

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

**Ireland Phase 1bis Report**

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## INTRODUCTION

### Purpose of Phase 1bis

1. In June 2018, in the context of Ireland’s Additional Phase 3 Written Follow-Up Report ([DAF/WGB\(2018\)22](#)), the Working Group on Bribery (WGB) agreed to conduct a Phase 1bis evaluation of Ireland in March 2019. Subsequently, the Phase 1bis evaluation was postponed until October 2019, due to the WGB’s heavy monitoring schedule. The evaluation would consider Ireland’s new legislation for implementing the [Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions](#) (Convention) – i.e., the Criminal Justice (Corruption Offences) Act 2018 (“CJA 2018”) (See Annex 1), which Ireland claimed implemented key outstanding Phase 3 recommendations.
2. Since Ireland’s [Phase 3 Report](#) was adopted in December 2013, the WGB had been closely following Ireland’s progress on implementing the following three key Phase 3 Recommendations through successive follow-up reports:<sup>1</sup> (1) Recommendation 1(a) to harmonise Ireland’s two foreign bribery offences contained in several statutes, the Prevention of Corruption (Amendment) Act 2001 (“POCA 2001”) as amended by the Prevention of Corruption (Amendment) Act 2010 (“POCA 2010”), and the Criminal Justice (Theft and Fraud Offences) Act 2001 (“CJA 2001”), including by removing reference to the term ‘agent’; (2) Recommendation 2(a) to review the law on the liability of legal persons for foreign bribery on a high priority basis with a view to codifying it, and to expand it to cover all the categories of liability recommended under Annex I of the [2009 Recommendation of the Council for Further Combatting the Bribery of Foreign Public Officials in International Business Transactions](#) (2009 Recommendation) – i.e., the OECD Good Practice Guidance on Implementing Specific Articles of the Anti-Bribery Convention; and (3) Recommendation 6(a) to amend the dual criminality exception for the money laundering offence in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to ensure that foreign bribery is always a predicate offence for money laundering, without regard to the place where the bribery occurred.
3. The purpose of this Phase 1bis Report is therefore to assess the following:
  - Whether CJA 2018 fully implements the three Phase 3 Recommendations 1(a), 2(a) and 6(a) referred to above. Implementation of these recommendations is assessed under the relevant parts of this report (i.e., Recommendation 1(a) is assessed under 3.1 on the foreign bribery offence, Recommendation 2(a) under 4.1 on the liability of legal persons, and Recommendations 6(a) under 8.1 on the money laundering offence); and
  - Compliance of CJA 2018 with relevant articles of the Anti-Bribery Convention (Articles 1, 2, 3, 4, 6 and 7).

### Phase 1bis Process

4. When the WGB agreed to conduct a Phase 1bis evaluation of CJA 2018, it also agreed that the United Kingdom and Estonia – the lead examiners for the Phase 3 evaluation of Ireland – would continue as the lead examiners. For the purpose of the Phase 1bis Report, a phase 1bis questionnaire was prepared by the Evaluation Team, composed of the Lead Examiners and the

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<sup>1</sup> Following Ireland’s Phase 3 Report in December 2013, Ireland underwent the following follow-up reporting steps: Phase 3 Two-Year Written Follow-Up Report – 2016, Additional Phase 3 Written Follow-Up Report – 2017 ([DAF/WGB\(2017\)68](#)); and Additional Phase 3 Written Follow-Up Report – 2018 ([DAF/WGB\(2018\)22](#)).

Secretariat. The Phase 1bis Questionnaire integrates questions regarding specifically the three Phase 3 Recommendations, discussed above, as well as selected questions from the [Standard Phase 1 Questionnaire](#), chosen for their relevance to the new legislation. This report is based on Ireland's responses to the Phase 1bis Questionnaire, as well as independent analysis by the Evaluation Team. Consistent with the [Phase 1 Procedure](#), this report does not involve an on-site visit. Ireland's Phase 4 Evaluation, currently scheduled for October 2021, will involve an on-site to meet with all relevant stakeholders, including law enforcement authorities, the Department of Justice and Equality, and other relevant ministries and government agencies, as well as the private sector and civil society, thus enabling the WGB to assess the practical implementation of CJA 2018.

## 1. Formal Issues

5. CJA 2018 was enacted on 5 June 2018, and entered into force on 30 July 2018. By section 4 and Schedule 2, the Act repeals several pieces of legislation, including all of POCA 2001, all of POCA 2010, sections 43, 44 and 45(2) of CJA 2001 and the definitions of "active corruption" and "passive corruption" in section 40(1) of CJA 2001.<sup>2</sup>
6. Regarding transitional arrangements, Ireland's Interpretation Act 2005 provides, in effect, that corruption offences that were committed before 30 July 2018 must be prosecuted under the old (i.e., now-repealed) statutory provisions.<sup>3</sup> Foreign bribery committed before that date must therefore be prosecuted under POCA 2010 or CJA 2001 depending on which statutory offence is considered to be applicable or most appropriate in the circumstances.
7. The Irish authorities explain that the jurisprudence (case law) regarding Ireland's previous legislation relevant to foreign bribery would almost certainly be applied in the same manner to CJA 2018, at least in reference to the presumption of corruption in section 14, to the extent that old and new legislative provisions contain identical wording.<sup>4</sup> They also explain that the Explanatory Memorandum published with the Criminal Justice (Corruption Offences) Bill 2017 ("the 2017 Bill") – the Bill which became the CJA 2018 – provided Members of Parliament and other readers of the Bill with a clear explanation of each provision.

## 2. Legislative Process for Responding to Phase 3 Recommendations

8. The Irish authorities have explained that CJA 2018 was enacted to achieve several purposes, including to give further effect to the Convention, and implement the Phase 3 recommendations

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<sup>2</sup> CJA 2018 (section 4 and Schedule 2) also repeals the following statutes and statutory provisions: Public Bodies Corrupt Practices Act 1889, Prevention of Corruption Act 1906, Prevention of Corruption Act 1916, section 38 of the Ethics in Public Office Act 1995 and section 23 of the Proceeds of Crime (Amendment) Act 2005.

<sup>3</sup> See section 27(1) and (2) regarding the transitional arrangement for a repealed enactment and any legal proceedings (civil or criminal) pursuant to such an enactment.

<sup>4</sup> Ireland cites the following decision of the Supreme Court in this regard: *DPP v. Forsey* [2019] 1 I.L.R.M 73. This case concerns the manner in which the presumption of corruption previously contained in section 4 of POCA 2001 should be interpreted in the future. This decision is discussed further in this Phase 1bis Report in relation to the culpable state of mind that must be proved under CJA 2018 in foreign bribery cases.

1(a), 2(a) and 6(a).<sup>5</sup> Indeed, both the Explanatory Memorandum and CJA 2018 itself expressly state that one of the reasons for the new legislation was to give effect to the Convention.

9. In 2012, the Irish Government published a Draft Scheme of a Criminal Justice (Corruption) Bill (“the 2012 Draft Scheme”). The 2012 Draft Scheme was amended in accordance with legal advice from the Office of the Attorney-General and further instructions from the Department of Justice and Equality, leading to the 2017 Bill. The 2017 Bill passed through all stages of the Houses of the *Oireachtas*, Ireland’s legislature and, as noted above, was enacted as CJA 2018 on 5 June 2018.
10. The Irish authorities have explained that CJA 2018 has either retained or strengthened previous legislative provisions on foreign bribery, to ensure continued compliance with the Convention and other international anti-corruption instruments. This involved some restructuring of offences to give better effect to the relevant instruments. In broad terms, CJA 2018 establishes a foreign bribery offence through the legislative technique described below (See 3.1 of this report) and the liability of “bodies corporate” for the foreign bribery offence (See 4.1 of this report).

### 3. Article 1: Offence of Bribery of Foreign Public Officials

#### *3.1 Implementation of relevant outstanding Phase 3 Recommendation on Article 1 of the Convention*

##### Recommendation 1(a) on the Foreign Bribery Offence

11. Consistent with the position in Phase 2, in Phase 3 the WGB recommended that Ireland consolidate and harmonise without further delay the foreign bribery offences in POCA 2001 (as amended by POCA 2010) and CJA 2001 in a manner that would be in compliance with Article 1 of the Convention, including by removing reference to the term “agent”. Ireland had established two separate foreign bribery offences in separate statutes – POCA 2001 (as amended by POCA 2010) established a general offence of bribing a foreign public official, whereas CJA 2001 established an offence of the bribery of an official of the European Communities or any national official of another Member State of the European Communities.<sup>6</sup> However, these two foreign bribery offences were not fully consistent, in ways that the WGB believed could make enforcement challenging. In particular, they overlapped regarding the bribery of an official of the European Communities or any national official of another Member State of the European Communities where the bribery was for the purpose of the official acting or refraining from acting in accordance with her/his duty “in a way that damages or is likely to

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<sup>5</sup> Additionally, CJA 2018 is intended to give further effect to the Convention drawn up on the basis of Article K 3 (2)(c) of the Treaty of the European Union on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union (1997); the Council of Europe Criminal Law Convention on Corruption (1999), and the Additional Protocol to the Council of Europe Criminal Law Convention on Corruption (20013); and the United Nations Convention against Corruption (2003).

<sup>6</sup> POCA 2001 was intended to implement the Convention, the Convention on the Fight against Corruption by the European Union, and the Criminal Law Convention on Corruption of the Council of Europe. CJA 2001 was intended to implement the Convention on the Protection of the European Communities’ Financial Interests.

damage the European Communities' financial interests"; but the overlapping offences employed different standards.<sup>7</sup>

12. By the end of Ireland's Phase 2 review cycle, no steps had been taken to implement the WGB's recommendation to consolidate and harmonise the foreign bribery offences in POCA 2001 and CJA 2001. But at the time of Ireland's Phase 3 review, in December 2013, it had enacted POCA 2010 (amending POCA 2001), and the 2012 Draft Scheme had been published. The WGB assessed that POCA 2010 did not attempt to consolidate the foreign bribery offences under POCA 2001 and CJA 2001. In addition, it did not fully harmonise the two separate foreign bribery offences, as the three following areas of inconsistency persisted: (1) CJA 2001 still did not cover "offers"; (2) POCA 2001 (as amended) continued to employ the concept of "agent"; and (3) POCA 2001 (as amended) maintained the requirement of a "corrupt" intent. Unfortunately, the opportunity provided by the 2012 Draft Scheme was not taken to consolidate the two foreign bribery offences. Nor did the 2012 Draft Scheme address the requirement of "corrupt" intent in POCA 2001 (as amended), or the absence of the term "offers" in CJA 2001. The 2012 Draft Scheme 2012 did not, however, use the term "agent".
13. CJA 2018 consolidates the two foreign bribery offences into one offence through the following legislative technique:
  - repealing POCA 2001 and POCA 2010;
  - amending Part 6 of CJA 2001 (i.e., repealing sections 43, 44 and 45(2) and the definitions of "active corruption" and "passive corruption" in section 40(1));
  - providing in section 5(1) the new offence of bribing a "person" (framed as an offence of "active corruption");
  - providing in section 2(1) that the word "corruptly" includes (but is not necessarily limited to) "acting with an improper purpose" – what might be called a corrupt intent;
  - providing in Part 3 of CJA 2018 (sections 11 to 13) rules on extraterritoriality, particularly in section 12 (corruption occurring outside Ireland);
  - providing in section 14(1) what is in effect a presumption of corrupt intent, in any case where a bribe is given by a "person" to an "official" in specific circumstances<sup>8</sup>; also providing in section 2(1) that "official" means "an Irish official or a foreign official"; (with further definitions for both "Irish official" and "foreign official"), definitions

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<sup>7</sup> The differing standards were as follows: (1) CJA 2001 did not expressly cover offers to bribe; (2) POCA 2001 covered bribes in the form of "any gift or consideration", and CJA 2001 covered "any gift, consideration or advantage"; (3) POCA 2001 covered the bribery of "agents", while CJA 2001 covered the bribery of "officials"; (4) POCA 2001 required a "*corrupt*" intent to bribe, whereas CJA 2001 did not; (5) POCA 2001 established extraterritorial jurisdiction only when the briber was an Irish public official or a member of the European Parliament, and CJA 2001 established nationality jurisdiction; and (6) POCA 2001 appeared to maintain the need for the consent of the Attorney-General or Solicitor-General of Ireland to prosecute an offence.

<sup>8</sup> The Irish authorities rightly point out that the offence in section 5(1) can be prosecuted without relying on the presumption of corruption. While it is a useful prosecutorial aid, it does not form part of the offence under section 5(1).

which, whilst not required for the interpretation of section 5(1) itself, may be relevant in related respects depending on the alleged facts<sup>9</sup>;

- providing penalties in section 17(3); and
- providing in section 18(c) and (j) of the Interpretation Act 2005 that the word “person” “shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual [...]” and, in particular, that “[a] reference to a person in relation to an offence (whether punishable on indictment or on summary conviction) shall be read as including a reference to a body corporate”.

14. CJA 2018 does not employ the term “agent” – it is the bribery of a “person” that is actionable under section 5(1). The section 5(1) offence also covers “offers” to bribe (section 5(1)(a)).
15. Section 5(1) also requires a “corrupt” intent, as noted above. This element, which raises issues independently of Phase Recommendation 1(a) to consolidate and harmonise the previous two separate foreign bribery offences, is discussed below under 3.2.2.
16. In summary, CJA 2018 addresses all the issues in Recommendation 1(a), which is therefore now fully implemented.

### *3.2 Elements of the Foreign Bribery Offence<sup>10</sup>*

#### *3.2.1 “any person”*

17. Section 5(1) of CJA 2018, which establishes the new offence of bribing a foreign public official according to the legislative technique described above under paragraph 13 of this report, applies to “a person”. Although the term “person” is not defined under CJA 2018, the Irish authorities state that it refers to natural and legal persons, consistent with section 18 (c) and 18(j) (depending on the circumstances) of the Interpretation Act 2005. Issues regarding the application of section 5(1) to legal persons, due to the interpretation of the term “person”, are discussed below under 4.3 of this report, including the restriction of the definition to a “body corporate”. The issue regarding the definition of “person” also arises in relation to the application of the offence to bribes transferred directly to third parties (see below under 3.2.6).

#### *3.2.2 “intentionally”*

18. Section 5(1) of CJA 2018 applies to a person who “corruptly offers” (section 5(1)(a)) or “corruptly gives or agrees to give” (section 5(1)(b)). As explained above, section 2(1) provides that the word “corruptly” includes (but is not necessarily limited to) “acting with an improper

<sup>9</sup> The definition of “Irish official” is relevant to, *inter alia*, the extraterritoriality provision in section 12 and to offences and penalties that relate to Irish officials only (i.e., section 7, which establishes the offence of bribing an Irish official, and section 17(4)(b), which establishes the penalty of forfeiture of office held as an Irish official). The definitions of “Irish official” and “foreign official” are relevant to, *inter alia*, the use of the term “official” in section 14 (the presumption of corruption).

<sup>10</sup> Article 1 of the Convention states: “Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”.

purpose”. Specifically, in section 2(1) the word “corruptly” is defined as follows: “includes acting with an improper purpose personally or by influencing another person, whether— (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”. The section 5(1) bribery offence therefore retains the requirement of a corrupt intent, which was present in POCA 2001 and maintained in POCA 2010.

19. In the Phase 3 Report, the WGB considered that the requirement of a corrupt intent might not be consistent with Article 1 the Convention, which requires only that the person who bribes intends to cause a foreign public official to “act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business”.
20. The Irish authorities explain that since the offence of active corruption in section 5(1) of CJA 2018 is not specific to the bribery of “foreign officials” (i.e., it applies to bribery of a “person” “on account of any person doing an act in relation to his or her office, employment, position or business”), there would be a risk of criminalising innocent behaviour if there was no requisite intent to act “corruptly”. It is also the Irish position that the requirement of a “corrupt intent” follows the provisions of the instruments that are being given effect under CJA 2018 and is more broadly based on the Convention and the Council of Europe Criminal Law Convention. The Irish authorities add that in the absence of the term “corruptly”, the offence would in essence be one of strict liability, which would give rise to serious issues in the context of everyday transactions where consideration is given for the performance of an act.
21. Pursuant to section 14 of CJA 2018, a presumption of a corrupt intent applies in specific circumstances where a “gift, consideration or advantage has been given to” an “official” (or a “connected person to an official”, “a person while intended to be for the benefit of an official or a connected person of an official”, or received “by or on behalf of an official or a connected person of an official”). The Irish authorities underline that this presumption is a prosecutorial aid and does not form part of the offence of active corruption, which includes foreign bribery. Moreover, Ireland states that the presumption does not relate directly to the issue of intent under Article 1 of the Convention, which does not require such a presumption.<sup>11</sup>
22. The presumption applies in the following circumstances, where the bribe has been given to an “official”: (i) the person who gave the gift, etc. “had an interest in the discharge of the functions” listed under subsection (3), “unless the contrary is proved” [section 14(1)]; or (ii) “the official performed or omitted to perform any of the functions” listed in subsection (3) “so as to give rise to an undue benefit or advantage to the person who gave the gift, consideration or advantage”, etc., “unless the contrary is proved” [section 14(2)]. Subsection (3) lists a broad range of “functions of officials”, including the following: (a) the awarding, granting, issuing sanctioning, renewal, refusal, withdrawal or revocation of tenders for goods and services, contracts, grants, payments, loans, licenses, permits, certificates, and authorisations; (b) decision-making regarding appointments to an office or employment, land acquisition, tax treatment; (c) law enforcement; and (d) exercise of judicial functions and the administration of justice. The list of functions of officials is extremely broad, and for that reason would appear to cover the majority of matters for which foreign public officials might be responsible. However, given that it is a closed list, the question arises about matters not specifically provided for, such as privatisation decisions, customs clearances and access to confidential information. The Irish authorities explain that even though the list is closed, prosecutors may

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<sup>11</sup> See footnote 8.



still use section 5(1) to prosecute the bribery of a “foreign official” as the bribery of a “person”, and thus would not need to rely on the presumption of corrupt intent.

23. On its face, the presumption of a corrupt intent places the burden of proof on the accused (i.e., to prove no corrupt intent) in foreign bribery cases where the gift, consideration or advantage has been given in the two situations described in the preceding paragraph. On the other hand, the presumption would not seem to apply where the bribe has only been offered or promised to the foreign public official, as well as where the functions of the foreign public official sought or performed/omitted are not listed in section 14(3) of CJA. In other words, where the bribe has actually been given to the foreign public official, section 14 might be thought to lessen the impact of the requirement of a corrupt intent (i.e., it would be easier for the prosecution to obtain a conviction).
24. However, the Irish authorities explain that a recent Supreme Court decision relates directly to the application of the presumption of corrupt intent. In *DPP v. Forsey* [2019] 1 I.L.R.M 73, the Supreme Court allowed the appeal and quashed the conviction of the appellant who had been convicted of six counts of corruption contrary to POCA 1906 (as inserted by section 2 of POCA 2001).<sup>12</sup> The Supreme Court held as follows:

*142 “[...] the accused will not rebut the presumption unless the evidence relied upon by the defence is, in itself, sufficient to create doubt about the correctness of the presumption. That is what is meant by “proving” that a doubt exists. In a case such as this, therefore, the evidence would have to point to the possibility of an innocent explanation for receipt of the benefit. However, the accused would not have to “prove” that innocent explanation.*

*[...]*

*145 The jury in a case of this nature should therefore be instructed clearly as to the elements of the offence. They should then be told that the prosecution has the burden of proving beyond reasonable doubt all of the elements, with the exception of the component that is the subject of the presumption - the corrupt intention. They should be told that if the prosecution has satisfied them beyond reasonable doubt of the matters it has to prove, they are to take corrupt intention as having been proved, regardless of whether the prosecution has given evidence in relation to it or not, or has given only weak evidence, unless there is something in the evidence that makes them doubt that the accused had a corrupt motive. The overriding consideration is that a jury should not convict if left in doubt as to guilt.”*

25. In other words, in cases of active bribery, the presumption stands in favour of the prosecution unless the defendant has pointed to some evidence before the court (presumably adduced or elicited by the defence) which is sufficient for the jury to conclude that there is a possible innocent explanation for his or her giving the benefit (the gift, consideration or advantage). If

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<sup>12</sup> *DPP v. Forsey* is also discussed above in this Report under 1. Formal Issues. This case also affirms that the presumption of innocence is a fundamental principle in Irish constitutional law. The Court stated that without the presumption the accused would be entitled to a direction from the trial judge to the jury to acquit if the prosecution (having proved the status of the accused and the receipt of the money) could not adduce any evidence bearing upon the motivation for acceptance of the money by the accused person. The presumption therefore means that the accused will be deemed to have acted corruptly despite the lack of evidence of motivation, or despite attacks on credibility of the evidence of motivation, and they could not seek a direction to acquit on this basis.

there is sufficient evidence to raise a doubt as to this issue, the presumption is disapplied. The Court in *Forsey* stated that the presumption is not rebutted unless the defendant produces sufficient evidence to create a doubt about the correctness of the presumption. The evidence would have to raise the possibility of an innocent explanation for giving the advantage, etc., to the official, but the defendant would not have to prove the innocent explanation. If, however, there is no such evidence, the presumption stands and the defendant is presumed to have acted with corrupt intent.

26. The Irish authorities explain that, since CJA 2018 contains almost identical wording to POCA 2001 in respect of the presumption of a corrupt intent, it will almost certainly be interpreted in the same manner in relation to any future prosecutions under the new Act.<sup>13</sup>
27. In summary, due to (i) the continued presence of the need to prove a corrupt intent, (ii) the possible disapplication of the presumption of a corrupt intent in cases where the bribe is transferred to a foreign official in specified circumstances, and (iii) the absence of jurisprudence specifically regarding the application of the presumption under CJA 2018, the WGB will follow up this part of the foreign bribery offence in Phase 4 to ensure that it is applied in full conformity with Article 1 of the Convention. However, the concern is this regard could be abandoned in the event that Ireland revise the offence under section 5(1) CJA 2018 so that it autonomously applies to the bribery of foreign public officials (also see discussion under 3.2.5 on the definition of a foreign public official).

### 3.2.3 “to offer, promise or give”

28. Section 5(1) of CJA 2018 covers “offers”, “gives” and “agrees to give”.<sup>14</sup> The Irish authorities state that the term “agrees to give” is intended to implement the term “promise” under Article 1 of the Convention.

### 3.2.4 “any undue pecuniary or other advantage”

29. Section 5(1) employs the term “gift, consideration or advantage”. The Irish authorities explain that this terminology covers pecuniary and “other forms of advantage”. The same terminology was used in CJA 2001 and POCA 2001 / POCA 2010, which, the WGB considered to be in conformity with Article 1 of the Convention in the Phase 3 Report.<sup>15</sup>

### 3.2.5 “whether directly or through intermediaries”

30. The Irish authorities explain that the language in section 5(1) of CJA 2018, “either directly or indirectly, by himself or herself or with another person,” covers the concept of bribery “directly or through intermediaries”, as required by Article 1 of the Convention. However, the term “with another person” differs semantically from “through intermediaries”. Under Article 1 of the Convention, the term “through intermediaries” means that the intermediary does not have

<sup>13</sup> The Irish authorities state that since the decision in *Forsey* was made by the Supreme Court, all lower courts are bound to follow the decision, and, thus, it is almost certainly the case that identical wording in CJA 2018 will be interpreted the same way as in POCA 2001.

<sup>14</sup> Previously, POCA 2001 / POCA 2010 (but not CJA 2001) covered “offers”. This discrepancy has therefore been rectified.

<sup>15</sup> At the time of Phase 2, POCA 2001 covered bribes in the form of “any gift or consideration”, and CJA 2001 covered “any gift, consideration or advantage”. By the time of the Phase 3 Report, Ireland had rectified this discrepancy by adding the term “advantage” to the relevant part of the foreign bribery offence by POCA 2010.

to be complicit in the bribery scheme. On the other hand, the term “*with another person*” (emphasis added) in section 5(1) of CJA 2018 would appear to suggest complicity, that is, that the intermediary needs to be aware of and intentionally or knowingly participate in the bribery transaction. The Irish authorities disagree, stating that the term “with another person” covers bribery through an intermediary regardless of the knowledge or intent of the intermediary. They add that, along with the term “indirectly”, it is clear that the intention is to cover bribery through intermediaries that do not themselves have the requisite intent to commit an offence. However, in the absence of a judicial decision to the effect that section 5(1) encompasses the case where a perpetrator offers, promises or gives a bribe through an intermediary who is not aware of her/his role in the bribery transaction – either as a straightforward question of interpretation (the word “indirectly”) or perhaps by the application of the doctrine of innocent agency – the WGB will follow up this part of the foreign bribery offence in Phase 4 to ensure that it is applied in full conformity with Article 1 of the Convention.

### 3.2.5 “to a foreign public official”

31. As described above under 3.1.1 of this report on implementation of Phase 3 Recommendation 1(a) to consolidate and harmonise the previous two foreign bribery offences, section 5(1) of CJA 2018 applies to the bribery of a “person” “on account of any person doing an act in relation to his or her office, employment, position or business”.
32. Separately, in relation to the presumption of a corrupt intent under section 14 CJA 2018, section 2(1) defines “foreign official” by listing categories of officials covered by the definition (e.g., a “member of government”, a “member of Parliament”, or a “judge”). On the other hand, Article 1.4 of the Convention employs a functional approach to defining “foreign public official” (i.e., “any person holding a legislative, administrative or judicial office...whether appointed or elected”, and “any person exercising a public function for a foreign country...”). In order for the CJA 2018 to effectively implement the Convention, it must include all the categories of officials encompassed by the functional approach.
33. Section 2(1) provides thirteen categories of foreign officials – i.e., those listed in the preceding paragraph, as well as members of the European Parliament, members of the Court of Auditors of the European Union, public prosecutors, judges, including judges under an international agreement to which Ireland is a Party, jury members in court proceedings, arbitrators including those acting for arbitral boards, and persons employed by or acting on behalf of international organisations, including those not established by an agreement to which Ireland belongs. The definition also includes a broader more generic category (m) comprising “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”.
34. The specific categories listed under section 2(1) of CJA 2018 would appear to cover the following functional categories under Article 1.4 of the Convention: “any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected”, and any “official or agent of a public international organisation”.
35. What is not so clear, however, is whether section 2(1) also covers “any person exercising a public function for a foreign country, including for a public agency or public enterprise”, as required to be compliant with Article 1.4 of the Convention. In particular, it is not clear whether the generic category (m) includes “any person “exercising a public function...for a public enterprise” – i.e. for a State-owned or controlled enterprise. In addition, for the purposes of Article 1.4 of the Convention, the public enterprise must be under direct or indirect foreign government control, whereas under category (m) of CJA 2018, the official must be under direct or indirect foreign government control.

36. In any case, the term “official”, which includes a “foreign official”, relates to the presumption of corruption under section 14 not the offence in section 5(1), and thus, according to the Irish authorities, it has no impact of the breadth of coverage under section 5(1). Indeed, it is the position of Ireland that the offence of bribery of a “person” under section 5(1) is broad enough to cover the bribery of any category of foreign public official, including persons performing a public function for a public enterprise. However, Ireland has chosen a legislative technique for this purpose that is unique and unprecedented in the WGB, as all other Parties have created autonomous foreign bribery offences – either their foreign bribery offence is self-contained (e.g., the offence expressly covers the bribery of a foreign public official and includes a definition of such officials), or their offence applies more generally to the bribery of an “official” or “person” and cross-references a definition of “official” or “person” that includes the list of foreign public officials, bribery of which constitutes the foreign bribery offence. Previously, the foreign bribery offences under POCA 2001 (as amended by POCA 2010) and CJA 2001 were autonomous, and employed the latter technique.
37. Due to the foregoing, the WGB will follow up application of section 5(1) of CJA 2018 in Phase 4 to ensure that it applies to all the functional categories of foreign public officials under Article 1.4 of the Convention. Moreover, the WGB has concerns that Ireland has not established an autonomous foreign bribery offence in CJA 2018.

### *3.2.6 “for that official or for a third party”*

38. Given that it would be relatively simple to avoid liability for foreign bribery by transferring the benefit directly to a third party, such as a political party, spouse or friend of the foreign public official, non-coverage of the case where the benefit is provided directly to a third party with the consent or knowledge of the foreign public official would represent a significant loophole in the legal basis for liability. The Irish authorities explain that section 5(1) of CJA 2018 covers the case where a bribe is transferred directly to a third party, as it requires that the gift, consideration or advantage be transferred “to a person”.
39. As mentioned above under 3.2.1 of this report, section 18(j) of the Interpretation Act 2005 provides that “[a] reference to a ‘person’ in relation to an offence (whether punishable on indictment or on summary conviction) shall be read as including a reference to a body corporate”. However, third parties associated with bribery offences may include unincorporated legal entities such as foundations, political parties, trusts, partnerships, and charities. Thus, if section 18(j) indeed applies to the definition of “person” in respect of third parties, there would potentially be a significant gap in the foreign bribery offence. However, the Irish authorities explain that the use of the term “person” in section 5(1) with regard to a third party beneficiary, shall be interpreted in accordance with section 18(c) of the Interpretation Act 2005, which defines “person” as importing a “body corporate (whether a corporate aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual”. In the absence of supporting case law regarding this interpretation, the WGB will follow up this part of the foreign bribery offence in Phase 4 to ensure that it is applied in full conformity with Article 1 of the Convention.

### *3.2.7 “in order that the official act or refrain from acting in relation to the performance of official duties”*

40. Section 5(1) of CJA 2018 applies to “doing an act”. Section 2(2) provides that a reference in CJA 2018 to the “commission or doing of an act includes a reference to the making of an omission”.

41. In addition, in the context of foreign bribery, the section 5(1) offence applies to bribery to obtain an act or omission “in relation to” the foreign public official’s “office, employment, position or business”. Thus, “acting in relation to the performance of official duties”, would necessarily involve acts and omissions regarding a foreign public official’s “office, employment, position or business”.

### ***3.2.8 “in order to obtain or retain business or other improper advantage”***

42. Section 5(1) of CJA 2018 only requires that the purpose of a bribe to a foreign public official is to act as an inducement or reward or is “otherwise on account of” the official doing or omitting to do something “in relation to his her office, employment, position or business”. The presumption of corruption under section 14 of CJA 2018 applies *inter alia* in relation to the specific “functions of officials” (see under 3.2.2 of this report). Some of these functions relate to business or other advantage (e.g., a tender for goods and services, a contract, a grant payment or loan). Thus, according to the Irish authorities, the foreign bribery offence is broad enough to cover “business or other improper advantage”.

### ***3.2.9 ‘in the conduct of international business’***

43. Section 5(1) of CJA 2018 is not restricted to bribes for the purpose of obtaining advantages “in the conduct of international business”. As mentioned under 3.2.8 of this report, the limitations in section 5(1) relate to the “office, employment, position or business” of the foreign public official. In addition, as mentioned under 3.2.2, the presumption of corruption applies in relation to many types of “functions of officials” – some relate to business and some relate to other kinds of functions (e.g., investigations and prosecutions, judicial functions, and the administration of justice).

## **4. Article 2: Responsibility of legal persons**

### ***4.1 Implementation of relevant Outstanding Phase 3 Recommendation on Article 2 of the Convention***

#### **Recommendation 2(a) on the Liability of Legal Persons**

44. As in Phase 2, in Phase 3 the WGB recommended that Ireland review its law on the liability of legal persons on a high priority basis, with a view to codifying it. In addition, it recommended that Ireland should expand the liability of legal persons to meet the Good Practice Guidance in Annex I to the 2009 Recommendation.<sup>16</sup> At the time of the Phase 3 review, Ireland continued to rely on the common law ‘identification theory’ of the liability of legal persons, which has evolved in Ireland through jurisprudence similar to the United Kingdom, Australia and Canada.

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<sup>16</sup> Paragraph B) b) of Annex I to the 2009 Recommendation states that Member countries’ systems for the liability of legal persons for foreign bribery should cover the following cases: (1) A person with the highest level managerial authority offers, promises or gives a bribe to a foreign public official; (2) A person with the highest level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official; or (3) A person with the highest level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to implement adequate internal controls, ethics and compliance programmes or measures. In addition Paragraph C) states that Member countries should ensure that “a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf”.

Put simply, under this doctrine, legal persons' criminal liability is dependent on proving the culpability of individuals who may properly be considered to be part of the 'controlling mind and will' of the legal person. The WGB does not consider this approach to be compliant with Article 2 of the Convention because, for example, corporate liability can be avoided in cases where only a lower level individual's culpability in respect of the foreign bribery can be proved.<sup>17</sup> In addition, this common law approach falls short of Annex I of the 2009 Recommendation (see Footnote 16); and it has been criticised by the Irish Law Reform Commission (LRC 77-2005), which considered that it ran "afoul of the legality principle", which requires "clear and precise legislative rules that effectively eliminate the need for creative interpretation by judges".

45. Section 18(1) of CJA 2018 creates a new offence for "bodies corporate" for offences committed by individuals under the Act, including an individual's foreign bribery offence contrary to section 5(1) through the legislative technique described above under 3.1.1 of this report. In summary, pursuant to section 18(1), a "body corporate" shall be guilty of an offence under the Act if it is committed by one of the following individuals: (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 (d) an employee, agent or subsidiary of the body corporate; but in any such case the offence must be committed by the individual 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. This broad basis for liability is limited, however, by section 18(2) of CJA 2018 which provides a defence for the body corporate if it proves that it "took all reasonable steps and exercised all due diligence to avoid the commission of the offence".
46. Section 18(5), which states that 18(1) "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", preserves the common law "identification theory" approach to the liability of bodies corporate, including for the offence in section 5(1) CJA 2018. However, the Irish authorities underline that the intention is that the new codified approach would be favoured by the prosecution authorities over the common law approach, in particular because it is broader and easier to implement.
47. Ireland has thus implemented the part of Recommendation 2(a) concerning the codification of the liability of legal persons in respect of foreign bribery offences. However, assessing compliance with Annex I of the 2009 Recommendation is more complicated. Concerning Paragraph B) of Annex I, the new offence for bodies corporate in section 18(1) of CJA 2018 is considerably wider than the common law basis for liability founded in the 'identification theory' because the statutory offence is not restricted to the acts of the individuals that are the 'controlling mind or will' of the legal person (the body corporate) -- section 18(1) also encompasses the acts of employees, agents or subsidiaries of the body corporate, which would appear to cover the case where a high level managerial authority directs or authorises a lower level person to offer, promise or give a bribe to a foreign public official, as recommended by Paragraph B) b) of Annex 1 of the 2009 Recommendation. It would also appear to cover the case under Paragraph B) b) where a high level managerial authority fails to prevent a lower level person from bribing a foreign public official, including through a failure to supervise her/him or failure to implement adequate internal controls, ethics and compliance programmes or measures.

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<sup>17</sup> The WGB also considered that it was not clear whether the 'identification theory' covered the case where a senior level person directed or authorised a lower level person to bribe.

48. Nevertheless, Annex 1 of the 2009 Recommendation does not foresee a defence. Furthermore, the concepts of “all reasonable steps”, and “all due diligence” are not explained in CJA 2018, nor have they been interpreted yet by the courts. The Irish authorities provide that inclusion of the defence is envisioned by Article 2 of the Convention, which requires that Parties “take such measures as may be necessary, in accordance with [their] legal principles”. They explain that absolute liability offences remove the requirement of criminal intent, and the Supreme Court in *CC v. Ireland* [2006] 4 I.R.1 made it clear that the presumption of *mens rea* is an aspect of the procedural rights protected by Article 38.1 of the Constitution. In addition, the Irish authorities cite *Re the Employment Equality Bill* [1997] 2 I.R. 321, which held that vicarious criminal liability for a body corporate was unconstitutional, and only permissible for offences that are essentially regulatory in nature. Nevertheless, in the absence of jurisprudence on section 18(2) of CJA 2018 and its impact on section 18(1), it is not clear to what extent the defence might affect compliance with Annex I.
49. Separately, under Paragraph B) of Annex I to the 2009 Recommendation, the liability of legal persons for the foreign bribery offence must be autonomous, and Member countries “should not restrict the liability to cases where the natural person or persons who perpetrated the offence are prosecuted or convicted”. Section 18(5)(b) of CJA 2018 provides that the liability of a body corporate under section 18(1) is autonomous in the sense that it does not “exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in an offence” under the Act. In addition, although to establish corporate liability under section 18(1) there must, as a precondition, be proof of “an offence [by an individual] under this Act”, the Irish authorities confirm that this does not require the *conviction* of an individual as the precondition – in other words, the corporate entity may be prosecuted under section 18(1) and the prosecution may prove, as part of its case, that a relevant individual committed a section 5 offence even if that individual has not been convicted.
50. Finally, under Paragraph C) of Annex I of the 2009 Recommendation, a legal person should not be able to avoid responsibility “by using intermediaries, including related legal persons, to offer, promise or give a bribe to a foreign public official on its behalf”. Section 18(1) of CJA 2018 encompasses bribery committed by a “subsidiary” of a body corporate (section 18(1)(c)), but does not extend “related legal persons” more generally, as recommended by Paragraph C). The concept of “related legal persons” commonly includes, in addition to subsidiaries, a parent (where the bribery is perpetrated by a subsidiary through a parent), or any entity in which a legal person holds a direct or indirect substantial ownership interest, such as a joint venture, or an affiliate or sister company. It follows that this aspect of the basis for liability of bodies corporate provided by section 18(1) of CJA 2018 might not be entirely consistent with Annex I of the 2009 Recommendation.
51. In view of these observations, it is only possible at this stage to assess Recommendation 2(a) as partly implemented. As a result, the issues identified above should be prioritised in Phase 4 to determine whether in practice CJA 2018 fully implements Phase 3 Recommendation 2(a) and Annex I of the 2009 Recommendation.

## 4.2 Other issues regarding the standard of liability under the new system

### “Consent or connivance” liability under section 18

52. Under section 18(3) CJA 2018, a person who is a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, shall also be guilty of an offence of foreign bribery where the offence 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 one of those persons.

Legal entities subject to liability under new system

53. Beginning in Phase 2, the WGB recommended that Ireland expressly provide for the liability of unincorporated “legal [entities]” for foreign bribery. This recommendation arose from the language in POCA 2001 and CJA 2001, which was restricted in application to “bodies corporate” due to the definition of “person” in the Interpretation Act 2005 (see also discussion on the definition of “person” under 3.2.6 of this report on bribes transferred to third party beneficiaries). In Phase 2bis the WGB reiterated the recommendation as “high priority”. By the time of the Phase 3 report, this recommendation was still not implemented. The WGB therefore recommended again [Phase 3 Recommendation 2(b)] that Ireland expressly provide for the liability of unincorporated [entities] for foreign bribery “as recommended in Phase 2”.
54. The Irish authorities explain that Recommendation 2(b) was examined extensively, and the Department of Justice and Equality questioned the need for an express provision in Irish law “in light of the variety of informal bodies that could be liable for criminal acts, and the fact that such associations are not deemed to be legal persons in this jurisdiction”. The Irish authorities also explain that there is no “definitive” definition of a legal person under Irish law, and it is their understanding that a legal person includes companies established pursuant to the Companies Act and other bodies corporate established by statute. Ireland further explains that it is the general position that under Irish law, unincorporated entities are not legal persons, but they will keep this issue under review.
55. Pursuant to the relevant statutes (primarily the Companies Act 2014), legal entities in Ireland include the following: private companies limited by shares, public limited companies, public companies limited by guarantee having a share capital, unlimited companies, general partnerships, limited partnerships, and investment limited partnerships. Clearly only some of the foregoing entities would constitute “bodies corporate”. The Irish authorities confirm that a designated activity company limited by guarantee and a company limited by guarantee constitute bodies corporate under parts 16 and 18 of the Companies Act 2014. However, they also confirm that branch companies and limited partnership companies would not be considered bodies corporate for the purpose of section 18(1) and section 5(1) of CJA 2018. However, the Irish authorities explain that, while a branch company is not a body corporate, and does not have separate legal personality, the foreign company seeking to operate the branch in Ireland is required to register under Part 21 of the Companies Act, and is thus considered a “body corporate” under that Act. The branch company is considered part of the “body corporate”, which is liable for the activities of the branch company. In addition, although a limited partnership is not a body corporate, its partners would be individually liable. The WGB considers that the size of the potential gap created by restricting the application of the foreign bribery offence under CJA 2018 to “bodies corporate” and its impact on implementation of the Convention are unclear. Ireland disagrees with this assessment, and believes that the vast majority of entities conducting international business are covered by the term “body corporate”.
56. In view of these observations, it would therefore appear that Phase 3 Recommendation 2(b) remains unimplemented. As a result, the application of CJA 2018 to legal persons for foreign bribery should be revisited in Phase 4 as a matter of priority to determine whether in practice Ireland is able to apply to apply section 18(1) to all legal persons under Irish law, consistent with Article 2 of the Convention. Moreover, Ireland is strongly encouraged to take necessary steps to ensure that all relevant legal entities under Irish law, including in particular unincorporated bodies, are subject to liability under CJA 2018 for the bribery of foreign public officials.



### 4.3 Two different systems of legal person liability

57. Section 18 CJA 2018 does not address the status of the common law ‘identification theory’, but as mentioned above under 4.1 of this report, section 18(5) clarifies that section 18(1) 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”. The common law doctrine was relied upon by Ireland as the sole basis of the liability of legal persons for the foreign bribery offence until CJA 2018 came into force. Moreover, in responding to the Phase 1bis questionnaire regarding the foreign bribery offence under section 5(1) of CJA 2018, the Irish authorities explained that the term “person” refers to natural and legal persons (see discussion under 3.2.1 of this report), and that the “doctrine of identification” continues to apply pursuant to section 5(1) CJA 2018.<sup>18</sup>
58. The Law Reform Commission of Ireland has addressed this sort of situation.<sup>19</sup> The Commission cites *Welch v Bowmaker (Ireland) Ltd* [1980] IR 251 where Henchy J said: “when you find a particular situation dealt with in special terms, and later in the same document you find general words used which could be said to encompass and deal differently with that particular situation, the general words will not, in the absence of an indication of a definite intention to do so, be held to undermine or abrogate the effect of the special words which were used to deal with the particular situation.”<sup>20</sup> This would seem to confirm that, where the requirements of both bases of liability could in principle be established, a legal person may be liable under section 5(1) (through the application of the “identification theory”) or under section 18(1), and that the prosecution would be free to charge either offence depending on the circumstances and what is considered to be most appropriate. In other words the specific provision in section 18(1) CJA 2018 does not automatically take precedence over the potential application of the common law “identification theory” to section 5(1) if both offences cover the same factual situation. The Irish authorities explain that, while it is true that there is no provision stating that a prosecution under section 18(1) should take precedence over section 5(1) on the basis of the “identification theory”, section 18(1) would place a significantly lower burden on the prosecution due to the lack of a *mens rea* element. However, they also concede that the penalties for bodies corporate under section 5(1) on the basis of the “identification theory” are broader (for instance they include forfeiture -- see discussion under 5.1). Nevertheless, as mentioned under 4.1 of this report, it is the intention that prosecutors would favour the use of the new offence for the liability of bodies corporate under section 18(1) over the “identification theory” under section 5(1), because the standard of liability is broader and easier to implement.
59. Given the two alternative bases of legal person liability, this issue should be followed up in Phase 4 to determine whether the choice between the two types of liability represents a challenge in practice to the effective implementation of Article 2 of the Convention.

<sup>18</sup> The Irish authorities add that section 18(5) relates to all the offences under CJA 2018, not just those in section 18.

<sup>19</sup> Consultation Paper on Statutory Drafting and Interpretation: Plain Language and the Law (LRC-CP14-1999): <https://www.lawreform.ie/fileupload/consultation%20papers/cpPlainLanguage.htm>

<sup>20</sup> The Law Reform Commission explains that the principle was also applied by the Supreme Court in: *Hutch v the Governor of Wheatfield Prison* (Supreme Court Unreported, 17 November 1992).

## 5. Article 3: Sanctions

### *5.1 Sanctions for natural persons and legal persons pursuant to the “identification theory”*

60. Pursuant to section 17(3)(a) of CJA 2018, upon conviction of the foreign bribery offence in section 5, a “person” is liable, on summary conviction, to (i) a class A fine (up to EUR 5000), (ii) imprisonment for a term not exceeding 12 months, (iii) forfeiture of any gift, consideration or advantage accepted or obtained in connection with the offence, or in the alternative, land, cash or other property of an equivalent value, or (iv) any combination of the aforementioned penalties. Previously, the available fine under POCA 2001 for a summary conviction offence was EUR 3000.
61. And pursuant to section 17(3)(b) of CJA 2018, upon conviction of the foreign bribery offence in section 5, a “person” is liable, on conviction on indictment, to (i) an unlimited fine, (ii) imprisonment for a term not exceeding 10 years, (iii) forfeiture of any gift, consideration or advantage accepted or obtained in connection with the offence, or in the alternative, land, cash or other property of an equivalent value, or (iv) any combination of the aforementioned penalties. Previously, the available fine under POCA 2001 and CJA 2001 on indictment was unlimited, and the maximum term of imprisonment under POCA 2001 was 10 years, and 5 years under CJA 2001.<sup>21</sup>
62. The Irish authorities explain that the criminal penalties applicable to the bribery of foreign public officials are now the same as for the bribery of domestic public officials. At the time of the Phase 3 Report, this was not the case, with the penalties under CJA 2001 for foreign bribery at a lower level than those for domestic bribery. Additionally, pursuant to section 17(4)(b), when the “person” who is convicted of foreign bribery on indictment is an Irish official, they may also be subject to the forfeiture of any office, position, or employment held at the time of the offence; and by section 17(4)(c), a “person” convicted of foreign bribery on indictment may be subject to an order prohibiting the person from seeking to hold or occupy any office, position or employment as an Irish Official for up to ten years.<sup>22</sup>
63. At the time of the Phase 3 Report, criminal confiscation orders, which were provided for under the Criminal Justice Act 1994, allowed for confiscation of the bribe (the instrument of the crime), and property or the pecuniary advantage obtained as a consequence of the offence. The new regime under CJA 2018 goes further, enabling the confiscation of land, cash or other property of an equivalent value. Confiscation continues to be discretionary under CJA 2018.

### *5.2 Sanctions for legal persons pursuant to the codified liability under section 18(1) of CJA 2018*

64. Under section 17(2) of CJA 2018, a “body corporate” that is guilty of an offence under section 18(1) shall be liable to a Class A fine (EUR 5000) on summary conviction, and an unlimited fine on conviction on indictment.

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<sup>21</sup> The Irish authorities note that while prosecution of the officer of a company is not compulsory, it is “highly likely” and as such would be subject to a forfeiture penalty under section 17(3) CJA 2018.

<sup>22</sup> Section 18(4)(c) provides an exception to this prohibition for those seeking to be democratically elected at the local, national or European level.

65. A legal “person” convicted under section 5(1) (through the application of the “identification theory”) is liable for the penalties outlined above (section 17(3)).
66. Where, however, a “body corporate” is convicted of the section 18(1) offence, CJA 2018 does not provide for confiscation of the bribe and/or the property or pecuniary advantage obtained as a sanction for foreign bribery.<sup>23</sup> It is evident that the provisions on confiscation in section 17(3)(a) and (b), for summary conviction and indictable offences respectively, do not apply to “bodies corporate” convicted under section 18(1) of the Act because section 17(3) expressly excludes the situation where a “person” (a term which includes a body corporate)<sup>24</sup> is convicted of the section 18(1) offence. Given that confiscation is not available as a penalty upon conviction of a legal person (body corporate) under section 18(1) of the Act, the penalties for legal persons under CJA 2018 would appear not to be fully consistent with Article 3.3 of the Convention.<sup>25</sup>
67. The Irish authorities counter that an underlying prosecution of the officer of a company, while not compulsory, is likely, and as such would be subject to a forfeiture penalty under section 17(3) of CJA 2018. Furthermore, sections 20 and 21 of CJA 2018 provide for the seizure and forfeiture of “a gift or consideration used or intended to be used for the purposes of an offence under section 5, 6, 7 or 8”. The Irish authorities also underline that the maximum penalty under section 18(1) is an unlimited fine, which should satisfy the requirement under Article 3.3 of the Convention that in the alternative to confiscation “monetary sanctions of comparable effect are applicable”. However, in the absence of practice in this regard, it is not possible to know whether the possibility of an unlimited fine would be applied in compliance with Article 3.3. As a result, this issue should be revisited in Phase 4 as a matter of priority to determine whether in practice Ireland is able to apply confiscation to legal persons for foreign bribery in full conformity with Article 3.3 of the Convention

## 6. Article 4: Jurisdiction

68. Pursuant to section 11 of CJA 2018, a person may be tried in Ireland for the offence of foreign bribery if “any one or more of the acts alleged to constitute the offence” were committed in (i) the State, or (ii) on board an Irish ship or an aircraft registered in the State.
69. Under section 12(1) of CJA 2018, a person who is one of the following may be tried in Ireland for the offence of foreign bribery if the act takes place outside Ireland and would have constituted an offence if it took place in Ireland: (i) an Irish official acting in their capacity as such [section 12(2)(c)(i), (ii) an Irish citizen [section 12(2)(c)(ii) or resident

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<sup>23</sup> On the other hand, section 20 of CJA 2018 states that a member of the *Garda Síochána* (Irish National Police) may seize property that they have reasonable grounds to suspect is a gift or consideration used to commit the foreign bribery offence. In addition, the seized property may be detained for specified periods under sections 20(2) and (3) of the Act.

<sup>24</sup> Interpretation Act 2005, section 18(c) and (j).

<sup>25</sup> Article 3.3 of the Convention states: “Each Party shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of a comparable effect are applicable”.

[section 12(2)(c)(iii)]<sup>26</sup>, or (iv) a company [section 12(2)(c)(iv) or “any other body corporate established under the law of [Ireland]”[section 12(2)(c)(v)]. In addition, the act must constitute an offence under the law of the foreign state where it took place.<sup>27</sup>

70. The Irish authorities explain that the dual criminality requirement has been adjudicated in the context of extradition and European Arrest Warrants in three cases: *State (Furlong) v. Kelly* 1974 IR 132, *Wyatt v. McLoughlin* 1974 IR 378, and *State (Trimbole) v. Governor of Mountjoy Prison* 1985 IR 550. The Court in these cases dealt with the question of whether the offence committed abroad by an individual would also amount to an offence if committed in Ireland, in order to be able to provide extradition from or execute an arrest warrant in Ireland on request of a foreign state. In these cases, the Court indicated that its function was to determine whether the conduct for which the extradition or search warrant was requested amounted to an offence under Irish law, but not necessarily for the same offence as described under the foreign state’s law.
71. Pursuant to Commentary 26 on Article 4.2 of the Convention, “the condition of dual criminality should be deemed to be met if the act is unlawful where it occurred even if under a different criminal statute”. In order to comply with Commentary 26, the foreign bribery offence must be deemed to have occurred under CJA 2018, when the foreign country where the act occurred does not have a foreign bribery offence, as long as the act constitutes an offence under the foreign country’s law, such as the bribery of a domestic public official, or trading in influence. According to the Irish authorities, the above-mentioned decisions of the Court on providing extradition and executing arrest warrants would apply equally to the application of nationality jurisdiction to the foreign bribery offence, section 12(1) of CJA 2018 would appear to meet the requirement under Article 4.2 of the Convention.

## 7. Article 6: Statute of limitations

72. The foreign bribery offence under CJA 2018 is not subject to a statute of limitations.

## 8. Article 7: Money laundering

### *8.1 Implementation of relevant Outstanding Phase 3 Recommendation on Article 7 of the Convention*

#### Recommendation 6(a) on the Dual Criminality Exception for the Money Laundering Offence

73. As in Phase 2, in Phase 3 the WGB recommended that Ireland amend the dual criminality exception for the money laundering offence in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, to ensure that foreign bribery is always a predicate offence for money laundering, without regard to the place where the bribery occurred, as previously recommended in Phase 2 in relation to the Criminal Justice Act 1994. This recommendation arose because, although by the time of the Phase 3 evaluation section 31(7) of the Criminal

<sup>26</sup> The full text of section 12(2)(c)(iii) is “an individual who has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence concerned”.

<sup>27</sup> Section 12(2) provides for extraterritorial jurisdiction over officials of the European Union who commit foreign bribery abroad, and section 12(3) provides for extraterritorial jurisdiction where the person bribed is an Irish citizen and holds one of the listed offices (e.g., member of the European Commission). For these provisions to apply, the act must constitute an offence under the law of the foreign state where it took place.

Justice Act 1994 had been repealed, the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, which replaced the 1994 Act in regard to money laundering offences, stated under section 6 that the predicate offence for money laundering includes conduct that occurs outside Ireland, if it is an offence in the state where it occurs and it would be an offence if it were to occur in Ireland. Thus, it appeared that the following scenario would not be covered: A company from Ireland bribes an official from Country 'C' in Country 'B', and Country 'B' has not criminalised the bribery of foreign public officials. The dual criminality requirement therefore did not conform to Article 7 of the Anti-Bribery Convention, which requires that foreign bribery must be a predicate offence for the purpose of applying money laundering legislation "without regard to the place where the bribery occurred".

74. The Irish authorities state that Recommendation 6(a) has been addressed by amending CJA 2018 during its passage through the Lower House of Parliament to insert a new paragraph (c) in the definition of "criminal conduct" in section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. Pursuant to the amendment, "criminal conduct" includes "conduct occurring in a place outside the State that would constitute an offence under section 5(1) or 6(1) of the Criminal Justice (Corruption Offences) Act 2018, if it were to occur in the State, and the person or official, as the case may be, concerned in relation to his or her office, employment, position of business is a foreign official within the meaning of that Act". Thus, foreign bribery under CJA 2018 is now a predicate offence for the purpose of money laundering legislation "regardless of the place where the bribery occurred" as required by Article 7 of the Convention. Phase 3 Recommendation 6 (a) is therefore now fully implemented.

## EVALUATION OF IRELAND

### General Comments

75. In July 2018, the Criminal Justice (Corruption Offences) Act 2018 (CJA 2018) entered into force. The purpose of this legislation is to, *inter alia*, implement outstanding recommendations from Ireland's Phase 3 Report that go to the heart of the Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention). These recommendations concern criminalisation of the bribery of foreign public officials, the liability of legal persons for such bribery, and application of the money laundering offence to the proceeds of foreign bribery when the foreign bribery offence takes place abroad. Following its enactment in June 2018, the WGB agreed to conduct a Phase 1bis evaluation of CJA 2018.
76. The WGB recognises the high level of cooperation and constructiveness demonstrated by Ireland throughout the Phase 1bis process. Ireland has provided clear and candid information about provisions in CJA 2018 that are intended to implement the Convention. Based on this information, the WGB has been able to conduct a comprehensive legal analysis of how effectively these statutory provisions implement the above-mentioned WGB Phase 3 Recommendations. The WGB has also been able to identify significant issues that will be revisited in Phase 4, currently scheduled for 2021, to ensure that pursuant to the new statutory provisions, cases of the bribery of foreign public officials are investigated and prosecuted effectively and in accordance with the Convention.

### Specific Comments

#### *Foreign Bribery Offence*

77. CJA 2018 represents a significant milestone in Ireland's fight against bribery and other forms of corruption. The new legislation fully implements the WGB Phase 3 recommendation [Recommendation 1(a)] to consolidate and harmonise two overlapping foreign bribery offences that were previously contained in two separate statutes,<sup>28</sup> and remove the concept of the bribery of an "agent", previously used in one of the statutes.
78. The legislative technique used to consolidate the two foreign bribery offences into one offence under section 5(1) of CJA 2018 also raises important issues requiring further clarity discussed in this report. In Phase 4, the WGB will in particular seek to assess whether Ireland has been able to effectively apply section 5(1) to foreign bribery cases, due to the following two significant concerns:
- a. Section 5(1) does not establish an autonomous offence of the bribery of foreign public officials. The Irish authorities have chosen instead to criminalise the bribery of "a person" "on account of any person doing an act in relation to his or her office, employment, position or business", which they state is broad enough to encompass the bribery of foreign bribery officials as required by Article 1 of the Convention. This legislative technique has not been previously used by any other Party to the Convention.

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<sup>28</sup> The Prevention of Corruption (Amendment) Act 2001 (POCA 2001) as amended by the Prevention of Corruption (Amendment) Act 2010 (POCA 2010), and the Criminal Justice (Theft and Fraud Offences) Act 2001 (CJA 2001).

- b. Section 5(1) requires proof of a corrupt intent. Although pursuant to a separate provision in CJA 2018 there is a presumption of a corrupt intent in certain situations where the bribe has been given to the foreign public official, it is unclear how these provisions will be applied in practice.

### ***Liability of Legal Persons***

79. CJA 2018 also creates, for the first time in Irish legal history, the criminal responsibility of “bodies corporate”, which pursuant to section 18 are now liable for corruption offences, including the bribery offence under section 5(1). The WGB finds that Phase 3 Recommendation 2(a) that Ireland review its law on the liability of legal persons, with a view to codifying it, and expand the liability as recommended in Annex I of the 2009 Recommendation on Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation) is now partly implemented.
80. Although the criminal responsibility of “bodies corporate” for bribery under section 18(1) of 2018 is considerably broader than the common law “identification theory”, which Ireland previously relied upon, certain issues require further clarity. In particular, in Phase 4, the WGB will seek to assess whether Ireland has been able to effectively apply section 18(1) in foreign bribery cases, due to the following three significant concerns:
  - a. Section 18(1) of CJA 2018 applies to “bodies corporate”, an issue that received a high priority recommendation in Phase 3 [Phase 3 Recommendation 2(b)], because Article 2 of the Convention strictly requires that all legal persons are responsible for foreign bribery. The Irish authorities state that under Irish law, legal persons only include “bodies corporate”, at least for the purpose of criminal liability. Although “bodies corporate” include some of the business entities that would conduct business abroad and face a risk of foreign bribery, it is not clear whether it could be effectively applied where, for instance, branch offices and limited partnerships are used to perpetrate bribery;
  - b. Section 18(2) of CJA 2018 provides a defence for “bodies corporate” charged with an offence under section 18(1), if they prove they “took all reasonable steps and exercised all due diligence to avoid commission of the offence”. Annex I of the 2009 Recommendation does not foresee such a defence, and, moreover, because the criteria for the defence are not explained in CJA 2018, nor have they been interpreted yet by the courts, it is not clear to what extent this defence might affect compliance with Annex I of the 2009 Recommendation; and
  - c. Although CJA 2018 creates a new statutory offence for “bodies corporate”, including the bribery of “a person” under section 5(1), it also maintains the common law “identification theory” of liability of “bodies corporate”.<sup>29</sup> The Irish authorities emphasise that it is expected that prosecutors will prioritise the use of the new statutory provision over the common law with section 5(1), but in the absence of cases, it is unclear how this will work in practice.

### ***Money Laundering***

81. CJA 2018 inserts a new definition of “criminal conduct” in section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, which includes conduct occurring in a place outside [Ireland] that would constitute a foreign bribery offence under CJA 2018, if it were

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<sup>29</sup> Section 18(j) of the Interpretation Act 2005 provides that “[a] reference to a ‘person’ in relation to an offence (whether punishable on indictment or on summary conviction) shall be read as including a reference to a body corporate”.

to occur in Ireland. Previously, it was not an offence to launder, in Ireland, the proceeds of bribing a foreign public official where the bribery occurred outside Ireland as follows: An Irish person bribes an official from Country “C” in Country “B”, and Country “B” had not criminalised foreign bribery. CJA 2018 now fully implements Phase 3 Recommendation 6(a) to amend the money laundering offence in order that it is always an offence to launder the proceeds of foreign bribery.



## **ANNEX. Criminal Justice (Corruption Offences) Act 2018**

*Number 9 of 2018*

### **CRIMINAL JUSTICE (CORRUPTION OFFENCES) ACT 2018**

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Public Bodies Corrupt Practices Act 1889 (52 & 53 Vict., c. 69)

Seanad Electoral (Panel Members) Act 1947 (No. 42)

Seanad Electoral (University Members) Act 1937 (No. 30)

## **CRIMINAL JUSTICE (CORRUPTION OFFENCES) ACT 2018**

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 and to give partial effect to Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law; 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. [5th June, 2018]

**Be it enacted by the Oireachtas as follows:**

### **PART 1**

#### **PRELIMINARY AND GENERAL**

##### **Short title and commencement**

1. (1) This Act may be cited as the Criminal Justice (Corruption Offences) Act 2018.  
  
(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**

2. (1) In this Act—  
  
“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—
  - (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”—

- (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
- (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;

“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,
- (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,
- (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,
- (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
- (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—

- (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,
- (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,
- (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 (including a member of a local authority),
- (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
- (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;

“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*;

“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.

(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.
- (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.

### Repeals

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

## PART 2

### CORRUPTION OFFENCES

#### 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,
 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—
  - (a) corruptly requests,
  - (b) corruptly accepts or obtains, or
  - (c) 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.

#### 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
  - (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—
  - (a) corruptly requests,
  - (b) corruptly accepts or obtains, or
  - (c) 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.
- (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,
- (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.
- (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.

### **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 firstmentioned 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.

### **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.

(2) In this section—

“document” includes—

- (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,
- (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
- (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.



## 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.
- (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—
- (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.

#### 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—
- (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.
- (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
  - (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,
    - (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, 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
- (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,
    - (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.

(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;

“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
- (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.

## **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—

(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,
- and

(b) the person who gave the gift, consideration or advantage, or on whose behalf the gift, consideration or advantage was given, had an interest in the discharge by the official of any of the functions to which this subsection applies by virtue of *subsection (3)*,

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—

(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,
- 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, 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.

(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,
- (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,
- (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;
- (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.

(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*.

(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—

- (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,
- (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,
- (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)*.

### **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—

(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,

(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, 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.

(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.

(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”—

(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.

### **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.

(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.

(2) In this section—

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

“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—

(i) a class A fine,

(ii) imprisonment for a term not exceeding 12 months,

(iii) the forfeiture of any gift, consideration or advantage accepted or obtained 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

(iv) any combination of the penalties referred to in *subparagraphs (i) to (iii)*, or

(b) on conviction on indictment, to—

(i) a fine,

(ii) imprisonment for a term not exceeding 5 years,

(iii) the forfeiture of any gift, consideration or advantage accepted or obtained 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

(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—

(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 accepted or obtained 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
  - (iv) any combination of the penalties referred to in *subparagraphs (i) to (iii)*, or
- (b) on conviction on indictment, to—
  - (i) a fine,
  - (ii) imprisonment for a term not exceeding 10 years,
  - (iii) the forfeiture of any gift, consideration or advantage accepted or obtained 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
  - (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.
 

(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—

  - (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
  - (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—
  - (i) in the interests of justice, and
  - (ii) in the interests of maintaining or restoring public confidence in the public administration of the State.

(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)*.
- (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,
- (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.

(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.

(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—

“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,
- (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,
- (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,
- (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,
- (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,
- (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
- (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**

**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
- (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.

(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.

(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

(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—

(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, 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—

(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”).

(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—

(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*,

(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, 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.

- (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, 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.
- (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.

#### **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*.
- (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.
- (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.

### **PART 6**

#### **MISCELLANEOUS**

#### **Amendment of Criminal Justice Act 1994**

23. The Criminal Justice Act 1994 is amended—
- (a) in the definition of “realisable property” in *section 3(1)*, by the substitution of the following for all the words from “but does not include property” to the end of that definition:
 

“but does not include property which is the subject of a forfeiture order under—

- (i) section 30 of the Misuse of Drugs Act 1977,
- (ii) *section 17 of the Criminal Justice (Corruption Offences) Act 2018*, or
- (iii) section 61 of this Act;”,
- (b) in paragraph (c) of section 12(3), by the insertion of “, *section 17 of the Criminal Justice (Corruption Offences) Act 2018*” after “section 30 of the Misuse of Drugs Act 1977”, and
- (c) in Schedule 1A—
  - (i) in Part 1—
    - (I) by the deletion of paragraph 1, and
    - (II) in paragraph 6, by the substitution of “paragraphs 2 to 5” for “paragraphs 1 to 5”, and
  - (ii) in Part 2—
    - (I) by the insertion of the following paragraph after paragraph 17:  
“17A. An offence under section 5 of the Criminal Justice (Corruption Offences) Act 2018.”, and
    - (II) in paragraph 19, by the substitution of “16, 17 and 17A” for “16 and 17”.

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

24. 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 2018*;”.

#### **Amendment of Schedule to Bail Act 1997**

25. The Schedule to the Bail Act 1997 is amended by the insertion of the following paragraphs after paragraph 38:
- “*Corruption offences*
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 2018*.”.

#### **Amendment of section 6 of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010**

26. Section 6 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 is amended by the substitution of the following definition for the definition of “criminal conduct”:
- “ ‘criminal conduct’ means—
- (a) conduct that constitutes an offence,
  - (b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State, or
  - (c) conduct occurring in a place outside the State that would constitute an offence under *section 5(1) or 6(1) of the Criminal Justice (Corruption Offences) Act 2018* if it were to occur in the State and the person or official, as the case may be,

concerned doing the act, or making the omission, concerned in relation to his or her office, employment, position or business is a foreign official within the meaning of that Act;”.

#### **Amendment of section 7 of Criminal Procedure Act 2010**

27. 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”:

“ ‘offence against the administration of justice’ means—

(a) an offence under—

(i) the *Criminal Justice (Corruption Offences) Act 2018* other than *section 18(1)* thereof, or

(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,

(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**

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

“28A. An offence under *section 5, 6, 7, 8, 9 or 10* of the *Criminal Justice (Corruption Offences) Act 2018*.”.

#### **Amendment of Electoral Act 1992**

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

##### **“Forfeiture of office order under *Criminal Justice (Corruption Offences) Act 2018***

**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 2018*, he or she shall thereupon cease to be such member and a vacancy shall exist accordingly in the membership of the Dáil.

(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 2018* 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.

(3) In this section—

‘*Act of 2018*’ means the *Criminal Justice (Corruption Offences) Act 2018*;

‘forfeiture of office order’ means an order under *section 17(4)(b)* of the *Act of 2018* for the forfeiture of the office of a person as a member of the Dáil.”.

### Amendment of Seanad Electoral (University Members) Act 1937

30. 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 2018* of a forfeiture of office order within the meaning of section 29A in respect of him or her” after “or disqualification”,

(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 2018* 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 2018***

**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 2018*, he or she shall thereupon cease to be such member and a vacancy shall exist accordingly in the membership of Seanad Éireann.

(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 2018* 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.

(3) In this section—

‘*Act of 2018*’ means the *Criminal Justice (Corruption Offences) Act 2018*;

‘forfeiture of office order’ means an order under *section 17(4)(b)* of the *Act of 2018* for the forfeiture of the office of a person as a member of Seanad Éireann.”.

### Amendment of Seanad Electoral (Panel Members) Act 1947

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

(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—

(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 2018* 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;”,

(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 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 2018* 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 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

“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

(b) the taking effect under *section 17(6)* of the *Act of 2018* 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 at such Seanad general election;”, and

(iv) by the insertion of the following definitions:

“the expression ‘*Act of 2018*’ means the *Criminal Justice (Corruption Offences) Act 2018*;

the expression ‘forfeiture of office order’ means an order under *section 17(4)(b)* of the *Act of 2018* 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)* of the *Act of 2018*” 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 2018***

**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 2018, he or she shall thereupon cease to be such member and a vacancy shall exist accordingly in the membership of Seanad Éireann.*

(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 2018* 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.”.

#### **Amendment of European Parliament Elections Act 1997**

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

##### **“Forfeiture of office order under *Criminal Justice (Corruption Offences) Act 2018***

**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 2018* takes effect under *subsection (6) of that section*, he or she shall thereupon cease to be such a member.”.

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

33. 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 2018* 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”.

#### **Saver**

34. 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.

### **SCHEDULE 1**

#### *Section 2*

### **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;
  - (b) the Office of the President;
  - (c) the Office of the Tánaiste;
  - (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;
- (i) the Courts Service;
- (j) a local authority;
- (k) the Health Service Executive;
- (l) the Garda Síochána;
- (m) the Garda Síochána Inspectorate;
- (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;
- (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
  - (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;
- (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.

(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
6 Edw. 7, c. 34	Prevention of Corruption Act 1906	The whole Act
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
No. 50 of 2001	Criminal Justice (Theft and Fraud Offences) Act 2001	Definitions of “active corruption” and “passive corruption” in section 40(1) Sections 43, 44 and 45(2)
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