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Explanatory Memorandum](#)



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*Number 27 of 2001*

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**PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2001**

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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
  2. Amendment of section 1 of Act of 1906.
  3. Presumption of corruption from failure to disclose political donations.
  4. Presumption of corruption.
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  6. Corruption occurring partially in State.
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ACTS REFERRED TO

Electoral Act, 1997	1997, No. 25
European Parliament Elections Act, 1997	1997, No. 2
Local Elections (Disclosure of Donations and Expenditure) Act, 1999	1999, No. 7
Planning and Development Act, 2000	2000, No. 30
Prevention of Corruption Act, 1906	1906, c. 34
Prevention of Corruption Acts, 1889 to 1995	
Public Bodies Corrupt Practices Act, 1889	1889, c. 69



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**PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2001**

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AN ACT TO GIVE EFFECT TO THE CONVENTION DRAWN UP ON THE BASIS OF ARTICLE K 3(2)(c) OF THE TREATY ON EUROPEAN UNION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION DONE AT BRUSSELS ON THE 26th DAY OF MAY, 1997, THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS DRAWN UP UNDER THE AUSPICES OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT AND ADOPTED AT PARIS ON THE 21st DAY OF NOVEMBER, 1997, AND THE CRIMINAL LAW CONVENTION ON CORRUPTION DRAWN UP UNDER THE AUSPICES OF THE COUNCIL OF EUROPE AND DONE AT STRASBOURG ON THE 27th DAY OF JANUARY, 1999, AND FOR THAT PURPOSE TO AMEND CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS. [9th July, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

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

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

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

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

(a) corruptly accepts or obtains, or

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

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

(2) A person who—

(a) corruptly gives or agrees to give, or

(b) corruptly offers,

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

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

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

(a) on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or

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

(5) In this Act—

'agent' includes—

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

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

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

(iii) a person who is a member of the European Parliament by virtue of the European Parliament Elections Act, 1997,

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

(v) the Comptroller and Auditor General,

(vi) the Director of Public Prosecutions,

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

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

and

- (c) (i) a member of the government of any other state,  
(ii) a member of a parliament, regional or national, of any other state,  
(iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997),  
(iv) a member of the Court of Auditors of the European Communities,  
(v) a member of the Commission of the European Communities,  
(vi) a public prosecutor in any other state,  
(vii) a judge of a court in any other state,  
(viii) a judge of any court established under an international agreement to which the State is a party,  
(ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and  
(x) any other person employed by or acting on behalf of the public administration of any other state;

‘consideration’ includes valuable consideration of any kind;

‘principal’ includes an employer.’.

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

Presumption of corruption from failure to disclose political donations.

- (a) the person received a donation exceeding in value the relevant amount specified in the Electoral Act, 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate,  
(b) the person failed to disclose the donation in accordance with that Act to the Public Offices Commission or the local authority concerned as appropriate, and  
(c) the donor had an interest in the person doing any act or making any omission in relation to his or her office or position or his or her principal’s affairs or business,

the donation shall be deemed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office or position or his or her principal’s affairs or business unless the contrary is proved.

(2) This section applies to the following:

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- (a) a person required by section 24 of the Electoral Act, 1997, to furnish a donation statement to the Public Offices Commission,
  - (b) a person required by section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, to furnish to the local authority concerned a statement of donations under subsection (1) of that section.
- (3) In this section—

“donation”

- (a) in relation to persons referred to in section 24 of the Electoral Act, 1997, has the meaning assigned to it by section 22 of that Act,
- (b) in relation to persons referred to in section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, has the meaning assigned to it by section 2 of that Act;

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

Presumption of corruption.

4.—(1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 (inserted by *section 2* of this Act) of the Act of 1906 for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

- (a) any gift, consideration or advantage has been given to or received by a person,
- (b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given had an interest in the discharge by the person of any of the functions specified in this section,

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

(2) This section applies to the following functions:

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

(3) In this section—

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“functions” includes powers and duties and references to the performance of functions includes as respects powers and duties references to the exercise of functions and the carrying out of duties;

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

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

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

- (a) that the search warrant is necessary for the proper investigation of an offence, and
- (b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for the issue of the warrant.

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

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

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

- (a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and
- (b) arrest without warrant any person who—
  - (i) obstructs or attempts to obstruct that member in the carrying out of his or her duties,
  - (ii) fails to comply with a requirement under *paragraph (a)*, or
  - (iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

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(6) A person who obstructs or attempts to obstruct a member acting under the authority of a warrant under this section, who fails to comply with a requirement under *paragraph (a) of subsection (5)*, or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a period not exceeding 12 months or to both.

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

Corruption  
occurring partially  
in State.

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

Corruption  
occurring outside  
State.

**7.**—(1) Subject to *subsection (2)* of this section, where a person does outside the State an act that, if done in the State, would constitute an offence under section 1 (inserted by *section 2* of this Act) of the Act of 1906, he or she shall be guilty of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State.

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

Corruption in  
office.

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

(a) on summary conviction, to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or

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

(2) In this section—

“consideration” includes valuable consideration of any kind;

“public official” means a person referred to in *subsection (5)(b)* of section 1 (inserted by *section 2* of this Act) of the Act of 1906.

Offences by bodies  
corporate.

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

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



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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. S.9

**10.—(1)** This Act may be cited as the Prevention of Corruption (Amendment) Act, 2001.

Short title,  
collective citation  
and construction.

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

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



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**PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2001**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

The purpose of this Act is to strengthen the law on corruption and enable Ireland to ratify three international agreements, namely—

- (i) 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 the 26th day of May, 1997;
- (ii) the Convention on Bribery of Foreign Public Officials in International Business Transactions, drawn up under the auspices of the Organisation for Economic Co-operation and Development and adopted at Paris on the 21st day of November, 1997; and
- (iii) the Criminal Law Convention on Corruption, drawn up under the auspices of the Council of Europe and done at Strasbourg on the 27th day of January, 1999.

*Section 1 (Interpretation)*

This defines the Prevention of Corruption Act, 1906, as “the Act of 1906” so as to avoid repetition of the full title where it appears elsewhere in the Act. It also contains standard interpretative provisions.

*Section 2 (Amendment of section 1 of Act of 1906)*

This section replaces section 1 of the Act of 1906. Only certain elements of the section are actually being changed, but for ease of reference the section is being completely replaced rather than partially amended.

There are three main changes to section 1 of the Act of 1906 which deals with the offence of corruption of or by an agent. First, the wording of the offence is being revised in order to make it more comprehensive. The revised offence will apply not only, as at present, to corruption of or by an agent, but also to corruption of or by a third party, for example a spouse of the agent, with a view to influencing the conduct of the agent.

The second main change is that the definition of “agent” is being extended to cover categories of office holders and officials, both national and foreign, not at present covered by the Act of 1906. The definition of “agent” is divided into three groupings. In the first

place, it covers any person employed by or acting for another. The second grouping includes domestic public office holders, persons occupying positions of employment in a public body, special advisers, members of local authorities and health boards and other public bodies. Certain specific categories are mentioned, namely members of the Oireachtas, the Attorney General, the Comptroller and Auditor General, the Director of Public Prosecutions, judges and any other person employed in or acting on behalf of the public administration of the State. In an amendment made during the Bill's passage through the Dáil, Irish MEPs also fall within this grouping. The third grouping reflects the requirements of international conventions to make provision for dealing with corruption by or of foreign office holders and officials. It includes members of the government and national or regional parliaments of any other state, a member of the European Parliament, the European Court of Auditors and European Commission, foreign public prosecutors and foreign judges as well as judges of any international court established by agreement to which Ireland is a party, and employees of international bodies and foreign administrations.

The third main change made by *section 2* is that it increases the maximum penalty for the offence of corruption from 7 years imprisonment and/or a fine of £50,000 to 10 years imprisonment and/or an unlimited fine.

*Section 3 (Presumption of corruption from failure to disclose political donations)*

*Section 3* and *section 4* (below) were included by way of amendments during the Bill's passage through the Dáil. They arose out of consideration by the Government of ways of strengthening its provisions. A limited presumption of corruption is already provided in *section 2* of the Prevention of Corruption Act, 1916, in relation to public contracts.

*Section 3* applies to persons elected to public office or persons who are candidates at such elections. It provides that where there are proceedings underway for an offence of corruption, a presumption that the person against whom the proceedings are being taken has acted corruptly will arise where the person has received a donation above the amount set out in the Electoral Act, 1997 or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate, which he or she has failed to disclose in accordance with the relevant provisions and where the donor had an interest in the person's performance of his or her functions. Where these facts are proven, it will then be presumed that the donation was given and received corruptly as an inducement or reward for the person acting or refraining from acting in accordance with his or her duties, unless the contrary is proved.

*Section 4 (Presumption of corruption)*

*Section 4* applies to domestic public office holders as set out in *section 2(5)(b)* of the Act. It provides for a presumption of corruption where proceedings are being taken under the Prevention of Corruption Acts against a person who holds any one of a number of public offices, in relation to the exercise of certain functions (see below) and where there is proof that he or she received money or other benefit from a person who has an interest in the way those functions are exercised. Where these facts are proven, it will then be presumed that the donation was given and received corruptly as an inducement or reward for the person acting or refraining from acting in accordance with his or her duties, unless the contrary is proved.

The functions which come within the scope of section 4 are the granting of licences or other permits, the sale or purchase of property and those related broadly to the planning process. It was considered that these areas are ones where there is a perception that corruption may occur.

#### *Section 5 (Search warrant)*

This section provides for the issue of a search warrant by a District Court Judge or, in circumstances of urgency, by a Garda Superintendent, and it was added by means of an amendment during the Bill's passage through the Dáil. The section also empowers the Gardaí to arrest any person who obstructs or interferes with the execution of a warrant, and to demand certain information from any person present in a place during the search. It provides for a penalty for a summary offence under this section of up to £2,362.69 (which converts to €3,000) and/or imprisonment for up to 12 months. It is proposed that a general provision regarding the issue of search warrants in connection with the investigation of serious offences will be included in future legislation. However, it was considered beneficial to include a specific provision in this Act pending enactment of the general provision.

#### *Section 6 (Corruption occurring partially in State)*

The three Conventions to which this Act relates require the national law on corruption of participating states to apply to corrupt acts which occur wholly or partly on their territories. An Act of corruption could occur partly in Ireland where, for example, an offer of a bribe is made abroad but received in Ireland. This section clarifies Irish jurisdiction in such cases by providing that a person may be tried in Ireland for the offence of corruption if any element of the offence occurred here.

#### *Section 7 (Corruption occurring outside State)*

Normally, Irish criminal law is territorial in its jurisdiction, that is to say it applies only to acts done in Ireland; but there are exceptions, and one is proposed in this instance. This section extends Irish jurisdiction extra-territorially to corruption abroad involving Irish office holders or officials. Otherwise, if the offence were limited to the national territory, an Irish office holder or official could evade the Prevention of Corruption Acts by accepting a bribe while outside Ireland.

#### *Section 8 (Corruption in office)*

This section creates a new offence of corruption in office. It applies to Irish office holders and officials and seeks to deal with a situation not covered by the offence of corruption. The offence of corruption, while broad, deals only with situations where an office holder or official seeks or accepts a bribe from someone in return for doing or not doing some act. It does not deal with a situation where an office holder or official acts corruptly without the involvement of anyone else, for example by making a biased decision in order corruptly to benefit a member of his or her family. The new offence will therefore criminalise any act or omission by an Irish office holder or official done with the intention of corruptly obtaining a gift, consideration or advantage for that office holder or official or any other person.

#### *Section 9 (Offences by bodies corporate)*

This provision enables responsibility for an offence by a corporate body, in this case corruption, to be attributed to certain of its officers, so that individuals as well as the corporate body can be held liable for the offence, where they have contributed to the commission of the offence, whether directly by consenting to or conniving at the

commission of an offence, or by wilful neglect of their responsibilities.

*Section 10 (Short title, collective citation and construction)*

These are standard technical provisions setting out the title of the Act and providing that it and the Prevention of Corruption Acts, 1889 to 1995 may be read together as one. It also provides that the Act or sections of it may be brought into operation by order or orders made by the Minister for Justice, Equality and Law Reform. This latter was included by way of amendment during the Bill's passage through the Dáil.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Iúil, 2001.*