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# THE ATTORNEY GENERAL FOR IRELAND

This paper has been prepared to assist the Assembly and Executive Review Committee to consider the role of the Attorney General and the functions of the Office of the Attorney General in Ireland.

The paper details the background to the creation of the post as well as subsequent developments in the role of the Attorney General for Ireland and the relationship he/she has with the Office of the Director for Public Prosecutions.

The paper contains information prepared by the Office of the Attorney General and the Office of the Director of Public Prosecutions.

## SUMMARY OF KEY POINTS

Article 30 of the Constitution of Ireland 1937 makes provision for the Attorney General for Ireland and states that he/she will be appointed by the President on the nomination of the Taoiseach. Article 30(5)(1)&(2) of the Constitution states that the Taoiseach may, for reasons which seem sufficient, request the resignation of the Attorney General. The functions, powers and duties of the Attorney General are found in both in the Constitution and legislation (primarily section 6 of the Ministers and Secretaries Act 1924).

The Attorney General is part of the overarching Office of the Attorney General, which is made up of a number of different offices and has four legal functions. There are four principal legal functions<sup>1</sup> are carried out by the Office as a whole:

- are the provision of legal advice (Advisory Counsel);
- legislative drafting (Parliamentary Counsel);
- the provision of litigation, conveyancing and other transactional services (Chief Solicitor's Office); and
- Statute Law Revision and Consolidation (Statute Law Revision Unit)

The independence of the Attorney General is evident under article 30(4) of the Constitution which prohibits the Attorney General from being a member of Government. Although in order to ensure that he/she is visible within Government it has been modern practice for him/her to attend cabinet meetings. This conveys the determination to ensure that the Attorney General remains independence and objective in his role as chief legal adviser.

### LEGAL ADVICE TO THE GOVERNMENT

The primary role of the Attorney General is enshrined in Article 30 of the Constitution as chief legal adviser to the Government. The Attorney General is also adviser to each Government department, certain public bodies and is representative of the public in all legal proceedings for the enforcement of law and the assertion or protection of public rights. The range of advisory work undertaken by the Office of the Attorney General is very broad, any legal issue on which the Government or a Department may require legal advice.

The Attorney General advises the government on the constitutional and legal issues which arise prior to or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, acts and treaties of the European Union or other international treaties to which Ireland has acceded.

### LEGISLATIVE DRAUGHTPERSONS

The Office of the Attorney General is divided into different divisions and The Office of the Parliamentary Counsel (OPC) to the Government is responsible for drafting legislation comprising a team of specialist lawyers trained to a high level in the discipline of drafting legislation and is headed by the Chief Parliamentary Counsel.

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<sup>1</sup> Office of the Attorney General- functions, powers and duties:  
<http://www.attorneygeneral.ie/ac/ac.html>

The OPC work closely with the Government Legislation Committee in ensuring that the Government Legislation Programme and its legislative priorities are implemented.

## **CRIMINAL JUSTICE POLICY**

The Attorney General has no direct role in relation to criminal justice policy however the overarching Office of the Attorney General has responsibilities within the area of criminal justice and formulating government legislation. The responsibility of the criminal justice policy lies primarily with the Minister for Justice, Equality and Law Reform in a partnership with the Department. This differs from the tripartite arrangement in England and Wales where responsibility for criminal justice policy lies between: Attorney General, Home Secretary and The Secretary of State for Justice.

## **ATTORNEY GENERAL'S RELATION TO PROSECUTIONS**

The Constitution of Ireland 1937 originally provided for the prosecution of all indictable crime to be exercised by the Attorney general. However, the Prosecutions Offences Act 1974 ('the 1974 Act')<sup>2</sup> established the Office of the Director of Public Prosecutions and transferred the powers from the Attorney General to the Director of Public Prosecutions. The 1974 Act did not create a reporting relationship between the Attorney General and the Director however section 2(6) of the 1974 Act states they can consult together from time to time in relation to matters pertaining to the functions of the Director.

The Attorney General has few prosecution duties; these are limited to functions under the various Fisheries Acts and Extradition Acts. The Attorney General has limited role under the following Acts:

- Section 29 of the Courts of Justice Act 1924;
- Section 34(1) & (2) of the Criminal Procedures Acts 1967;
- Section 3 of Geneva Conventions Act 1962;
- Section 14 of the Official Secrets Act 1963; and
- Section 2(3) of the Genocide Act 1973.

## **ACCOUNTABILITY OF DIRECTOR OF PUBLIC PROSECUTIONS**

The Director of Public Prosecutions is made accountable for the expenditure of public monies through the Public Accounts Committee. The Director has showed his commitment that to ensuring that the Prosecution Service remains accountable to the public and have showed this by appearing voluntarily before Oireachtas Committees to discuss matters of policy.

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<sup>2</sup> Prosecution Offences Act 1974: <http://acts2.oireachtas.ie/zza22y1974.1.html>

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## 1 INTRODUCTION

This paper provides information on the role of the Attorney General for Ireland and the various agencies that are part of the overarching Office of the Attorney General for Ireland. The paper will also examine its relationship with Government and the Office of the Director of Public Prosecutions.

The Constitution of Ireland 1937 established the Constitutional Office of the Attorney General. The role of the Attorney General for Ireland was established under Article 30 of the Constitution for Ireland providing a dual role between legal adviser to the Government and a superintendence function in relation to public prosecutions.

However, the role of the Attorney General in relation to the prosecution of indictable offences was altered by The Prosecution Offences Act 1974 which transferred '*all the functions capable of being performed in relation to criminal matters and in relation to election petitions and referendum petitions by the Attorney General*' to the new Director of Public Prosecutions.

## 2 THE FUNCTIONS OF THE ATTORNEY GENERAL

The role of the Attorney was established under Article 30 of the Constitution describes the Attorney General as '*the adviser of the Government in matters of law and legal opinion.*'<sup>3</sup>

### 2.1 LEGAL ADVISER

Article 30 of the Constitution makes provision for the Attorney General as chief legal adviser to each Government department and certain public bodies and is representative of the public in all legal proceedings for the enforcement of law and the assertion or protection of public rights.<sup>4</sup>

### 2.2 LEGISLATIVE COMPETENCE

The Attorney General advises the government on the constitutional and legal issues which arise prior to or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, acts and treaties of the European Union or other international treaties to which Ireland has acceded. The Attorney General also advises as to whether the State can ratify international treaties and convention and represents the State in all legal proceedings involving the State and defends the constitutionality of Bill referred to the Supreme Court under Article 26<sup>5</sup> of the Constitution.<sup>6</sup>

### 2.3 APPOINTMENT AND REMOVAL OF THE ATTORNEY GENERAL

Article 30(2) of the Constitution<sup>7</sup> makes provision for the appointment of the Attorney General and states that he/she will be appointed by the President on the nomination of the Taoiseach.

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<sup>3</sup> Article 30 of the Constitution of Ireland:

[http://taoiseach.gov.ie/attached\\_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf](http://taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf)

<sup>4</sup> Role of the Attorney General: <http://www.attorneygeneral.ie/ac/ac.html>

<sup>5</sup> Article 26 of the Constitution of Ireland:

[http://taoiseach.gov.ie/attached\\_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf](http://taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf)

<sup>6</sup> Role of the Attorney General: <http://www.attorneygeneral.ie/ac/ac.html>

<sup>7</sup> [http://taoiseach.gov.ie/attached\\_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf](http://taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%IrelandNov2004.pdf)

Article 30(5)(1)&(2) of the Constitution states that the Taoiseach may, for reasons which seem sufficient, request the resignation of the Attorney General. If the Attorney General fails to comply with the request, his/her appointment will be terminated by the President if the Taoiseach so advises.

#### 2.4 MEMBER OF GOVERNMENT<sup>8</sup>

Article 30(4) of the Constitution prohibits the Attorney General from being a member of Government; however it is modern practice for him/her to attend cabinet meetings. The Attorney General has no executive responsibilities other than for the management of his or her own office which is responsible for handling the State's litigation and the drafting of Parliamentary legislation as well as giving advice to the Government. The Minister for Justice, Equality and Law Reform is responsible for prisons, policing, the courts and law reform.

### **3 THE ATTORNEY GENERAL AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

The Constitution of Ireland 1937 originally provided for the prosecution of all indictable crime to be exercised by the Attorney general, which was the case from 1937- 1974. However, the Prosecutions Offences Act 1974 ('the 1974 Act')<sup>9</sup> established the Office of the Director of Public Prosecutions and transferred to the Director, all functions previously performed by the Attorney General in relation to criminal matters, election and referendum petitions. The 1974 Act specifically stated that the Director is independent in the performance of his functions.<sup>10</sup> The Director is accountable to Parliament through the Public Accounts Committee.

#### 3.1 INDEPENDENCE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Prosecution of Offences Act 1974 creates a number of substantial guarantees for the independence of the Director of Public Prosecutions:<sup>11</sup>

- Firstly, the Act expressly states that the Director shall be independent in the performance of his functions;
- Secondly, although the Director is appointed by the Government, the appointment may be made only from among those persons who are considered suitable for appointment by a committee consisting of the Chief Justice, the heads of the barristers and solicitors professions in Ireland, the permanent secretary to the Government and the permanent head of the Attorney General's Office;
- Thirdly, the Director can be removed from office by the Government only following consideration by them of a report of an inquiry into the physical or mental health or conduct of the Director carried out by a committee consisting of the Chief Justice, a High Court judge nominated by the Chief Justice and the Attorney General.

<sup>8</sup> The role of the Attorney General in other jurisdictions: <http://www.parliament.the-stationary-office.com/pa/cm200607/cmselect/cmconst/306/30607.htm>

<sup>9</sup> Prosecution Offences Act 1974: <http://acts2.oireachtas.ie/zza22y1974.1.html>

<sup>10</sup> The Office of the Director of Public Prosecutions: [http://www.dppireland.ie/about\\_us/](http://www.dppireland.ie/about_us/)

<sup>11</sup> James Hamilton, Director of Public Prosecution, Seminar on Accountability in the Public Sector, 2008-  
[http://dppireland.ie/filestore/documents/Seminar\\_on\\_accountability\\_in\\_the\\_public\\_sector organised\\_by\\_Mason\\_Hayes\\_&\\_Curran\\_141108.pdf](http://dppireland.ie/filestore/documents/Seminar_on_accountability_in_the_public_sector organised_by_Mason_Hayes_&_Curran_141108.pdf)

The Act also makes it unlawful to communicate with the Director or his officers for the purposes of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings unless the person making the communication is a defendant or complainant in criminal proceedings or believes that he is likely to be a defendant.

The 1974 Act did not create a reporting relationship between the Attorney General and the Director. However, section 2(6) of the Act provides that '*the Attorney General and the Director shall consult together from time to time in relation to matters pertaining to the functions of the Director.*'

### 3.2 ACCOUNTABILITY OF THE DIRECTOR OF PUBLIC PROSECUTIONS<sup>12</sup>

The Director of Public Prosecutions is accountable in a number of ways for the performance of his functions, apart from the mechanism of consultation with the Attorney General. The Office is accountable for the expenditure of public money through the normal governmental accounting procedures of the Dail Committee of Public Accounts and the Comptroller and Auditor General.

The Committees of the House of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997 governs the compellability of witnesses before parliamentary committees and empowers such committees to summon witnesses to give evidence and to produce or make discovery documents. However, this Act does not apply to the Director of Public Prosecutions except where the committee is the Committee of Public Accounts. Evidence or the production of documents can be compelled only in relation to the general administration of the Office or in relation to statistics relevant to a matter referred to in a report of and published by the Director of Public Prosecutions in relation to the activities generally of the Office.<sup>13</sup>

Despite the fact that the Oireachtas is not entitled to compel the Director or his officers to attend, the Director has voluntarily appeared before Oireachtas Committees on a number of occasions to discuss matters of legal policy on which it was felt that the practical experience of his Office might be of assistance to members of the Oireachtas. Such appearances have always been on the strict understanding that individual cases would not be discussed.

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<sup>12</sup> James Hamilton, Director of Public Prosecution, Seminar on Accountability in the Public Sector, 2008-  
[http://dppireland.ie/filestore/documents/Seminar\\_on\\_accountability\\_in\\_the\\_public\\_sector organised\\_by\\_Mason\\_Hayes\\_&\\_Curran\\_141108.pdf](http://dppireland.ie/filestore/documents/Seminar_on_accountability_in_the_public_sector organised_by_Mason_Hayes_&_Curran_141108.pdf)

<sup>13</sup> House of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997, section 3(6)

### 3.3 THE ROLE OF THE ATTORNEY GENERAL IN PUBLIC PROSECUTIONS

The Attorney General has few prosecution duties; these are limited to functions under the various Fisheries Acts and Extradition Acts. Under the 1974 Act, the Attorney General is given the power to exercise several functions in addition to the Director of Public Prosecutions. Section 3(4) & (5) of the 1974 Act<sup>14</sup> state:

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| 3 | <p>(4) Notwithstanding anything in this section, the Attorney General may, in addition to the Director, exercise the functions conferred on the Attorney General by section 29 of the Courts of Justice Act 1924, and section 34 of the Criminal Procedure Act 1967.</p> <p>(5) Notwithstanding anything in this section, where a person is charged with an offence under section 3 of the Geneva Conventions Act 1962, the Official Secrets Act 1963, or the Genocide Act 1973, no further proceedings in the matter except such remand or remands in custody or on bail as the court may think necessary shall be taken without the consent of the Attorney General.</p> |
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The various different legislative provisions give the Attorney General limited powers to intervene:

- *Section 29 of the Courts of Justice Act 1924*<sup>15</sup> concerns the decisions of the Court of Appeal and states that no appeal shall be considered unless that Court or the Attorney General believe the point of law involves ‘*exceptional public importance*.’<sup>16</sup>

29.-	The determination by the Court of Criminal Appeal of any appeal or other matter which has power to determine shall be final, and no appeal shall lie from that court to the Supreme Court, unless that court or the Attorney-General shall certify that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court, in which case an appeal may be brought to the Supreme Court, the decision of which shall be final and conclusive.
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- *Section 34(1) & (2) of the Criminal Procedures Act 1967*<sup>17</sup> concerns the power that the Attorney General has in relation to reference of a question of law to the Supreme Court:

<sup>14</sup> Prosecution Offences Act 1974: <http://acts2.oireachtas.ie/zza22y1974.1.html>

<sup>15</sup> The Courts of Justice Act 1924:  
<http://www.irishstatutebook.ie/1924/en/act/pub/0010/index.html>

<sup>16</sup> Section 29, The Courts of Justice Act 1924:  
<http://www.irishstatutebook.ie/1924/en/act/pub/0010/index.html>

<sup>17</sup> Section 34(1)&(2) of The Criminal Procedures Act 1967:  
<http://www.irishstatutebook.ie/1967/en/act/pub/0012/sec0034.html#zza12y1967s34>

34.- (1) Where, on a question of law, a verdict in favour of an accused person is found by direction of the trial judge, the Attorney General may, without prejudice to the verdict in favour of the accused, refer the question of law to the Supreme Court for determination.

(2) The statement of the question to be referred to the Supreme Court shall be settled by the Attorney General after consultation with the judge by whom the direction was given and shall include any observations which the judge may wish to add.

- *Section 3 of Geneva Conventions Act 1962*<sup>18</sup> makes provision for the role of the Attorney General in relation to grave breaches of scheduled conventions:

3.- (1) Any person, whatever his nationality, who, whether in or outside the State, commits, or aids, abets or procures the commission by any person of, any such grave breach of any of the Scheduled Conventions as is referred to in the following Articles respectively of those Conventions.

(3) Proceedings for an offence under this section shall not be instituted except, or on behalf of, or with the consent of the Attorney General.

- *Section 14 of the Official Secrets Act 1963*<sup>19</sup> provides a restriction on prosecution in that any offence under this Act will not be instituted without the consent of the Attorney general:

14.- (1) Proceedings for any offence under this Act shall not be instituted except by or with the consent of the Attorney General

(2) before such consent is obtained a person charged with an offence under section 9 may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, but not in any case to a date later than eight days after he had been first remanded, and no further proceedings shall be taken until such consent is obtained.

<sup>18</sup> Section 3 of the Geneva Conventions Act 1962:

<http://www.irishstatutebook.ie/1962/en/act/pub/0011/sec0003.html#zz11y1962s3>

<sup>19</sup> Section 14 of the Official Secrets Act 1963:

<http://www.irishstatutebook.ie/1963/en/act/pub/0001/sec0014.html#zza1y1963s14>

- Section 2(3) of the Genocide Act 1973<sup>21</sup> states that an offence under the Genocide Act can not be brought without the consent of the Attorney General:

2.- (3) Proceedings for an offence of genocide shall not be instituted except by or with the consent of the Attorney General.

#### 3.4 ACCOUNTABILITY AND INDEPENDENCE OF THE ATTORNEY GENERAL

Although the Attorney General is the principal law officer of the state and legal adviser to the Government, his independence is protected through the fact he is not a member of Government. Although he attends cabinet meetings in his capacity as adviser to the Government on matters of law and legal opinion which ensures that, whilst ensuring his independence, he also remains accountable to Government.

### **4 THE OFFICE OF THE ATTORNEY GENERAL FOR IRELAND<sup>22</sup>**

The Office of the Attorney General is made up of a number of different offices:

- The Attorney General's Office contains the Advisory Counsel to the Attorney General
- The Office of Parliamentary Counsel to the Government comprises the Parliamentary Counsel who draft legislation and have responsibilities in the area of statute law revision
- The Chief State Solicitor's Office (CSSO) comprise the solicitors representing the Attorney and the State

Since the enactment of the Prosecution of Offences Act 1974 the responsibility for the prosecution of indictable criminal offences is mostly in the hands of the Director of Public Prosecutions who is by law independent of the Attorney General and the State.

There are four principal legal functions<sup>23</sup> are carried out by the Office as a whole:

- the provision of legal advice (Advisory Counsel);
- legislative drafting (Parliamentary Counsel);
- the provision of litigation, conveyancing and other transactional services (Chief Solicitor's Office); and
- Statute Law Revision and Consolidation (Statute Law Revision Unit)

#### 4.1 ADVISORY COUNSEL<sup>24</sup>

The Director General of the Office of the Attorney General, who is also the most senior Advisory Counsel, is head of the Office of the Attorney General. The Advisory side of the Attorney General's office comprises of lawyers who

<sup>21</sup> Section 2(3) of the Genocide Act 1973:

<http://www.irishstatutebook.ie/1973/en/act/pub/0028/sec0002.html#zza28y1973s2>

<sup>22</sup> <http://www.attorneygeneral.ie>

<sup>23</sup> Office of the Attorney General- functions, powers and duties:

<http://www.attorneygeneral.ie/ac/ac.html>

<sup>24</sup> Office of the Attorney General- Advisory Counsel: <http://www.attorneygeneral.ie/ac/ac.html>

specialise in specific areas of law. Currently, the Advisory section of the Attorney General's Office is divided into five functional groups.

The principal duty of the Advisory Counsel in the Office is to assist the Attorney General in performing his functions, powers and duties. The range of subjects covered is broad, but the activities themselves fall broadly into three categories:<sup>25</sup>

**(1)**

**The provision of advice**

The range of advisory work undertaken by the Office is very broad, any legal issue on which the Government or a Department may require legal advice. Requests from Government or Ministers are usually made directly to the Attorney General and an Advisory Counsel is usually assigned to assist the Attorney General in dealing with such a request. Most requests for advice come from civil servants in Departments or Offices and either come directly to the Office, or via the Chief State Solicitor's Office. Currently, the Advisory section of the Attorney General's Office is divided into five functional groups each co-ordinated by an Advisory Counsel.

**(2)**

**The direction of litigation**

The Office of the Attorney General (including the Chief State Solicitor's Office) is responsible for handling virtually all civil litigation engaged in by the State. This involves actions in all Courts in the State, in the Court of Justice of the European Communities and the Court of First Instance in Luxembourg, and before the Commission and Court of Human Rights in Strasbourg.

The involvement of Advisory Counsel and the Attorney General is determined by the difficulty and the importance of the case. The mechanism of this involvement is that the solicitor handling the case seeks directions from the Attorney General or his staff. Generally the Attorney General's Office is not involved in criminal matters which are dealt with the Director of Public Prosecutions. There are some exceptions to this, notably arising from the Attorney General's role as prosecutor in fisheries cases and in dealing with applications to extradite person for Ireland to other jurisdictions.

<sup>25</sup> Office of the Attorney General, 'The role of the Attorney General:' <http://www.attorneygeneral.ie/ac/ac.html>

**(3) Involvement in the provision of a drafting service to Government departments**

The function of Parliamentary Counsel is to transpose the policy of the Department into a draft Bill which is expressed in clear and precise terms. During the drafting process legal issues can arise which may involve Parliamentary Counsel seeking the advice of another lawyer (known as an Advisory Counsel) in the Office of the Attorney General whose specific function it is to give legal advice to Government Departments.

Parliamentary Counsel may also have to consult with the Attorney General from time to time during the drafting process. When the Department and the Office are satisfied with the draft Bill, and all legal and outstanding policy issues have been resolved, the Parliamentary Counsel assigned to draft the Bill will transmit the final draft to the Department.

**4.2 OFFICE OF THE PARLIAMENTARY COUNSEL TO THE GOVERNMENT** <sup>26</sup>

The Office of the Parliamentary Counsel to the Government comprises a team of specialist lawyers trained to a high level in the discipline of drafting legislation and is headed by the Chief Parliamentary Counsel. The Office is a constituent part of the Office of the Attorney General.

A Minister of the Government who wishes to bring forward legislation must, in accordance with requirements set out in the Cabinet Handbook, obtain a Government decision authorising the drafting of that legislation. When a decision is obtained the Minister concerned will request the Attorney General to arrange for the drafting of a Bill. The request will then be sent to the Group Manager in the OPC whose group deals with requests from the Department for which the Minister has responsibility. The Group Manager will then assign a Parliamentary Counsel to draft the Bill. <sup>27</sup>

The Functions of the Office of the Parliamentary Counsel to the Government (OPC) are to: <sup>28</sup>

<sup>26</sup> Office of the Attorney General- Office of the Parliamentary Counsel to the Government: <http://www.attorneygeneral.ie/pco/pco.html>

<sup>27</sup> Office of the Attorney General- Office of the Parliamentary Counsel to the Government: <http://www.attorneygeneral.ie/pco/pco.html>

<sup>28</sup> Ibid

- draft Government Bills;
- draft Government amendments to Bills during the Parliamentary process;
- draft, or settle the drafts of, statutory instruments to be made by Government;
- draft, or settle the drafts of, statutory instruments to be made by a Minister of the Government, a Minister of State or the Revenue Commissioners;
- draft, or settle the drafts of, statutory instruments to be made by a person (other than a Minister of the Government) or body authorised in that behalf by statute, if requested to do so by a Minister of the Government or a Minister of State where the Minister has the statutory function of approving the draft concerned
- provide information to the Government Legislation Committee on the progress of the drafting of Bills
- provide information to the European Union Division, Department of Taoiseach, on the progress of the drafting of European Union statutory instruments
- provide drafting advice to client Departments on achieving their aims in proposed legislation
- liaise with client Departments during the drafting process

#### 4.3 GOVERNMENT LEGISLATION COMMITTEE<sup>29</sup>

The Government Legislation Committee (GLC) is chaired by the Government Chief Whip and its members include: the Attorney General, the Chief Parliamentary Counsel, the Programme Managers of the main parties in Government, the Leader of Seanad Éireann (Upper House of the Irish Parliament) and representatives of the Department of the Taoiseach and the OPC.

The OPC works closely with the GLC in ensuring that the Government Legislation Programme is implemented. The function of the GLC is to assist the Government in setting legislative priorities for the forthcoming Parliamentary session and oversee its implementation.

## **5 THE ATTORNEY GENERAL AND CRIMINAL JUSTICE POLICY**

### 5.1 RESPONSIBILITY FOR CRIMINAL JUSTICE POLICY

The Attorney General has no direct role in relation to criminal justice policy. However the overarching Office of the Attorney General has responsibilities within the area of criminal justice and formulating government legislation which was discussed in section 4 above.

The responsibility for criminal justice policy lies primarily with the Minister for Justice, Equality and Law Reform, with his department, who assumes general responsibility for the criminal justice system, including policing. The minister exercises policy and financial controls over the Garda Síochána and is accountable to the Dáil for their

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<sup>29</sup> Ibid

performance. The minister is not involved in operational police matters and has no role in the prosecution of criminal offences.

The Minister for Justice, Equality and Law Reform is assisted by 3 further ministers, who collectively head the Department for Justice, Equality and Law Reform: the Minister of State for children and youth Justice; the Minister of State for integration policy; and the Minister of State for equality, disability issues and mental health. The Minister's and the Department's main areas of responsibility include:<sup>30</sup>

- Implementing government policy on crime and protecting the security of the State;
- Providing policy advice in relation to the criminal justice system;
- Continuing reform of the criminal law and updating areas of the civil law;
- Implementation of core elements of the Good Friday Agreement;
- Implementation of the government's asylum strategy and development of the national immigration policy; and
- Implementation of policy in relation to equal treatment, anti-racism, disability equality and human rights.

This system differs in structure from that in England and Wales, where a tripartite arrangement exists in relation to criminal justice policy. This tripartite arrangement contains: the Attorney General, Home Secretary and the Secretary of State for Justice who all have a part to play in formulating criminal justice policy. In Ireland, criminal justice policy is primarily dealt with within one Department, in England and Wales, 3 distinct offices assume responsibility for various areas of criminal justice.

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<sup>30</sup> Ibid

## APPENDIX I

### ATTORNEY GENERAL FOR IRELAND'S RESPONSIBILITIES

As legal adviser to the Government the Attorney General attends Government meetings. The Attorney General advises the Government on all the constitutional and legal issues which arise in connection with or at Government meetings, including whether proposed legislation complies with the provisions of the Constitution, Acts and Treaties of the European Union or other international treaties to which Ireland has acceded. This also includes advice by the Attorney General as to whether the State can ratify international treaties and conventions.

The Attorney General is joined in all proceedings in which a challenge is raised to the constitutionality of legislation and defends the constitutionality of all legislation.

The Attorney General defends the constitutionality of Bills referred to the Supreme Court under Article 26 of the Constitution.

The Attorney General represents the State in legal proceedings involving the State.

The Attorney General is representative of the public in legal proceedings for the enforcement of law and the assertion or protection of public rights.

The Attorney General has a function in giving or declining a direction in certain extradition requests under Part III of the Extradition Act, as amended.

The Attorney General advises the Minister for Finance in relation to escheated estates.

The Attorney General has a protective role in relation to charities and in particular in relation to a change in objects of a charity. Under existing law, the Attorney General has a protective role in relation to charities and in particular in relation to a change in objects of a charity. In the period covered by this Statement of Strategy, it is possible that the Charities Bill 2007 may be enacted and an independent regulator of charities appointed to whom the Attorney General's statutory functions will be transferred.

The Attorney General retains certain prosecution functions, for example under the Fisheries (Amendment) Act 1978, pending their transfer to the Office of the Director of Public Prosecutions pursuant to the Sea Fisheries and Maritime Jurisdictions Act 2006.

The Attorney General has a statutory function in deciding whether warrants under the Extradition Acts 1965 to 1994 should be endorsed or not, and advises in extradition cases.

The Attorney General has functions in respect of the Law Reform Commission under the Law Reform Commission Act 1975.

The Attorney General has functions in respect of legislative programming and is a member of the Government Legislation Committee which is chaired by the Government Chief Whip.

The Attorney General has functions under the Attorney General's Scheme. (This is a non-statutory scheme under which the Attorney General funds certain legal proceedings not covered by legal aid.)

The Attorney General is responsible for acting as lawyer for the State in most civil litigation in which the State, or its officers in an official capacity, are parties (except in the majority of personal injuries litigation, the majority of which is delegated to the State Claims Agency under the National Treasury Management Agency (Amendment) Act 2000). Usually the State is the defendant in claims in which the Attorney General is involved.

The Attorney General is involved in litigation in all courts of the State, in the Court of Justice of the European Communities (Luxembourg), in the European Court of First Instance (Luxembourg) and the European Court of Human Rights (Strasbourg). The Attorney General furnishes legal advice and is involved in the preparation (sometimes with the assistance of outside counsel) of written pleadings in relation to litigation in both courts. The Chief State Solicitor acts as agent for the State in the Luxembourg Court and the legal adviser of the Department of Foreign Affairs acts as agent for the State in the Strasbourg Court.

The Attorney General directs advisory counsel, solicitors and legal executives in connection with litigation involving the State.

Advisory Counsel advise and assist the Attorney General in his functions including advising generally and advising on draft legislation and assisting in the conduct of litigation involving the State.

The role of the Office of the Parliamentary Counsel to the Government derives from section 6 of the Ministers and Secretaries Act 1924, the Cabinet Handbook and established practice and includes:

- drafting Government Bills (including Bills containing proposals to amend the Constitution);
- drafting, or settling drafts, of statutory instruments that are made by the Government;
- drafting or settling statutory instruments to be made by a Minister of the Government, a Minister of State or the Revenue Commissioners;
- drafting or settling any statutory instrument to be made by a person (other than a Minister of the Government) or body authorised in that behalf by statute, if requested to do so by a Minister of the Government or a Minister of State where the Minister has the statutory function of approving the draft concerned;

The Statute Law Revision Project, managed by the First Parliamentary Counsel, involves statute law revision and consolidation of the Better Regulation Agenda and includes the drafting of Bills, revising and reforming legislation;

The functions of the Chief State Solicitor are to act as solicitor to Ireland, the Attorney General and Government Departments and Offices. Other functions include:

- carrying out all conveyancing of State property, including Landlord and Tenant and other land law matters;
- furnishing of legal advice on the various matters that are submitted by Government, Departments and Offices and the drafting of the necessary accompanying legal documents;
- preparing and presenting all prosecutions initiated by Ministers or Government Departments;
- acting as Agent of the Government before the European Court of Justice;
- acting for the State in enquiries under the Tribunals of Inquiry (Evidence) Acts 1921– 1998 and supplying legal staff to act for the Tribunals, the public interest and other relevant State authorities;
- providing a solicitor service in all civil courts and tribunals in which the State, any State Authority or the Attorney General is involved; · discharging functions under the Council Regulation (E.C.) No 1348/2000 of 29 May, 2000 and the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;
- representing the State and State Authorities in taxation of costs before the Taxing Masters; providing staff to the members of the various Court Rules Committees.

