



AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ), 2000
PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2000

*Mar a leasaíodh sa Roghchoiste um Dhlí agus Ceart,
Comhionannas, Cosaint agus Cearta na mBan
As amended in the Select Committee on Justice, Equality, Defence
and Women's Rights*

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Amendment of section 1 of Act of 1906.
 3. Presumption of corruption from failure to disclose political donations.
 4. Presumption of corruption.
 5. Search Warrant.
 6. Corruption occurring partially in State.
 7. Corruption occurring outside State.
 8. Corruption in office.
 9. Offences by bodies corporate.
 10. Short title, collective citation and construction.
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ACTS REFERRED TO

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| Electoral Act, 1997 | 1997, No. 25 |
| Local Elections (Disclosure of Donations and Expenditure) Act, 1999 | 1999, No. 7 |
| Planning and Development Act, 2000 | 2000, No. 30 |
| Prevention of Corruption Act, 1906 | 1906, c. 34 |
| Prevention of Corruption Acts, 1889 to 1995 | |
| Public Bodies Corrupt Practices Act, 1889 | 1889, c. 69 |



AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ), 2000
PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2000

BILL

entitled

5 AN ACT TO GIVE EFFECT TO THE CONVENTION DRAWN
UP ON THE BASIS OF ARTICLE K 3(2)(c) OF THE
TREATY ON EUROPEAN UNION ON THE FIGHT
AGAINST CORRUPTION INVOLVING OFFICIALS OF
THE EUROPEAN COMMUNITIES OR OFFICIALS OF
10 MEMBER STATES OF THE EUROPEAN UNION DONE
AT BRUSSELS ON THE 26th DAY OF MAY, 1997, THE
CONVENTION ON COMBATING BRIBERY OF FOR-
EIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSI-
NESS TRANSACTIONS DRAWN UP UNDER THE AUS-
PICES OF THE ORGANISATION FOR ECONOMIC CO-
OPERATION AND DEVELOPMENT AND ADOPTED AT
15 PARIS ON THE 21st DAY OF NOVEMBER, 1997, AND
THE CRIMINAL LAW CONVENTION ON CORRUPTION
DRAWN UP UNDER THE AUSPICES OF THE COUNCIL
OF EUROPE AND DONE AT STRASBOURG ON THE
20 27th DAY OF JANUARY, 1999, AND FOR THAT PUR-
POSE TO AMEND CERTAIN ENACTMENTS AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

25 **1.**—(1) In this Act “the Act of 1906” means the Prevention of Interpretation.
Corruption Act, 1906.

(2) References in this Act to an act include references to an omis-
sion and references to the doing of an act include references to the
making of an omission.

30 (3) References in this Act to any enactment shall be construed as
references to that enactment as amended, adapted or extended by
any subsequent enactment including this Act.

2.—The Act of 1906 is hereby amended by the substitution of the Amendment of
following section for section 1: section 1 of Act of
1906.

35 “1.—(1) An agent or any other person who—

(a) corruptly accepts or obtains, or

(b) 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, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence. 5

(2) A person who—

(a) corruptly gives or agrees to give, or

(b) corruptly offers,

any gift or consideration to an agent or any other person, whether for the benefit of that agent, person or another person, 10 as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(3) A person who knowingly gives to any agent, or an agent 15 who knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal shall be guilty of an offence. 20

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 25 months or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years or to both.

(5) In this Act—

'agent' includes— 30

(a) any person employed by or acting for another,

(b) (i) an office holder or director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public 35 body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid),

(ii) a member of Dáil Éireann or Seanad Éireann,

(iii) an Attorney General (who is not a member of Dáil Éireann or Seanad Éireann), 40

(iv) the Comptroller and Auditor General,

(v) the Director of Public Prosecutions,

(vi) a judge of a court in the State,

(vii) any other person employed by or acting on behalf of the public administration of the State,

and

(c) (i) a member of the government of any other state,

(ii) a member of a parliament, regional or national, of any other state,

(iii) a member of the European Parliament,

(iv) a member of the Court of Auditors of the European Communities,

(v) a member of the Commission of the European Communities,

(vi) a public prosecutor in any other state,

(vii) a judge of a court in any other state,

(viii) a judge of any court established under an international agreement to which the State is a party,

(ix) 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, and

(x) any other person employed by or acting on behalf of the public administration of any other state;

‘consideration’ includes valuable consideration of any kind;

‘principal’ includes an employer.”.

3.—(1) Where in any proceedings against a person to whom this section applies for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

Presumption of corruption from failure to disclose political donations.

(a) the person received 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,

(b) the person 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 an interest in the person doing any act or making any omission in relation to his or her office or position or his or her principal’s affairs or business,

the donation shall be deemed 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 or position or his or her principal’s affairs or business unless the contrary is proved.

(2) This section applies to the following:

- (a) a person 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 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, to furnish to the local authority concerned a statement of donations under subsection (1) of that section. 5

(3) In this section—

“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, 10
- (b) in relation to persons referred to in section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, has the meaning assigned to it by section 2 of that Act; 15

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

Presumption of corruption.

4.—(1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 of the Act of 1906 for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that— 20

- (a) any gift, consideration or advantage has been given to or received by a person,
- (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 person of any of the functions specified in this section, 25

the gift or consideration or advantage shall be deemed to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of the functions aforesaid unless the contrary is proved. 30

(2) This section applies to the following functions:

- (a) the granting, refusal, withdrawal or revocation by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State by or under any statute of any licence, permit, certificate, authorisation or similar permission, 35
- (b) the making of any decision relating to the acquisition or sale of property by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State, 40
- (c) any functions of a Minister or an officer of a Minister or of any other person employed by or acting on behalf of the public administration of the State under the Planning and Development Act, 2000. 45

(3) In this section—

“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;

5 “Minister” means a person who is a Minister of the Government or a Minister of State.

10 5.—(1) A judge of the District Court, on hearing evidence on oath given by a member of the Garda Síochána, or a member of the Garda Síochána not below the rank of superintendent, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the *Prevention of Corruption Acts, 1889 to 2001*, punishable by imprisonment for a term of 5 years or by a more severe penalty (“an offence”) is to be found in any place, issue a warrant for the search of that place and any persons found at that place. Search Warrant.

(2) A member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied—

20 (a) that the search warrant is necessary for the proper investigation of an offence, and

(b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for the issue of the warrant.

25 (3) A warrant under this section shall be expressed, and shall operate, to authorise a named member of the Garda Síochána, accompanied by such other members or persons as the member thinks necessary, to enter, within one month of the date of issue of the warrant, if necessary by the use of reasonable force, the place named in the warrant, to search it and any persons found at that place and to seize and to retain anything found at that place, or anything found in the possession of a person present at that place at the time of the search, which the said member reasonably believes to be evidence of or relating to the commission of an offence or suspected offence.

(4) A search warrant issued by a member of the Garda Síochána under this section shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

40 (5) A member of the Garda Síochána acting under the authority of a warrant under this section may—

(a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and

(b) arrest without warrant any person who—

45 (i) obstructs or attempts to obstruct that member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

50 (iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(6) A person who obstructs or attempts to obstruct a member acting under the authority of a warrant under this section, who fails to comply with a requirement under *paragraph (a)* of *subsection (5)*, or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a period not exceeding 12 months or to both.

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(7) The power to issue a warrant under this section is without prejudice to any other power conferred by statute for the issue of a warrant for the search of any place or person.

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Corruption
occurring partially
in State.

6.—A person may be tried in the State for an offence under the Public Bodies Corrupt Practices Act, 1889, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State.

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Corruption
occurring outside
State.

7.—(1) Subject to *subsection (2)* of this section, where a person does outside the State an act that, if done in the State, would constitute an offence under section 1 of the Act of 1906, 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 in the State.

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(2) *Subsection (1)* shall apply only where the person concerned is a person referred to in *subsection (5)(b)* of the said section 1.

Corruption in
office.

8.—(1) A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence and shall be liable—

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(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

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(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.

(2) In this section—

“consideration” includes valuable consideration of any kind;

“public official” means a person referred to in *subsection (5)(b)* of section 1 of the Act of 1906.

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Offences by bodies
corporate.

9.—(1) Where an offence under the *Prevention of Corruption Acts, 1889 to 2001*, has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any wilful neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

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(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and

defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

5 **10.—**(1) This Act may be cited as the Prevention of Corruption (Amendment) Act, 2001. Short title, collective citation and construction.

(2) The Prevention of Corruption Acts, 1889 to 1995, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 2001, and shall be construed together as one.

10 (3) This Act shall come into operation on such day or days as, by order or orders made by the Minister for Justice, Equality and Law Reform under this section, may be fixed therefor either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.