that either its origin or derivation is being further investigated or consideration is being given to instituting proceedings, whether in the State or elsewhere, against a person for an offence with which the gift or consideration is connected, and

(iii) that it is accordingly necessary that the property be detained for a further period,

and

(b) shall authorise the detention of the seized property for a further specified period or periods, not exceeding 3 months in any case or 2 years in aggregate.

(4) An application for an order under subhead (3) of this head may be made by a member of the Garda Síochána.

(5) Property detained under this head shall continue to be so detained until the final determination of—

- (a) any proceedings, whether in the State or elsewhere, against any person for an offence with which the property is connected, or
- (b) any application under head 20 (*forfeiture of bribe*) for its forfeiture, whichever later occurs.

(6) Subject to subhead (5), a judge of the [District] Circuit Court may amend or revoke an order under subhead (3) of this head if satisfied, on application by the person from whom the property was seized or any other person, that its further detention upon the terms of the order is no longer justified.

## Head 20 - Forfeiture of Bribe

Provide that-

(1) A judge of the Circuit Court may order any gift or consideration which is detained under head 19 (*seizure of suspected bribe*) to be forfeited if satisfied, on application made by or on behalf of the Director of Public Prosecutions, that it is a gift or consideration referred to in heads 2, 3, 4 5, 7, 8, or 9.

(2) An order may be made under this head whether or not proceedings are brought against any person for an offence with which the gift or consideration in question is connected.

(3) The standard of proof in proceedings under this head is that applicable in civil proceedings.

## **Head 21 - Application of sections 40, 41, 42 and 45 of Criminal Justice Act 1994 to certain property.**

Provide that -

(1) Sections 40 (appeal against forfeiture order), 41 (interest on cash detained), 42 (procedure) and 45 (disposal of forfeited cash) of the Criminal Justice Act 1994 shall apply in relation to cash and, as appropriate, to any other gift or consideration detained under head 19 (*seizure of suspected bribe*), or forfeited under head 20 (*forfeiture of bribe*) as they apply in relation to cash detained or forfeited under section 38 or 39 of that Act.





## Head 22 - Protection for Persons Reporting Offences

This head is included in the scheme for the time being, however, it may be modified or removed entirely so as to align with the provisions of the Protected Disclosures in the Public Interest Bill. If this Bill was to be enacted before the Protected Disclosures Bill it would be necessary to retain whistleblower protections until they could be replaced by the Protected Disclosures Bill.

Provide that -

(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to an appropriate person of his or her opinion that an offence under this Act may have been or may be being committed unless—

(a) in communicating his or her opinion to that appropriate person did so—

(i) knowing it to be false, misleading, frivolous or vexatious, or

(ii) reckless as to whether it was false, misleading, frivolous or vexatious,

or

(b) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading.

(2) The reference in subsection (1) to liability in damages shall be construed as including a reference to liability to any other form of relief.

(3) A person who makes a communication under subsection (1), which the person knows to be false, shall be guilty of an offence.

(4) Subsection (1) is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is an appropriate person or not) of an opinion of the kind referred to in subsection (1).

(5) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for—

(a) having formed an opinion of the kind referred to in subsection (1) and communicated it, whether in writing or otherwise, to an appropriate person unless the employee—

(i) in communicating his or her opinion to that appropriate person did so—

(I) knowing it to be false, misleading, frivolous or vexatious, or

(II) reckless as to whether it was false, misleading, frivolous or vexatious,

or

(ii) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading,

or

(b) giving notice of his or her intention to do the thing referred to in paragraph (a).

(6) Schedule 2 shall have effect in relation to an alleged contravention of subsection (5).

(7) An employer who contravenes subsection (5) shall be guilty of an offence.

(8) A person guilty of an offence under subsection (3) or (7) shall be liable—

(a) on summary conviction, to a Class A fine or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

(9) Any person who, upon examination on oath or affirmation authorised under paragraph 3(1) of Schedule 2, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true shall be guilty of an offence and liable on summary conviction to a Class A fine or imprisonment for a term not exceeding 12 months or both.

(10) A person to whom a notice under paragraph 3(2) of Schedule 2 has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or

wilfully fails to produce any document to which the notice relates shall be guilty of an offence and liable on summary conviction to a Class A fine.

(11) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

(a) a person named in the document was, by a notice under paragraph 3(2) of Schedule 2, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both,

(b) a sitting of the Labour Court was held on that day and at that time and place, and

(c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person under subsection (10), be evidence of the matters so stated without further proof unless the contrary is shown.

(12) For the purposes of this section, a reference to 'dismissal' includes—

(a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and

(b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9 (3) of the Protection of Employees (Fixed-Term Work) Act 2003 .

(13) Schedule 3 shall have effect for the purposes of a communication referred to in this section made to an appropriate person who is a confidential recipient.

(14) Paragraphs (a), (c), (d), (e) and (f) of the definition of 'penalisation' in subsection (15) shall not be construed in a manner which prevents an employer from—

(a) ensuring that the business concerned is carried on in an efficient manner, or

(b) taking any action required for economic, technical or organisational reasons.

(15) In this section—

'appropriate person', in relation to a communication referred to in this section made by a person, means a communication to—

(a) in any case, a member of the Garda Síochána,

(b) in any case where the opinion concerned of the kind referred to in subsection (1) was formed in the course of the person's employment—

(i) the person's employer, or

(ii) a person nominated by such employer as the person to whom a communication of that kind may be made,

(c) without prejudice to the generality of paragraphs (a) and (b), in any case where the person is in a state other than the State—

(i) a diplomatic or consular officer of the State who is in that state, or

(ii) a member of a law enforcement agency of that state,

or

(d) in any case where the person wishes to make the communication in confidence, to a confidential recipient;

‘confidential recipient’ has the meaning assigned to it by paragraph 1 of Schedule 3;

‘contract of employment’ means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

‘employee’ means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

‘employer’, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where

the employment has ceased, entered into or worked under) a contract of employment, and includes—

(a) a person (other than an employee of that person) under whose control and direction an employee works, and

(b) where appropriate, the successor of the employer or an associated employer of the employer;

‘penalisation’ means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

(a) suspension, lay-off or dismissal,

(b) the threat of suspension, lay-off or dismissal,

(c) demotion or loss of opportunity for promotion,

(d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),

(f) unfair treatment, including selection for redundancy,

(g) coercion, intimidation or harassment,

(h) discrimination, disadvantage or adverse treatment,



(i) injury, damage or loss, and

(j) threats of reprisal

## Head 23 - Amendment to the Garda Síochána Act 2005

Provide that -

(1) The following is substituted for section 124 of the Garda Síochána Act 2005 -

“Regulations relating to reporting corruption and malpractice in the Garda Síochána.

**124.—** (1) The Minister shall, after consulting with the Garda Commissioner, the Ombudsman Commission and the Inspectorate, and with the approval of the Government, make regulations providing for members and civilian staff of the Garda Síochána to report information of corruption and malpractice within the Garda Síochána.

(2) Regulations made under subsection (1) may provide for the following:

- a. confidentiality of the identity of a person who makes a report,
- b. the conditions under which the identity of a person who makes a report may be revealed,
- c. the appointment of persons to receive reports,
- d. remedies for persons penalised on account of making a report,
- e. the appointment of tribunals to adjudicate on claims of penalisation,
- f. the appointment of appeal boards to hear appeals against decisions of a tribunal,
- g. procedures for tribunal and appeal board hearings,

- h. such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) A person who, apart from this section, would be so liable shall not be liable in damages or any other form of relief for making a report in accordance with regulations made under subsection (2) unless in making his or her report the person did so—

- (a) knowing it to be false, incomplete, misleading, frivolous or vexatious, or

- (b) reckless as to whether it was false, misleading, frivolous or vexatious,

(4) A person who suffers penalisation on account of having made a report in accordance with subsection (1) may seek remedies in accordance with regulations under subsection (2) unless in making his or her report the person did so—

- (a) knowing it to be false, incomplete, misleading, frivolous or vexatious, or

- (b) reckless as to whether it was false, misleading, frivolous or vexatious,

(5) A person who suffers damage, loss or penalisation as a result of a false report made under regulations made under subsection (1) shall have a right of action in tort against a person who made the report knowing it to be false, or who ought reasonably to have known it to be false.

(6) In this section ‘penalisation’ means any act or omission by the Commissioner or the Government, or by a person acting on behalf of the Commissioner or the Government, that affects a member or a member of the civilian staff of the Garda Síochána to his or her detriment with respect to any term or condition of his or her office [or employment], and, without prejudice to the generality of the foregoing, includes—

(a) suspension, [lay-off] or dismissal,

(b) the threat of suspension, [lay-off] or dismissal,

(c) demotion or loss of opportunity for promotion,

(d) transfer of duties, change of location of place of work, reduction in [wages] [pay] [salary] [remuneration] or change in working hours,

(e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),

(f) unfair treatment, including selection for redundancy,

(g) coercion, intimidation or harassment,

(h) discrimination, disadvantage or adverse treatment,

(i) injury, damage or loss, and

(j) threats of reprisal.”

## **Head 24 - Amendment to Section 16B of the Proceeds of Crime Act 1996**

Provide that -

(1) The following is substituted for Section 16B (1) (b) of the Proceeds of Crime Act 1996 –

“(b) ‘corrupt conduct’ is any conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2010, the Official Secrets Act 1963 or the Ethics in Public Office Act 1995, the Criminal Justice (Corruption) Act 2012;”

## Head 25 - Amendment to Section 7 of the Criminal Procedure Act 2010

Provide that –

(1) The following is substituted for the definition of “offence against the administration of justice” in section 7 of the Criminal Procedure Act 2010;

“offence against the administration of justice” means—

(a) an offence under section 1 of the Prevention of Corruption Act 1906 or the Criminal Justice (Corruption) Act 2012 in so far as the offence concerned relates to criminal proceedings,

(b) an offence under section 41 of the Criminal Justice Act 1999 ,

(c) attempting to pervert the course of justice,

(d) embracery

(e) perjury, or

(f) conspiring or inciting another person to commit any of the offences referred to in *paragraphs (a) to (d)*;

## **Head 26 - Amendment to Schedule 1 of the Criminal Justice Act 2011**

Provide that –

Schedule 1 of the Criminal Justice Act 2011 is amended by the insertion of the following after paragraph 28;

“28A. An offence under the Criminal Justice (Corruption) Act 2012.”

## **Head 27 - Amendment to the Bail Act 1997**

Provide that -

The schedule to the *Bail Act 1997* is amended by the insertion of the following paragraph after paragraph 37:

*“Corruption Offences*

38. An offence under the *Criminal Justice (Corruption) Act 2012*.”.



## **Head 28 - Repeals**

Provide that –

(1) The Prevention of Corruption Acts 1889 to 2010 are hereby repealed.

## **Head 29 - Savings**

Provide that –

- (1) A person shall not be exempt from the provisions of this Act by reason of the invalidity of appointment or election of any person to an office, employment or position.
  
- (2) Section 170 of the Local Government Act 2001 shall not be read so as to exclude the persons to whom that subsection relates from the application of this Act.

## **Head 30 - Short Title and Commencement**

Provide that -

- (1) This Act may be cited as the Criminal Justice (Corruption) Act 2012.
  
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

## Head 31 - SCHEDULE Irish Public Body

1. Each of the following shall be an Irish public body for the purposes of this Act:

- 1) a Department of State (including, as respects any particular Department of State, any office or body not otherwise standing specified in or under this Schedule in relation to which functions are vested in the Minister of the Government having charge of that Department of State),
- 2) the Office of the President,
- 3) the Office of the Tánaiste,
- 4) the Office of the Attorney General,
- 5) the Office of the Comptroller and Auditor General,
- 6) the Office of the Ombudsman,
- 7) the Houses of the Oireachtas Service,
- 8) The Courts Service,

- 9) a local authority (within the meaning of the Local Government Act 2001),
- 10) the Health Services Executive,
- 11) the Garda Síochána,
- 12) the Garda Síochána Inspectorate,
- 13) the Garda Síochána Ombudsman Commission,
- 14) the National Asset Management Agency,
- 15) a body, organisation or group established—
  - a. by or under any enactment (other than the Companies Acts), or
  - b. under the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,
- 16) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government,
- 17) any other body, organisation or group appointed by the Government or a Minister of the Government,

18) any other body, organisation or group financed wholly or partly out of moneys provided by the Oireachtas that stands prescribed for the time being (being a body, organisation or group that, in the opinion of the Minister, ought, in the public interest and having regard to the provisions and spirit of this Act, to be prescribed).

2.

1) In *paragraph 1 "Office"*, in relation to a person, means the offices in which the administration and business relating to the functions of the person are carried on.

2) There shall be deemed to be included in *subparagraphs (8) to (13) of paragraph (a)* any subsidiary (within the meaning of the Companies Acts) of a public body specified in those subparagraphs.