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AN BILLE UM ÉILLIÚ A CHOSC, 2000
PREVENTION OF CORRUPTION BILL, 2000

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

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4. Presumption of corruption in certain cases.
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Public Bodies

Acts Referred to

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AN BILLE UM ÉILLIÚ A CHOSC, 2000
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BILL

entitled

5 AN ACT TO AMEND, EXTEND AND CONSOLIDATE THE
STATUTE LAW RELATING TO CORRUPTION, AND TO
PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

10 “act” includes omission or failure to act and a reference to the doing
or commission of an act includes a reference to the making of an
omission, and any cognate words shall be construed accordingly;

“advantage” includes—

15 (a) a right, privilege, office or dignity and any forbearance to
demand money or money’s worth or a valuable thing,

(b) any aid, vote, consent or influence or pretended aid, vote,
consent or influence,

20 (c) any promise or procurement of or agreement or endeavour
to procure, or the holding out of any expectation of, any
gift, loan, fee, reward or other thing aforesaid,

or other advantage and the avoidance of a loss, liability, penalty,
forfeiture, punishment or other disadvantage;

“agent” includes—

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

25 (b) a public official, 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,

30 (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, 5
- (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 10
- (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;

“document” includes any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Act, 1988) are held, any other form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically and anything that is a part or a copy, in any form, of any of the foregoing or is a combination of two or more of the foregoing; 15 20

“functions” includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

“principal” includes an employer; 25

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

“public official” means—

- (a) the President,
- (b) a Minister of the Government or a Minister of State,
- (c) the Attorney General, 30
- (d) a member of Dáil Éireann or Seanad Éireann,
- (e) (i) a director, within the meaning of the Companies Acts, 1963 to 1990, of a public body,
- (ii) in the case of a public body that is not a company (within the meaning of those Acts), a person who is a member of it or a member of any board or other body that controls, manages or administers it, and 35
- (iii) a person who occupies a position of employment in a public body,
- (f) (i) a special advisor appointed under section 11 of the Public Service Management Act, 1997, 40
- (ii) a person employed by a member of Dáil Éireann or Seanad Éireann in his or her capacity as such or by a

political party registered in the Register of Political Parties,

(g) the Comptroller and Auditor General,

(h) the Director of Public Prosecutions,

5 (i) the Ombudsman,

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

(k) a member of the Defence Forces,

(l) a member of the Garda Síochána,

10 (m) any other person employed by or acting on behalf of the public administration of the State.

(2) In this Act—

(a) a reference to a section or Schedule is a reference to a section of, or the *Schedule* to, this Act unless it is indicated that reference to some other provision is intended,

15 (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

20 (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

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

(a) corruptly accepts or obtains, or

25 (b) corruptly agrees to accept or attempts to obtain,

Corrupt transactions with agent.

30 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 in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(2) A person who—

(a) corruptly gives or agrees to give, or

(b) corruptly offers,

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

40 (3) A person who knowingly gives to any agent, or an agent 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,

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.

(4) In *subsections (2) and (3)*, an agent does an act in relation to his or her office or position or his or her principal's affairs or business if it relates to— 5

- (a) any function of his or her office or position or of his or her principal, 10
- (b) any business or administration relating to the performance of such a function, or
- (c) any matter or transaction whatsoever, actual or proposed, in which such agent, by virtue of his or her office or position, or his or her principal is or may be concerned.

Corruption by a public official.

3.—(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. 15

(2) A public official who does outside the State an act that, if done in the State, would constitute an offence under *section 2*, shall be guilty of an offence. 20

Presumption of corruption in certain cases.

4.—(1) Where in any proceedings against a person for an offence under this Act it is proved that any money, gift or other consideration has been paid or given to or received by a public official from a person or agent of a person who has or had a material interest in the performance by that public official of a function of his or her office or position, the money, gift or consideration shall be presumed to have been paid or given and received corruptly until the contrary is proved. 25

(2) For the purposes of *subsection (1)*, a person has a material interest in the performance by a public official of a function of his or her office or position if the consequence or effect— 30

- (a) of the performance of that function, or
- (b) of any decision made in relation to or in the course or as a result of the performance of such a function,

may be to confer on or withhold from the person a significant benefit (including the award or grant of a contract, licence, permission, designation or any other valuable benefit or advantage), without also conferring it on or withholding it from persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person is a member. 40

Consequences of invalid election or appointment to office or position.

5.—A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of that person or another person to any office or position.

6.—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 in the State notwithstanding that other of the acts alleged to constitute the offence were committed outside the State.

Corruption
occurring outside
the State.

5 7.—(1) A judge of the High Court, on hearing evidence on oath given by 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 an offence under this Act is to be found in any place, issue a warrant for the search of that place and any person found at that place.

Search warrants.

(2) A warrant under this section shall be expressed to and shall operate to authorise a named member of the Garda Síochána, accompanied by such other persons as he or she thinks necessary—

15 (a) to enter, within one week of the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant, and to search it and any person found at that place,

20 (b) to require any person so found to produce any books, documents or records which are in that person's power or control, and to give such information as may reasonably be required in regard to any entries in such books, documents and records,

(c) to inspect and copy or take extracts from any such books, documents and records, and

25 (d) to seize and retain any material found at that place, or any material found in the possession of a person found present at that place at the time of the search, which the officer believes to be evidence of or relating to an offence under this Act.

30 (3) 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 carried out to give to the officer the person's name and address, and

35 (b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct that officer or any person accompanying that officer in the carrying out of his or her duties,

40 (ii) fails to comply with a requirement under *subsection (2)(b)* or *paragraph (a)*, or

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

45 (4) A person who obstructs or attempts to obstruct a person acting under the authority of a warrant under this section, who fails to comply with a requirement under *subsection (2)(b)* or *(3)(a)* or who gives a false or misleading name or address to a member of the Garda Síochána, 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 6 months, or to both.

(5) The power to issue a warrant under this section is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.

(6) In this section, “place” includes any dwelling, any building or part of a building and any vehicle, vessel or structure.

5

Offences by bodies corporate.

8.—(1) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any wilful neglect on the part of any 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 shall 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.

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Penalties.

9.—A person guilty of an offence under this Act 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

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

25

Repeals.

10.—(1) The Prevention of Corruption Acts, 1889 to 1995, are hereby repealed.

(2) *Sections 4 and 7* shall, with such modifications as may be necessary, apply in respect of offences under the enactments repealed by this Act as they apply in respect of offences under this Act.

30

Short title.

11.—This Act may be cited as the Prevention of Corruption Act, 2000.

SCHEDULE

Public Bodies

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

35

(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),

40

(2) the Office of the President,

(3) the Office of the Attorney General,

- (4) the Office of the Comptroller and Auditor General,
- (5) the Office of the Ombudsman,
- (6) the Office of the Houses of the Oireachtas,
- 5 (7) a local authority (within the meaning of the Local Government Act, 1941),
- (8) a health board,
- (9) a body, organisation or group established—
- (a) by or under any enactment (other than the Companies Acts, 1963 to 1990), or
- 10 (b) under the Companies Acts, 1963 to 1990, 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
- 15 of a Minister of the Government,
- (10) a company (within the meaning of the Companies Act, 1963) a majority of the shares in which are held by or on behalf of a Minister of the Government,
- (11) any other body, organisation or group appointed by the
- 20 Government or a Minister of the Government,
- (12) any other body, organisation or group financed wholly or partly out of moneys provided by the Oireachtas that stands prescribed for the time being by order made by the Government (being a body, organisation or group that, in the opinion of the Govern-
- 25 ment, ought, in the public interest and having regard to the provisions and spirit of this Act, to be prescribed).
2. 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.
- 30 (2) There shall be deemed to be included in *subparagraphs (7) to (12) of paragraph 1* any subsidiary (within the meaning of the Companies Act, 1963) of a public body specified in those subparagraphs.



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AN BILLE UM ÉILLIÚ A CHOSC, 2000
PREVENTION OF CORRUPTION BILL, 2000

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is, according to its long title, “to amend, extend and consolidate the statute law relating to corruption”. The consolidated measures are the Prevention of Corruption Acts, 1889 to 1995. The Bill also incorporates the proposals contained in the Government’s Amendment Bill published this year, which would extend anti-corruption measures to include the acts of members of both Houses of the Oireachtas, judges and officials of other states and of international organisations of states. Finally, the Bill provides for a power of Garda search and seizure and extends the existing presumption of corrupt payment which can be relied on by the prosecution in certain circumstances.

Provisions of Bill

Section 1 is an interpretation section which defines certain expressions used in the Bill. In particular the word “agent”, which is used in the context of prohibiting corrupt transactions with agents, is defined as including—

- any person employed by or acting for another,
- a public official, and
- governmental, parliamentary, judicial and other public officials of other states and of international organisations.

A “public official” means the President, a Government Minister or a Minister of State, the Attorney General, a member of Dáil Éireann or Seanad Éireann or a local authority, a director, member or employee of a public body, a special advisor, an employee of a member of either House of the Oireachtas or of a political party, the Comptroller and Auditor General, the Director of Public Prosecutions, the Ombudsman, a judge of a court in the State, a member of the Defence Forces, a member of the Garda Síochána, and “any other person employed by or acting on behalf of the public administration of the State”.

Section 2 covers corrupt transactions with agents. By *subsection (1)*, an agent or any other person who 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, the agent doing any act in relation to his or her office or position or his or her principal’s affairs or business shall be guilty of an offence.

Subsection (2) provides for the converse: a person who corruptly gives or agrees to give, or corruptly offers, any gift, consideration or advantage to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

By *subsection (3)*, a person who knowingly gives to any agent, or an agent 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, which contains any statement which is false, 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.

Subsection (4) provides that an agent does an act in relation to his or her office or position or his or her principal's affairs or business if it relates to any function of his or her office or position or of his or her principal; to any business or administration relating to the performance of such a function; or to any matter or transaction whatsoever, actual or proposed, in which the agent, by virtue of his office or position, or his or her principal is or may be concerned.

Apart from the extended meaning given to "agent", as proposed in the Government Bill, these provisions largely represent a restatement of existing law.

Section 3 deals with corruption by a public official. By *subsection (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.

Subsection (2) provides a jurisdiction in relation to corrupt acts by a public official committed outside the State. It provides that a public official who does outside the State an act that, if done in the State, would constitute an offence under *section 2*, shall be guilty of an offence.

Section 4 extends the existing provision which creates a presumption of corrupt payment on foot of proof that any money, gift or consideration has been given to a public official. At present the presumption only arises where such payment is made by a person holding or seeking a contract with a public body.

Under this new provision, where in any proceedings against a person for an offence it is proved that any money, gift or other consideration has been given to or received by a public official from a person with a material interest in the performance by that public official of a function of his or her office or position, the money, gift or consideration shall be presumed to have been given and received corruptly, until the contrary is proved. The onus on a defendant in such a circumstance would be to rebut the presumption by providing proof, on the balance of probabilities, of an innocent explanation.

It is provided that a person has a "material interest" in the performance by a public official of a function of his or her office or position if the consequence or effect of the performance of that function, or any other decision made in relation to or in the course or as a result of the performance of such a function, may be to confer on or withhold from the person a significant benefit (which includes the award or grant of a contract, licence, permission, designation or any

other valuable benefit or advantage), without also conferring it on or withholding it from persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person is a member.

Section 5 restates the rule that a person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of that person or another person to any office or position.

Section 6 relates to corrupt transactions committed partially outside the State and provides that 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 in the State, notwithstanding that other of the acts alleged to constitute the offence were committed outside the State.

Section 7 relates to search warrants and is new. *Subsection (1)* provides that a judge of the High Court, on hearing evidence on oath given by 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 an offence under this Act is to be found in any place, issue a warrant for the search of that place and any person found at that place.

By *subsection (2)*, a warrant under this section shall authorise a named member of the Garda Síochána, accompanied by such other persons as he or she thinks necessary—

- to enter, within one week of the date of issuing of the warrant (if necessary by the use of reasonable force), the place named in the warrant, and to search it and any person found at that place,
- to require any person so found to produce any books, documents or records which are in that person's power or control, and to give such information as may reasonably be required in regard to any entries in such books, documents and records,
- to inspect and copy or take extracts from any such books, documents and records, and
- to seize and retain any material found at that place, or any material found in the possession of a person found present at that place at the time of the search, which the officer believes to be evidence of or relating to an offence under this Act.

Subsection (3) provides that a member of the Garda Síochána acting under the authority of a warrant may require any person present at the place where the search is carried out to give to the officer the person's name and address. He or she may also arrest without warrant any person who obstructs or attempts to obstruct that officer in the carrying out of his or her duties, who fails to comply with a lawful requirement or who gives a name or address which the officer has reasonable cause for believing is false or misleading.

Subsection (4) provides that a person who obstructs or attempts to obstruct a person acting under the authority of a warrant, who fails to comply with a lawful requirement or who gives a false or misleading name or address to a member of the Garda Síochána, 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 6 months, or to both. The power to issue a warrant under this section is expressed to be in addition to and not in substitution

for any power to issue a warrant for the search of any place or person.

Section 8 relates to offences committed by bodies corporate. It provides that, where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any wilful neglect on the part of any 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 shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

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.

Section 9 provides for penalties in respect of offences under the Act. A person found guilty of an offence shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both; on conviction on indictment, he or she shall be liable to a fine (no upper limit is specified) or to imprisonment for a term not exceeding 10 years or both.

Section 10 provides for the repeal of the Prevention of Corruption Acts, 1889 to 1995. By virtue of the Interpretation Act, 1937, the repeal of those Acts would not effect the liability of individuals to be prosecuted in respect of offences committed while they were in force. *Subsection (2)* extends to the investigation and prosecution of offences under the repealed enactments, with necessary modifications, the provisions of *sections 4* and *7*, which relate to the presumption of corrupt payment and the power of search and seizure.

Section 11 is a standard provision relating to the short title of the Bill.

The *Schedule* lists “public bodies” for the purposes of this Act. This is similar to the list already provided for by the Second Schedule to the Ethics in Public Office Act, 1995.

An Teachta Breandán Ó Húilín,
Bealtaine, 2000.