



An Bille um Cheartas Coiriúil (Cionta Éillithe), 2017
Criminal Justice (Corruption Offences) Bill 2017

Mar a tionscnaíodh

As initiated



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CRIMINAL JUSTICE (CORRUPTION OFFENCES) BILL 2017**

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AN BILLE UM CHEARTAS COIRIÚIL (CIONTA ÉILLITHE), 2017
CRIMINAL JUSTICE (CORRUPTION OFFENCES) BILL 2017

Bill

entitled

An Act to amend the law regarding the prevention of corruption (including offences relating to corruption) and, in doing so, 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 Member States of the European Union done at Brussels on 26 May 1997¹, the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted at Paris on 21 November 1997, the Council of Europe Criminal Law Convention on Corruption done at Strasbourg on 27 January 1999, the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption done at Strasbourg on 15 May 2003 and the United Nations Convention Against Corruption done at New York on 31 October 2003; for that purpose, to repeal the Prevention of Corruption Acts 1889 to 2010 and to provide for consequential amendments to other enactments; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

PART 1

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PRELIMINARY AND GENERAL

Short title and commencement

- (1) This Act may be cited as the Criminal Justice (Corruption Offences) Act 2017.
- (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.

Interpretation

- (1) In this Act—

¹ O.J. No. C195, 25.6.1997, p.2

“company” means a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act;	
“consideration” includes valuable consideration of any kind;	
“corruptly” includes acting with an improper purpose personally or by influencing another person, whether—	5
(a) by means of making a false or misleading statement,	
(b) by means of withholding, concealing, altering or destroying a document or other information, or	
(c) by other means;	
“court”—	10
(a) in relation to the State, includes a court-martial, and	
(b) in relation to any other state, includes a military court by whatever name called;	
“director” means—	
(a) in relation to a company, a director within the meaning of the Companies Act 2014, and	15
(b) in the case of an Irish public body that is not a company, a person who is a member of the body or a member of a board by whatever name called that controls, manages or administers the body;	
“enactment” means a statute or an instrument made under a power conferred by statute;	20
“foreign 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 such a member by virtue of the European Parliament Elections Act 1997,	25
(d) a member of the Court of Auditors of the European Union,	
(e) a member of the European Commission,	
(f) a public prosecutor in any other state,	
(g) a judge of a court in any other state, including a coroner’s court by whatever name called,	30
(h) a judge of a court established under an international agreement to which the State is a party,	
(i) a member of a jury in court proceedings (whether criminal or civil), including an inquest in relation to the death of a person, in any other state,	
(j) an arbitrator, including any member of an arbitral board, panel or tribunal, in arbitral proceedings not governed by the law of the State,	35

- (k) a member of, or any other person employed by, or acting for or on behalf of, an organisation or body established under an international agreement to which the State is a party,
 - (l) any other person employed by or acting on behalf of the public administration of any other state, including a person under the direct or indirect control of the government of such a state, or 5
 - (m) a member of, or any other person employed by, or acting for or on behalf of, an international organisation established by an international agreement between states to which the State is not a party;
- “Irish official” means— 10
- (a) a member of Dáil Éireann,
 - (b) a member of Seanad Éireann,
 - (c) a member of the European Parliament who is such a member by virtue of the European Parliament Elections Act 1997,
 - (d) the Attorney General, 15
 - (e) the Comptroller and Auditor General,
 - (f) the Director of Public Prosecutions,
 - (g) a judge of a court in the State,
 - (h) an arbitrator, including any member of an arbitral board, panel or tribunal, in arbitral proceedings governed by the law of the State, 20
 - (i) a member of a jury in court proceedings (whether civil or criminal) in the State or in an inquest held under the Coroners Act 1962,
 - (j) an officer, director, employee or member of an Irish public body,
 - (k) any other office holder appointed under an enactment who is remunerated out of moneys provided by the Oireachtas and who is independent in the performance of the functions of that office, or 25
 - (l) any other person employed by or acting for or on behalf of the public administration of the State;
- “Irish public body” shall be construed in accordance with *Schedule 1*;
- “local authority” means a county, city or city and county council within the meaning of section 2 of the Local Government Act 2001; 30
- “Minister” means the Minister for Justice and Equality;
- “official” means an Irish official or a foreign official;
- “prescribed” means prescribed by regulations made by the Minister under *section 3*;
- “seized property” shall be construed in accordance with *section 20*; 35
- “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;

“subsidiary” has the meaning it has in section 7 of the Companies Act 2014. 5

- (2) A reference in this Act to an act includes a reference to an omission and a reference in this Act to the commission or doing of an act includes a reference to the making of an omission.

Regulations

- 3. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed. 10
- (2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 15
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Repeals

- 4. The enactments specified in *Schedule 2* are repealed to the extent specified in *column (3)* of that Schedule.

PART 2

CORRUPTION OFFENCES 25

Active and passive corruption

- 5. (1) A person who, either directly or indirectly, by himself or herself or with another person—
 - (a) corruptly offers, or
 - (b) corruptly gives or agrees to give, 30
 a gift, consideration or advantage to a person as an inducement to, or reward for, or otherwise on account of, any person doing an act 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— 35

(a) corruptly accepts or obtains, or

(b) corruptly agrees to accept,

for himself or herself or for any other person, a gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, any person doing an act in relation to his or her office, employment, position or business shall be guilty of an offence. 5

Active and passive trading in influence

6. (1) A person who, either directly or indirectly, by himself or herself or with another person—

(a) corruptly offers, or 10

(b) corruptly gives or agrees to give,

a gift, consideration or advantage in order to induce another person to exert an improper influence over an act of an official in relation to the office, employment, position or business of the official shall be guilty of an offence.

(2) A person who, either directly or indirectly, by himself or herself or with another person— 15

(a) corruptly accepts or obtains, or

(b) corruptly agrees to accept,

for himself or herself or for any other person, a gift, consideration or advantage on account of a person promising or asserting the ability to improperly influence an official to do an act in relation to the office, employment, position or business of the official shall be guilty of an offence. 20

(3) For the purposes of *subsections (1) and (2)*, it is immaterial whether or not—

(a) the alleged ability to exert an improper influence existed,

(b) the influence is exerted, 25

(c) the supposed influence leads to the intended result, or

(d) the intended or actual recipient of the gift, consideration or advantage is the person whom it is intended to induce to exert influence.

Corruption in relation to office, employment, position or business

7. (1) An Irish official who, either directly or indirectly, by himself or herself or with another person, does an act in relation to his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or for any other person, shall be guilty of an offence. 30

(2) An Irish 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 or herself or for any other person shall be guilty of an offence. 35

Giving gift, consideration or advantage that may be used to facilitate offence under this Act

8. A person who gives a gift, consideration or advantage to another person where the first-mentioned person knows, or ought reasonably to know, that the gift, consideration or advantage, or a part of it, will be used to facilitate the commission of an offence under this Act shall be guilty of an offence. 5

Creating or using false document

9. (1) A person who, either directly or indirectly, by himself or herself or with another person, corruptly creates or uses a document, that the person knows or believes to contain a statement which is false or misleading in a material particular, with the intention of inducing another person to do an act in relation to his or her office, employment, position or business to the prejudice of the last-mentioned person or another person shall be guilty of an offence. 10

- (2) In this section—

“document” includes— 15

- (a) a book, record or other written or printed material in any form (including in any electronic device),
- (b) a map, plan or drawing,
- (c) a disc, tape or other mechanical or electronic device in which data other than visual images are embodied so as to be capable, with or without the aid of some other mechanical or electronic equipment, of being reproduced from the disc, tape or other device, 20
- (d) a film, disc, tape or other mechanical or electronic device in which visual images are embodied so as to be capable, with or without the aid of some other mechanical or electronic equipment, of being reproduced from the film, disc, tape or other device, and 25
- (e) a copy of any thing that falls within *paragraph (a), (b), (c) or (d)*;

“electronic device” includes any device which uses any electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, or other forms of related technology, or any combination thereof, to store or transmit data or both to store and transmit data. 30

Intimidation

10. (1) A person who, either directly or indirectly, by himself or herself or with another person, threatens harm to a person with the intention of corruptly influencing that person or another person to do an act in relation to the person’s office, employment, position or business shall be guilty of an offence. 35

- (2) In this section “harm” includes loss, disadvantage or injury of any kind.

PART 3

CORRUPTION OCCURRING PARTLY IN OR OUTSIDE STATE

Corruption occurring partly in State

11. A person may be tried in the State for an offence under this Act if any one or more of the acts alleged to constitute the offence were committed— 5
- (a) in the State,
 - (b) on board an Irish ship within the meaning of section 33 of the Merchant Shipping (Registration of Ships) Act 2014, or
 - (c) on an aircraft registered in the State,
- notwithstanding that the other acts alleged to constitute the offence were committed outside the State. 10

Corruption occurring outside State

12. (1) Subject to *subsection (2)*, where a person (in this section referred to as the “person concerned”) does an act in a place outside the State that, if done in the State, would constitute an offence under— 15
- (a) *section 5, 6, 7, 8 or 18(1)*, or
 - (b) *section 9* concerning the creation or use of a false accounting, auditing or financial document,
- the person concerned shall be guilty of an offence and shall be liable on conviction to the penalty to which the person concerned would have been liable if the person concerned had done that act in the State. 20
- (2) *Subsection (1)* shall apply where—
- (a) the act is committed on board an Irish ship within the meaning of section 33 of the Merchant Shipping (Registration of Ships) Act 2014,
 - (b) the act is committed on an aircraft registered in the State, or 25
 - (c) the act constitutes an offence under the law of the place where it was done and the person concerned is—
- (i) an Irish official acting in his or her capacity as an Irish official,
 - (ii) an Irish citizen,
 - (iii) 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, 30
 - (iv) a company, or
 - (v) any other body corporate established under the law of the State.

- (3) Where a European Union official working for an institution of the European Union or a body set up in accordance with the treaties governing the European Union which has its headquarters in the State does an act in a place outside the State that—
- (a) if done in the State, would constitute an offence under *section 5*, and
 - (b) constitutes an offence under the law of the place where it was done, 5
- he or she shall be guilty of an offence and shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done that act in the State.
- (4) Where a person does an act in a place outside the State that—
- (a) if done in the State, would constitute an offence under *subsection (1) of section 5*,
 - (b) constitutes an offence under the law of the place where it was done, and 10
 - (c) the person last-mentioned in that subsection is an Irish citizen and—
 - (i) a national official of a Member State, or
 - (ii) a member of—
 - (I) the European Commission,
 - (II) the European Parliament, 15
 - (III) the Court of Justice of the European Union, or
 - (IV) the Court of Auditors of the European Union,
- the first-mentioned person shall be guilty of an offence and shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done that act in the State. 20
- (5) In this section—
- “Convention” means 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 Member States of the European Union done at Brussels on 26 May 1997; 25
- “European Union official” has the same meaning as “Community official” in Article 1(b) of the Convention;
- “national official”—
- (a) in relation to a Member State other than the State, has the meaning it has in Article 1(c) of the Convention, and 30
 - (b) in relation to the State, means an Irish official;
- “treaties governing the European Union” has the meaning it has in the European Communities Act 1972.

Location of proceedings relating to offences committed outside State

13. Proceedings for an offence under *section 12* may be taken in any place in the State and the offence may for all incidental purposes be treated as having been committed in that place. 35

PART 4

PRESUMPTIONS RELATING TO CORRUPTION

Presumption of corrupt gift, consideration or advantage

14. (1) Where, in any proceedings against a person for an offence under *section 5, 6, 7 or 8*, it is proved that— 5
- (a) a gift, consideration or advantage has been—
 - (i) given to an official or a connected person of an official,
 - (ii) given to a person while intended to be for the benefit of an official or a connected person of an official, or
 - (iii) received by or on behalf of an official or a connected person of an official, 10and
 - (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 official of any of the functions to which this subsection applies by virtue of *subsection (3)*, 15
- the gift, 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, that official doing an act in relation to the performance of any of those functions, unless the contrary is proved.
- (2) Where, in any proceedings against a person for an offence under *section 5, 6, 7 or 8*, it is proved that— 20
- (a) a gift, consideration or advantage has been—
 - (i) given to an official or a connected person of an official,
 - (ii) given to a person while intended to be for the benefit of an official or a connected person of an official, or 25
 - (iii) received by or on behalf of an official or a connected person of an official,and
 - (b) the official performed or omitted to perform any of the functions to which this subsection applies by virtue of *subsection (3)* 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, 30
- the gift, 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, that official doing an act in relation to the performance of any of those functions, unless the contrary is proved. 35
- (3) *Subsections (1) and (2)* apply to functions of officials relating to the following matters or under the following enactments:

- (a) the awarding, granting, issuing, sanctioning, renewal, refusal, withdrawal or revocation of—
 - (i) a tender for goods or services,
 - (ii) a contract,
 - (iii) a grant, payment or loan, or a credit facility of any kind, 5
 - (iv) a licence, permit, certificate, warrant, authorisation or similar permission or instrument, or
 - (v) a passport, visa or immigration permission or status;
 - (b) the making of a decision regarding—
 - (i) the appointment of a person to an office, position or employment, 10
 - (ii) the acquisition, letting or sale of any land or other property by any means, or
 - (iii) a designation affecting the treatment of any land, cash or other property or income for the purposes of any tax or any rate of taxation;
 - (c) the investigation or prosecution of offences;
 - (d) the exercise of judicial functions; 15
 - (e) the administration of justice;
 - (f) the performance by the Central Bank of Ireland of its functions;
 - (g) the performance by the National Asset Management Agency of its functions;
 - (h) the Planning and Development Acts 2000 to 2016 and any Act which is to be construed together as one with those Acts. 20
- (4) The Minister may prescribe a class of persons for the purposes of *paragraph (i)* of the definition of “connected person” of an official in *subsection (5)* only if the Minister is satisfied that it would be appropriate for the provisions of this section to be applied in relation to members of the class, having regard to any heightened risk, arising from their close family relationship with the official, that such persons may be involved in offences under *sections 5, 6, 7 and 8*. 25
- (5) In this section—
- “civil partner” has the meaning it has in section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;
- “connected person”, in relation to an official, means— 30
- (a) an individual who has joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with the official,
 - (b) an individual who has sole beneficial ownership of a legal entity or legal arrangement set up for the actual benefit of the official,
 - (c) a spouse or civil partner of the official, 35

- (d) a person who is considered to be equivalent to a spouse or civil partner of the official under the national or other law of the place where the person or official resides,
- (e) a child of the official,
- (f) a spouse or civil partner of a child of the official, 5
- (g) a person who is considered to be equivalent to a spouse or civil partner of a child of the official under the national or other law of the place where the person or child resides,
- (h) a parent of the official, or
- (i) any person who is a member of a class of persons prescribed under *subsection (4)*. 10

Presumption of corrupt donation

- 15.** (1) Where, in any proceedings against a person to whom this section applies by virtue of *subsection (2)* (in this subsection referred to as the “person concerned”) for an offence under *section 5, 6, 7 or 8*, it is proved that— 15
- (a) the person concerned received a donation—
 - (i) exceeding in value the relevant amount specified in *section 23A(1)* of the Act of 1997 or *section 19B(1)* of the Act of 1999, as may be appropriate, or
 - (ii) of a type specified in *section 23A(2), 23AA(1) or 24A(2)* of the Act of 1997 or *section 19B(2) or 19BB(1)* of the Act of 1999, as may be appropriate, 20
 - (b) the person concerned failed to—
 - (i) return the donation or the part of the donation exceeding the limit concerned to the donor in accordance with whichever section of the Act of 1997 or the Act of 1999, as the case may be, is appropriate, or
 - (ii) notify the Standards in Public Office Commission or the local authority concerned of the receipt of the donation and remit the donation or the part of it exceeding the limit concerned or the value thereof to the Standards in Public Office Commission or that local authority in accordance with whichever section of the Act of 1997 or the Act of 1999, as the case may be, is appropriate, 25
30
- and
- (c) the donor had an interest in the person concerned doing an act 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, or otherwise on account of, the person concerned doing an act in relation to his or her office, employment, position or business, unless the contrary is proved. 35
- (2) This section applies to a person who was—
- (a) a member of Dáil Éireann,

- (b) a member of Seanad Éireann,
 - (c) a member of the European Parliament who is such a member by virtue of the European Parliament Elections Act 1997, or
 - (d) a member of a local authority,
- at the time of the alleged commission of the offence concerned. 5

(3) In this section—

“Act of 1997” means the Electoral Act 1997;

“Act of 1999” means the Local Elections (Disclosure of Donations and Expenditure) Act 1999;

“donation”— 10

(a) in relation to a person referred to in *paragraph (a), (b) or (c) of subsection (2)*, has the meaning it has in section 22 of the Act of 1997, and

(b) in relation to a person referred to in *paragraph (d) of subsection (2)*, has the meaning it has in section 2 of the Act of 1999;

“donor” means the person who makes a donation or on whose behalf a donation is made and includes a corporate donor within the meaning of section 22(2)(aa) of the Act of 1997 or section 19A of the Act of 1999, as the case may be. 15

Presumption of corrupt enrichment

16. (1) (a) *Paragraph (b)* applies where, in any proceedings against an Irish official who is or was a member or an office holder for an offence under *section 5, 6, 7 or 8*, it is proved that he or she owns or has, or owned or had, an interest in land or other property that was required to be declared in the statement of registrable interests of that member or office holder but was not so declared. 20

(b) It shall be presumed that the land or other property referred to in *paragraph (a)* derives or derived, either directly or indirectly, from a gift, consideration or advantage received as an inducement to, or reward for, or otherwise on account of, the Irish official doing an act in relation to his or her office, employment, position or business, unless the contrary is proved. 25

(2) In this section—

“member”, “office holder” and “registrable interest” have the meanings they have in the Ethics in Public Office Act 1995; 30

“statement of registrable interests” means a statement of registrable interests (if any) which an Irish official who is a member or an office holder is or was required to make in accordance with the Ethics in Public Office Act 1995.

PART 5

PENALTIES AND ENFORCEMENT

Penalties

17. (1) A person guilty of an offence under *section 6* shall be liable—
- (a) on summary conviction, to— 5
 - (i) a class A fine,
 - (ii) imprisonment for a term not exceeding 12 months,
 - (iii) the forfeiture of any gift, consideration or advantage offered, given or agreed to be given, accepted, obtained or agreed to be accepted in connection with the offence or, in the alternative, the forfeiture of land, cash or other property of an equivalent value to such gift, consideration or advantage, or 10
 - (iv) any combination of the penalties referred to in *subparagraphs (i) to (iii)*,or
 - (b) on conviction on indictment, to—
 - (i) a fine, 15
 - (ii) imprisonment for a term not exceeding 5 years,
 - (iii) the forfeiture of any gift, consideration or advantage offered, given or agreed to be given, accepted, obtained or agreed to be accepted in connection with the offence or, in the alternative, the forfeiture of land, cash or other property of an equivalent value to such gift, consideration or advantage, or 20
 - (iv) any combination of the penalties referred to in *subparagraphs (i) to (iii)*.
- (2) A body corporate guilty of an offence under *section 18(1)* shall be liable, on summary conviction, to a class A fine and, on conviction on indictment, to a fine.
- (3) A person guilty of an offence under this Act, other than an offence under *section 6* or *18(1)*, shall be liable— 25
- (a) on summary conviction, to—
 - (i) a class A fine,
 - (ii) imprisonment for a term not exceeding 12 months,
 - (iii) the forfeiture of any gift, consideration or advantage offered, given or agreed to be given, accepted, obtained or agreed to be accepted in connection with the offence or, in the alternative, the forfeiture of land, cash or other property of an equivalent value to such gift, consideration or advantage, or 30
 - (iv) any combination of the penalties referred to in *subparagraphs (i) to (iii)*,or
 - (b) on conviction on indictment, to— 35
 - (i) a fine,

- (ii) imprisonment for a term not exceeding 10 years,
 - (iii) the forfeiture of any gift, consideration or advantage offered, given or agreed to be given, accepted, obtained or agreed to be accepted in connection with the offence or, in the alternative, the forfeiture of land, cash or other property of an equivalent value to such gift, consideration or advantage, or 5
 - (iv) any combination of the penalties referred to in *subparagraphs (i) to (iii)*.
- (4) (a) *Paragraph (b) or (c)* applies where a person is convicted on indictment of an offence under *section 5, 7, 8, 9 or 10* in relation to an office, position or employment as an Irish official held or occupied by that person at the time the offence was committed. 10
- (b) Subject to *subsection (5)*, the court in imposing sentence on the person for the offence concerned may order the forfeiture of any office, position or employment as a relevant Irish official held or occupied by that person.
- (c) Subject to *subsection (5)*, the court in imposing sentence on the person for the offence concerned may make an order prohibiting the person from seeking to hold or occupy any office, position or employment as an Irish official, other than an office as— 15
- (i) a member of Dáil Éireann,
 - (ii) a member of Seanad Éireann,
 - (iii) a member of the European Parliament who is such a member by virtue of the European Parliament Elections Act 1997, or 20
 - (iv) a member of a local authority,
- for a specified period not exceeding 10 years from the making of the order.
- (5) (a) The penalty provided for in *paragraph (b) or (c) of subsection (4)* may be imposed by a court on a person who is convicted on indictment of an offence under *section 5, 7, 8, 9 or 10* in the circumstances specified in *paragraph (a)* of that subsection where the court is satisfied that to do so is— 25
- (i) in the interests of justice, and
 - (ii) in the interests of maintaining or restoring public confidence in the public administration of the State. 30
- (b) The penalty provided for in *paragraph (b) or (c) of subsection (4)* may be imposed by a court on a person who is convicted on indictment of an offence under *section 5, 7, 8, 9 or 10*—
- (i) in addition to the penalties provided for in *subsection (3)*, and
 - (ii) in addition to, or instead of, any other penalty under *subsection (4)*. 35
- (6) An order under *subsection (4)(b)* for the forfeiture of any office, position or employment as a relevant Irish official held or occupied by a person shall take effect upon—
- (a) in case no appeal is taken by the person against the conviction or sentence for the offence concerned, the expiration of the time limit for taking the appeal, 40

- (b) in case an appeal taken by the person against the conviction or sentence for the offence concerned is withdrawn or abandoned, the withdrawal or abandonment of the appeal, or
- (c) in case an appeal is taken by the person against the conviction or sentence for the offence concerned and the appeal is disallowed or the order is confirmed on appeal, the determination of the appeal. 5
- (7) The registrar of the court which makes, or on appeal confirms, an order under *subsection (4)(b)* for the forfeiture of any office, position or employment as a relevant Irish official held or occupied by a person shall notify the relevant person of the taking effect under *subsection (6)* of the order as soon as practicable thereafter. 10
- (8) Nothing in this section shall affect the operation of a provision in any other enactment providing for the disqualification of a person for, or the removal or dismissal of a person from, holding or occupying an office, position or employment as an Irish official.
- (9) In this section— 15
- “relevant Irish official” means an Irish official other than—
- (a) the Attorney General,
- (b) the Comptroller and Auditor General,
- (c) a judge of a court in the State,
- (d) an officer of the Defence Forces within the meaning of the Defence Act 1954, 20
- (e) the Ombudsman for the Defence Forces,
- (f) the Judge Advocate-General appointed under section 15 of the Defence Act 1954,
- (g) a member of the Garda Síochána Ombudsman Commission,
- (h) a member of the Policing Authority,
- (i) the chairperson of the Standards in Public Office Commission, 25
- (j) an ordinary member of the Standards in Public Office Commission appointed under section 21(2)(b)(v) of the Ethics in Public Office Act 1995,
- (k) the Ombudsman,
- (l) the Complaints Referee,
- (m) the Information Commissioner, 30
- (n) an Coimisinéir Teanga,
- (o) the Ombudsman for Children,
- (p) a member of the Broadcasting Authority of Ireland,
- (q) a member of the Contract Awards Committee of the Broadcasting Authority of Ireland, 35
- (r) a member of the Compliance Committee of the Broadcasting Authority of Ireland,
- (s) a member of the Board of Raidió Teilifís Éireann,

- (t) a member of the Board of Teilifís na Gaeilge, and
- (u) a member of the Irish Human Rights and Equality Commission;

“relevant person”, in relation to a relevant Irish official in respect of whom an order under *subsection (4)(b)* takes effect, means—

- (a) in the case of a member of Dáil Éireann, the Chairman of Dáil Éireann, 5
- (b) in the case of a member of Seanad Éireann, the Chairman of Seanad Éireann,
- (c) in the case of a member of the European Parliament who is such a member by virtue of the European Parliament Elections Act 1997, the Clerk of Dáil Éireann,
- (d) in the case of a member of a local authority, the meetings administrator within the meaning of the Local Government Act 2001 of the local authority, and 10
- (e) in the case of any other relevant Irish official, the person who has functions regarding the appointment to, disqualification for and the dismissal or removal from holding or occupying an office, position or employment, as the case may be, as a relevant Irish official in the case of that relevant Irish official.

Offences under this Act and bodies corporate 15

18. (1) A body corporate shall be guilty of an offence under this subsection if an offence under this Act is committed by—

- (a) a director, manager, secretary or other officer of the body corporate,
 - (b) a person purporting to act in that capacity,
 - (c) a shadow director within the meaning of the Companies Act 2014 of the body corporate, or 20
 - (d) an employee, agent or subsidiary of the body corporate,
- with the intention of obtaining or retaining—
- (i) business for the body corporate, or
 - (ii) an advantage in the conduct of business for the body corporate. 25

(2) In proceedings for an offence under *subsection (1)*, it shall be a defence for a body corporate against which such proceedings are brought to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(3) Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person shall, as well as the body corporate, 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. 30 35

(4) Where the affairs of a body corporate are managed by its members, *subsection (3)* 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) *Subsection (1)*—

- (a) is without prejudice to the other circumstances, under the general law, whereby acts of a natural person are attributed to a body corporate resulting in criminal liability of that body corporate for those acts, and 5
- (b) does not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence under this Act.

Evidence

19. (1) In any proceedings for an offence under this Act— 10

- (a) 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
- (b) 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, 15

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.

(2) A document purporting to be a certificate referred to in *paragraph (a)* or *(b)* of *subsection (1)* is deemed, unless the contrary is shown— 20

- (a) to be such a certificate, and
- (b) to have been signed by the person purporting to have signed it.

Seizure of suspected bribe

20. (1) Subject to *subsection (2)*, a member of the Garda Síochána may seize and detain land, cash or other property that the member has reasonable grounds for suspecting is a gift or consideration used or intended to be used for the purposes of an offence under *section 5, 6, 7 or 8* (in this Act referred to as "seized property"). 25

(2) Seized property shall not be detained for more than 72 hours unless its detention for a further period is authorised by an order under *subsection (3)*.

(3) Subject to *subsections (4)* and *(7)*, a judge of the Circuit Court may, upon application in that behalf, order the continued detention of seized property (including seized property detained pursuant to a previous order under this subsection) for a further period specified in the order, not exceeding 3 months from the date of the order, where he or she is satisfied that— 30

- (a) there are reasonable grounds to suspect that the seized property is a gift or consideration used or intended to be used for the purposes of an offence under *section 5, 6, 7 or 8*, 35

(b) one or more of the following applies:

- (i) the origin or derivation of the seized property is being further investigated;
 - (ii) an application in respect of the seized property under *section 21* has been made but not finally determined;
 - (iii) proceedings have been instituted or consideration is being given to instituting proceedings (whether in the State or elsewhere) against a person for an offence with which the seized property is connected, 5
- and
- (c) the further detention of the seized property is justified.
- (4) Subject to *subsection (5)*, orders under *subsection (3)* may not authorise the detention of seized property for periods that, in aggregate, exceed 2 years. 10
- (5) (a) *Paragraph (b)* applies in the case of seized property in respect of which—
- (i) an application under *section 21* has been made for the forfeiture of the seized property, or
 - (ii) proceedings have been brought (whether in the State or elsewhere) against any person for an offence with which the seized property is connected, 15
- before the expiration of the period of 2 years referred to in *subsection (4)*.
- (b) Orders under *subsection (3)* may authorise the detention of seized property for periods after the expiration of the period of 2 years referred to in *subsection (4)* but may not authorise the detention of seized property for any period after the final determination of the application or the proceedings, as the case may be, referred to in *paragraph (a)* in respect of the seized property concerned. 20
- (6) An application for an order under *subsection (3)* may be made by a member of the Garda Síochána.
- (7) A judge of the Circuit Court may amend or revoke an order under *subsection (3)* if he or she is satisfied, on application by the person from whom the seized property concerned was seized or any other person, that its further detention in accordance with the terms of the order is no longer justified. 25

Forfeiture of bribe

21. (1) A judge of the Circuit Court may order seized property to be forfeited if he or she is satisfied, on application made by or on behalf of the Director of Public Prosecutions, that it is a gift or consideration used or intended to be used for the purposes of an offence under *section 5, 6, 7 or 8*. 30
- (2) An order under *subsection (1)* may be made whether or not proceedings are brought against a person for an offence with which the gift or consideration concerned is connected. 35
- (3) The standard of proof in proceedings under this section is that applicable in civil proceedings.

Application of sections 40, 41, 42 and 45 of Criminal Justice Act 1994 to seized property

22. 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, with all necessary modifications, apply in relation to cash or any other seized property detained under *section 20*, or forfeited under *section 21*, as they apply to cash (within the meaning of Part VI of that Act) detained under section 38, or forfeited under section 39, of that Act. 5

PART 6

MISCELLANEOUS

Amendment of section 16B(1) of Proceeds of Crime Act 1996 10

23. Section 16B(1) of the Proceeds of Crime Act 1996 is amended by the substitution of the following paragraph for paragraph (b):

“(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, the Ethics in Public Office Act 1995 or the *Criminal Justice (Corruption Offences) Act 2017*.” 15

Amendment of Schedule to Bail Act 1997

24. The Schedule to the Bail Act 1997 is amended by the insertion of the following paragraphs after paragraph 38:

“*CORRUPTION OFFENCES* 20

39. Any offence under the Prevention of Corruption Acts 1889 to 2010.

40. An offence under any section, other than *section 18(1)*, of the *Criminal Justice (Corruption Offences) Act 2017*.”

Amendment of section 7 of Criminal Procedure Act 2010

25. Section 7 of the Criminal Procedure Act 2010 is amended by the substitution of the following definition for the definition of “offence against the administration of justice”: 25

“ ‘offence against the administration of justice’ means—

(a) an offence under—

(i) the *Criminal Justice (Corruption Offences) Act 2017* other than *section 18(1)* thereof, or 30

(ii) the Prevention of Corruption Acts 1889 to 2010,
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, 35

- (e) perjury, or
- (f) conspiring or inciting another person to commit any of the offences referred to in paragraphs (a) to (e);”.

Amendment of Schedule 1 to Criminal Justice Act 2011

26. Schedule 1 to the Criminal Justice Act 2011 is amended by the insertion of the following paragraph after paragraph 28: 5

“28A. An offence under *section 5, 6, 7, 8, 9 or 10 of the Criminal Justice (Corruption Offences) Act 2017*.”.

Amendment of Electoral Act 1992

27. The Electoral Act 1992 is amended by the insertion of the following section after section 42: 10

“Forfeiture of office order under Criminal Justice (Corruption Offences) Act 2017

42A. (1) If while a person is a member of the Dáil a forfeiture of office order in respect of the person takes effect under *section 17(6)* of the Act of 2017, he or she shall thereupon cease to be such member and a vacancy shall exist accordingly in the membership of the Dáil. 15

(2) As soon as may be after the receipt by the Chairman of the Dáil of a notification from the registrar of a court under *subsection (7) of section 17* of the Act of 2017 of the taking effect under *subsection (6)* of that section of a forfeiture of office order in respect of a member of the Dáil, the Chairman of the Dáil shall inform the Dáil of such receipt. 20

(3) In this section—

‘Act of 2017’ means the *Criminal Justice (Corruption Offences) Act 2017*; 25

‘forfeiture of office order’ means an order under *section 17(4)(b)* of the Act of 2017 for the forfeiture of the office of a person as a member of the Dáil.”.

Amendment of Seanad Electoral (University Members) Act 1937 30

28. The Seanad Electoral (University Members) Act 1937 is amended—

(a) in section 3, in the definition of “Seanad bye-election”, by the insertion of “, or by the taking effect under *section 17(6)* of the *Criminal Justice (Corruption Offences) Act 2017* of a forfeiture of office order within the meaning of section 29A in respect of him or her” after “or disqualification”, 35

(b) in section 13(1), by the insertion of “or by the taking effect under *section 17(6)* of the *Criminal Justice (Corruption Offences) Act 2017* of a forfeiture of office order within the meaning of section 29A in respect of such a member” after “or

disqualification of a member thereof who was elected thereto by a university constituency”, and

(c) by the insertion of the following section after section 29:

“Forfeiture of office order under Criminal Justice (Corruption Offences) Act 2017

5

29A. (1) If while a person is a member of Seanad Éireann for a university constituency a forfeiture of office order in respect of the person takes effect under *section 17(6)* of the Act of 2017, he or she shall thereupon cease to be such member and a vacancy shall exist accordingly in the membership of Seanad Éireann.

10

(2) As soon as may be after the receipt by the Chairman of Seanad Éireann of a notification from the registrar of a court under *subsection (7)* of *section 17* of the Act of 2017 of the taking effect under *subsection (6)* of that section of a forfeiture of office order in respect of a member of Seanad Éireann for a university constituency, the Chairman of Seanad Éireann shall inform Seanad Éireann of such receipt at the next meeting thereof.

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(3) In this section—

‘Act of 2017’ means the *Criminal Justice (Corruption Offences) Act 2017*;

20

‘forfeiture of office order’ means an order under *section 17(4)(b)* of the Act of 2017 for the forfeiture of the office of a person as a member of Seanad Éireann.”.

Amendment of Seanad Electoral (Panel Members) Act 1947

29. The Seanad Electoral (Panel Members) Act 1947 is amended—

25

(a) in section 2—

(i) by the substitution of the following definition for the definition of “casual vacancy”:

“the expression ‘casual vacancy’ means a vacancy in the membership of Seanad Éireann occasioned by—

30

(a) the death, resignation or disqualification of a member of Seanad Éireann, or

(b) the taking effect under *section 17(6)* of the Act of 2017 of a forfeiture of office order in respect of a member of Seanad Éireann,

who was elected at the next preceding Seanad general election or was elected at a Seanad bye-election since the next preceding Seanad general election;”.

35

(ii) by the substitution of the following definition for the definition of “nominating bodies sub-panel casual vacancy”:

“the expression ‘nominating bodies sub-panel casual vacancy’ means a

40

- casual vacancy occasioned by—
- (a) the death, resignation or disqualification of a member of Seanad Éireann, or
 - (b) the taking effect under *section 17(6)* of the Act of 2017 of a forfeiture of office order in respect of a member of Seanad Éireann, 5
 who was elected at the next preceding Seanad general election from a nominating bodies sub-panel or who was elected at a Seanad bye-election to fill (whether directly or indirectly) the place of a member who was so elected at such Seanad general election;”,
- (iii) by the substitution of the following definition for the definition of 10
“Oireachtas sub-panel casual vacancy”:
- “the expression ‘Oireachtas sub-panel casual vacancy’ means a casual vacancy occasioned by—
- (a) the death, resignation or disqualification of a member of Seanad Éireann, or 15
 - (b) the taking effect under *section 17(6)* of the Act of 2017 of a forfeiture of office order in respect of a member of Seanad Éireann, who was elected at the next preceding Seanad general election from an Oireachtas sub-panel or who was elected at a Seanad bye-election to fill (whether directly or indirectly) the place of a member who was so elected 20
at such Seanad general election;”,
- and
- (iv) by the insertion of the following definitions:
- “the expression ‘Act of 2017’ means the *Criminal Justice (Corruption Offences) Act 2017*; 25
- the expression ‘forfeiture of office order’ means an order under *section 17(4)(b)* of the Act of 2017 for the forfeiture of the office of a person as a member of Seanad Éireann;”,
- (b) in section 55(2), by the insertion of “or, as the case may be, the member in respect of whom a forfeiture of office order has taken effect under *section 17(6)* 30
of the Act of 2017” after “the member whose death, resignation, or disqualification occasioned the vacancy”, and
 - (c) by the insertion of the following section after section 80:
 - “**Forfeiture of office order under Criminal Justice (Corruption Offences) Act 2017** 35
 - 80A.** (1) If while a person is a member of Seanad Éireann elected under this Act a forfeiture of office order in respect of the person takes effect under *section 17(6)* of the Act of 2017, he or she shall thereupon cease to be such member and a vacancy shall exist accordingly in the membership of Seanad Éireann. 40

- (2) As soon as may be after the receipt by the Chairman of Seanad Éireann of a notification from the registrar of a court under *subsection (7) of section 17* of the Act of 2017 of the taking effect under *subsection (6)* of that section of a forfeiture of office order in respect of a member of Seanad Éireann elected under this Act, the Chairman of Seanad Éireann shall inform Seanad Éireann of such receipt at the next meeting thereof.” 5

Amendment of European Parliament Elections Act 1997

30. The European Parliament Elections Act 1997 is amended by the insertion of the following section after section 11: 10

“Forfeiture of office order under Criminal Justice (Corruption Offences) Act 2017

- 11A. If while a person is a member of the European Parliament an order for the forfeiture of the office of the person as such a member under *subsection (4)(b) of section 17* of the *Criminal Justice (Corruption Offences) Act 2017* takes effect under *subsection (6)* of that section, he or she shall thereupon cease to be such a member.”. 15

Amendment of section 16(1) of Local Government Act 2001

31. Section 16(1) of the Local Government Act 2001 is amended by the insertion of “, or upon an order under *subsection (4)(b) of section 17* of the *Criminal Justice (Corruption Offences) Act 2017* for the forfeiture of the office of the person as a member of the local authority taking effect under *subsection (6)* of that section” after “under section 20 of the Local Elections (Disclosure of Donations and Expenditure) Act 1999”. 20

Saver

32. 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 as an official. 25

SCHEDULE 1

IRISH PUBLIC BODIES

1. Each of the following shall be an Irish public body for the purposes of this Act:
- (a) 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; 5
 - (b) the Office of the President;
 - (c) the Office of the Tánaiste; 10
 - (d) the Office of the Attorney General;
 - (e) the Office of the Comptroller and Auditor General;
 - (f) the Office of the Director of Public Prosecutions;
 - (g) the Office of the Ombudsman;
 - (h) the Houses of the Oireachtas Service; 15
 - (i) the Courts Service;
 - (j) a local authority;
 - (k) the Health Service Executive;
 - (l) the Garda Síochána;
 - (m) the Garda Síochána Inspectorate; 20
 - (n) the Garda Síochána Ombudsman Commission;
 - (o) the Policing Authority;
 - (p) the Criminal Assets Bureau;
 - (q) the National Asset Management Agency;
 - (r) the Broadcasting Authority of Ireland; 25
 - (s) the Irish Human Rights and Equality Commission;
 - (t) an Bord Pleanála;
 - (u) the Office of the Director of Corporate Enforcement;
 - (v) a body, organisation or group established—
 - (i) by or under any enactment (other than the Companies Act 2014), or 30
 - (ii) under the Companies Act 2014, 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; 35

(w) a company a majority of the shares in which are held by or on behalf of a Minister of the Government;

(x) any other body, organisation or group appointed by the Government or a Minister of the Government.

2. (1) In *paragraph 1* “Office”, in relation to a person holding an office, means the offices in which the administration and business relating to the functions of the person as that office holder are carried on. 5
- (2) There shall be deemed to be included in *paragraph 1* any subsidiary of an Irish public body specified in that paragraph.

SCHEDULE 2

Section 4

ENACTMENTS REPEALED

Session and Chapter or Number and Year (1)	Short Title (2)	Extent of Repeal (3)	
52 & 53 Vict., c. 69	Public Bodies Corrupt Practices Act 1889	The whole Act	5
6 Edw. 7, c. 34	Prevention of Corruption Act 1906	The whole Act	10
6 & 7 Geo. 5, c. 64	Prevention of Corruption Act 1916	The whole Act	
No. 22 of 1995	Ethics in Public Office Act 1995	Section 38	
No. 27 of 2001	Prevention of Corruption (Amendment) Act 2001	The whole Act	15
No. 1 of 2005	Proceeds of Crime (Amendment) Act 2005	Section 23	
No. 33 of 2010	Prevention of Corruption (Amendment) Act 2010	The whole Act	20

An Bille um Cheartas Coiriúil (Cionta
Éillithe), 2017

BILLE

(*mar a tionscnaíodh*)

dá ngairtear

Acht do leasú an dlí maidir le héilliú a chosc (lena n-áirítear cionta a bhaineann le héilliú) agus, le linn déanamh amhlaidh, do thabhairt éifeacht don Choinbhinsiún, a tarraingíodh suas ar bhonn Airteagal K.3(2)(c) den Chonradh ar an Aontas Eorpach, maidir leis an gcomhrac i gcoinne an éillithe a bhfuil oifigigh de chuid na gComhphobal Eorpach nó oifigigh de chuid Bhallstáit an Aontais Eorpaigh i dtreis ann agus a rinneadh sa Bhruiséil an 26 Bealtaine 1997, do Choinbhinsiún na hEagraíochta um Chomhar agus Forbairt Eacnamaíochta maidir le Cur i gCoinne Breabaireacht a Dhéanamh ar Oifigigh Phoiblí Choigríche in Idirbhearta Gnó Idirnáisiúnta a glacadh i bPáras an 21 Samhain 1997, do Choinbhinsiún Dlí Choiriúil Chomhairle na hEorpa maidir le hÉilliú a rinneadh i Strasbourg an 27 Eanáir 1999, don Phrótacal Breise a ghabhann le Coinbhinsiún Dlí Choiriúil Chomhairle na hEorpa maidir le hÉilliú a rinneadh i Strasbourg an 15 Bealtaine 2003 agus do Choinbhinsiún na Náisiún Aontaithe in aghaidh an Éillithe a rinneadh i Nua-Eabhrac an 31 Deireadh Fómhair 2003; chun na críche sin, d'aisghairm na nAchtanna um Éilliú a Chosc, 1889 go 2010 agus do dhéanamh socrú maidir le leasuithe iarmhartacha ar achtacháin eile; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An tAire Dlí agus Cirt agus Comhionannais a
thíolaic,*

31 Deireadh Fómhair, 2017

Criminal Justice (Corruption Offences) Bill
2017

BILL

(*as initiated*)

entitled

An Act to amend the law regarding the prevention of corruption (including offences relating to corruption) and, in doing so, 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 Member States of the European Union done at Brussels on 26 May 1997, the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted at Paris on 21 November 1997, the Council of Europe Criminal Law Convention on Corruption done at Strasbourg on 27 January 1999, the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption done at Strasbourg on 15 May 2003 and the United Nations Convention Against Corruption done at New York on 31 October 2003; for that purpose, to repeal the Prevention of Corruption Acts 1889 to 2010 and to provide for consequential amendments to other enactments; and to provide for related matters.

Presented by the Minister for Justice and Equality,

31st October, 2017

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,

52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.

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