Public Appointments: Options for Reform
Paula Clancy and Nat O'Connor

Abstract

In this paper, the authors address the ad hoc and politicised manner in which people come to be appointed to the boards of public bodies in Ireland. Some of the problems of this system are described. Alternative models for more transparent and independent public appointments are presented, along with arguments for more meritocracy, transparency and diversity in public appointments. These provide a range of options for improving the current appointments process. The authors argue that the current ad hoc process needs to be replaced with clear rules - regardless of which model or mix of models is formally adopted.

Public Appointments: Options for Reform

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> *"To the victor the spoils of political office. But some of the appointments made by governments – present and past – to State boards and agencies have illustrated the clear defects of that spoils system. In some cases the political affiliation of those appointed has mattered more than their suitability or their professional qualification for a board position. All parties in government have engaged in the practice, particularly at the end of their tenure. And all parties in opposition have railed against it, while promising to reform the system in government. But the record speaks for itself."*
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> Irish Times, Editorial, Friday, 21 January 2011

Introduction: background and context

1. The lack of accountability and oversight of ministerial appointments to public bodies is a pressing concern that should be prioritised for reform. Since the early 1990s public bodies have ceased to be merely an adjunct to the work of Government, traditionally conducted by the central civil service. Instead, they have become central to the Irish system of government, performing vital public functions, controlling significant expenditure and employing large numbers of public sector workers. They play a crucial role in delivering services ranging from education, health and immigration, to food safety, public enterprise and road safety. The changed importance of public bodies needs to be reflected in an improved and more consistent process for making appointments to the boards that govern them.

2. As TASC demonstrated in its 2006 publication *Outsourcing Government: Public Bodies and Accountability*, many of our public bodies have developed in an *ad hoc* manner, many of which are governed by boards of directors appointed in a similarly *ad hoc* manner. Public mistrust of this essentially politicised approach to the governance of significant elements of Irish public administration is compounded by the lack of transparency in the way boards of public bodies are appointed. Sporadic negative media and political

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commentary, together with political initiatives by TDs of different political persuasions, suggests that there is a growing consensus surrounding the need for reform. In April 2011, the cabinet approved a memorandum from Minister for Public Expenditure Brendan Howlin proposing that vacancies on State boards should in future be advertised on the website of the relevant Government department; this suggests that the issue of public appointments is a priority for the new Government.

3. TASC's 2010 report, *Mapping the Golden Circle*, highlighted risks to good corporate governance in some of Ireland's most economically important State-owned bodies. Recent history has also shown the danger of relying solely on the expertise of those who control the decision-making structures in this country, whether these are members of the business elite, top-ranking civil and public servants or leading members of the legal and accountancy professions. We argue that Ireland needs to adopt a model of public appointments to ensure that appointments to public boards are transparent, and that those appointed are qualified to oversee delivery of the services within a board's remit. In addition, board appointees should also reflect the diversity of modern Ireland; for example in terms of ethnicity. This is essential to avoid 'groupthink' and to strengthen the protection of the public interest, as a guiding principle in how public bodies are governed.

4. This paper is designed to stimulate a wider public debate about the importance of improving the governance of public bodies. International experience and commentary suggests that there are advances in this area that Ireland could draw from. For example, the OECD stated that "*If boards [in Ireland] are to be maintained as effective governing bodies, board nomination needs to be treated as a human resource management issue and capacity should be dedicated to improving the nomination process and*

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searching for the right profiles".[3] This paper examines three potential models for reforming the appointments process, based on experience in other jurisdictions with legal and administrative backgrounds similar to Ireland's, including Canada, New Zealand, Scotland and the rest of the UK. Each of these jurisdictions has undertaken fundamental and effective reforms from which Ireland can learn. These reforms include moves towards reducing discretionary ministerial powers. New legislation has been enacted and new oversight institutions established. Public scrutiny of the appointments process has been facilitated by publicising codes of practice, protocols, processes and appointment decisions. And, in an even stronger move towards independent appointments, Nova Scotia in Canada has granted legislative committees the power of veto over ministerial appointments.

5. One study has helpfully distinguished between different degrees of reform in appointment processes to public sector boards.[4]

(A) Model A maintains the role of the minister in making appointments and relies on parliamentary committees or similar bodies for oversight. It also includes appointment protocols and codes of practice, the publication of selection criteria and potential conflicts of interest, and advertising available positions widely.

(B) Model B – essentially the UK model – develops the first approach by concentrating on the establishment of a central oversight body (an agency or parliamentary committee) to scrutinise processes and appointments. It is helpful to note that, despite widespread

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[3] Management Review of Ireland, 'Towards an Integrated Public Service', *OECD Public Management Reviews* (2008) p. 305

[4] This typology was developed for comparative purposes in order to develop reform models for Australia. See: Edwards, Meredith (July, 2006) 'Appointments to Public Sector Boards in Australia: A Comparative Assessment, Issues Paper Series No.3, University of Canberra, Australia Corporate Governance ARC Project. Due to this study's focus on 'Anglo-Saxon' governance systems, including the UK, it may be reasonably applied to Ireland.

acknowledgement that an innovative system has been established in which an independent body (the OCPA) plays a central role and despite this being a significant improvement on previous systems, there have been calls in the UK for further changes to be made and for responsibility for appointments to be transferred to the UK Commissioner for Public Appointments.[5]

(C) The third approach (Model C) strengthens Model B by establishing an independent statutory central authority which manages the appointment process from start to finish. For example, the Commissioner for Public Appointments in Scotland has more independence than the UK Commissioner, and is closer to Model C.

6. The three models are presented as examples of how a formal process for public appointments has been developed elsewhere, guided by the principles of transparency, accountability and independence from political patronage. It is not proposed that any model would be adopted by Ireland in a rigid fashion; instead, it may be appropriate to adopt aspects of different models. Practice in some other countries exhibit aspects of different models (e.g. Nova Scotia). In deciding what process for public appointments best suits Ireland's future needs, the explicit objective must be erasing the longstanding culture of political patronage and replacing it with a culture which recognises the importance of merit and diversity.

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[5] Maer, Lucinda *"The Commissioner for Public Appointments"*: Parliament and Constitution Centre; 18 November 2010 p.6

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Current practice: problems and issues

Absence of coherent approach to establishment of Public Bodies

7. In 2006, TASC identified 479 public bodies operating at national level.[6] Most of these were created after 1990. However, quantifying the precise number of public bodies is problematic in the absence of an agreed definition of a 'public body'. For this reason, different agencies may be included in the lists compiled by different researchers. The lack of an official, comprehensive State directory compounds this problem. TASC's initial investigation deliberately included 'task forces' and other similarly impermanent bodies, which nonetheless involve important public appointments and have potentially significant influence over the formation of public policy. However, even this research did not necessarily capture all temporary forums or committees established by Ministers to advise them on specific matters.

8. The recently-launched Irish State Administration Database (www.isad.ie) now records information about all national-level public organisations (i.e. central Government departments and the agencies under their aegis, commercial State-owned enterprises and other relevant public bodies and institutions). In January 2011, there were 349 active bodies listed in this database.[7] As recently as 1998, it was thought that only 130 public bodies were functioning in the State.[8] Thus, the growth rate over the last decade is startling.

9. Combining the data compiled in both the ISAD list with the list drawn up by TASC, over 600 different, current public bodies and boards/committees can

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[6] See Clancy, P. and Murphy, G. (2006) *Outsourcing Government: Public Bodies and Accountability*, Dublin: TASC@New Island, for definition of a national public body and for a full list of these bodies.
[7] Hardiman, Niamh; MacCarthaigh, Muiris and Scott, Colin. 2011. The Irish State Administration Database. http://www.isad.ie [Accessed April 2011]
[8] Coakley, John; Gallagher, Michael: "Politics in the Republic of Ireland" 4th Edition Routledge 2005 p. 392

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be identified, operating on a nation-wide basis.[9] A large number of additional bodies exist which operate only on a local or regional basis.

10. Ireland has a relatively large number of public bodies, many of whose governance structures include a board comprising a non-executive chair and members. For example, in 2010 MacCarthaigh identified 249 non-commercial national level agencies, three-quarters of which had a board or governing councils, giving rise to a total of 2,304 board/council memberships.[10] Much of the discussion of public bodies assumes that the mere fact of growing numbers is ample evidence that we have too many, and that the appropriate response is simply to cut the number of bodies. However, TASC has consistently argued that, while there is an urgent need to review the number, it must be done in a constructive manner which recognises that many public functions require public bodies to exist as instruments of government, and which values their role. We therefore welcome the 2008 OECD report on the Irish public service,[11] which deals with the subject in a more nuanced way.

11. The OECD report called for the establishment of an overall governance framework for agencies. This, in turn, would require fundamental decisions on what should remain within central departments, what should be devolved to local government and what should be carried out at arm's length from the civil service. Only then can decisions be taken not only about the number of agencies, but also about how they should be structured and governed. It is

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[9] There are a number of factors to be considered when explaining the disparity in the lists compiled by TASC and the Irish State Administration Database. TASC's list was compiled in late 2005, while the ISAD list was released in 2010. The ISAD list measures the durable state capacity through formally constituted public bodies, whereas TASC's list includes other boards/committees where public appointment may occur. For example, ministerial departments were not included in the TASC list, while they were in the ISAD list; prison visiting committees, tribunals, taskforces; and a number of hospitals and education centres were omitted from the ISAD list, while TASC excluded a number of government appointed offices (e.g. the office of the DPP, the office of public works, the Central Statistics Office etc.) The variation in the two compilations is indicative of the degree of ambiguity around the definition of a 'public body'.
[10] MacCarthaigh (July 2010)
[11] *Ireland: Towards an Integrated Public Service* (OECD Report, 2008); available at www.oecd.org/eco/surveys/ireland

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worth noting that the OECD seemed to favour what it describes as "the latest waves of agencification in OECD countries" which includes the creation of "departmental agencies". These are bodies that have significant managerial autonomy, although they are not legally separated from the Civil Service and, crucially, have no board. These ideas are worthy of serious consideration as part of a rational and coherent design of the public service including the core civil service.

12. Following receipt of the OECD report, which it had commissioned, the Government established a taskforce on the public service. The taskforce's remit included outlining "… an appropriate framework for the establishment and operation and *governance* of State agencies."[12] In its report, published in November 2008, it recommended, *inter alia*, that there should be a detailed review of existing public bodies to "identify opportunities to amalgamate, rationalise and make greater use of shared services", as well as development of a new governance framework which would cover the appointment of directors to State boards and the functioning of boards.[13]

13. Arising from these recommendations, the Special Group on Public Service Numbers and Expenditure Programmes (colloquially known as 'An Bord Snip Nua') was formed and subsequently made recommendations on the rationalisation of State agencies, while the Department of Finance developed a new governance framework for State bodies that was published in June 2009.[14] The extent to which this code of practice is being enforced is not clear.

14. Parliamentary questions tabled in 2006 provide evidence of appointments over a ten-year period. These show that, between January 1997 and January

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[12] Our italics
[13] 'Transforming public services', Report of the Task Force on the Public Service, Department of the Taoiseach, November, 2008.
[14] 'Code of Practice for the Governance of State Bodies', Department of Finance, June 2009

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2006, ministers had made nearly 7,000 such appointments.[15] The new Programme for Government provides for the proposed rationalisation of State-sponsored bodies, which could lead to a considerable reduction in the number of public appointments. Similarly, if a review of agencies results in a reduction in the number of public bodies with boards of non-executive directors, fewer public appointments would be made.

15. Although the emphasis on State-sponsored bodies is appropriate, the appointments to less permanent task forces, forums and similar bodies also need to be considered in any rationalisation and reform of public appointments.

16. The new Programme for Government contains no detailed outline of how public appointments will take place in the future. It does, however, set out some plans which, if implemented, would go some way towards changing the shape of public appointments. These include:

> An undertaking to ensure that, where appropriate, agency boards are scrapped and agency managers held directly accountable to Ministers.[16]

> A promise to take steps to ensure that all State boards are comprised of at least 40 per cent of each gender.[17]

> A commitment to amend the rules governing senior public servants (including political appointees) and Ministers. The new rules would ensure that none of them can work in the private sector, in any area involving a potential conflict of interest with their former area of public employment, until at least two years have elapsed since they left the public service.[18]

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[15] Parliamentary questions tabled by Deputy Dan Boyle, Dáil Éireann, Parliamentary Debates, Vol. 613, 25.01.2006. See also follow-up questions: Vol. 616, 07.03.2006
[16] *Towards Recovery: Programme for National Government 2011-2016* 6th [March 2001] p.24
[17] ibid p.53
[18] ibid p.20

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17. As stated above, the new Programme for Government states that the Government will substantially reduce the number of State-sponsored bodies. With the exception of plans to cut governmental committees[19], the proposals outlined in the document focus on the merging of existing bodies. They include plans to develop a single Irish Agri-Food brand which would amalgamate State agencies,[20] a promise to merge transport services,[21] and a commitment to merge all marine responsibilities under one Department.[22] Additionally the programme outlines the Government's intention to combine a variety of small hospitals into one local hospital network.[23]

Ad hoc and politicised system of selection

18. At present, Ministers and senior civil servants are responsible for appointing the majority of those serving on boards of public bodies. Ministers may be constrained by written criteria governing certain appointments. But in many cases appointments are entirely at the Minister's discretion, requiring neither justification nor any evidence that appointments have been made on the basis of stated criteria, following careful consideration of different candidates' qualifications. The mere fact of ministerial patronage, and the potential for abuse involved, is compounded by an opaque selection procedure. Many bodies list their board members on their website but very few include an explanation of the selection criteria used. Even in cases where there is an official selection process, the public is ill-informed on how it operates. Overall, there is a lack of clarity regarding the expertise or experience which might objectively justify an appointment, and there is no

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[19] ibid p.19
[20] ibid p.12
[21] ibid p.12
[22] ibid p.64
[23] ibid p.35

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effective independent input into the appointments process. The Oireachtas has negligible influence on public appointments, since they are at the Minister's sole discretion.[24]

19. Appointments typically result from a number of inputs and processes. Initially, individual civil servants, drawing on their experience and contacts, submit a list of names to the Minister for approval. The Minister then draws up a shortlist, drawing to a greater or lesser extent on the names submitted by the civil servants. Other elements may also come into play: coalition government agreements may require that the list include nominees of both the Taoiseach and the Tánaiste while, in certain cases, social partners or other stakeholders may also have been granted nomination rights, either in statute or on a *de facto* basis.

20. In addition to addressing the potential for political patronage, a more formal and consistent system of public appointments would avoid a situation where any social partners or other stakeholder groups had undue influence in nominating people to public boards. Reform could facilitate stakeholders having a role, but this would be limited to input on the code of practice, protocols and competencies required by any particular public board. In a legitimate appointments system, the role of stakeholders, including the Minister, should not extend to simply naming individuals for appointment without undergoing an open selection process.[25]

21. In practice, it is often left to the Minister or his/her political advisor to draw up a list of potential names. While there may be a genuine attempt to establish a nexus of expertise, the whole process is arbitrary, unmonitored

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[24] Recently it was announced that an Oireachtas committee will question nominated chairs of transport agencies for their suitability (Irish Examiner, Monday 4 July 2011).
[25] The only exception to this rule would be where boards of bodies, notably commercial semi-states, have one or more board members elected by employees.

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and unsystematic. It is also at the mercy of subjective – and thus biased – judgements.

22. The secrecy surrounding Ministerial patronage, and the potential for abuse, is compounded by a lack of accountability. Not only is there no onus on the Minister to justify an appointment at the time: there is also no process whereby the Minister can subsequently be held accountable for the appointee's performance (or lack thereof). Indeed, it may be difficult or impossible for the public to assess an appointee's performance. For example, in the case of the many *ad hoc* task-centred advisory committees which are disbanded once a particular project has been completed, only the Minister being advised is in a position to evaluate the appointee's performance. And there is often no discernible relationship between performance and tenure: while theoretically the Minister has substantial powers of dismissal, these are rarely exercised in practice.

23. Our current system of appointments-by-Ministers has arguably given elite groups a near-monopoly over public board positions, and thus inordinate and unaccountable influence over public policy. Essentially, the governing party – regardless of ideological hue – is allowed to shape public boards in its own (political) image. Since appointments to such boards do not coincide with Dáil elections, the governing party is able to exercise influence well beyond its term of office. The difficulty that the new Fine Gael-Labour Government experienced in removing appointees of the previous administration further emphasises this point.[26]

24. Concerns about public appointments are not just a recent development. Those which live on in the public mind are those surrounded by a whiff of cronyism. As far back as 1991 – when there were far fewer public bodies,

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[26] See, for example, Irish Independent (23 March 2011) and Irish Examiner (29 March 2011).

and hence ministerial appointments, than now – controversy surrounded the position of Michael Smurfit, former chairman of Telecom Éireann, following questions about Telecom's acquisition of the Johnston, Mooney and O'Brien site.

25. A more recent example which serves to highlight the issues surrounding political patronage relates to former Taoiseach Bertie Ahern's friend Joe Burke. Eyebrows were raised when members of Bertie Ahern's circle of friends were appointed to State boards. The appointment of Joe Burke – one of the former Taoiseach's friends and donors – as chairperson of the Dublin Port Company was particularly illustrative of how a nexus of political and business contacts gave rise to perceptions of undue influence. A former Fianna Fáil Councillor, Mr Burke was also a trustee of Bertie Ahern's Drumcondra constituency office, St. Luke's.[27] Mr Burke was appointed chairman of Dublin Port Company in 2002, and also held a seat on East-Link Ltd, the toll bridge subsidiary of NTR. He was also a director of Renore Ltd, the company which owned Greenore Harbour in Co Louth. In 2002, Dublin Port Company and the Irish Agricultural Wholesale Society Ltd, now trading as the One51 Group, obtained ministerial approval to establish a joint venture to acquire the shares of Greenore Port Company. This shows the potential risk of a conflict of interest. Other questions can be asked of Mr Burke's suitability. A High Court order restricted him from involvement in the affairs of any company for five years unless certain funding conditions were met. This order followed the liquidation of his building company with a deficit of €2.3 million and tax debts of €279,000. Yet he remained *in situ* as chairman of the Dublin Port Company for a number of months following this.[28]

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[27] Sunday Tribune, February 3rd 2008
[28] Irish Times, January 12th 2009

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26. Like certain other agencies, the Dublin Port Company is not subject to the Freedom of Information Acts and is thus not required to provide information about itself. However, we do know that the chairman's fee in 2007 was €24,000 and that the total remuneration bill for Dublin Port Company's 11 directors came to nearly €600,000 in 2006.

The issue of payment for public service

27. In the private sector, the excessive pay awarded to board members has been identified as a risk factor related to board members' independence.[29] Furthermore, many of the Directors receiving very high pay rates often hold multiple directorships. This means they tend to be overstretched and that the companies paying them may be getting poor value for their money.[30]

28. In the case of the public sector, while a similar issue arises in relation to some board positions, in general remuneration is small or non-existent. There are pros and cons to remunerating appointees to public boards. The absence of remuneration may have been designed to foster a culture of volunteerism and public service, paradoxically, however, it has reinforced the perception that appointments are made for solely political reasons. The absence of formal remuneration has also resulted in an increased focus on daily allowances and mileage, the perceived abuse of which has increased public suspicion of State boards. Arguments can be made that some remuneration is appropriate, not only to increase accountability but also to enable a much greater level of diversity, allowing those who could otherwise not afford the loss of earnings involved in the time commitment required to board responsibilities to accept appointment.

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[29] Paula Clancy, Nat O'Connor, Kevin Dillon; "Mapping the Golden Circle" TASC May 2010 p. 25
[30] ibid at p.29

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Proposals for reform

29. The potential of public appointments to serve as a political legacy becomes apparent when one considers the dramatic historical rise in appointments immediately before and after a general election, and prior to a minister's departure from office. During the two months before the 2007 general election, around 700 appointments were made – over three times the average appointment rate. Similarly, in the weeks between former Taoiseach Bertie Ahern's announcement of his forthcoming resignation and the formation of a new Cabinet, over 100 new appointments were made to State boards. This figure contrasts with just eight appointments made during the six weeks preceding Mr. Ahern's resignation announcement.[32]

30. This trend is ongoing. In the run up to the February 2011 General Election (from 14 December to 13 January) 90 appointments were made to State boards. This became the focus of intense scrutiny and was highlighted by the opposition parties during Dáil debates. In addition, the issue garnered a significant amount of media attention. Fine Gael's Leo Varadkar accused Fianna Fáil of "stuffing State boards with friends and political party supporters" before later retracting his comments, stating that he "was making no allegation about any individual".[33] Insinuations of cronyism on State boards are commonplace. However, outright accusations of this nature are not. This is because the corroborating evidence is simply not available. Given the lack of transparency surrounding public appointments, this is unsurprising. Despite his swift reversal on the issue, Deputy Varadkar's accusations may have had some impact because on 1 February 2011 – the first day of the 2011 election campaign – the Government publicly introduced new rules surrounding appointments to State boards, as well as undertaking not to make any more appointments before vacancies occur. The

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[32] Irish Independent, May 19th 2008
[33] Irish Times, January 20th, 2011 "FF TD calls on Varadkar to apologise over cronyism claims"

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Government also promised that, where vacancies do arise, no new appointments would be made where it is "clearly necessary to consider changes in the function or structure of a State body".[34] While the Government's promises here were broad and relatively unspecific, the fact that they were made at all might indicates a realization that public appointments have now become a significant issue in the minds of voters.

31. The importance of, and possibly the electoral advantages associated with, reforming public bodies and appointments to the boards of such bodies have not escaped political parties. Fine Gael's election manifesto included promises to cut the number of current 'quangos' by at least 150. It pledged to require the Chairpersons of all State boards, agencies and regulators to submit their resignations within one year of the Oireachtas passing a Public Appointments Transparency Bill. It also stated that previous Chairpersons will be permitted to reapply to serve on State boards, but that they will be scrutinised by the relevant Dáil committees.[35] In 2010, Fine Gael enterprise spokesperson Richard Bruton promised that, if elected, Fine Gael would replace the membership of every board within six months.[36]

32. Labour made 140 proposals to transform government, politics and the public service,[37] including a promise to establish an Office of Public Service Reform, with responsibility for all matters in relation to the public service and headed by a Minister who sits in cabinet. The office envisaged will have a particular responsibility for planning and implementing the change agenda. The idea was that the office will also be responsible for ensuring that all aspects of the agenda are explained fully to the public and to public sector staff.[38] Labour

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[34] Irish Times, February 2nd 2011 "Government alters rules on State boards post"
[35] NewPolitics, Fine Gael (accessed at: www.finegael.org/upload/NewPolitics.pdf)p.9
[36] Irish Times, December 12th, 2010 "Fine Gael wants appointments freeze"
[37] *New Government, Better Government; Changing a Broken System* accessed at: www.labour.ie/download/pdf/newgovernmentbettergovernment.pdf
[38] ibid p.19 point 83

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also promised to review the number of State bodies and reduce their numbers where appropriate.[39] In addition, Labour stated that it would ensure State bodies are subject to the same reporting requirements as their parent departments.[40] Finally, Labour's manifesto undertook to "review the structure of all organisations and bodies to ensure that each one and each of its divisions, agencies and units are engaged in work that contributes to organisational goals".[41]

33. Sinn Féin has, in the past, called for a new transparency and greater diversity (particularly regarding the representation of women) in public appointments.[42] Sinn Féin's 2011 election manifesto promised to impose a significant cull on public bodies, retaining only those "essential to the public interest".[43] Sinn Féin pledged to make all State boards "answerable to the Oireachtas through relevant committees and ministers, with transparency and efficiency in decision-making."[44] It stated that it would establish an All-Ireland Parliamentary and Consultative Civic Forum and complete the Review of the All-Ireland Implementation bodies with particular consideration of the case for additional bodies.[45] Sinn Féin's manifesto included a pledge to end political appointments to State boards, stating that there needs to be an open and transparent system of appointments to State bodies.[46]

34. Public appointments reform was not addressed by either Fianna Fáil or the Green Party in their 2011 election manifestos. The Green Party had previously, in opposition, introduced legislation on this issue. The issue also

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[39] ibid p.19 point 84
[40] ibid p.19 point 86.
[41] ibid p.22 point 114.
[42] www.mayosinnfein.com/policy/women [accessed 10/02/2011]
[43] Sinn Féin General Election Manifesto 2011 p. 35 point n; accessed at:
www.sinnfein.ie/files/SF_GeneralElectionManifesto2011.pdf
[44] ibid p.35 point o
[45] ibid p.35 point p
[46] ibid p.35 point q

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did not feature in their combined 2007 Programme for Government,[47] however it was in the 2009 Renewed Programme for Government: *"We will introduce on a legislative basis a more open and transparent system for appointments to public bodies. The legislation will outline a procedure for the publication of all vacancies likely to occur, invite applications from the general public and from the responses, create a panel of suitable persons for consideration of appointment. The legislation will also specify numbers of persons to be appointed by a Minister and will facilitate the appropriate Oireachtas Committees to make nominations to the panel."* Unfortunately, this commitment was not progressed before that Government fell.

35. The fact that the issue of public appointments is being raised by most political parties highlights how significant it has become. Moreover, reforming public bodies and appointments to these bodies are not issues that have been picked up on simply by political parties. Independent politicians have also offered opinions. For example, Shane Ross claimed that cronyism was the biggest issue in the election and that the government had been appointing their own "cronies" to the boards of banks since stepping in to rescue the institutions.[48] Shane Ross advocated the establishment of an independent commission to make appointments to State boards.[49]

36. It has sometimes been argued that Ireland is too small to require an independent commission. However, the example of Scotland shows that it is possible and useful to have the independent Scottish Public Appointments Commissioner overseeing a significantly smaller number of bodies (fewer than 100).

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[47] Programme for Government 2007-2012
[www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/Eng_Prog_for_Gov.pdf]
[48] Irish Examiner; 10th February 2011 "Senator vows to establish party if elected".
[49] Irish Examiner; 10th February 2011 "Senator vows to establish party if elected".

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37. The Irish Small and Medium Enterprises Association (ISME)[50] and the Institute of Directors in Ireland[51] have both recently called for the establishment of an independent process for appointments to the boards of public bodies.

Public Good versus Private Benefit

38. The fact that public appointments are a Ministerial function has given rise to the suspicion – whether well-founded or not – that such appointments constitute a reward for political or other services rendered, and that some appointees are motivated less by a desire to serve the public good than by self-interest, or by narrow political interests.

39. There are a number of links, through shared directors, between private companies and State-owned bodies. These connections appear to be common. A quick scan of the boards of many Irish public bodies shows that a disproportionate number are populated by members of the business community. Many people who work in, or are board members of, private or listed companies are recruited to the boards of State-owned companies with responsibilities in the same sector. Former senior public service officials are also recruited to the boards of private companies. An example of this is that Central Bank directors were appointed to commercial banks once their terms at the Central Bank ended. Additionally, there have been occasions where AIB and Bank of Ireland directors have sat simultaneously on the Board of the Central Bank. After retiring from the board of Irish Life and Permanent, the CEO was appointed CEO of the Financial Regulator's office.

40. There is, of course, nothing inherently wrong with such dual service: indeed, the State has often been indebted to the businessmen and women who have placed their expertise at the disposal of public bodies. However, there is an

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[50] Irish Times; 27th January 2011 "ISME calls for independent body to make State board appointments"
[51] Irish Times; 28th April 2011 "Ending political influence will make appointments to State boards transparent"

obvious potential for real or perceived conflicts of interest when personnel serve on the boards of both public bodies and private enterprises, especially when the sectors concerned overlap. As TASC pointed out in *Mapping the Golden Circle*, six of the 11 most well connected directors in Ireland sat on the boards of both private and public companies. For example, as well as his involvement in private companies like Anglo Irish Bank, Sean FitzPatrick was a member of the Dublin Docklands Development Authority and was also a Government appointee to the Board of Aer Lingus.[52] The controversy that arose over the ties between the Dublin Docklands Development Authority and Anglo-Irish Bank provides a notable example of the degree to which public and private sectors have become blurred.[53]

41. Most recently, it was revealed that Sean FitzPatrick, Lar Bradshaw and Donal O'Connor have all, at various times, served on the boards of both Anglo Irish Bank, which – until its recent troubles – invested significantly in property development, and the public Dublin Docklands Authority which oversees development in the Docklands area. The blurring between the public and private sector has resulted in consequences adverse to the public interest. In relation to the involvement of Sean Fitzpatrick and Lar Bradshaw on the boards of the Dublin Docklands Development Authority and Anglo Irish Bank, newly appointed DDDA chair Niamh Brennan said that because of Anglo's influence, the Dublin Dockland Development Authority "became very focused on development and used planning to facilitate and encourage development" and that "the association between Anglo and the DDDA has not served the authority well."[54]

42. The UK Code of Practice governing ministerial appointments to public bodies cogently analyses the potential for conflicts of interests which may arise

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[52] Paula Clancy, Nat O'Connor, Kevin Dillon; "Mapping the Golden Circle" TASC May 2010 p. 43 (5.4)
[53] ibid at p. 43 (5.6)
[54] The Sunday Tribune, March 14th, 2010.

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when making appointments, and outlines the measures which must be in place to protect against such conflicts.[55] The Code identifies five issues most frequently encountered which could lead to real or apparent conflicts of interest. One of these relates to relationships and associations, including those of friendship and the potential for such to either influence actions or be perceived as doing so. The presence of such an issue is sufficient grounds for excluding a candidate for appointment. Other such grounds include the potential perception of the appointment as a reward for past or future contributions or favours, and circumstances where awareness of pending government policy arising from a board position could represent an unfair advantage for those with related business interests.

43. Critics of the UK regulations claim they are too broad and there have been calls to revamp the system.[56] A preference for independence from parliament, as seen in the Scottish system, has been voiced by some UK commentators.[57] For example, the Scottish Commissioner is not allied to the parliament, helping to ensure that public appointments are more separate than they are in the rest of the UK. The UK's Code of Practice had drawn criticism for being less specific than the Scottish model.[58]

44. It is important to note that a small country like Ireland has to operate under different conditions. It is, in some respects, inevitable that potential board members are more likely to be known to one another than in larger jurisdictions. However, this can be compensated for by having a more formal, independent system of public appointments – such as the Scottish system.

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[55] The UK Code of Practice is available online at https://www.publicappointmentscommissioner.org/web-resources/resources/df72b27f9e3.pdf
[56] Maer, Lucinda"*The Commissioner for Public Appointments*": Parliament and Constitution Centre; 18 November 2010 p.6
[57] McTavish & Pyper "Monitoring the public appointments process in the UK"; Public Management Review 2007 p.150
[58] ibid

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Scotland is a good comparator since it has a comparable population size to Ireland. The cliché that 'everyone knows everyone' should not be allowed to mask the fact that directors are often sought from a very limited pool of people. With a population of 4.4 million, there is no doubt that many qualified and competent candidates could be found without difficulty to fill public appointments. In addition, there is no reason why appointments should be limited to Irish nationals, especially when specific expertise is required.

Appointing political activists

45. While there are obvious potential problems surrounding the appointment of political activists by Ministers of the same political party, there is also no doubt that political activism is crucial to the development and maintenance of a vibrant civil society. Therefore, any code of practice governing public appointments must avoid discouraging such activism. This conflict between the need to avoid political favouritism, on the one hand, and to encourage political involvement by citizens, on the other, has been extensively debated in the UK in the context of their appointments process. This has been resolved by requiring candidates for public appointment to complete a political activity questionnaire, which is subsequently made available for public scrutiny. Likewise, any refusal to complete the questionnaire is recorded.

Preventing 'groupthink'

46. A serious concern with drawing on the same (small) pool is the problem of 'groupthink' (exemplified by the collective blindness demonstrated by non-executive boards in the period predating the current crisis). Groupthink is a well-recognised psychological phenomenon, occurring when decision-making is carried out by small groups. The result is that alternative or contrary

evidence is ignored when conclusions are reached or decisions are made.[59] This happens due to the group's strong desire to reach a consensus.

47. One of the obvious solutions to the risk of groupthink is to ensure board members reflect the full diversity of society. In fact, diversity is an effective method for reducing the risk of 'groupthink' while increasing the likelihood that appointees will be independent in their work. In *Mapping the Golden Circle*, TASC noted that the Director Network (a small number of directors in 40 of Ireland's top private companies and State-owned bodies who hold multiple directorships on the boards of these 40 organisations)[60] is largely made up of men who are of similar ages, live in close geographical proximity and are likely to have attended the same schools and university.[61] Moreover, TASC found a marked imbalance in the gender composition of boards. At 18 per cent, the proportion of women serving as Directors on public boards is certainly better than the figure for private boards, which stands at 6.5 per cent. However, 18 per cent still falls a long way short of the long-standing public policy commitment to achieving a minimum of a 40 per cent female membership of public bodies.

The issue of diversity

48. Not only is diversity important to address concerns about groupthink, but achieving a diversity among public appointments has further substantive importance in its own right. The public interest requires that public appointments reflect society in terms of social class, gender, geography, sexual orientation, ethnicity, etc. The appointment of suitably qualified people from diverse backgrounds makes it more likely that the boards of public bodies will act upon a broader range of public concerns. However,

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[59] Paula Clancy, Grainne Murphy; "Outsourcing Government: Public Bodies and Accountability" TASC New Island 2006
[60] Paula Clancy, Nat O'Connor, Kevin Dillon; "Mapping the Golden Circle" TASC May 2010 Glossary
[61] ibid at p. 24 (3.15)

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ensuring this broad representation is a challenge which has not yet been fully met, even in those jurisdictions with state-of-the-art procedures. For example, recent figures in the UK show that women accounted for only 34.7 per cent of public appointees; people from ethnic minorities currently hold less than seven per cent of posts[62] (a figure which has actually fallen),[63] despite making up nearly eleven per cent of the population; and people with a disability currently account for 3.9 per cent of appointees, even though 14 per cent of the working age population has a disability.[64] In 2009, plans were put in place to ensure that by 2011 the figure for women appointed to State boards would reach 50 per cent, disabled people would make up 14 per cent and 11 per cent of public appointments would be ethnic minorities.[65] While it is unclear what the actual outcome will be by year-end, setting such clear goals is an essential prerequisite if progress is to be made.

Poor accountability and transparency

49. Starting with the Ombudsman's Act 1980, various governments have introduced measures to provide for more accountability and transparency in the governance of the State, including its public bodies. The decision on which bodies should come under the scrutiny of the various oversight bodies has been a matter of considerable contention. Decisions regarding which bodies should be covered by a particular piece of accountability/transparency legislation are taken on a case-by-case basis, and there are often a number of explicit exemptions. Indeed, the Ombudsman has repeatedly challenged a number of exclusions from coverage of her office. Also, in her role as

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[62] Government Equalities Office, "Diversity of public appointments" (Facts and Figures as of 31 March 2009) Accessed at: http://homeoffice.gov.uk/equalities/equality-public-political/
[63] UK Commissioner for Public Appointments, Annual Report 2007/08, available at http://www.cfps.org.uk/userfiles/file/7444fed6cef.pdf
[64] Government Equalities Office, "Diversity of public appointments" (Facts and Figures as of 31 March 2009) Accessed at: http://homeoffice.gov.uk/equalities/equality-public-political/
[65] Government Equalities Office "Action to improve diversity in public appointments" 17th of June 2009

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Information Commissioner, she has stated that the exclusion of a number of public bodies from the freedom of information act was a retrograde step.[66]

50. There is no doubt that, following a series of controversies during the early 1990s, mechanisms were put in place to increase the accountability of central government. Such mechanisms include, for example, the enactment of Freedom of Information and Ethics in Public Office legislation, as well as more recent initiatives such as the 2009 Code of Practice for the Governance of State Boards. However, while all of these measures were designed to foster a culture of transparency, they often stop short at the door of public bodies – or, more precisely, at the boardroom door. Too many public bodies are specifically exempted from such oversight legislation. These exemptions were addressed comprehensively by TASC in 2006,[67] and a few examples may suffice here:

- Around 50 public bodies are explicitly exempted from application of the Ombudsman's Act, including the Refugee Applications Tribunal;

- Nine public bodies are explicitly exempted from application of the Children's Ombudsman's Act;

- Half of all public bodies are not subject to the Ethics in Public Office legislation;

- A number of crucial public bodies, ranging from the National Pension Reserve Fund and Central Bank to the Garda Síochána, are exempted from Freedom of Information legislation;[68]

- Certain public bodies are not subject to financial control and auditing provisions.

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[66] http://www.rte.ie/news/2010/0309/politics.html and others check.
[67] *Outsourcing Government*, 34 - 44
[68] Although the Government's commitment to restoring Freedom of Information legislation includes the expansion of the Act to cover bodies that were previously excluded.

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51. The number of public bodies to which the current Code of Practice for the Governance of State Bodies applies is unclear. A list of the State bodies to which it applies is not appended in the relevant schedule. While the Code of Practice, in principle, does apply to both commercial and non-commercial State bodies, there is provision for waiving elements of the Code which are not regarded as 'appropriate' to a particular State body on a case-by-case basis, and with the permission of the relevant Minister. We argue that accountability legislation must be applied fully to all bodies responsible for public functions, and that exemptions should only be granted in accordance with specified criteria agreed in an open and transparent manner.[69]

52. Creating a culture of transparency within our public bodies must thus involve a two-pronged approach: ensuring that the greatest number possible are rendered subject to our legislative 'transparency framework' – and ensuring that the boards of such bodies are appointed and managed in a way which is accountable to both Government and the wider public.

Principles for reform

53. Any reform of the Irish public appointments system must be ultimately informed by the public interest, and by debate regarding what is in the public interest. There needs to be strategic thinking about public appointments. Such strategic thinking is vital to ensure that public appointments are planned and integrated into a wider strategy, rather than being *ad hoc* and fragmented, and to ensure that such appointments do not continue drawing from the same limited pool. We have identified three guiding principles that vindicate the public interest is in relation to public appointments:

    ▪ Appointments based on merit;

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[69] This would imply that all public bodies would be automatically included in legislation such as Freedom of Information, unless they are listed as explicitly excluded; the reverse of current practice.

- Respect for diversity;

- Transparency.

54. Selection on the basis of merit requires that the best available candidate is selected and appointed to each post. This ensures that appointees are appropriately qualified, competent, experienced and have the requisite expertise to carry out their role in governing a public body.

55. Respect for diversity requires appointees to be drawn from all sections of society. Showing respect for diversity ensures more equality, in terms of the appointment of more women, more young and older people, more people from different ethnic background, more people from different socio-economic backgrounds, etc. Diversity ensures maximum civil society participation, and is an effective method for reducing the risk of 'groupthink' while increasing the likelihood that appointees will be independent in their work. For example, inclusion of Ireland's new ethnic minorities is important to ensure that public bodies are genuinely inclusive and that public policy reflects a more diverse population. Ireland's new communities include many people who would be highly qualified to participate on the board of a public body, but without a formal process for inclusion they are less likely to be called upon to participate.

56. Respect for diversity requires public appointments to be made within a framework that looks at the overall composition of boards, and ensures that individual appointments complement the existing balance of competences and backgrounds of those already appointed. Yet in Ireland, unlike in the UK, beyond figures for gender, we do not have the data routinely available to monitor the level of diversity in appointees to State bodies (e.g. in relation to disability or ethnicity). This might be interpreted as a lack of commitment to encouraging diversity and could be easily remedied.

57. Transparency is a guiding principle on multiple levels. The overall process of public appointments must be implemented through fair and open procedures. There must be disclosure by appointees to ensure probity. For example, a declaration of interests and political activities would be appropriate. Transparency also ensures that there is a clear division of responsibility, so that both appointees and the wider public are aware of who is responsible for what aspect of a public body's performance and activities.

58. The three principles of merit, diversity and transparency are not sufficient as mere goals or objectives. There is a clear requirement for formal mechanisms to ensure that these principles are achieved in concrete terms. The Models (A to C) presented in this paper are examples of how formal mechanisms might be combined into a system for public appointments. Mechanisms to be considered must include, *inter alia*:

  ▪ Independent scrutiny of appointments;

  ▪ Auditing of appointments;

  ▪ Public reports on appointments;

  ▪ Performance assessment of appointees;

  ▪ Sanctions for appointees who do not perform well;

  ▪ Statistics on the diversity of appointments;

  ▪ Term limits for certain types of appointment or reappointment;

  ▪ Remuneration (or not) of appointees;

  ▪ When (or if) public servants should be appointees;

  ▪ Involvement by the Department and/or relevant public bodies in the appointment process.

59. Whichever combination of formal mechanisms is chosen, there is a need for proportionality. That is, the length, complexity, arduousness and therefore

cost of appointment procedures should be commensurate to the nature and responsibilities of the post being filled, and to the strategic importance and influence of the public body in question.

Towards a new model of public appointments: the options

60. In this final section we outline in more detail three potential models for reforming the appointments process, based on experience in other jurisdictions with legal and administrative backgrounds similar to Ireland's, taking account of Irish administrative practices and institutional structures. As stated in the introduction, reforms undertaken by Canada, New Zealand, Scotland and the wider UK have all been effective to varying degrees. The different practices implemented in each case provide a strong basis from which Ireland can learn, potentially drawing aspects from different models to create a formal process appropriate to Ireland's needs.

61. The reforms implemented in these jurisdictions include moves towards reducing discretionary ministerial powers, the enactment of new legislation and the establishment of new oversight institutions. Codes of practice, protocols, processes and appointment decisions have been widely publicised, thereby allowing public scrutiny of the appointments process. By granting legislative committees the power of veto over ministerial appointments, Nova Scotia in Canada has moved even further towards independent appointments.

Overview of Models

62. As discussed at the outset, the three models presented here represent examples of how a formal process for public appointments has been developed elsewhere, guided by the principles of transparency, accountability and independence from political patronage. Model A provides for a formal system of transparency to open up appointments to wider public scrutiny. Model B (essentially the UK model) adds a formal process of

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oversight to scrutinise appointments. Model C goes furthest by establishing an independent agency to carry out public appointments. As will be shown below, it is possible to envisage different aspects of appointments being guided by different models. The examination of the three models also illustrates that certain practices are common to two or even all three of them. What is essential in each case is that a degree of formality and consistency of approach replaces *ad hoc* measures, which are open to the perception (if not the reality) of patronage.

Preparation

Table 1: Models for Reform of Appointment Process: Preparation[70]

Stages of Appointment Process	Model A – Transparency	Model B –Transparency with Oversight	Model C – Independent Public Appointments
Preparation	Code of practice prepared and made publicly available. Position descriptions and selection criteria made publicly available.	New or existing independent authority (e.g. the Commission for Public Service Appointments)[71] appointed to oversee appointments which continue to be managed within each government department. Code of practice, position descriptions and election criteria made publicly available.	New or existing independent authority (e.g. Commission for Public Service Appointments) appointed to oversee appointments and to arrange an independent selection process; for example by the Public Appointments Service (PAS)[72] or a recognised agency licensed by the CPSA. Code of practice, position descriptions and election criteria made publicly available. Independent authority ensures comprehensive selection process in line with merit and diversity principles.

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[70] Tables 1 to 5 modified from version accessed at: Edwards, Meredith (July, 2006) 'Appointments to Public Sector Boards in Australia: A Comparative Assessment, Issues Paper Series No.3, University of Canberra, Australia Corporate Governance ARC Project.

[71] The Commission for Public Service Appointments (CPSA) sets standards for recruitment for the civil service, An Garda Síochána, the HSE and the IQUA and certain other public bodies and monitors compliance with these standards. The CPSA is chaired by the Ceann Comhairle and the other members are Dermot McCarthy, the Secretary General to the Government; Emily O'Reilly (Ombudsman), Mr. Justice Matthew P. Smith (Chairman, Standards in Public Office Commission) and Ciarán Connolly (Secretary General, Public Service Management and Development, Department of Finance).

[72] The PAS is the centralised recruitment and selection body for the public services and has been used for appointment of independent public officials including the Financial Services Ombudsman.

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63. Preparation for making public appointments refers to the background work that is required to facilitate a formal process of making public appointments. Model A provides for transparency through the publication of relevant codes and job descriptions. Model B also strengthens oversight by the use of an independent body to oversee Government departments as they make appointments (which would be similar to the role of the Commission for Public Service Appointments in publishing standards and monitoring and auditing appointment processes). Model C provides for an independent body with the powers to carry out a selection process (which would be similar to how some civil and public service positions are recruited through the Public Appointments Service).[73]

Candidate location

Table 2: Models for Reform of Appointment Process: Candidate location

Stages of Appointment Process	Model A – Transparency	Model B –Transparency with Oversight	Model C – Independent Public Appointments
Candidate location	All board positions advertised on central government website and senior positions advertised in popular newspapers.	All board positions advertised on central government website and senior positions advertised in popular newspapers.	All board positions advertised on central government website and senior positions advertised in popular newspapers.

64. Candidate location refers to the process of finding suitable candidates and encouraging them to apply for positions on public boards. Obviously, a reformed process of public appointments cannot simply allow political patronage through the backdoor through 'invitation only' application processes. It is noteworthy that all three models converge on public advertisement (i.e. transparency) as the solution to finding suitable candidates. In all three models, advertisement on Government websites is deemed sufficient for most posts, with only senior appointments requiring newspaper notices.

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[73] See, for example, http://www.publicjobs.ie/publicjobs/en/employer/cpsa.do

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Assessment of candidates

Table 3: Models for Reform of Appointment Process: Assessment of candidates

Stages of Appointment Process	Model A – Transparency	Model B –Transparency with Oversight	Model C – Independent Public Appointments
Assessment of candidates	Assessments carried out by departments in accordance with the code of practice. Details of conflicts of interest made publicly available.	Assessments carried out by departments, with participation or oversight by the independent authority. Details of conflicts of interest made publicly available.	Assessments carried out by the independent authority, possibly with a representative from the responsible department providing input. Details of conflicts of interest made publicly available.

65. Assessment of candidates refers to the process of determining the suitability of candidates for a post and potentially ranking them in order of merit. Model A requires transparency about the code of practice that sets out this process. Transparency also requires the publication of any conflicts of interest that affect the successful candidate(s); i.e. that appropriate conflicts of interest checks must be carried out and specified steps must be taken to address any conflicts that were identified. Model B adds oversight through the same independent body referred to under Preparation. Model C gives the independent body primacy in assessing candidates, with input from the relevant Government department.

Selection and appointment

Table 4: Models for Reform of Appointment Process: Selection and appointment

Stages of Appointment Process	Model A – Transparency	Model B –Transparency with Oversight	Model C – Independent Public Appointments
Selection and Appointment	Ministers make appointments in accordance with code of practice and relevant protocols. Names of appointees and reasons for decisions made publicly available.	Ministers make appointments in accordance with code of practice and relevant protocols. Names of appointees and reasons for decisions made publicly available.	Selection made by independent authority for appointment by Minister. Names of appointees and reasons for decisions made publicly available.

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66. Selection and appointment refers to the process of choosing between a number of candidates who have been deemed suitable for the post. Models A and B require that Ministers are guided by a published set of codes and protocols. Transparency also requires that the names of appointees are published, along with reasons for their appointment. There is an option for involving parliamentary committees in this process, but this should not dilute ministerial accountability for appointments, as committees (with Government majorities) will typically vote as directed. Model C gives the independent body the power to select candidates, with Ministers having the role of formally appointing them.

Audit

Table 5: Models for Reform of Appointment Process: Audit

Stages of Appointment Process	Model A – Transparency	Model B –Transparency with Oversight	Model C – Independent Public Appointments
Audit	None.	Appointment processes subject to an audit by independent authority and details of the audit made publicly available.	Appointment processes subject to an audit by independent authority and details of the audit made publicly available.

67. Audit refers to the oversight of the whole system of appointments, to ensure adherence with the code of guidance, protocols, etc. Model A does not include any further mechanisms, beyond the transparency at each stage of the appointments process. Models B and C converge on giving the independent body the role of auditing and reporting publicly on the whole process.

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Conclusion

68. There are arguments for and against each of the three models; these are elaborated below.

69. The core of Model A is to increase transparency. The arguments in favour of this model are that it leaves intact the Ministerial executive function, allowing democratically-elected governments to ensure that key aspects of public administration are operated according to their policy choices. Transparency would improve the *ad hoc* nature of the current system by ensuring it is codified and transparent, providing protection against potential conflicts of interest and/or appointment of unqualified people. The advertisement of positions allows for greater diversity and increases the likely pool of people with appropriate competencies. A codified and transparent system should increase public trust and foster a sense of citizenship and potential for engagement.

70. The limitations of Model A are that appointments remain fully within the remit of the relevant Minister. Although more transparent, appointments are open to political patronage and cronyism. The system lacks accountability as there is no provision for audit of the process or its outcomes.

71. Model B introduces oversight mechanisms alongside transparency. The arguments for this include all of the benefits of Model A. In addition, the existence of an independent oversight body will increase the likelihood that the code of practice will be implemented and will increase trust in the system. The fact that the appointment process is subject to audit by an independent authority would also increase the likelihood of compliance with the code.

72. Model B has the same disadvantages as Model A, in that appointments are still potentially open to political patronage and cronyism. While an oversight

body and auditing process will improve compliance, the absence of sanctions for non-compliance is a limitation.

73. The third model is for an independent body to be delegated some or all of the functions relevant to assessing and selecting candidates for appointment. Arguments in favour of Model C include the transparency of the process, plus the likely increase in candidate diversity. Likewise, a codified and transparent system should increase public trust and foster a sense of citizenship and potential for engagement. The independence of the oversight body should increase likelihood that the code of practice will be implemented and should increase public trust in the system. The fact that the appointments process is subjected to an independent audit should also increase compliance with the code.

74. The main argument against Model C is that it could constrain Government's capacity to ensure its policy programme is implemented through control of the appointments process (i.e. the more the agency is independent of government, the greater the risk of 'mission creep').

75. When considering what elements of Models A, B and C would best suit Ireland's needs, it is important to ensure that – whatever system is chosen – there is a move towards a more transparent and professional system of making public appointments. In this context, it is also worth considering whether different Models would be appropriate for different types of public appointment. For example, the importance of independent appointments may be greater for those bodies which have quasi-judicial powers (e.g. Ombudsman), in order to preserve the separation of powers between the executive from the judiciary.[74]

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[74] TASC is currently engaged in further research on a typology of public appointments to investigate this option.

76. An important argument advanced to justify ministerial control over public appointments is that, the greater the autonomy of the agency from government, the greater the risk of 'mission creep'. It is however possible to address this concern while adhering to the principle of an independent system of public appointments. For example, in the case of commercial State bodies it may be desirable that the chair and vice chair be appointed by the Minister subject to endorsement by an appropriate parliamentary committee (e.g. Finance and Public Services), with all other members of the board to be appointed by the independent system, perhaps involving the chair in the selection process.

77. First, it is essential that - as part of the development of a coherent framework for governance of all public bodies - an independent board should be retained only where this is clearly required in the public interest. In all other cases, accountability should be provided for through the structures of the relevant civil service department, and thus directly subject to the policy control of the Minister of the day. Second, in those limited cases where it is appropriate to appoint an independent board in a policy-sensitive area, a modification of Model C could be adopted. For example, selection criteria could include sensitivity to, and agreement with, the policy programme of government in the particular area, while the Cabinet could retain the right of final sign-off on the appointment from a list of suitably qualified nominees. In the UK system, ministers are involved in drawing up the appointment plan, including the criteria for appointment to a board. Along with their senior officials, they can suggest candidates who should be invited to apply. They are then kept appraised of the process, and choose from a final shortlist of two or three recommended candidates. They retain the power to veto any proposed candidate. While we argue that applying this process to all appointments diminishes the objective of achieving an independent system,

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there is a case for applying some or all of the elements of this process in exceptional situations.

78. In order to progress reform in this area, there is a pragmatic argument for adopting a phased approach – beginning with important commercial semi-state bodies and gradually introducing a consistent system of public appointments to other bodies, task forces, and so on over a reasonable timeframe.

79. The Programme for Government indicates a willingness to engage in some degree of reform in the area of public appointments, although there is no indication that a fully independent appointments system is planned.

80. TASC estimates that there are over 600 public bodies and boards/committees of various types operating nationwide, as well as other bodies operating on a local or regional basis. The governance of our public bodies is thus crucial to the implementation of public policy across a variety of areas ranging from education, health and immigration, to food safety, public enterprise and road safety. Despite playing such a critical role, many of our public bodies are governed by boards of directors appointed in an *ad hoc* manner. Lack of transparency has given rise to persistent suggestions of cronyism and patronage. Serious consideration should therefore be given to a full range of options, including the creation of a fully independent appointments system.

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