

## CEP Magazine – January 2019 Anticorruption on the Emerald Isle

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by Eric Brotten

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In the summer of 2018, the Criminal Justice (Corruption Offences) Bill passed through the houses of Ireland's parliament, the Oireachtas, and was enacted on June 5 and commenced July 30.<sup>[1]</sup> The Criminal Justice (Corruption Offences) Act (the Act) modernizes and consolidates Irish laws previously covering crimes such as bribery and corruption [e.g., The Prevention of Corruption Acts (1889 – 2010) and the Criminal Justice (Theft and Fraud) Offences Act, 2001].<sup>[2]</sup> The Act has roots in earlier initiatives proposed by the Irish government to tackle corruption in response to the Mahon Tribunal, the Organisation for Economic Co-operation and Development (OECD), and European Union recommendations.<sup>[3]</sup>

### Overview of the Act

The Act is broader in scope than previous legislation and creates several new corruption offenses, such as:

- Criminalizing direct and indirect corruption in both the public and private sector, where:
  - “Corruptly” is defined as “acting with an improper purpose personally or by influencing another person,”<sup>[4]</sup>
  - A “bribe” is considered “a gift, consideration, or advantage” given to “any person doing an act in relation to his or her office of employment, position or business,”<sup>[5]</sup> and
  - The bribe can be given or accepted, or agreed to be given or accepted<sup>[6]</sup>
- Holding corporations (and potentially directors and management) liable for corruption offenses committed by staff, agents, or subsidiaries when reasonable steps were not taken to avoid commission of the offence,<sup>[7]</sup> and
- Including a presumption of corruption in certain circumstances.<sup>[8]</sup>

Additionally, the Act is extra-territorial,<sup>[9]</sup> extending beyond Ireland, and in many ways, emulates similar provisions of the United Kingdom's Bribery Act 2010 (UKBA).<sup>[10]</sup> Lastly, the Act increased penalties to up to 10 years imprisonment and unlimited fines.<sup>[11]</sup>

A detailed list of crimes in the Act includes:<sup>[12]</sup>

- **Active and passive corruption:** Bribe giving and bribe taking.
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- **Active and passive trading in influence:** Exerting or claiming to exert influence over a public official's decision making.
- **Corruption in relation to office, employment, position, or business:** As an Irish official, corruptly receiving a bribe or using confidential information to receive a bribe.
- **Giving gift, consideration, or advantage** that may be used to facilitate offense under the Act ("bribe"): Giving a bribe, where the giver knows or ought to reasonably know that it will be used to commit a corruption offense.
- **Creating or using a false statement in a document:** Corruptly creating or using a document that the person knows or believes to contain a statement which is false or misleading, with the intent of inducing another person to do an act to his or her prejudice or that of another person.
- **Intimidation:** Corruptly threatening harm to a person with the intention of influencing that person or another to carry out an act in relation to his or her office, employment, position, or business.

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