

Chapter 2

Institutional capacities for Better Regulation

Regulatory management needs to find its place in a country's institutional architecture, and have support from all the relevant institutions. The institutional framework within which Better Regulation must exert influence extends well beyond the executive centre of government, although this is the main starting point. The legislature and the judiciary, regulatory agencies and the subnational levels of government, as well as international structures (notably, for this project, the EU), also play critical roles in the development, implementation and enforcement of policies and regulations.

The parliament may initiate new primary legislation, and proposals from the executive rarely if ever become law without integrating the changes generated by parliamentary scrutiny. The judiciary may have the role of constitutional guardian, and is generally responsible for ensuring that the executive acts within its proper authority, as well as playing an important role in the interpretation and enforcement of regulations. Regulatory agencies and subnational levels of government may exercise a range of regulatory responsibilities. They may be responsible (variously) for the development of secondary regulations, issue guidance on regulations, have discretionary powers to interpret regulations, enforce regulations, as well as influencing the development of the overall policy and regulatory framework. What role should each actor have, taking into account accountability, feasibility, and balance across government? What is the best way to secure effective institutional oversight of Better Regulation policies?

The OECD's previous country reviews highlight the fact that the institutional context for implanting effective regulatory management is complex and often highly fragmented. Approaches need to be customised, as countries' institutional settings and legal systems can be very specific, ranging from systems adapted to small societies with closely knit governments that rely on trust and informality, to large federal systems that must find ways of dealing with high levels of autonomy and diversity.

Continuous training and capacity building within government, supported by adequate financial resources, contributes to the effective application of Better Regulation. Beyond the technical need for training in certain processes such as impact assessment or plain drafting, training communicates the message to administrators that this is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to Better Regulation. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

Assessment and recommendations

Institutional structures to support Better Regulation have progressed steadily since the 2001 OECD report, spearheaded by an active central unit. The first structures of the late 1990s, which were primarily focused on red tape reduction, have been broadened and replaced with a range of bodies and networks covering Better Regulation processes ranging from the implementation of regulatory impact analysis to statute law simplification. The Better Regulation Unit in the Department of the *Taoiseach* (Prime Minister’s Department) has, in particular, established itself as a small but highly active and enthusiastic advocate of Better Regulation across government and beyond (commendably so, given its small size). It has overall responsibility for supervising the roll out of Better Regulation, and direct responsibility for the key process of regulatory impact assessment. Not all EU countries are yet equipped with such a unit. This is an important achievement, which needs to be sustained.

There are limits to what the Better Regulation Unit has been able to do, in order to bridge the gap between principles and practice. The Better Regulation Unit has, in essence, succeeded in putting Better Regulation on the government policy radar screen, not least through clear explanations of what it means, how it works, and why it is important for Ireland. But – Ireland is not alone in this situation – there remains an appreciable gap between principles and practice. The OECD’s 2001 report had already noted that “implementation strategy and institutional drivers for reform are weak”. These have significantly improved, but need further strengthening. Beyond the often uncertain political support, this can be linked to three factors, which are explored further below: a relative lack of buy-in from other key players at the centre of government; the need for the Better Regulation Unit itself to be strengthened within the Department of the *Taoiseach*; and the need for significant further culture change among line ministries.

Beyond the Better Regulation Unit, other key players are, or need to be, providing active support for the development of Better Regulation. The constitutionally established Office of the Attorney General advises the government on matters of law and legal opinions, and also drafts most of the important regulations, as well as spearheading key aspects of statute law simplification. Its perspective on developments must be seen as valuable and necessary. Two government departments also have responsibilities that are important for the Better Regulation agenda. The Department of Trade, Enterprise and Innovation has been engaged for some time in the business related aspects of the agenda, and was charged by the government in 2007 with responsibility for the business administrative burden reduction programme. In March 2008, DETI was given responsibility for leading and co-ordinating the measurement and reduction of administrative burdens across government, leading to the achievement of the 25% target by 2012. The Department of Finance leads more broadly on key aspects of public governance which are relevant to Better Regulation. Without the perspective and full support of these players, the further development of Better Regulation will be a struggle. Reflecting a common dilemma across Europe over the best organisational structure, it is difficult for Prime Ministers’ Offices to take sole responsibility for Better Regulation, as they must balance the whole range of issues meriting the Prime Minister’s attention, and they are not directly “connected” to the citizens and businesses for which they ultimately work, in the way that line departments are. The Better Regulation Unit needs, therefore, the full and unconditional support of other key players, in order to exert effective leverage across government. The “baton” of Better Regulation advocacy must be shared, if it cannot be handed over, building on the recent achievement of sharing part of the agenda with the DETI.

Yet the engagement of these key players seems muted. The OECD peer review team had the sense that the other key actors were not always fully engaged. The Finance ministry is the most important department alongside the Department of the *Taoiseach* for Better Regulation. It is responsible for financial and performance management across government, shares responsibility with the Department of the *Taoiseach* for public sector modernisation, and oversees e-Government policy. However its understanding of the value of the horizontal Better Regulation work promoted by the Department of the *Taoiseach* as support for policies to strengthen the economy post crisis appears fragile.

There is a need to reinforce the Better Regulation Unit itself, not least in terms of securing supportive connections with the other parts of the Department of the *Taoiseach*. The Better Regulation Unit also needs the active engagement and support of other parts of the Department of the *Taoiseach*. It is attached to the Public Service Modernisation Division, which only reflects a part of the relevant Better Regulation functions inside the Department. The Department includes other relevant units including the division for European and International Affairs (link to EU management), the economic and social policy division (link to competitiveness), and not least, the cabinet secretariat. It is not clear to what extent this work is fully joined up, where it needs to be. Given the horizontal nature of the Better Regulation agenda, have other divisions in the Department of the *Taoiseach* mainstreamed its agenda sufficiently? Does its work perhaps lack a strong enough visibility within its own Department? The 2008 OECD public service review of Ireland underlined the importance of the Department of the *Taoiseach* (as a whole) as a strong central driver of reform.

The Better Regulation Unit also lacks powers, and may be short on the necessary resources to do an effective job. The BRU currently can do little more than encourage, monitor and advocate. It has few if any real powers (sticks or carrots) to ensure that departments, for example, produce timely and adequate Regulatory Impact Assessments. It may not be appropriate to increase its powers, as this does not necessarily fit with the Irish conception of how a Prime Minister's Office should function. However, this should be considered. Resources and their effective deployment may also be an issue. The BRU expanded following the publication of the 2004 White Paper "Regulating Better", but staff have been reduced recently. Given the size of the country, and compared with some other EU countries, resources overall (taking account of staff directly deployed on Better Regulation functions elsewhere, such as in the DETI), are reasonable. But as some stakeholders suggested, they may need to be deployed more effectively. Some other countries such as the United Kingdom and the Netherlands have developed their institutional approach on the basis of secondments from relevant parts of the institutional structure, which encourages buy-in, so that the BRU is not working in relative isolation. This approach also reflects the findings of the 2008 OECD public service review, which drew attention to the need for more mobile postings across the public service, as well as the Irish government's own statement on Economic Regulators, which advocated internal cross-postings. The Belgian federal government is another example to reflect on, as it has developed its Better Regulation unit into a semi detached "agency" within its federal Chancellery, which allows it some independence from political cycles, as well as the potential to acquire and to use resources more flexibly.

Recommendation 2.1. Consider whether to increase the powers of the Better Regulation Unit. Actively integrate the Better Regulation agenda across all areas of the Department of the Taoiseach. Consider whether to evolve towards a larger shared unit, based on secondments from other key players as well as selected line ministries, and perhaps on the basis of a special status within the Department of the Taoiseach. At the very least, ensure that the Better Regulation Unit does not shrink further, and (as far as possible) that the public service cuts needed for fiscal consolidation do not affect capacities to deliver on Better Regulation.

There is, as in most other EU countries, the need for further significant culture change across the “whole-of-government” in support of Better Regulation. Overall, and with some important exceptions, ownership of the Better Regulation agenda in-line ministries looks fragile. Ireland’s departments are traditionally autonomous, a feature shared with most other jurisdictions, and the context is therefore challenging. It is difficult to hold departments accountable and to put them under pressure to perform. Significant efforts have been deployed over the last few years to develop networks and co-ordinating groups for different aspects of Better Regulation, internally and shared with external stakeholders. The 2008 OECD public service review of Ireland drew attention to the importance of networking. This is a key way of advancing. It should be pursued in tandem with “stronger” mechanisms to secure performance. As already advocated in the OECD public service review, there should be a stronger use of performance measures and budget frameworks to drive effectiveness, with departments held to account on the basis of measurable targets.

There is a general lack of baselines, measurements, targets to support qualitative analysis and allow for effective *ex post* evaluation. The 2001 OECD report had already noted that Ireland could raise accountability for results through measurable and public performance standards. The Irish government is aware of this need. Both the report “Smart Economy” and the report “Transforming Public Services” emphasise the need for quantification and performance measurement. The argument which the OECD peer review team sometimes heard that the relatively small size of the country needs to be taken into account is not clear. The team also heard many comments to the effect that there are no measurable performance targets, and that a tougher approach (more sticks, not only carrots) and increased accountability, was needed. This is one major reason why the Finance Department needs to be part of the central leverage, and the performance and delivery focus – as advanced through the Annual Output Statements – needs to be brought to the forefront within the resource allocation process. Without this, it will be an uphill struggle to secure buy-in. At the same time, the carrots need to stay in place (for example, the BRU has set up some impressive training for Regulatory Impact Assessment, which draws in an increasing number of line ministries).

One aspect that needs particular attention is the need to improve capacities for a more rigorous and quantitative approach to the Better Regulation work of line ministries. The OECD peer review team heard a number of comments to the effect that the use of data and quantitative approaches needed to be strengthened (“Metrics needed as well as incentives”. “Be data driven”. “Is there enough of the right capacities in ministries?” “Dearth of expertise”. “Legitimising the use of quantitative approaches has some way to go”). Enhancing the quality of processes which are in place will require a more rigorous approach to measurement, targets, and the use of quantitative methods in processes such as RIA.

Recommendation 2.2. Consider identifying a Better Regulation “champion” in each Department. Consider secondments from departments to the Better Regulation Unit. Sustain the networks that have been set up. Link Better Regulation performance to budgets and performance assessments.

Rationalisation of government agencies is a priority; at the same time they offer some important examples of Better Regulation best practice. The government is conscious of the need to identify further means of rationalising a complex network of government agencies, following the rapid growth in their numbers in the 1990s. Judging from stakeholders’ comments to the OECD peer review team about the confusion generated by the existence of numerous agencies whose functions are not always clearly understood, this is important. The government also notes that the principles in its 2009 Statement on Economic Regulation may be considered to apply to all regulatory agencies. A broader review of government agencies, focusing not so much on savings but aiming to strengthen their governance framework to maximise efficiency and effectiveness, as well as to clarify the functions which are most appropriately delegated, would be a helpful further step. This could build on the 2009 Economic Regulation Statement and the 2007 mapping exercise. At the same time, it seems that Better Regulation practices are well advanced with some regulators, which could help to guide others in their adoption of good practice which has been tested on the ground.

Recommendation 2.3. Pursue the efforts in rationalisation of government agencies, and at the same time, clarify the extent to which the principles set out in the 2009 Statement on Economic Regulators will be applied to enhance governance for optimum efficiency and effectiveness. Consider, with the relevant agencies, how to encourage the diffusion of their best practices to other agencies (and to government departments).

The role of the parliament appears to be changing, with a growing engagement and interest in Better Regulation issues. This appears to be a significant development relative to the OECD’s 2001 report. Three parliamentary committees, two with specific mandates relating to regulatory management (the Joint *Oireachtas* Committee on Economic Regulatory Affairs, and the Joint *Oireachtas* Committee on EU scrutiny), and a third which takes an interest in initiatives related to the business environment (the Joint *Oireachtas* Committee on Enterprise, Trade and Employment), are now increasingly active. A particular area of progress relates to EU issues where significant efforts have been made by the government to better inform parliament on negotiation and transposition. This interest needs to be actively encouraged, as in some other EU countries, since parliament shares with the executive the development of legislation. Parliament’s overall ability to be engaged remains fragile.

Recommendation 2.4. Consider how to further encourage parliament into taking an interest in Better Regulation. This could be done by sending it relevant reports on progress as well as evaluations, which would also have the merit of increasing accountability for Better Regulation performance by government departments and agencies.

The importance of the judiciary in the Irish context should not be neglected. In the Irish system, the judiciary has traditionally played a significant role in the judicial review of regulation, even by the standards of common law countries. Judicial review of regulations can be vigorous. The system of judicial review in Ireland is described in Annex C.

Recommendation 2.5. Consider using the legal decisions of the judiciary to learn about regulatory issues that may need attention.

Finally, some other key players should not be neglected. These include the Office of the Comptroller and Auditor General, which was receptive to the OECD peer review team on increased involvement in Better Regulation (which could be done by asking them to help with regular evaluations of the RIA process, for example). The Ombudsman is also relevant for its surveillance role and the feedback which it can provide on the effects of regulation. The Law Reform Commission, an independent body which was set up to examine specific areas of the law as directed by the government and to make practical proposals for its reform, carries out necessary underlying work (including statute law restatement) to ensure that the Irish Statute book is effectively reformed, and needs adequate resources to carry on this work. Finally, the local authorities play a key role in direct contact with business and citizens over the provision of public services.

Box 2.1. Recommendation from the 2001 OECD report

Strengthen implementation of the regulatory reform policy by creating stronger disciplines and performance assessment of regulatory quality within the departments and agencies, and by enforcing the disciplines through a high-level committee.

Reducing Red Tape originated in the SMI as one of the elements to modernise the Irish public administration. The new policy and action plan inherited the management and implementation mechanisms as well as the accountability structure of SMI. In particular, the enforcement and compliance approaches of *Reducing Red Tape* are based on self-assessment and peer pressure. **Contrary to the implementation approach used for other flagship policies, such as the *Freedom of Information Act*, the modernisation of the regulatory management system has lacked resources, training and resolve, and has yielded few concrete benefits for citizens and business.** Accountability mechanisms of the new policy have been based on vague internal procedures, supervised by an over busy SMI Co-ordinating Group of Secretaries. Such mechanisms are too weak and remote: to change long-established habits and culture; to protect the regulatory system from influence and pressures from powerful special interests; to offset perverse incentives within the ministries and agencies; and to co-ordinate the difficult agenda of regulatory reform.

A high-level regulatory committee should be created for these tasks with adequate powers to influence decisions at the cabinet level. Its role should be to advocate and promote implementation of the regulatory reform policy, to initiate key regulatory reform decisions, and to co-ordinate regulatory reform across government. **Participants on the committee could include the Department of the Prime Minister and the Ministry of Finance, the General Attorney's Office, and the Competition Authority. Regulatory departments and offices and sectoral regulators should be invited on an *ad hoc* basis.** The committee may be supplemented by an advisory body where social partners (including consumer groups) and key institutions, like *Forfas*, could discuss regulatory affairs. The committee's work should be co-ordinated with other horizontal policies, such as SMI or budgeting. **It should also prepare an annual report to the parliament.** This political body could be modeled on the Netherlands' Ministerial Committee in charge of the influential MDW ("Functioning of Markets, Deregulation and Legislative Quality") programme.

In parallel with a strong central promoter, Ireland could raise accountability for results within the departments and agencies through **measurable and public performance standards for regulatory reform**. Indeed, control mechanisms are not balanced by effective incentives for the departments to change themselves, particularly given contrary pressures from their constituencies and the political level. At present, the objectives of the regulatory reform programme are formulated at a high-level of generality, and transparent measures of performance for each department have not been adopted. That is, objectives are strategic rather than results-oriented. Hence, accountability for results is over-centralised, whereas the skills and resources for reform are decentralised. The fact that **incentives for the departments to produce good regulation are still not very strong** may be one explanation why the regulatory habits of the administration have not changed very much.

Strengthen the accountability of sectoral regulators by building capacities for appropriate overview by the Parliamentary committees, and clarify the respective roles of sectoral regulators and the Competition Authority to ensure a co-ordinated, uniform competition policy approach in the regulated sectors.

Market-oriented bodies and institutions have developed along with liberalisation, privatisation and regulatory reform. However, the powers, nature, and accountability mechanisms of the sectoral regulators are challenging the general public governance and institutional balance. **In some respects, these bodies have become a “fourth branch of the State” alongside the Executive, Legislative and Judiciary.** Ireland has been one of the first countries to start addressing the complex issues of accountability raised by this situation. In March 2000, the Minister of Public Enterprises published policy proposals on *Governance and Accountability in the Regulatory Process* which among other things advocated a clearer role for parliament in overseeing sectoral regulators. However, the parliament and its committees lack capacities to do so. In light of this and past reports, Ireland should **consider a strategy to improve parliament accountability procedures**, including appropriate resources. Attention should be paid to managing the information to permit the committees to focus on strategic policy decisions. A step in that direction could be the development of a succinct impact assessment of policy decisions along the line of a RIA.

Many of the Competition and Mergers Review Group recommendations should be followed, to provide for a structured process of co-ordination and a legal basis for the sectoral regulators and the Competition Authority to defer to each other without risk and without diluting or compromising the application of competition policy. The Authority and sectoral regulators should advise each other about matters that may come under the others' jurisdiction, and consult when they find they are both pursuing the same matter. To do this meaningfully, they must have the right to exchange information with each other. Having someone from the Authority sit on appeal panels for sectoral regulator decision is an excellent idea for integrating policy perspectives.

Background

Ireland's public governance context and developments

The underlying framework for Ireland's public governance is quite stable compared to the developments seen in some other European countries which are experiencing significant decentralisation, for example, or a major rationalisation of their subnational structures. The Constitution of Ireland (1937) is the fundamental law of the state. The Constitution can only be amended by the people following a referendum.

Public governance modernisation

Public governance modernisation has been a major feature of the Irish policy landscape over the last twenty years (waves of reforms have been launched since the early 1990s), has come a long way, but as in many other OECD countries remains a “work in progress”, as Ireland itself acknowledges. Many of the findings of the OECD's Public Management Review (Box 2.2) are highly relevant to Better Regulation, including the need to develop more shared and networked approaches to working within government; the stronger use of performance measures and budget frameworks to drive public service effectiveness; a renewed emphasis on the role of e-Government; more mobile postings across the public service; and the importance of the Department of the *Taoiseach* as a strong central driver of reform.

Some of the findings of the 2001 report also still resonate today, for example, the need to continue strengthening institutional capacities (skills, culture change) within the public administration in support of a modern economy and society, and the challenging effects of the multi-seat constituency electoral system on public transparency and consultation, as well as in relation to the handling of appeals on administrative decisions. The report noted that the reform of Ireland's public governance structure lacks market and social changes,

and was proving a bottleneck to sustained growth; and that skills gaps and institutional and cultural rigidities persisted in the public administration.

Box 2.2. Public governance modernisation: The OECD 2008 Public Management Review

2008 report

The report was commissioned by the Irish government so that its public service could be benchmarked internationally in support of the ongoing modernisation and reform effort. Ireland appreciates the importance of its public service for the national well being and quality of life. The Irish public service has played a central role in Ireland's growth and development.

The focus of public service reform efforts so far has generally tended to be inward looking, at the improvement of internal structures and processes. In a changing society, greater focus needs to be placed on citizens and their expectations, and on targeting delivery of services from their perspective. **In short, the public service needs to become more outward focused.**

The public service remains segmented overall, leading to sub-optimal coherence in policy development, implementation and service delivery. It needs to evolve toward a more integrated system. This requires amending existing accountability structures and ways of working, to allow for integrated system wide action where this is required. This will require targeted action in a number of areas:

- **Improved dialogue is needed to address fragmentation and disconnects between departments, their offices and agencies,** and other public service actors. The current disconnects need to be addressed... particularly between departments and agencies... improved dialogue to reach shared agreement on performance targets.
- **The use of networks to bring together relevant players from across the public service needs to be expanded...** to allow greater connectivity between different sectors. Networks need to be developed that exploit agility, informality and openness. The Social Partnership model represents another possible way for exploring the networked approach. In order to respond to the increasing interconnectedness of policy challenges. Despite various new co-ordinating structures, there is evidence that departments are reluctant to devote resources to cross cutting activities such as integrated e-Government service delivery or improved policy co-ordination at the local level. The challenge of overcoming a stovepipe system is common to all OECD countries, as is the need to develop accountability structures to take account of shared responsibility for commonly agreed outcomes.
- **Increased interconnectedness and co-operation** are also necessary in order to allow the public service to achieve economies of scale through shared services and the development of centres of excellence that can serve as repositories for good practice and expertise. Otherwise, the fragmentation of the public service risks driving up costs and decreasing efficiency and effectiveness.
- **Performance measures** need to look at outcomes rather than inputs and processes, and increased flexibility is needed to allow managers to achieve those outcomes. This links to HRM strategy and the need to continue moving towards performance related pay.
- **Budget frameworks are needed to facilitate prioritisation and reallocation of spending.** Full benefits of some recent reforms such as the production of departments' Annual Output Statements linking annual targets to annual expenditure allocations, have yet to be fully realised, but this is a sound trajectory.
- **A renewed emphasis is needed on the role of ICT and e-Government to strengthen information sharing and integrated service delivery.** For citizens and business, the key measure of public service performance is how quickly and easily they can access a service and the quality of that service once received. E-Government, and the development of a more

integrated ICT interface, provides a major opportunity to deliver faster, more readily accessible services and secure internal data sharing to simplify contact with the public service.

- **Greater mobility is needed to help develop and broaden the skills and competency base of generalist staff.** At present, few opportunities exist even for generalist staff to move within and across the public service. Limited mobility creates challenges in sharing skills and competencies across the system and in re-allocating resources to those areas most in need. Also, the public service has to compete with opportunities elsewhere in the economy. The capacity to implement policy effectively and to anticipate future policy needs will depend on ability to recruit and retain the best of the workforce, and to develop and allocate them to maximum effect.
- **In support of all of these, a stronger role is needed to lead and support the renewed change,** both through the creation of a Senior Public Service, and the development of a more strategic role for the centre. Over the last decade, the *Taoiseach*, as head of government, has championed the reform agenda, and this has been a crucial driver for change within the public service. Given the changes outlined, Ireland will continue to require strong central leadership if new ways of working are to be successfully implemented. The transformational effort will require achieving efficiencies and steering the renewed reform agenda... and will need to be appropriately resourced.

Transforming Public Services Programme

The report of the Irish government, Transforming Public Services (TPS – published in November 2008) and accompanying government statement, endorsed the core messages of the OECD review. The TPS Programme represents the blueprint for a new type of unified public service, focused on common goals, with greater co-operation and reduced boundaries between sectors, organisations and professions, with a greater integration of services around user needs and greater efficiency in internal data sharing and administration through shared service models.

The appointment of a Minister of State with responsibility for public service transformation was announced by the *Taoiseach* on 23 March 2010. The aim of this appointment was to give a strengthened emphasis to the direction and leadership of change in the public service. The measures announced in the Government Statement (including a new Public Service Board; new senior appointments in relation to e-Government, shared services and procurement; senior public service) also support change. Implementation of the Programme is overseen by the Cabinet Committee on Transforming Public Services, chaired by the *Taoiseach*.

The financial crisis, fiscal consolidation and public expenditure cuts

In the wake of the 2008 financial crisis, the accent is, not surprisingly, on public expenditure cuts which include reducing the size of the public service. The report of the Special Group on Public Service Numbers and Expenditure (McCarthy report), published in June 2009, made significant recommendations for cuts, but it also supported the need to raise public sector efficiency. Earlier in 2010, the Government reinforced the role of the Public Sector Modernisation Division, by the appointment of a Minister of State at the Departments of the *Taoiseach* and Finance with special responsibility for Public Service Transformation.

The 2008 OECD Public management review recorded, although public expenditures have risen sharply over the last few years, this is from a low-base and at a slower-rate than overall economic growth.¹ The number of public service employees increased significantly by 30% between 1995 and 2007, but also from a low-base relative to other OECD

countries. Rationalisation is important, but as the 2008 OECD public service report also underlines, Ireland needs an effective body of public officials to carry through public policy, and as the OECD peer review team heard, many are concerned that in the rush to make cuts, these will be carried out in the wrong places, and the public service reform agenda on which Ireland depends for strengthening its economy and society will be neglected. There is particular concern, as regards Better Regulation, that cuts may slow up the policy and rule making process and lead to neglect of the application of quality principles such as RIA. In short, rationalisation and cuts need to be carried out in a framework that also addresses the effective implementation of a strong regulatory policy for the longer term.

The growth of government agencies

The majority of government agencies have been created since the beginning of the 1990s as a way to build capacities and increase flexibility in the public sector during a time of rapid growth in public spending. The Irish government has not developed a clear governance framework for agencies, so that structures and methods can vary across agencies (OECD, 2008).²

The growth in the number of government agencies was a repeated issue in meetings with a wide range of stakeholders, who generally perceive this proliferation as a negative development on which action should be taken.³ As one stakeholder put it “it is difficult to know who’s doing what”.

The government is aware of the need for rationalisation. Tackling this is now on the agenda as part of the drive to improve public services and to reduce public expenditures. The 2004 White Paper on *Better Regulation* included a commitment that “where new sectoral regulators are proposed, they will be established only if the requirement for a regulator can be clearly demonstrated and if responsibility for the sector in question cannot be assigned to an existing regulator”. In line with the rationalisation of agencies set out in Budget 2009, the government continues to review possible mergers between agencies.

The rationalisation measures set out in *Budget 2009* took account of the government principles on agency rationalisation including citizen focus; sustaining a clear distinct between policy making (the task of government departments) and the work of agencies; taking a clear view of whether specialist agencies are needed; the need to streamline and share service where this can be done; and agency life cycle. The OECD 2008 Public Management Review made a number of recommendations to improve the framework within which government agencies operate (Box 2.3). The recently published Government Statement on Economic Regulation provides a framework for the future development of economic regulation in Ireland, which picked up some of the proposals of the OECD report. This was a valuable exercise and should perhaps be the trigger for a further and broader review of government agencies (focusing on the need to strengthen their governance framework to maximise efficiency and effectiveness, as well as to clarify the functions which are most appropriate for delegation to agencies). The government does, however, consider that the principles of the economic regulation review are applicable to all regulatory agencies.

Box 2.3. Government agencies

The 2008 OECD Public Management Review

The report notes that the potential value added of agencies should be looked for less in their policy autonomy and more in a focus on performance, for which they will need additional managerial flexibilities.

While adding needed capacity to the public service, the way in which agencies have been set up in recent years has decreased the overall accountability of the public service, while increasing fragmentation and complexity. The establishment of an overall governance framework for agencies will require that the government rethink the organisational form of service delivery as a whole, deciding what functions in principle should remain in central departments, what functions should be devolved to local authorities, and what functions should be carried out at arm's length from the civil service. Governance structures should be matched with agency objectives. The government should establish clear guidelines and criteria for establishing new agencies and for operating existing ones. The new agency rationale should prohibit the creation of agencies solely for increasing resources and personnel allocated to a specific policy priority. Departments need to build up capacity for their oversight and performance management roles.

The political context: a multi seat constituency system

The Irish electoral system is based on proportional representation in multi-seat constituencies and a political environment where ideology has traditionally taken second place to direct contact and knowledge of the constituency's needs. The 2001 OECD report noted that policy making is affected by the strong and close relationships between elected representatives and particular groups of interests. Functioning as a broker at the local level, the Irish politician becomes a specialist in government information and contacts. The OECD peer review team heard that this remained an issue. The system encourages competition between *Teachta Dálas* (including within one party) to spend time responding to specific requests of their constituents. This can make it difficult to have a broad approach to policy and legislative/regulatory issues. It also blurs the approach to dealing objectively with public consultation and appeals on administrative decisions (local *Teachta Dálas* being a preferred conduit).

Social partnership

The social partnership model, developed in Ireland in the 1980s (Box 2.4), has been an important vehicle for formal consultation on high-level national policies. All eight social partnership agreements concluded to date were negotiated between the government, main employer groups, farming representatives and the trade unions ("social partners"). Since the mid 1990s, representatives of the community and voluntary sectors have also taken part in the process. Originally focused on pay, the agreements have expanded to cover a wider-range of increasingly complex issues. In the Better Regulation context, the social partnership process has proved important, and has covered the review of the operation of RIA, data collection on the public and private sector bodies with regulatory functions, and a survey of business attitudes to regulation.

In response to the economic crisis, the government reached an agreement with social partners on a "Framework for Stabilisation, Social Solidarity and Economic Renewal" in January 2009. In June 2009, the government proposed a new agreement on "Further Measures to Support National Recovery through Social Partnership". While it did not subsequently prove possible to conclude a further national agreement in 2009, the government remains committed to social dialogue. Furthermore, a Public Services Agreement was concluded with the public service unions in June 2010. It provides a

comprehensive agenda for Public Service Transformation and a framework for public service pay determination over the period to 2014.

Box 2.4. Social partnership in Ireland

The original impetus for the series of social partnership agreements came from the poor state of the economy and the public finances in the mid to late 1980s. In 1987, the newly elected government set about correcting the public finances through relatively stringent cuts in public expenditure. The Programme for National Recovery (PNR), the first of the current type of agreements, was a key part of the process. A key objective of the Programme was to achieve consensus on wage bargaining and deliver a cost/wage structure that would enhance the competitiveness of the economy. This model was based on agreement between the social partners – government, employers and trade unions – to limit wage increases in return for other concessions.

Seven other social partnership agreements followed. The negotiations widened to include agricultural organisations, community and environmental groups. While the pay deal remained a key element, the final agreements broadened to include social and community issues.

Institutional framework for Ireland's policy, lawmaking and law execution process

Ireland is a parliamentary democracy.⁴ The Irish Constitution was approved by referendum in 1937. It renamed the Irish Free State as Ireland (*Eire* in Gaelic) and ended the country's status as a dominion within the British Commonwealth. Ireland officially became a republic in 1948.

Box 2.5. Institutional framework for the Irish policy, law making and law execution process

The executive

The Irish government is made up of the head of the government or *Taoiseach* (Prime Minister), who has his/her own department, and a cabinet of at least 6 but no more than 14 ministers with a government department each. The current cabinet has 14 ministers. Members of the government are appointed by the President, and must be members of one of the Houses of Parliament.

The Constitution sets the principle of collective responsibility. Government approval is required for significant new or revised policies and strategies, and no bill can be drafted without prior formal approval of the cabinet.

The *Uachtarán* (President), who is head of state, is directly elected for a seven-year term. The civil service is non-political (officials do not change according to the political make up).

The legislature

The constitution vests legislative power in a bicameral parliament (*Oireachtas*). This consists of the lower house (*Dáil Éireann* or House of Representatives), and the upper house (*Seanad Éireann* or Senate) which acts as a reflection chamber. The President signs and promulgates the laws adopted by the parliament.

Members of the *Dáil* are elected at least once every five years by a system of proportional representation in multi-seat constituencies. Under this system the representative is closely linked to his/her constituency and usually functions as a broker at the local level, specialised on government information and contacts, for example to help citizens solve individual problems.

The judiciary

Ireland is a common law country with a written constitution. While much of Irish public law is similar to that of other common law jurisdictions, the existence of a written constitution and judicial review of legislation has meant that the Irish legal system has developed its own distinctive characteristics. Judicial review is more vigorous than in most other countries. Similar to the US, a judge may declare legislation to be unconstitutional, and the High and Supreme Courts in the cases that come before them

ensure that government and parliament, in the enactment of primary legislation, respect principles of natural and constitutional justice. These principles include principles of proportionality, the right to be heard, and the right to have decisions taken without bias. Courts also ensure that secondary legislation and other acts of public bodies are consistent with the authorizing primary legislation. In this regard, the courts will be concerned with how a decision was taken by a regulator, rather than with the merits of the decision itself.

The court system was set up by the Courts (Establishment and Constitution) Act 1961 pursuant to Article 34 of the 1937 Constitution. The constitution outlines the structure of the court system as comprising a court of final appeal, the Supreme Court, and courts of first instance which include a High Court, with full jurisdiction in all criminal and civil matters, and courts of limited jurisdiction, the Circuit Court and the District Court, organised on a regional basis. The High Court and the Supreme Court have authority, by means of judicial review, to determine the compatibility of laws and activities of public bodies with the constitution and the law.

Although not a part of the judiciary, the Office of the Attorney General plays a significant role advising the government on matters of law and the constitution.

See also Annex C.

Regulatory agencies

Ireland has over 200 regulatory bodies. Their numbers have more than doubled since the 1990s. In some cases agencies were established to develop new public service capacity and meet needs in relation to service delivery during the major economic expansion of the 1990s. In other cases they have been set up to separate the functions of policy making and service delivery. The 2007 report, *Regulatory Bodies in Ireland*, listed 213 regulatory bodies, of which 205 were public sector regulators.⁵ This list included 114 local authorities and town council and 9 Fisheries Commissioners and Fisheries Boards. Since then five other regulatory bodies have been established: the Legal Ombudsman, the National Employment Rights Authority (NERA), the National Consumer Agency (to be merged with the Competition Authority), the Health Information and Quality Authority, and the Health and Social Care Professional Council.

All government agencies are established under the remit of a government department and are required to submit regular reports on their activities to their minister. Negotiations with the Department of Finance regarding funding, resource allocation and staffing take place via the parent department. Agencies tend to be staffed initially with secondments from departments, followed by recruitment of own staff.

Local levels of government

The Twentieth Amendment of the Constitution of Ireland (1999) provided for constitutional recognition of local government for the first time in Ireland. The Local Government Act 2001 is the basic legislation governing the structures, operation and functions of local government in Ireland. Ireland is considered to be one of the most centralised countries in Europe. There are 114 elected local authorities, which have a more limited range of powers than many of their counterparts in other EU countries. The 29 county councils and 5 city councils are the primary units of local government. Local elections take place every 5 years. Under the general supervision of the Department of the Environment, Heritage and Local Government, local governments mainly provide public services (see Chapter 8).

Civil service

The civil service comprises the permanent staff of the 15 government departments and certain specified “core” agencies or offices. These civil service agencies include: the Office of the Revenue Commissioners; the Central Statistical Office; the Office of the Comptroller and Auditor General; the Courts Service of Ireland; the Director of Public Prosecution; the Office of the Attorney General; the Office of Public Works; the Office of the Houses of the *Oireachtas*; the Office of the Information Commissioner; the Office of the President of Ireland; and the Office of the Ombudsman. All civil servants are expected to maintain impartiality.

The wider public service generally consists of specialised staff such as teachers, doctors, police, armed forces, or those staff within agencies (e.g. the Food Safety Authority, the Health and Safety Authority, *Forfás*) who, while not formally part of a department, provide services on behalf of the government.

In 2009, the civil service employed 37 357 people out of a total workforce of 2.2 million. The wider public service employees 309 751 people (a large part of which in the health sector)*.

Note: * *Source:* Central Statistics Office, website, Database Direct.

Developments in Better Regulation institutions

From relatively modest beginnings focused mainly on reducing red tape, the last few years have seen a number of developments to provide institutional support for Better Regulation policies. These include the establishment of the Better Regulation Unit in the Department of the *Taoiseach* and of High-level Groups dedicated to Better Regulation (including department officials, in some cases regulatory agencies, business representatives, trade unions).

Table 2.1. Milestones in the development of Better Regulation institutions in Ireland

Late 1990s	<ul style="list-style-type: none"> • Working Group on Regulatory Reform. • <i>Ad hoc</i> High-level Group on Administrative Simplification for the “Reducing Red Tape” policy. • Task Force on Small Businesses and Services.
1999	<ul style="list-style-type: none"> • Statute Law Revision Unit established in the Office of the Attorney General.
2000	<ul style="list-style-type: none"> • Better Regulation Unit established in the Department of the <i>Taoiseach</i>.
2001	<ul style="list-style-type: none"> • Working group established in the wake of the 2001 OECD report to develop a RIA model.
2004	<ul style="list-style-type: none"> • Establishment of Better Regulation Group (with a broad range of Departmental as well as agency representatives, chaired by the Department of the <i>Taoiseach</i>)⁶ following publication of the 2004 White Paper “Regulating Better”, to oversee implementation of the Action Programme proposed in the White Paper.
2005	<ul style="list-style-type: none"> • Establishment of the Small Business Forum. • Establishment of the Business Regulation Forum (BRF).
2007	<ul style="list-style-type: none"> • Senior officials group on Economic Regulation set up to guide work on a Programme to review the economic regulatory environment.⁷ • Establishment of the RIA network. • Establishment of the Business Regulation Unit in the Department of Enterprise, Trade and Innovation (DETI), to oversee the programme on administrative burden reduction, and of an inter-departmental officials group on administrative burdens. • Establishment of the High-level Group on Business Regulation, chaired by the secretary general of the DETI. It replaces the BRF.

Key institutional players for Better Regulation policy

The executive centre of government

The Department of the *Taoiseach* (Prime Minister's Office)

The Better Regulation Unit, which is part of the Public Service Modernisation Division, has overall responsibility for promoting and supporting Better Regulation initiatives across government (Box 2.6).

Box 2.6. The Better Regulation Unit in the Department of the *Taoiseach*

The Better Regulation Unit (BRU) has its origins in earlier units to drive forward the regulatory reform agenda in the late 1990s (an earlier version was the Central Regulatory Reform Resource Unit).

It plays an especially key role in Regulatory Impact Assessment (RIA). It operates a RIA helpdesk and delivers RIA Training in partnership with the Civil Service Training and Development Centre (CSTDC). It chairs the RIA Network which includes representatives from all departments and has worked closely with the Central Evaluation and Expenditure Division of the Department of Finance in revising the methodological elements of the RIA Guidelines. The BRU does not have a statutory gatekeeper role with regard to RIA (it has no formal authority to turn poor RIAs back), nor does it have a formal mandate to assess the quality of RIAs or to report on the outcomes of its monitoring work on RIA.

The BRU also supports the Office of the Attorney General in relation to the Statute Law Revision project and the Law Reform Commission in relation to the Restatement project (see Chapter 5).

The BRU supports other activities related to Better Regulation. For example, it facilitated the independent review of the economic regulatory environment and co-ordinated work on the 2009 government Statement on Economic Regulation (see Chapter 1). The unit is responsible for organising meetings of the Annual Regulatory Forum which the government has committed to in their Statement on Economic Regulation. The first Forum was held in February 2010.

The BRU represents Ireland at Better Regulation meetings of the EU and the OECD.

The BRU does not directly oversee the work on administrative burden reduction. This work is the responsibility of the Business Regulation Unit in the Department of Trade, Enterprise and Innovation, created in 2007.

The Department of the *Taoiseach* comprises a number of other divisions and units which play a more or less important role in regulatory management. These include a division of European and international affairs; and an Economic and Social policy division (link to competitiveness). The Department of the *Taoiseach* has been increasingly involved in EU matters, partly as it provides support to the *Taoiseach* as a member of the European Council. It is involved in all key EU policies and decisions, and can be brought into negotiations in case of specific difficulties or conflict between departments. It is involved in improving the accessibility of regulations alongside the Attorney General's Office (drawing together an informal group, the e-Legislation Group to discuss improvements to the online Statute Book).

The Department also includes the Cabinet Secretariat, among whose tasks is to ensure compliance with procedures for putting proposals to the Cabinet, based on the Cabinet Handbook (which includes a quality regulation checklist and the requirement to carry out a RIA).⁸ The Government Chief Whip is a Minister of State (minister attached to the Department of *Taoiseach*). S/he attends government meetings and is also assigned the functions relating to the Central Statistics Office. The role of the whip is principally that of disciplinarian for all government parties, *i.e.* to ensure that all parliamentarians, including ministers, attend to *Dail* business and follow the government line on all issues.

The Office of the Attorney General

The constitutional Office of the Attorney General was established in 1937, concurrently with the Constitution. The office is a key player in regulatory management. The principal role of the Attorney General is to advise the government in matters of law and legal opinions. While not a member of government, the Attorney General attends cabinet meetings in that capacity. The Attorney General's Office also drafts most of the important regulations. The office includes a number of specialist units and carries out the following functions:

- **Provision of legal advice to the government.** The Advisory Counsel to the Attorney General carries out a broad range of advisory work for the government. The range of advisory work undertaken by the office is very broad, including constitutional and administrative law, commercial law, public international law and criminal law – in fact, any legal issue on which the government or a department may require legal advice. Advice frequently has to be provided, and is provided, under extreme pressure of time. Requests for advice may be received from the government as a whole, from Ministers, or from civil servants in government departments or offices.
- **Drafting of legislation.** The Office of the Parliamentary Counsel to the government (OPC), part of the Attorney General's Office, drafts all primary bills and most secondary regulations with the Advisory Council having an important but essentially auxiliary role in the drafting process (providing counsel on legal quality).
- **Reform of statute law.** The Statute Law Revision Unit within the Attorney General's Office is charged with improving the body of statute law, working with the Law Reform Commission (see Chapter 5). The online Irish Statute Book (eISB- see Chapter 3) is managed by this Unit.
- **Legislative programming.** The Attorney General also takes part in legislative programming as a member of the Legislation Committee which is chaired by the Government Chief Whip (see Chapter 4).
- **Management of litigation.** The Chief State Solicitor's Office within the Office of the Attorney General deals with all civil litigation involving the state.

The Department of Trade, Enterprise and Innovation

The Department of Trade, Enterprise and Innovation (DETI) has been engaged, to a greater or lesser degree, in business aspects of Better Regulation since the late 1990s, when *Forfás*, a policy advisory agency to the Department, played a significant role in the promotion of early regulatory reforms.

The Business Regulation Unit set up within this Department in 2007, part of the Commerce, Consumers and Competition Division, is responsible for overseeing the business administrative burden reduction programme and its target to reduce burdens by 25% by 2012 (including burdens generated by its own department), in partnership with the Inter-departmental officials Group on Administrative Burdens. The Department provides the secretariat to the High-level Group on Business Regulation which meets 4-6 times per year, to consider concrete business suggestions for red-tape reduction a successor to the Business Regulation Forum). The Unit also co-ordinates Ireland's interaction with

European groups for administrative burden policy.⁹ The Department also leads on the development of risk-based enforcement.

Other key players for Better Regulation in the executive:

- **The Department of Finance plays an important role in different aspects of Better Regulation.** The Department has the lead role in implementing reforms in the area of financial management, performance management and HRM, and alongside the Department of the *Taoiseach*, leads on public service modernisation. It has overall responsibility for training of the civil service. It has overall responsibility for developing and co-ordinating the implementation of e-Government policy. The Department also plays a prominent role in EU affairs as it is involved in any proposals with financial implications and directly manages EMU, structural funds and taxation issues. It is also involved in following through the Freedom of Information Acts, managing a dedicated website to this effect (Chapter 3).
- **The Department of Foreign Affairs** shares overall co-ordinating responsibilities on EU issues with the Department of the *Taoiseach*. It is responsible for day-to-day co-ordinating on EU matters and ensuring the coherence of Ireland’s stance in European institutions.
- **The Department for the Environment, Heritage and Local Government** has general supervisory responsibility for local authorities and their provision of public services.

Co-ordination across central government on Better Regulation

The 2001 OECD report noted that Ireland has a strong tradition of autonomous ministries, and linked to this, a decentralised rule making process in which the proponent ministry assumes most of the regulatory decisions before the cabinet approves a bill. This remains the case, a situation that Ireland shares with several other European countries (such as Germany for example). The tone is also somewhat informal, which reflects in part the small size of the country. Procedures are quite permissive and are seen as guides rather than rules to be complied with. The OECD peer review team heard the departments were “independent minded” and that “relationships are friendly, but they do not like being told what to do and to conform to a standard pattern”.

Within this context, the policy and rule-making process does not generally rely on any structured networks of ministerial or official committees for decision-making. That said, there are four cabinet committees with special relevance to regulatory management: the Cabinet Committee on EU Affairs which provides strategic overview and direction on major EU developments; the Cabinet Committee on Economic Renewal; and the Cabinet Committee on Transforming the Public Service.

The informality of this framework has raised a challenge for Better Regulation and its processes, which rely heavily on a shared approach and understanding if they are to be effective, for example as regards impact assessment. Important steps have been taken to encourage a shared-approach in matters of Better Regulation, with the Better Regulation Group and Business Regulation Forum, and more recently, with the establishment by the *Taoiseach* BRU of a RIA network across departments, and of an equivalent group by the DETI for taking forward the administrative burden reduction programme. Additionally, DETI has convened a group of inspection and enforcement agencies (the Risk-based Enforcement group) to share best practice and establish a critical path of steps towards better risk-based enforcement. In this case, the group will not only periodically make

recommendations to the High-level Group on how to improve the practice of risk-based enforcement across government, but aims to establish concrete collaborations between relevant participants to improve their effectiveness and efficiency. The informality of the group and its discussions is expected to reinforce its ability to find practical solutions that might be difficult within a more formal structure. The e-Legislation group is another example of efforts at progressing key Better Regulation issues.

Regulatory agencies and Better Regulation

Government agencies are traditionally responsible for setting their own Better Regulation policies, which means that the nature and degree of Better Regulation activities varies across agencies. The OECD peer review team was told, however, that parent departments do disseminate Better Regulation papers such as the White Paper “Regulating Better”, consultation guidelines and RIA guidelines. Although this is not strictly required by the government decision on RIA, it is standard practice for independent regulators to carry out impact assessments, and that a large number of agency staff have received RIA training. The programme to reduce administrative burdens involves some regulatory bodies.¹⁰ Many agencies are actively involved in EU groups and networks. This applies especially (as in other EU countries) in those cases where the EU is active in developing policies and new regulatory frameworks, as in the network sectors. For example, the Commission for Energy Regulation (CER) is an active participant in the EU Energy Regulators’ Group for Electricity and Gas (ERGEG).

The OECD peer review team was not able to go into any detail on this issue, but it seems that Better Regulation policies such as impact assessment and consultation are well advanced with some regulators, more so in some cases than with the parent department. This can also be seen in some other European countries. Good performances may be partly driven by the advantage of starting a new institution from scratch, a well identified set of stakeholders, and specific issues for attention that require stakeholder engagement and expertise such as network access. The team also noted a good level of co-operation between some agencies (for example, CRO, Revenue) on certain issues such as enforcement.

With the 2009 government Statement on Economic Regulation, the policy management of at least some government agencies (economic regulators) looks set to be significantly strengthened (Box 2.7), with scope for further development of effective Better Regulation as part of this. The Statement sets out a framework for the management of regulators, which will have to prepare Statements of Strategy and Integrated Annual Reports based on performance indicators agreed with the parent departments. The government has signalled that the principles may apply to a much wider range of regulators than the six directly covered in the review process. In a 2007 paper (Bodies in Ireland with regulatory powers), the government has already set out a very clear and comprehensive definition and analysis of the “regulators” that exist in Ireland, a useful baseline document that could be updated and used to further investigate relevant issues such as consolidation, relations with the parent Department and Better Regulation practices.

Box 2.7. 2009 Government Statement on Economic Regulation

The Statement was drawn up in October 2009 to give effect to the key findings of a report commissioned by the government on the role and operation of six regulators (the Commission for Aviation Regulation – CAR; the Commission for Communications Regulation – *ComReg*; the Commission for Energy Regulation – CER; the Commission for Taxi Regulation (Taxi Regulator); the Health and Safety Authority – HSA; and the Irish Financial Services Regulatory Authority (the Financial Regulator). The report was based on an international comparative review of regulators around a selection of OECD countries. It focused on policy objectives and performance.

The Statement covers issues of:

- **Governance and accountability.** Where not already required, regulators will now be asked to produce statements of strategy on a five yearly basis, taking account of mandates and policy directions. Integrated **annual reports and annual output statements** will allow for reporting on progress on objectives. The onus will be on departments to develop performance indicators as a basis for annual reporting. Annual reports will also encompass Public interest statements, and **regulatory frameworks will be “stress tested”**.
- **Appropriateness of structures and mandates.** There will be five yearly reviews of the roles and mandates of regulators. Regulators will conclude or update Memoranda of Understanding with the Competition Authority.
- **Costs and driving efficiencies.** Ministers will formally approve any planned expenditure or levies following consultation with both business and consumers. There will be shared administrative and legal services as well as the exchange of personnel and joint procurement. The scope for additional efficiencies through the co-location of regulators will be examined.
- **Engagement with stakeholders.** A stronger focus will be put on effective engagement between regulators and the public. The Statement says that “regulators must be seen not just as effective regulators of the market (producers) but also as champions of consumer interest”. The National Consumer Agency (which is to be merged with the Competition Authority) will continue to have a broad role in terms of advancing consumer issues generally, regulators will be asked to place an increased emphasis on the protection of consumer interests in line with their mandates. Also, relevant ministers will establish industry panels or advisory councils for selected regulators, and there will be statutory requirement to consult with the National Consumer Agency or consumer panels in relation to expenditure.

An Annual Regulatory Forum will be organised, for the communication of “Whole of government” priorities relating to the economy, competitiveness and competition. It will be chaired by the *Taoiseach*. The Forum will complement but not replace traditional bilateral communication between ministers and regulators, and will help departments in devising performance indicators. The Forum held its plenary meeting in February 2010.

The Statement says that “the government has decided that principles set out... will apply, where relevant, to all regulators. They are directed, however, primarily at key economic regulators”.

Although the review was not primarily concerned with structure, in presenting the Statement, the *Taoiseach* underlined that, “in line with government policy on rationalising agencies, the options for merging various regulatory bodies are being examined across departments in the light of changing markets and technologies and the need to ensure that our regulatory structures are both effective and efficient”.

The legislature and Better Regulation

Until recently, parliament has not been an evident presence in the Irish Better Regulation landscape. The 2001 OECD report recorded that parliament was slow to assume its accountability responsibilities. Parliamentary committees were strengthened in the late 1990s, but staff and research capacities were in short supply with parliamentarians having

to rely as a consequence on information from government reports and interest groups. The multi-seat constituency system of representation also meant a diversion of effort by parliamentarians to address constituents' individual needs rather than focusing on broader issues of public policy.

This may be changing, with the establishment of two joint-committees with specific mandates relating to regulatory management. The Joint *Oireachtas* Committee on Economic Regulatory Affairs was established in December 2007 with a mandate to scrutinise the operations of economic regulators, while the Joint *Oireachtas* Committee on EU scrutiny, established in 1995, has a specific role in scrutinising all proposed EU legislation (Chapter 7). The government also notes that parliament asks regular questions on the number of RIAs prepared and published by departments, which has helped to raise the profile of RIA, and that the administrative burden reduction programme has also been the subject of parliamentary attention. Parliamentary researchers now regularly use RIAs as the basis for briefing on bills (and some have attended the two day RIA training course). Parliament also has an important role in relation to bills brought forward to simplify or consolidate existing legislation, which go to the relevant committees. There is also the Joint *Oireachtas* Committee on Enterprise, Trade and Innovation which scrutinises initiatives related to the business regulatory environment. The research capacity available to parliament has increased considerably (including a library established in 2006, the recruitment of librarians, researchers and the development of services).

The judiciary and Better Regulation

In Ireland, the judiciary has traditionally played a significant role in the judicial review of regulation, even by the standards of common law countries. It combines all the elements which can be attributed to the judicial function: constitutional guardian; ensuring that the executive acts within its proper authority; and interpretation and enforcement of regulations. Judicial review of regulations is more vigorous and common than in most other countries, with the courts not only reviewing but sometimes reshaping or even overturning regulations. Altogether this has meant that the judiciary was implicitly seen to be a core part of regulatory management. In the past this broad engagement has risked “crowding out” other and broader Better Regulation processes. The 2001 OECD report was critical of this situation, noting that judicial review as the main challenge to regulation was costly and time consuming, and that it could not be regarded as an effective quality control mechanism, but rather the reverse, as it reinforced a natural tendency for the regulatory framework to “fragment and inflate”. The OECD peer review team understood that the role of the judiciary remained an issue. However, it is also clear that Better Regulation processes which are quite independent of the judiciary, such as RIA, have gained significant ground. The judiciary nonetheless remains an important actor in the Irish Better Regulation landscape. The OECD peer review team heard that the courts are increasingly reviewing secondary regulations, which means that primary laws must become more detailed (“The courts are becoming *de facto* legislators”).

Local levels of government and Better Regulation

Local authorities have relatively minor regulatory powers of their own but are responsible for implementing regulations adopted centrally which raises some important issues of co-ordination with central departments over the potential impact of these regulations (Chapter 8).

Other important players

The Law Reform Commission (see Chapter 5) is an independent statutory body. Its programme of work is approved by government, which directs it to examine particular areas. Its main aim is to keep the law under review and to make practical proposals for its reform, established in 1975 under an Act which defines law reform to include the development of law, its codification (including its simplification and modernisation) and the revision and consolidation of statute law. The Law Reform Commission has three main areas of activities: conducting programmes of law reform; preparing statute law restatement; and updating the Legislation Directory. Given the historical complexities of the Irish legislative stock, and the way in which Irish law is developed, this body plays an important role in Irish Better Regulation.

The Ombudsman (who is also the Commissioner of the Freedom of Information Act), the Comptroller, and Auditor General play a surveillance role to strengthen accountability of the administration. In principle therefore, if not in practice, they have an important potential perspective to offer on the development of the Better Regulation agenda.

Resources and training

Resources

The resources directly allocated to Better Regulation have decreased in the last two years, reflecting the general contraction of the civil service.

- **Better Regulation in the Department of the Taoiseach.** The Better Regulation Unit initially expanded following the publication of the White Paper, *Regulating Better*, in 2004. As of early 2010 it comprised one half-time principal officer, two full-time policy officials and one clerical officer, who report directly to the head of the Public Service Modernisation Division.
- **Statute Law Revision Project in the Office of the Attorney General.** During the passage of the Statute Law Revision Bill of 2009 through parliament, the research team consisted of a project manager, deputy project manager and a number of other research assistants. Subsequent to the bill's enactment, the project is on hold pending the availability of resources.
- **Business Regulation Unit in the Department of Enterprise, Trade and Innovation.** This comprises one and one third senior policy officials and one and a half junior officials. The size of this unit has not changed significantly since it was set up in 2007.

To these resources, however, should be added the officials involved in the networks and groups set up for impact assessment and for the administrative burden reduction programme. All departments are represented on the RIA network and the inter-departmental group on administrative burdens. These involve up to 100 officials across government, part time (staff are often assigned other duties such as the co-ordination of other public service modernisation initiatives). Some departments and government agencies also deploy more significant resources on Better Regulation than others, reflecting responsibilities which tie them in more closely to the Better Regulation agenda. The DETI, for example, deploys some 19 staff on projects including the consolidation of legislation, but this is at the “top end” of the scale.

Access to appropriate resources, and their effective deployment, has been a challenge. The BRU notes that considerable investment has been made in recent years in the training and recruitment of officials with regulatory or related expertise such as economics. But it is not clear that such staff are always assigned appropriately within departments. The 2009 Statement on Economic Regulation proposes some opening up, with lateral transfers of staff between departments and the regulatory agencies.

Training

The Civil Service Training and Development Centre (CSTDC) in the Department of Finance is responsible for running relevant training courses for government officials.¹¹ A number of training options are available to officials involved in developing policy and legislation (Box 2.8). These options increasingly integrate Better Regulation elements such as impact assessment.

Box 2.8. Key policy and legal training courses for officials

Legislative Process Course

The CSTDC run a two-day course on the legislative process which is available to all government officials. The aim of the course is to help officials develop an understanding of the working of the legislative process and how best to achieve policy objectives through legislation. This course includes modules on Regulatory Impact Analysis, drafting legislation, overview of secondary legislation and progress through parliament.

Since 2006, 543 officials have attended this course.

Statutory Instrument Course

The CSTDC run a two-day course on statutory instruments which is available to all government officials. The aim of the course is to help officials develop an understanding of the legal basis governing secondary legislation and statutory instruments. This course includes modules on constitutional and legal framework, drafting Statutory Instruments and RIA.

This course was introduced in 2007, and since then, 214 officials have participated in the course.

Public Financial Management

The CSTDC run a two-day course on Public Financial Management which is available to all government officials. The aim of the course is to give a sound understanding of the legal basis on which government finances work, the budgetary cycle and accountability for outputs and outcomes.

Policy Analysis Course

The CSTDC also run a four-day course to provide an overview of Policy Analysis in a Civil Service context. This course includes an introductory module on RIA as well as other modules such as analytical techniques and risk management.

Since 2006, 159 officials have attended this course.

Standard cost model training

DETI provided an SCM training course to all departments during 2008 and 2009. The training has been attended by approximately 40 officials. The Business Regulation Unit also supplied an Irish version of the SCM Manual to all departments, and has circulated a variety of project guides and templates to the members of the inter-departmental group, setting out a clear and structured approach to prioritisation and measurement.

RIA training

The Department of the *Taoiseach*, in conjunction with the CSTDC, runs a dedicated two-day training course on Regulatory Impact Analysis (RIA). This training is available to all officials including staff of regulatory agencies and parliamentary research staff. The course details the step-by-step process for conducting a RIA. The course also gives an introduction to different analytical techniques, builds awareness of RIA and addresses issues particularly relevant to business including compliance costs and specifically administrative burdens. Significance and proportionality and the role of RIA during EU negotiations and transposition are also discussed. The course includes a number of case studies and workshops which allows participants to interact with presenters. Courses are held based on demand. 294 officials have attended since 2006. In addition to the training materials, participants are also supplied with revised RIA Guidelines, a RIA template, and consultation guidelines. Participants are also made aware of other supports available to them including the Better Regulation website (www.betterregulation.ie), RIA Network, RIA Bulletin, RIA Helpdesk and assistance of an economic consultant which is commissioned by the Department of the *Taoiseach*.¹² The Business Regulation Unit in DETI provides support and advice on *ex ante* administrative burden measurement as required.

The Better Regulation Unit in the Department of the *Taoiseach* is also available to conduct tailored presentations on RIA to suit the specific needs of requesting departments or offices. Requests sometimes come through a Departmental representative on the RIA Network.

Notes

1. Annual growth in public expenditure between 1995 and 2005 was 5.1%, significantly lower than real GDP growth of 7.5%.
2. OECD (2008), Public Management Review.
3. Comments received included “Agencies multiply the sources of regulation”; “Agencies cause confusion”; “There are too many agencies”; “Rationalise the agencies please”; “Institutional reform is needed, shake out please”; “Regulators are (too) well resourced”. “It is difficult to know who is doing what”.
4. It traces its existence back to the Anglo-Irish War of Independence of 1919-21 and the subsequent Anglo-Irish Treaty of 1921. The treaty partitioned Ireland into two entities: the Irish Free State in the south (covering 80% of the island’s land area) and Northern Ireland which remained part of the United Kingdom.
5. Department of Taoiseach (2007):
www.taoiseach.gov.ie/attached_files/Pdf%20files/Bodies%20in%20Ireland%20with%20Regulatory%20Powers.pdf.

6. Members include : Department of the Taoiseach ; Department of Transport; Department of Finance; Department of Enterprise, Trade and Innovation ; IFRA (Irish Financial Services Regulatory Authority); Competition Authority; Department of Communications, Energy and Natural Resources; Commission for Aviation Regulation; Department of Environment, Heritage and Local Government; Commission for Communications Regulation; Department of Agriculture, Fisheries and Food; Department of Justice, Equality and Law Reform; Office of the Attorney General. The Department of the *Taoiseach* provides the secretariat.
7. Members include : Department of the *Taoiseach*; Department of Finance; Department of Transport; Department of Enterprise, Trade and Employment; Department of Communications, Energy and Natural Resources; Office of the Attorney General. The secretariat is provided by the Department of the Taoiseach.
8. The Government Chief Whip is a Minister of State (minister attached to the Department of Taoiseach). He/she attends government meetings, and is also assigned the functions relating to the Central Statistics Office. The role of the Whip is primarily that of disciplinarian for all government parties *i.e.* to ensure that all parliamentarians, including ministers, attend for *Dáil* business and follow the government line on all issues. The functions and responsibilities of the Chief Whip include: attendance at government meetings; preparation of weekly brief for Taoiseach on legislation in preparation; scheduling and monitoring of *Dáil* business; operation of the pairing system; *Dáil* reform; Leinster House accommodation for political parties; and chairing the Legislation Committee.
Source: www.citizensinformation.ie/categories/government-in-ireland/national-government/the-irish-government/the_government_chief_whip
9. It is the Irish contact for the EU Commission Single Point of Contact for the European Administrative Burden Reduction Action Programme; member of the Standard Cost Model Network; and member of European High Level Group of Regulatory Experts, alongside the *Taoiseach* BRU.
10. The RBE Group includes Revenue and the Companies Registration Office, the National Employment Rights Authority, the Health and Safety Authority, the Office of the Director of Corporate Enforcement, the Environmental Protection Agency, the National Consumer Agency, the Department of Agriculture, the Food Safety Authority of Ireland, and the Private Security Authority. The group also calls on the Central Statistics Office, the Centre for Management and Organisation Development (CMOD) and the Data Protection Commissioner for technical advice. DETI is currently arranging to expand the activities of the group beyond data sharing to co-operative inspections, and will shortly invite five further participants to join the discussion to search for practical solutions to multiple inspections of the retail sector.
11. A full list of these courses is available at: www.cstdc.gov.ie.
12. Renewal of this contract is currently under consideration.



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