

# Submission to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach re the Ministers and Secretaries Act, 1924

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## Introduction

The Committee has heard evidence at its meeting on Wednesday 12<sup>th</sup> October concerning the origins and purpose of the 1924 Ministers and Secretaries Act, the 1956 Civil Service Regulation Act and the 1997 Public Service Management Act, as well as the formal status of the relationship between Ministers and their departments and the statutory duties of Secretaries-General. This submission is designed to assist the committee in its deliberations by providing further information on the role and accountability of Secretaries-General and their relationship to Ministers and the government.

We suggest that accountability demands and relationships at the most senior level of government are affected by historical design, as well as by changes in the range and type of responsibilities in question, the prominence of the policy issue, and the capacity of both Ministers and Secretaries General, all of which have experienced change in recent years. Furthermore, in a small state such as Ireland, it is difficult for ministers to successfully delegate political accountability, particularly via arms' length bodies, with high profile examples of where this has proved problematic including the Health Service Executive. Looking internationally, equivalent changes to accountability requirements have been addressed through more systemic monitoring of performance for both departments and agency activities, rather than in an *ad hoc* manner. Given the challenges faced by the existing system in Ireland, and the scale of changes to the administrative system, a more detailed study of current accountability practices may be warranted.

## Political-administrative relationships in context

Although it is often argued that the role of politicians is to make policy and public servants to implement it, in practice it is impossible to delineate between where politics ends and administration begins, particularly at the top level of government. Rather, in most states there is a

complex and informal 'black box' within which government decisions are arrived at by Ministers and top civil servants working together. Within this black box it is generally understood that Ministers have the final say, and civil servants are there to serve, but there is interdependence also. The actions and advice of senior civil servants have significant influence on the policy decisions of Ministers, and Ministers reserve the right to organise departments as they wish and to task civil servants with implementing their policy choices. Ministers require professional advice, service and apolitical loyalty as much as civil servants expect Ministers to respect and defend them and their work in the public arena.

As well as formal rules around contracts of employment and reporting mechanisms, scholars of political-administrative relationships speak of an informal 'bargain' that is struck between politicians and civil servants (Hood and Lodge 2006). Essentially, security of tenure and remuneration sufficient to guard against inducements or bribes are given in return for loyalty and competency. Furthermore, in return for politicians forfeiting the right to appoint, fire and unfairly change terms and conditions of employment, civil servants accept anonymity and forfeit the right to blame or express opposition to government policy. Ministers take credit when government works well, but are expected to accept blame and defend their department when problems occur. Reflecting this, a recent study of Dutch political-administrative relations pointed to informal 'rules of the game' which guide activity at the top of government, namely mutual respect, discretionary space and reciprocal loyalty (Van Dorp and t'Hart 2019).

As with equivalents elsewhere, the role of Secretary-General is a challenging one and occupants must reconcile conflicting demands on a daily basis. They are expected to demonstrate loyalty to their Minister and government, yet also act as a public trustee with a responsibility to serve the common good; to implement policy decisions and be personally accountable for the finances involved; to manage their department but also be cognisant of system-wide policy developments. Other tasks include engaging with political/special advisers, participation in cross-departmental committees and taskforces, helping to respond to media stories, and to navigate wide and ceaseless streams of information.

In a study by MacCarthaigh (2017, p. 261), a political adviser suggested:

You can't import readily from the private sector the skill-set that's necessary to do the job around here. The notion that you can import somebody from the private sector to be a Secretary-General is fanciful. The skill set that's involved in policy formation, advising a

Minister, public administration generally, particularly the policy formation piece and dealing with complexity, is not something that has a private sector analogue.

### Accountability of Secretaries-General

In Ireland, the relationship between Ministers and Secretaries-General is a constantly changing one. It has generally worked well, though as noted at the Committee's session on 12<sup>th</sup> October it has been the subject of periodic controversy and scrutiny. As they sit at the top of their organisation, the question of to whom Secretaries-General are accountable has frequently arisen. Comparisons between CEO and Chairperson do not adequately capture the distinctive nature of the relationship between Secretaries-General and their Ministers.

Twenty-five years ago, the 1997 Public Service Management Act sought to give more autonomy to top civil servants for managing the performance of their departments. The Act sought to separate Ministerial responsibility for policy objectives and results from the advisory and managerial roles of Secretaries-General in their achievement. Ministers would remain ultimately accountable to parliament as per Westminster-style convention, but the Act envisaged the traditional role of senior civil servants as anonymous policy advisers being transformed arising from the legal delegation of functions to them (from Ministers), greater use of performance management tools (including application of sanctions for poor performance up to and including dismissal), and increased public accountability of officials.

The legislation did not fully resolve the issue of the accountability of Secretaries-General however and the issue was the subject of a subsequent report of a high-level *Working Group on the Accountability of Secretaries-General and Accounting Officers* created by the government in 2000 (and popularly known as the Mullarkey Report, after its chairman). Its recommendations focused on the issues of internal risk management and audit, but again did not determine how Secretaries-General would be held to account for their performance.

Under the Civil Service Renewal Plan published by the Department of Public Expenditure and Reform in 2014, two new non-statutory fora were created:

- A 'Civil Service Accountability Board', chaired by the Taoiseach, which would have oversight of the implementation of crosscutting priorities set by the government, and the capacity and capability of the civil service. This latter role included the introduction of a performance management system for Secretaries-General.

- A 'Civil Service Management Board' to manage the performance and operation of the civil service, support the government on the implementation of cross-departmental policy initiatives, identify and manage strategic and operational risks and lead implementation of the Civil Service Renewal Plan.

The Civil Service Management Board is still chaired by the Secretary-General to the Government, and comprises all Secretaries-General and heads of major offices. It normally meets monthly. However the Accountability Board has not met since 2016, and although the recent published 'Civil Service Renewal Strategy 2030' provide a role for the Civil Service Management Board, the Accountability Board is not mentioned.

### The changing profile of government Departments

The role of departments is to provide a professional administrative system for the state's political leaders, individually and collectively. This includes the development and implementation of legislation, the preparation and management of budgets, gathering evidence from a variety of sources to assist Ministers, issuing policy decisions and overseeing them, provision of information on government policies and decision-making processes, and the management of arms' length bodies or agencies. Since the foundational 1924 Act, and responding to the growing and changing role of the state, there have been important changes to the profile and activity of Departments.

As well as determining that civil servants would act in the name of and be accountable to their respective Minister, the 1924 Act created 11 'Departments of State' and assigned the powers, duties and functions of the new state apparatus to them. Since that time, the number of departments has expanded and the current number of 18 is as numerous as it has ever been (Table 1).

However, what has also expanded is the range of responsibilities which each department must manage and coordinate. As Table 1 also identifies, from being largely single-issue policy portfolios in 1924, most departments today are multi-issue, with most having two or more distinct and often diverse policy responsibilities which require departments to adopt new internal technologies and mechanisms for coordinating and managing them. It has also changed the profile of Ministers of State who frequently manage discrete policy fields within departments.

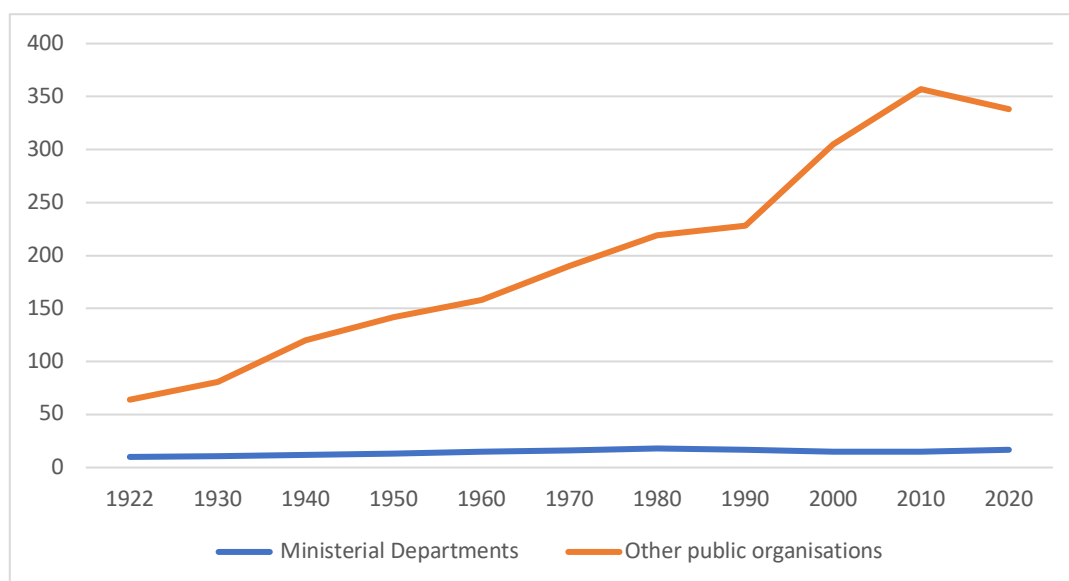
**Table 1: Government departments in 1924 and 2022**

No.	1924	2022
1	President of the Executive Council	Taoiseach
2	Finance	Finance
3	Defence	Defence
4	Education	Education
5	Justice	Justice
6	Fisheries	Environment, Climate and Communications
7	Industry and Commerce	Further and Higher Education, Research, Innovation & Science
8	Posts and Telegraphs	Rural and Community Development
9	Lands and Agriculture	Agriculture, Food and the Marine
10	Local Government and Public Health	Health
11	External Affairs	Foreign Affairs
12		Social Protection
13		Enterprise, Trade and Employment
14		Tourism, Culture, Arts, Gaeltacht, Sport and Media
15		Transport
16		Housing, Local Government and Heritage
17		Children, Equality, Disability, Integration and Youth
18		Public Expenditure and Reform

Source: Hardiman, MacCarthaigh and Scott (2022) *The Irish State Administration Database* ([www.isad.ie](http://www.isad.ie))

There is also an aggregate increase in the number of non-departmental or ‘arms’ length’ agencies for which departments, and therefore Ministers, have oversight responsibilities, as Figure 2 identifies.

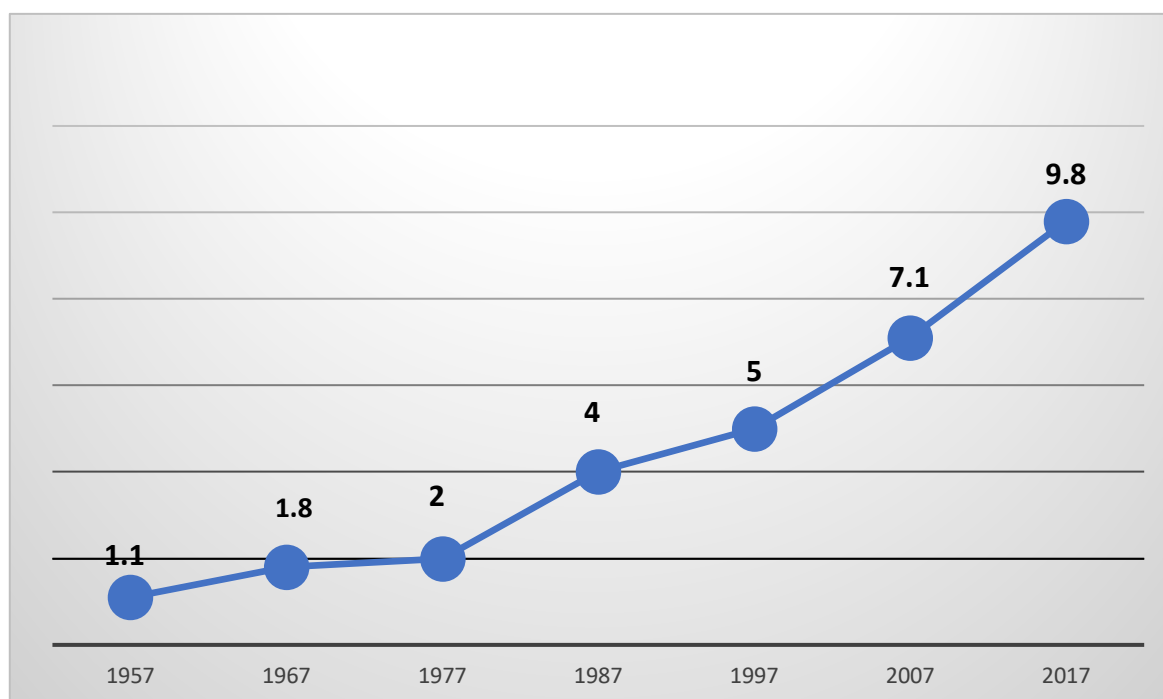
**Figure 2: Ministerial departments and other central public organisations in Ireland, 1922-2021**



Source: Hardiman, MacCarthaigh and Scott (2022) *The Irish State Administration Database* ([www.isad.ie](http://www.isad.ie))

The environment in which Ministers and civil servants now operate is very different from the time of the Mullarkey Report in 2002. Major technological innovations have increased the volume and speed of information that flows between the political and administrative domains. And both politicians and senior public servants are subject to more regular public scrutiny and a variety of public and non-public forums for their decisions. Government departments have also changed, and as Figure 3 identifies, over the last half-century the proportion of civil servants in senior roles has increased.

**Figure 3: Percentage of civil servants employed at higher grades (i.e. from Assistant Principal grade)**



Updated from MacCarthaigh 2021, p. 53

Senior civil service accountability is a process and its dimensions are not static. The Committee was advised at its 12<sup>th</sup> October meeting of the significance of the changing public profile of senior civil servants generally, and the greater frequency of appearances before Oireachtas committees in particular. A further important change affecting the relationship between ministers and civil servants has been the growing importance of political advisers working with ministers. In the Westminster world portrayed in “Yes Minister” ministers are almost entirely dependent on senior civil servants for knowledge and advice about their policy briefs and, of course, this remains a very important aspect of government functions, frequently referred to in ministerial memoirs across a number of jurisdictions. However, ministers have sought to address the sense of helplessness and limited autonomy they might sometimes feel through the more routine appointment of political advisers who play an increasingly significant role in shaping the interactions of ministers with their departments.

This phenomenon is common across Westminster-style systems including that of Ireland.

Connaughton has suggested that the growth of the political adviser class has at least three distinct sets of motivations for ministers: asserting greater political control of policy making; protecting an apolitical civil service from the necessary actions to build and sustain political support for policy; and

to 'drive the machinery of government to secure policy outputs' (Connaughton, 2015: 38). The roles played by advisers are varied and she identifies at least four types: expert, partisan, coordinator, minder, and with considerable overlap between them (Connaughton 2015). Such a significant change must also affect the accountability of senior civil servants, including Secretaries General, since ministers have a reduced dependency and greater knowledge and capacity for day-to-day forms of accountability with respect to these senior civil servants. The rationale for the change is to give ministers greater control by virtue of which they should exhibit greater accountability for policy actions of their departments.

### International developments

In **Norway**, a recent official study pointed out that it was not easy to balance the requirements for the civil service to be loyal to the Minister and government of the day, and also politically neutral and professionally independent on the other (Norwegian Ministry of Local Government and Modernisation 2019: 16). The review suggested seven key duties for the civil service, which 'are based on and should support the four core public administration values: democracy, the rule of law, professional integrity and efficiency'. These are:

1. Legality
2. Truth
3. Loyalty
4. Professionalism and professional independence
5. Party-political neutrality and objectivity
6. Transparency
7. Good public governance and management

In the **Netherlands**, a political incident led to the parliament requesting the government to investigate the functioning of the top management in the Dutch civil service, focussing on 'preventing poorly functioning civil servants from being employed elsewhere in government'. The resulting study noted problems emerging from the fact that the average term of office for a top civil servant was just 4.3 years. Amongst recommendations, they suggested:

- More regular parliamentary and political discussion on the Senior Civil Service;
  - Timely identification of problems in the performance of top civil service management;
  - Protecting appointment procedures, and;
  - A more relaxed approach to political-civil service interaction and communication
- (<https://www.uu.nl/en/news/senior-civil-service-to-become-more-visible-and-strategic>) .



In **Belgium**, each Minister is surrounded by a political leadership team known as a *cabinet* which operates with some autonomy from the department for which the Minister is responsible. Referred to as a 'strategic cell' (Brans et al. 2007), it can contain over 40 staff (less than French and Italian equivalents which can number over 60) and even occupy a different building to that of the administration. Many of the *cabinet* staff may however be seconded from the administration.

In many countries (including Ireland) there has been a trend since the 1980s towards 'hiving off' or delegating core government functions from government departments to executive agencies of one kind or another. The importance of agencies to government policy and delivery creates a significant accountability challenge for ministers and senior civil servants, with a significant number of controversies arising from political interventions in nominally independent agency responsibilities. Delegating functions to agencies has been a key aspect of "new public management" (NPM) reforms in the **UK, Australia** and **New Zealand**, involving changes also in financial management frameworks and accountability structures.

In Australia, risks that reforms would fragment government operations and reduce accountability have been met with a degree of backlash and a trend towards greater centralization and whole of government approaches to policy making delivery, monitoring and accountability, with the ambition of enhancing policy and programme control (Halligan, 2007). Similar reforms in New Zealand have targeted distinct concerns with a) performance and b) political control of policy (Halligan 2008) with effects in both systems on the relationships between ministers and heads of government departments (which have traditionally been more arms-length than in Ireland).

In Ireland, the 'rise of the regulatory state', and the assignment of regulatory tasks to a new army of regulatory bodies, some required as an aspect of EU legislation and policy, has been a key aspect of growing delegation to independent agencies. Whilst Ireland has not placed the same dependence on the creation of agencies to deliver government policies as has been true of other countries such as the UK, nevertheless agencies are a key part of the Irish landscape in functions beyond regulation. Other key functions assigned to agencies include delivery (including the Health Service Executive and the National Treasury Management Agency), and transfers (e.g. the Higher Education Authority, Home Building Finance Ireland, the Housing Finance Agency, the Investor Compensation Company, the Irish Research Council, the Irish Sports Council, Science Foundation Ireland).

In Ireland, experience suggests it is difficult for ministers to give away power to agencies through legislation. Even when public bodies are nominally independent, the reality of politics frequently requires ministers to account for the actions they set in train through agencies, and thus to take a greater interest in day-to-day activities than might be anticipated by the establishing legislation. Arguably the creation of capacity for systemic financial and performance monitoring, as has occurred in New Zealand and Australia, is more transparent and efficient, than *ad hoc* interventions by ministers in agency responsibilities.

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