IRELAND'S COMPLEX REGULATORY LANDSCAPE

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1. Introduction

As in many advanced economies, under the broader banner of public service modernisation, Ireland is currently pursuing a policy of regulatory reform with the twin socio-economic aims of improving/sustaining national "competitiveness and economic growth", along with "promoting inclusiveness and good government for all citizens" (*Regulating Better* 2004, p. 1). Drawing upon relevant national and international literature on regulatory reform, and as part of a wider cross-national research initiative within the Comparative Public Organization Data Base for Research and Analysis – network or COBRA (http://www.publicmanagement-cobra.org/), this paper[2] seeks to outline:

- the development of the national regulatory reform agenda, within the wider context of efforts to modernise public services in Ireland, including an initiative to map for the first time Ireland's regulatory landscape;
- explore some of the Irish definitional, conceptual and operational challenges such a mapping exercise entails
- place the mapping exercise within the wider context of the growing academic literature on regulatory bodies and agencification and
- provide and discuss policy and related insights arising from the initial analysis of this database.

While set in the specific context of Irish experience, and will therefore be of some value from an informational point of view, it is anticipated that this paper will raise broader issues for discussion of relevance to regulatory reform efforts in other jurisdictions.

2. Policy context

Since 1994, the Irish public service has been engaged upon a long-term programme of public service modernisation broadly along New Public Management (NPM) lines (see, for example, Pollitt and Bouckaert 2004). It has been called the Strategic Management Initiative (SMI). Never the less, some aspects of Ireland's approach have been distinctive, particularly the ways in it has been implemented. For example, modernisation has been primarily driven by senior officials themselves, rather than at cabinet or parliamentary levels, and has been taken forward within the context of national-level partnership agreements between government and the social partners. For example, verified performance against modernisation-linked targets (including those relating to regulatory reform) has been a requirement for public sector pay awards in recent years (see Boyle 2006). The latest of these, *Towards 2016, Ten-Year Framework Social Partnership Agreement 2006-2015*, as will be seen later, contains a number of specific and concrete targets to move forward the regulatory reform agenda. A useful overview of the Irish public service modernisation programme is available at www.bettergov.ie, as well as in Boyle and Humphreys 2001 and P.A.

Consulting 2002. The modernisation programme is summarised graphically in Figure 1 below.

Figure 1
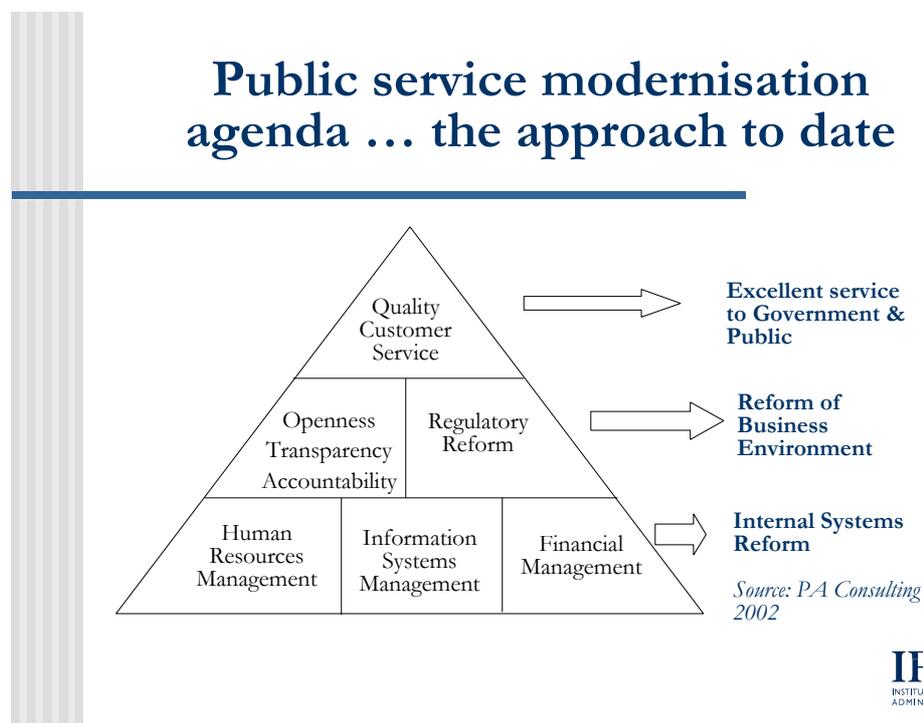
It is within this context that the national regulatory reform agenda has been taken forward in Ireland (http://www.betterregulation.ie/). Interestingly, as will be seen later, in this specific case, external drivers, such as the Organisation for Economic Cooperation and Development (OECD), have had a significant part to play in stimulating internal change most recently. However, initial efforts were made within the context of the SMI. In *Delivering Better Government* (1996), which remains the de facto agenda for modernisation at the national level, the emphasis upon regulatory reform is as follows.

> "Regulatory simplification (which encompasses legislation) has been recognised internationally as an integral part of any strategy to foster growth, competitiveness and employment. There is considerable debate on the extent to which Ireland and the countries of the European Union (EU) are, or are not, "over-regulated" relative to other countries and regions. The debate is a vexed one and involves social as well as economic issues. What is clear is that the regulatory environment is changing significantly. In so far as the Civil Service is concerned, it is changing from one where utilities are provided directly by the public sector without competition, to an environment of Civil Service regulation of the increasingly competitive provision of these services. Another issue to be considered is the growing need for clarity between the provision of a service and its regulation, particularly where there is potential for conflict of roles. These and other changes underline the need for high-quality, easily understood and efficiently implemented regulation where, following examination, regulation is deemed to be in the public interest. A country

which regulates badly puts itself at a serious economic disadvantage vis-à-vis its competitors" (p .12).

In plotting a way forward, *Delivering Better Government* (1996), recommended that the principles of regulatory reform should be to:

- improve the quality, rather than the quantity, of regulations;
- eliminate unnecessary and/or inefficient regulations (including legislation);
- simplify necessary regulation and related procedures as much as possible;
- lower the cost of regulatory compliance;
- make regulations more accessible to the public while in each case protecting the public interest.

It recommended a series of measures as part of a programme of regulatory reform:

- the introduction of national guidelines to improve the quality of new regulations;
- the development of self-regulatory mechanisms, where feasible and effective;
- the putting in place of mechanisms for the review, every five years, of existing regulations;
- the compilation of data bases of existing regulations;
- consideration of the impact on employment of all proposed new regulations;
- a more proactive approach to developing and implementing a coherent policy in relation to regulation at European Union level.

To move forward with implementation, an SMI Working Group on Regulatory Reform was established. The Group recommended a programme of consolidation and codification of existing legislation. This would have the advantage of creating a more accessible body of legislation and of ensuring that the most recent Act contains reference to all the legislative provisions in relation to the area it governs. In this way, each department and office would consider specifically the issue of how it could 'reduce red tape' and introduce efficient and effective regulatory reform in its own case.

The Working Group's recommendations were endorsed by government and published as *Reducing Red Tape - An Action Programme of Regulatory Reform in Ireland* (1999). In line with the Action Programme, the Government Procedures Handbook was amended so that each proposal for legislation is considered in the overall regulatory context. Additionally, a Statutory Law Revision and Consolidation Unit was established in the Office of the Attorney General which, together with the Department of the Taoiseach, has been engaged upon a programme of revision, consolidation and restatement of existing legislation in consultation with all Government Departments, with a view to making them more "user friendly and accessible" (see also Boyle 1999). In March 2000, the (then) Minister for Public Enterprise published *Policy Proposals on the Governance and Accountability of the Regulatory Framework* in the specific areas of transport, energy and communications (see also Ferris 2001).

While the initial regulatory focus in the SMI was mainly on administrative simplification and the accessibility of legislation (i.e. 'reducing red tape'), the

overall stimulus for change was greatly accelerated by the findings of the OECD Report (2001), *Regulatory Reform in Ireland*. In addition to a series of specific and demanding recommendations, the OECD concluded overall that,

> "The coming cycle in Irish economic development justifies a more coherent and determined approach to regulatory reform than seen to date. Ireland's future strengths lie in continued attention to domestic competitiveness through regulatory efficiency and flexibility, good governance and competition policy. Success will require Ireland to benchmark itself to a higher standard than its neighbours, that is, to be a leader in regulatory reform. To speed up results, a broad and co-ordinated approach across product, labour and financial markets is needed, with governance reforms" (p.8).

The SMI has been taken forward in Ireland on a largely consensual and gradualist basis. It is within this context that, in making recommendations regarding the management of the regulatory reform elements of this programme, the OECD (2001) makes the following points.

> "The next policy steps to be taken need to focus on issues of sustainability and the development of a robust regulatory policy … These efforts will require a new political commitment. Although its contribution has been essential, regulatory reform is not a political 'hot topic' and some reforms lack the external imperative that is often needed to overcome internal resistance. Hence the government will need to employ all its persuasive and communication skills necessary to pursue the regulatory reform agenda" (p. 108).

In this context, it is also interesting to note that P.A. Consulting (2002), in their independent assessment of progress made under the SMI, made the following observations:

> " … a central finding of this evaluation is that a shared understanding does not exist across Departments/Offices on what better regulation/regulatory reform entails … With the exception of the principal economic Departments, and some other Departments with a large legislative framework, there is little sense of the regulatory reform agenda permeating through the system and becoming an integral part of what departments do. There are therefore gaps in awareness of regulatory management and institutional capacity" (p.51).

As a consequence, P.A. Consulting (2002) concluded that, "Regulatory Reform is at a less developed stage than other components of the modernisation agenda" (p. 54) (see Figure 1).

In response to the OECD Report (2001), the government agreed an Action Programme, one element of which was the establishment of a High Level Group on Regulation that comprised senior officials from key government departments/offices and external regulatory authorities. This Group was asked to develop and co-ordinate the Better Regulation agenda with particular regard to the institutional and policy proposals required on foot of the OECD Report. The Group was tasked to (a) develop a system of Regulatory Impact Analysis (RIA),[3] (b) oversee the production of a new

national policy statement or White Paper on Better Regulation and (c) promote and monitor views in particular sectors.

Following the preparation of a public consultation document by the Group, *Towards Better Regulation* (2002), the subsequent White Paper, *Regulating Better* (2004), identifies six principles of Better Regulation and a detailed Action Programme was set out. These principles are:

- *"Necessity*: Is the regulation necessary? Can we reduce red tape in this area? Are the rules and structures that govern this area still valid?
- *Effectiveness*: Is the regulation properly targeted? Is it going to be properly complied with and enforced?
- *Proportionality*: Are we satisfied that the advantages outweigh the disadvantages of the regulation? Is there a smarter way of achieving the same goal?
- *Transparency*: Have we consulted with stakeholders prior to regulating? Is the regulation in this area clear and accessible to all? Is there good back-up explanatory material?
- *Accountability*: Is it clear under the regulation precisely who is responsible to whom and for what? Is there an effective appeals process?
- *Consistency*: Will the regulation give rise to anomalies and inconsistencies given the other regulations that are already in place in this area? Are we applying best practice developed in one area when regulating other areas?

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A Better Regulation Group (BRG) was also established to report back regularly to Government on implementation of these actions by departments/offices and agencies.

The introduction of Regulatory Impact Analysis (RIA) was also a key commitment in *Regulating Better*. The impetus for RIA can be traced back to the inclusion of regulatory reform as a central element of *Delivering Better Government* (1996). The Working Group established after the OECD Report developed a draft RIA model for the Irish context in 2002. As part of *Regulating Better*, the government committed to the piloting of this model with a view to its subsequent introduction in all departments/offices[4]. The pilot process commenced in June 2004, with the following participating:

- Department of Health and Children - *Medical Practitioners Bill*
- Department of Justice, Equality and Law Reform - *Coroners Bill*
- Department of Enterprise, Trade and Employment - *Export Control Bill*
- Office of the Revenue Commissioners - *Betting Duty Regulations*
- Department of the Environment, Heritage and Local Government - draft *EU Groundwater Directive*

Following an evaluation of the pilot experiences, a new two-phase approach to RIA was launched in July 2005 that is intended to be "proportionate, flexible and effective" (p.5).[5] The publication of the *Report on the Introduction of Regulatory Impact Analysis* (2005) was accompanied by the launch of *Reaching Out: Guidelines on Consultation for Public Sector Bodies* (2005).

Most recently, as part of *Towards 2016, Ten-Year Framework Social Partnership Agreement 2006-2015*, the Government has identified the following priorities in the regulatory area:

- Continue to monitor levels of compliance with requirements in relation to Regulatory Impact Analysis. Government Departments will publish within their Annual Reports details of legislation and regulations published during the relevant year and how RIA was applied in such cases;

- The Department of the Taoiseach will review the operation of RIA by the end of 2007 and use the findings of this review, to refine and amend RIA requirements and processes. This will help to ensure that RIA continues to support the development of proportionate, effective and targeted regulations;

- Publish a database of the key public and private sector bodies that currently have regulatory functions in Ireland;

- Conduct a wide-ranging survey to ascertain business attitudes to regulation. This will better inform Government of those regulatory areas causing most concern to business, either in terms of their impacts on the effective operation of markets and/or their imposition of administrative burdens. Based on the findings of this survey, Government will consider proposals from the Social Partners, the Better Regulation Group and the Business Regulation Forum to address any negative impacts of regulation on business, competitiveness and the consumer;

- As part of increased efforts to improve accessibility of legislation, the tools of restatement, consolidation, repeal and reform will be used to ensure the Irish Statute Book is more readily accessible. In developing this programme, particular attention will be paid to those legislative areas that have most impact on the citizen and on business, and to areas where restatement would be most useful;

- The programme to remove all obsolete and redundant Acts that predate the foundation of the State will continue. Repealing redundant or obsolete Acts will assist in ensuring that there is greater clarity regarding the legislation that remains in force in Ireland, and that this is more coherent and easily accessible to all citizens. Work will also progress on making secondary legislation available electronically at an earlier stage;

- It is essential that regulators' decisions are open to scrutiny and challenge by affected parties who consider that they have not been properly treated in accordance with the law. Government has published a consultation document in 2006 seeking views of the Social Partners, representative groups and other interested stakeholders on the most appropriate appeals mechanisms for the key economic regulators, reflecting best international practice, as well as the specific regulatory arrangements and market structures operating in individual sectors. In 2006, the Better Regulation Group also launched its *Consultation Paper on Regulatory Appeals.*

'Good quality regulation is essential to prevent market failures, to ensure the health and welfare of the citizen, the worker, the consumer and of business. It is important

that our regulatory framework remains flexible, proportionate and up to date'. (Towards 2016, p.18).

Towards 2016 identified as a priority area: the publication of a 'database of the key public and private sector bodies that currently have regulatory functions in Ireland'. It was felt that this database would contribute to the mapping of the regulatory framework in Ireland, in turn acting as a valuable research resource moving forward with the programme of regulatory reform. Mapping the regulatory framework in Ireland is an important step in the reform agenda because to date the infrastructure has remained under-researched and under-evaluated in terms of achieving greater efficiencies and economies of scale. There has been a renewed push since 2005 with new regulatory tools and resources such as regulatory impact analysis. It has been required that regulators' decisions are open to scrutiny and challenge.

3. Research Context

Regulating Better (2004) estimated that "there are over 500 public agencies/bodies in Ireland, many of which have a regulatory function – either as a 'rule-maker' or 'rule-enforcer'" (p.14). Essentially, the *Regulating Better* (2004) agenda commits the Government to ensuring that the potential for fragmentation and duplication is minimised. However, one of the major tasks still needing to be tackled in rolling further forward the programme of regulatory reform in Ireland is both apparently simple but also complex: namely, mapping Ireland's regulatory framework.

For the impression remains that, for a geographically compact country with a population of only 4 million, the institutional/functional diversity of the regulatory landscape appears to be remarkably complex and poorly understood. Fragmentation and overlap may be not only be horizontal, in terms of the scope of coverage of regulatory functions across the sectors, but also vertical in character, in terms of the accountability chain and the precise reporting arrangements in place. But without a database to begin to test such hypotheses, the further progress of evidence-based policy development in this area is constrained.

While the headline figure in *Regulating Better* (2004) of over 500 public agencies/regulatory bodies may have been a reasonable estimate, an authoritative database containing reliable information on public, or indeed non-public, sector regulatory bodies in Ireland does not currently exist in Ireland. The White Paper identified a number of different types and levels of regulatory body, including:

- Government Departments/Offices generating either primary or secondary legislation.

- Local authorities

- Independent sectoral regulators, such as ComReg (the communications regulator), the Commission for Aviation Regulation, the Commission for Energy Regulation and the Financial Regulator.

- Non-commercial public sector bodies under the aegis of departments/offices such as the Office of the Director of Consumer Affairs [National Consumer Agency], the Food Safety Authority and the Censorship/Appeals Boards.

In addition to these public bodies, there are also a number of private bodies with a regulatory role in particular areas of the economy and who can impact directly on business.

Acknowledging the lack of authoritative information and to support long-term regulatory reform, *Regulating Better* proposed that, "An audit of the regulatory framework in Ireland will be undertaken which will map the various bodies and reporting arrangements. It will also provide information on the range and type of bodies in Ireland with regulatory powers - whether *rule-makers* or *rule-enforcers* (p.43)[6]. The BRG sees a number of potential benefits arising from such a mapping exercise. It would provide:

- A way to highlight the range and scope of regulatory activity across the public sector and thereby raise awareness of the applicability of the Better Regulation principles.
- A source of information e.g. if placed online with interactivity, it could provide a useful visual reference guide.
- An input to comparison and benchmarking of Ireland's regulatory regime and regulatory reform process internationally.
- An insight to current governance structures for regulatory activity in Ireland.

At the outset, the BRG identified as a core issue: what is or is not a regulatory body?[7] Internationally, there are varying definitions of regulation that are used. The OECD (2001) for example, defines regulation as 'a set of incentives established either by the legislature, government or public administration that mandates or prohibits actions of citizens and enterprises, covering both primary and secondary legislation through which the government establish parameters for the behaviour of citizens and enterprises.' As was noted above, *Regulating Better* adopted a liberal definition of what constituted a regulatory body – namely, that a regulatory body was an organisation that could act as a 'rule-maker' or 'rule-enforcer'. However, if in trying to map the regulatory landscape such a very broad definition of a regulator were to be used then the list of regulatory bodies to be included in the audit would constitute potentially all organisations that can create and apply rules which impacts on their own membership or other groups or individuals. This would include not only regulators, like Government Departments, local authorities and sectoral regulators but also sporting organisations, trades unions, representative organisations and even local residents associations, as each of these would operate under a set of rules that govern how they operate, and how their relevant members must operate.

Accordingly, the BRG adopted a more pragmatic approach and that, for the purposes of compiling the audit, a 'regulatory body' would be defined as one that has functions in at least two of the following three areas of activities:

- The formulation of goals; the making of rules; [and/or] the setting of standards.
- Monitoring; gathering information; scrutiny; inspection; audit and evaluation.
- Enforcement; modifying behaviour; applying rewards and sanctions[8].

As a consequence of working closely with the policy community, it is apparent that the eventual audit of regulatory bodies sought to achieve an optimal compromise between as consistent and objective a definition as possible (in the light of available international and national literature) and the experience and views of practitioners engaged on a daily basis upon regulation and who are committed to better regulation within the Irish policy context.

Later in the paper, the characteristics of Irish regulatory bodies will be explored in more detail but, prior to this, the content and character of the data contained therein and available from secondary sources will be outlined. In summary, for each of the regulatory bodies in the database, information is available for the following fields:

- Name of body
- Website
- Parent body (public sector)
- Start date (public sector)
- Legislative framework (public sector)
- Type of Body (private sector)
- Primary Function (NACE)
- Regulatory Tasks
- Administrative Level
- Commercial/Non-commercial status and
- Contact details.

The information contained in the database is largely derived from the public domain, primarily *The IPA Yearbook and Diary 2005*, as well as Internet and other public domain sources. Annex 1 contains further detailed information on the database.

4.   Broader perspectives on regulatory reform

It is important while examining the regulatory framework in Ireland, to place this analysis in the wider framework of international and European regulation, so that in the future it may be possible to identify key issues and best practice methodologies for *regulating better*. Having established the policy context earlier in the paper the international context will now be reviewed. Ireland is in the process of emerging from the underdeveloped regulatory regime of past decades to episodes of independent regulators being created in recent years. Significant lessons can be drawn from the international literature in light of current regulatory arrangements. Majone (1997) maintains that a new model of governance began to emerge in Europe from the 1970s. Elements included privatisation, liberalisation, welfare reform and deregulation. However 'regulation' was seen as a distinctive element of that model. Essentially the term deregulation as commonly used is, according to Majone, rather misleading – since there has been no dismantling of public regulation. 'Regulatory reforms have had three main dimensions: liberalisation, state retrenchment and new regulatory design' (Gönenç et al. 2001, p.12).

4.1   Meanings of regulation

Regulation as legal term is a legal restriction imposed by governmental administrative agencies through rules, threat of sanction or fines. Regulators and governments also use competition as a policy instrument to support economic effectiveness (Helm, 2001, p.300). In the EU, there is an extensive argument for the continued establishment of European regulatory institutions. According to Helm, this approach considers regulation of the European market 'as a whole', versus 'the special interests of member states' (2001, p.309).

Papps (1975, p.10) proposes four rationales for government intervention in the economy:

- 'natural' monopoly – where conditions of production make more than one firm impossible
- externalities – effects on people not a party to the contract e.g. air pollution
- distribution of income - by selling at a price below the cost of production or by giving the workers a share in the profits
- maintenance of standards e.g. most governments intervene in the education system in some way to ensure access and equality of education for all

As Gilardi *et al* (2006) note that, one of the most notable characteristics of the change in governance of the past two decades has been the restructuring of the state, most notably the delegation of authority from politicians and ministries to technocrats and regulatory agencies. Massey and Daly (2003) suggest there has been a move to review the role of the state in the economy in most EU countries over the past 25 years. The term *de-regulation* is often used to describe the process of moving to replace direct state intervention and control in the economy with regulations that introduce market forces. 'Regulatory reform is a more accurate description, since what is involved is not the complete removal of all forms of regulatory control, but rather a move towards more effective mechanisms for achieving overall public policy objectives. In Ireland, this process has been driven by a combination of factors, including EU Directives, Government policy decisions and technological change' (pp. 339-340). Majone (1997) suggests that the growth of the regulatory state in Europe has much to do with the growth of European regulations, and their subsequent significant impact on the development of regulatory policies and institutions at national level. This causal development is commonly referred to as the 'Europeanisation of policy-making'.

4.2   'Agencification' and regulatory capture

It is also important not to distance the discussion of developments of the changing regulatory landscape from the wider debate around 'agencification'. Agencies are established for many reasons including: economic and efficiency reasons, societal expectations, political reasons, specialities (when complex fields require specialist policy knowledge) and isomorphic factors – whereby, as maintained by Van Thiel (2003), setting up agencies is simply seen as 'doing the right thing' (McGauran *et al.*, 2005, 5-7). The proliferation of agencies in Ireland broadly follows New Public Management (NPM) principles and the modernisation programme of government (see Section 2 above). In summary, Governments delegate operational functions to separate organisations so that they can devote resources more fully to the policy agenda. However, as Vaugn (2006) observes '… there is increasing international evidence that the establishment of agencies fosters a host of new problems, related

primarily to the impact they have on overall policy coherence and their democratic legitimacy … agencies many only be a temporary balm that provokes further convulsions of reform' (p. 50). NPM has, over time, introduced complex changes within public service organisations in the ways in which standards are set and enforced (Hood *et al.*, 1998, p.62). Is it correct to assume a dichotomy between agencies and the legislature in terms of control? von Wangenheim (1999) perceives a correlation between the changes in preferences of an institution and changes in policy of other agencies. In other words, he proposes that it is impossible for one institution (i.e. government department) to control an agency without the cooperation of the other institutions (p. 569).

Exactly what agencies are set up to do is another matter. Regulation is considered one of the core functions (in addition to advice, research, industrial development and information provision). Agencies are established to regulate both economic and social areas of society, as well as internally regulating the public sector. At arms length from government, regulatory agencies are 'endowed with some sort of authority over their charges', in some cases the degree of organisational separation between regulator and regulated suggests, as Hood *et al.* (1998) observe, 'one bureaucracy aiming to shape the activities of another' (p.61) (See also Mitnick, 1980). The OECD (2002) reports that 'in most countries studied, governments report that the creation of bodies with various degrees of separateness has been a largely positive experience' (p.21). But as McGauran *et al.* (2005) describe, problems can nonetheless be encountered even when agencies set up are working relatively well. These can include:

- Lack of clarity about the differences between agencies, and what they are set up to do
- The appropriate level of autonomy and accountability for agencies
- Lack of clarity regarding the governance structures of agencies, and their accountability to ministers and parent departments
- Lack of coordination between agencies and ministries, and between different agencies (2005: 24-27)

Pollitt *et al.* (2004) and Verhoest (2005) observe a similar unclear strategic role of the centre (line or parent departments) existing in many countries.

Many OECD countries have attempted to limit the danger of regulatory capture by creating regulatory institutions that are 'independent' of the executive branch of government. Making the regulator's status less dependent on political power limits the risk that private sector lobbies may use their political influence to affect regulatory decisions. The United States (US) has a long tradition of independent regulatory agencies, and the United Kingdom (UK) felt the creation of similarly structured regulatory agencies for the utilities was a critical step in overcoming the traditional problems of regulatory failure.

Regulatory reform that introduces independent regulatory agencies, independent from government, can involve a degree of risk. The OECD (2001) refers to this as the 'revolving door' scenario. Regulators, having weakened the links with politicians, have not eliminated the danger of capture by the regulated industry. This demonstrates how difficult it can be to assert transparent regulatory independence. Regulators can end up moving into senior positions in the companies they once

regulated. Beck (1987) for example carried out an econometric analysis of the Federal Reserve in the US to examine the degree to which the US President could influence the direction of monetary policy. His results showed over time that while the Federal Reserve does not sustain political cycles, it does reflexively accept such cycles when introduced through fiscal policy. Therefore, Beck perceived the US President holding some limited control over the Federal Reserve.

Thatcher (2006, p.6) recommends careful comparison between independent regulatory agencies across countries, since responsibilities between them differ so greatly. It does appear that there is no overall theory or model applied to the relationship between the elected politician and the independent regulatory agencies' (IRAs) post regulation. But this is relatively unsurprising in light of the variation of function between independent regulators and the relationships within the overall 'regulatory space' (Thatcher 2006, p.5, Scott, 2001, Hancher and Moran 1989). Majone (1994) observed that the growth of the 'regulatory state' in society at large was paralleled by an increase of regulation inside the state. Scott (2003, p.3) suggests that 'post-regulatory state' thinking dispels some of the sharp distinctions made previously between the state and markets, and between public and private regulation, common to economic, political science and sociological analysis. What has brought about the changes in governance at both the public and private levels?

Scott (2003) and Majone (1994) describe the move away from the welfare state to the regulatory state as an emerging trend in public management reform involving:

- Separation of operational and regulatory activities in some policy areas
- Tendency to separate purchasers and providers of public services (contracting out and market testing)
- Separation of operational and policy tasks within government departments
- Creation of executive agencies

'Each of these policies shifts the emphasis of control, to a greater or lesser degree, from the traditional bureaucratic mechanisms towards instruments of regulation' (Scott, 2003, p.4). Moran (2001) identifies that regulatory states not only reform the mechanisms of control over the economy and society but also flow into the process areas of social and economic life in which controls were characterised predominantly as self-regulatory in character (pp. 22-23). What about the variety of control mechanisms: form goals and standards take, mechanisms for feedback and monitoring, methods of repair when different standards appear, variety in who is controlling and who is controlled. For example, plurality of state actors with formal rule-making capacity can result; including: government departments, agencies, sub-national governments, supranational institutions (EU) (Scott, 2003, p.15).

4.3   A European perspective

'After more than three decades of continuous expansion, EC regulation constitutes an impressive body of public law, affecting practically every aspect of economic activity as well as many dimensions of public life' (Majone, 2000). We can assume that delegation of regulatory powers to the European level has not reduced but in fact increased, the results of which for Ireland will be referred to at a later stage. Then again, Grande's (2005) findings counter Majone's thesis on the scope of European

regulatory authority. 'This is not to say that the European Union is of little importance (i.e. that the new regulatory regimes are firmly grounded in the nation-state), but its legal regulatory competencies are only indirect and implicit. These competencies can be found mostly in the field of competition law, and the EU's scope of authority is quite obviously very restricted' (pp.6-7). Grande (2005) suggests that the regulatory regimes across Europe fall somewhere into the European system of multi-level governance (with actors involved from public, private, national, European and international levels). Can we assume therefore that there are a number of levels of decision-making at work in Ireland's regulatory regime, just one of them being centralised decision-making?

4.4   *Irish agencification research*

Research findings from the study undertaken by McGauran *et al* (2005) indicate a number of reasons for setting up agencies. In terms of regulatory agencies in Ireland, the EU was found to have a specific role in the set up of many regulatory agencies. 'Some EU legislation and policies explicitly require the establishment of independent agencies to separate the regulation and provision of services where markets are being liberalised, or indeed to separate out regulatory functions which have to regulate the public sector itself … just under half of the ninety-three survey respondents reported that the EU has some influence on their current existence … with one fifth indicating that this influence was strong' (pp. 55-56)[9].

5. An overview of Ireland's regulatory landscape

While this paper reports work still very much in progress, it is possible to get an overview of Ireland's complex regulatory landscape by drawing information from three main sources:

- An initial descriptive analysis of the bodies contained in the Irish regulatory database (see Section 3 above).
- Relevant results for a study previously undertaken at the IPA on agencification by McGauran *et al.* (2005) and
- Results for Ireland from the *OECD International Regulation Database.*

Each of these can now be summarised in turn.

5.1   *Irish regulatory bodies*

Detailed tables are provided in Annex 2[10]. Here, it can be seen that Table 1 presents an overview of the regulatory bodies currently contained in the database. The table shows the total number of bodies by date of establishment in *current* form, beginning with the youngest and indicates remit/parent department. Here it can be seen that apart from the local authorities that were established in the 19th. Century, many public bodies with a regulatory function in Ireland have been constituted in the past decade and a half.

From the regulatory database on public bodies, it is possible to break down the number of bodies per regulatory functions. Table 2 (Annex 2) indicates the regulatory function using the NACE codes. NACE codes represent the statistical classification of

economic activities within the EU, as used by the Central Statistics Office, Ireland (see Annex 1). The database also allows us to describe regulatory bodies according to regulatory task which follows a typology derived from Mitnick (1982) that breaks regulatory tasks into three main brackets: *economic* (business and corporate regulation, product standards, public utilities), *social* (environmental protection, workers' health and safety, consumer protection) and *general legal* (individual rights and duties, property rights, penal and procedural law, traffic law). Table 3 (Annex 2) illustrates the classification of bodies in relation to the primary regulatory task (up to six were assigned in some cases), number of bodies, whether they operate commercially or non-commercially and by level of administration (national or local). As can be seen, the majority of regulatory bodies operate nationally except for the local government cohort.

5.2   *National survey results (2005) – regulatory bodies*

Respondents from a national survey (2005)[11], undertaken by the IPA on *the corporate governance of agencies, non-commercial national agencies*, found that surveyed agencies, whose function is regulatory, fall mainly under the aegis of the Department of Health and Children, followed by the Departments' of Enterprise, Trade and Employment, Environment, Heritage and Local Government and Education and Science. Interestingly, when compared to the overall survey results, the Department of Enterprise, Trade and Employment has a higher representation of regulatory agencies than of other agencies (3% of all surveyed agencies were under the aegis of the department, while 13% of the regulatory bodies were).

Results showed that 54% of regulatory agencies had existed in another format prior to their current format. In total 59% of regulatory agencies were subject to EU influence in their current set-up. This influence was largely legislative, with 82% stating that this was a result of EU legislation being transposed into Irish law, a much higher proportion than among all other agency types surveyed. Most of the regulatory agencies surveyed were established in the 1990s. In terms of size and control, staff numbers in the surveyed regulatory agencies ranged from one part-time employee to 2,300 staff, with a mean staff number of 116 (quartiles at 8, 31 and 88). Annual budgets ranged from €84,000 to €1.24bn, with a mean of €65m. The median budget of regulatory agencies was lower when compared to the median of all agencies.

5.3   *OECD International Regulation Database*

This database is used to estimate the use of command and control regulation, collected in 1998 and 2003. The 2003 data for Ireland have been used for the purpose of this section. The indicator reflects the extent to which governments in the OECD member states use coercive regulation, (as opposed to incentive-based), in general and specific service sectors (it is one of sixteen low-level indicators in the system of Product Market Regulation indicators)[12]. The OECD's Indicators Questionnaire (2003) showed that Ireland's regulatory framework was in need of reform. Unlike the majority of OECD countries, Ireland's regulators were not required to formally assess alternative policy instruments (regulatory and non-regulatory) before adopting new regulation. Similarly there was no guidance issued on using alternatives to traditional regulation or concern at the level of government at which regulation occurs.

6. Moving forward

While the research reported on in this paper is still at a comparatively early stage of development, it is hoped that these initial findings and analysis will provoke a wider debate. In drawing the paper to a conclusion, it will also be helpful to explore a number of emergent issues in Ireland.

6.1   Work in progress

Over six years ago, the then Department of Public Enterprise issued a series of policy proposals in March 2000, immediately following the Government approved participation in the OECD review of regulatory developments in Ireland (published subsequently in 2001). Highlighted amongst that set of proposals on *Governance and Accountability in the Regulatory Process* was the acknowledgment that with the separation and transfer of regulatory functions to independent statutory agencies, came the delegation of power. It was stated that delegation of authority to independent regulators must be accompanied by clear accountability procedures. These changes were in line with the trend at European level to bring about programmes of liberalisation to encourage competition, in telecommunications, energy and transport sectors in particular. These programmes have in turn recommended the establishment of national regulatory authorities, with devolved powers from the Minister, which will ensure all consumers have unrestricted access to a minimum standard of service at affordable prices and open competition. Regulatory reform in selected industries and utilities illustrates the traditional focus of regulation. According to Gönenç *et al.* (2001), it is the associated developments in technology and increases in demand that have helped fuel the progress in regulatory reform (p.15). In addition Gönenç *et al.* (2001) note that for privatisation to be successful, the regulatory framework needs to be reformed. But privatisation can additionally make market-oriented regulatory policies easier to implement (p.58).

Despite the efforts of recent years, the 2006 annual national business survey carried out by the Small Firms Association, Ireland, highlighted a number of areas of current concern for small businesses[13]. On top of labour costs, skills shortage etc, the significant increases in 'legislation and red tape' is seen as an escalating concern for 66% of small companies. One of the biggest issues to come to light in Ireland since the beginning of the current regulatory reform process is the risk of administrative inefficiency by duplicating the functions of existing agencies designed to regulate within the different sectors of society and the economy. For example there are already a number of state-sponsored instruments for dealing with issues such as health and safety, employment conditions and environmental control.

6.2   Regulatory impact analysis

The Lisbon strategy has renewed the focus on the cost of regulation to Ireland and the EU, in terms of competitiveness. Regulatory Impact Analysis (RIA) is Ireland's response to a new and different public private interface. This is turn has led to the reform process being upfront and value led. RIA requires the following to be as effective as possible:

- Clarity of objectives

- Careful sequencing of processes
- Relevant data
- A clear mindset
- Allocation of responsibility
- Appropriate skills

RIA was piloted in 2005 across five government departments and offices. The OECD (2001) showed progress in many areas with a steady capacity building programme in place to ensure high quality regulation. However, the OECD report found that implementation was weak. On foot of the report's recommendations, a high level group on regulatory reform set about developing a preliminary model of RIA to be piloted. 'The intention of the pilot exercise is to assess the merit of the RIA model and gain insights from practical issues arising from its uses. Following the pilot phase, *Regulating Better* proposes that the RIA model will be refined and mainstreamed across all departments and offices' (Boyle, 2005: 2).

Ireland has a comparatively weak history of system wide planning and a limited tradition of effective policy analysis. Social partnership arising out of the 1980s invigorated both the economy and helped pave the way for the public service reform process. While Ireland has begun the process of regulatory control, the process has been considerably slower and the pattern of change different to many OECD countries. Institution building of independent regulators has come much later than in the US and UK for example, and while this reforming of the regulatory framework is still at a young stage in comparison, more and more emphasis is being placed on improving the processes for designing regulations and managing implementation, e.g. RIA. While significant progress is being made in moving towards a more flexible, transparent and competitive environment, some sectors more than others are still shaped by the heritage of past regulatory policies (Boylaud *et al.* 2001, p.104).

> In most OECD countries, regulatory reform has also concerned the policy and institutional setting … The first thing to notice is the wide diffusion of sectoral regulators, which are usually somewhat independent from the legislative and executive bodies, sometimes acquiring a semi-judiciary role (Boylaud *et al.*, 2001, pp. 109-110)

In terms of institutional design it is important to find ways of reducing the influence that interest groups have in regulation. 'Often, government ministries keep a policy-making role in the industry, while independent regulators have a legal mandate to define and enforce detailed regulations' (e.g. the promotion of competition, tariff setting and consumer protection) (Gönenç *et al.*, 2001: 63).

In Ireland's case many forces have challenged the concept of state control (see Figure 2). Impetus for change came as a result of the public service modernisation programme and international developments, whereby the traditional modes of governance and control were no longer seen to work as effectively as intended. Changes in state structure as well as those of governance and accountability seem now subject to challenge. In other words regulatory reform in Ireland is a response to deal with the problem of adapting traditional concepts to new institutional and

political settings. Bartle *et al.* (2005) note that accountability is a huge issue for regulatory bodies that come under pressure from 'interest-driven' parties and 'market-failure' pressures. '(A)ccountability of both the regulators and the regulated through transparency of process and reporting is the essential operating mechanism required to maintain effective regulation' (p. 46). Regarding capture theory of regulation and regulatory reform, political economy thinking, according to Gönenç *et al.* would suggest 'the larger the costs of regulation, the weaker the political sustainability of a given regulatory arrangement' (2001: 61). In other words the efficiency costs of regulation (costs of compliance, costs of change and demand) must be low for regulatory reform to be successful.

Figure 2

Where does RIA fit into the current evaluation framework?
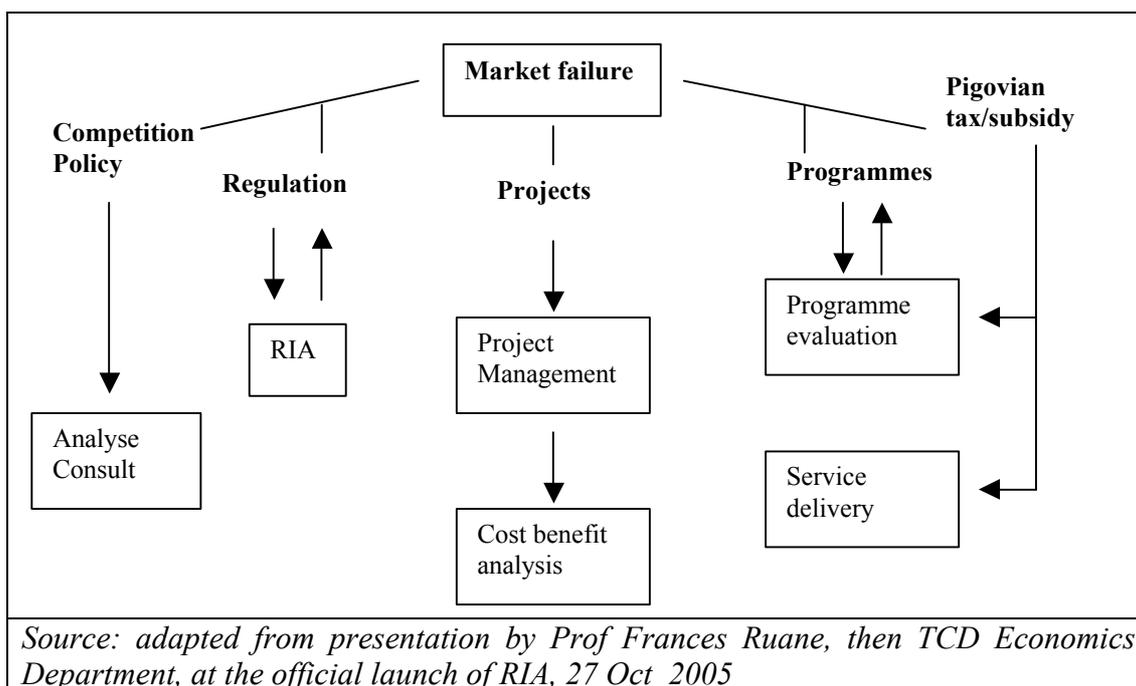
Source: adapted from presentation by Prof Frances Ruane, then TCD Economics Department, at the official launch of RIA, 27 Oct 2005

6.3   Lessons to be learned?

'What are the main characteristics of a 'good' or 'sensible' regulatory system? The answer to the question has two dimensions. The first relates to the instruments or legal forms selected to achieve the desired objectives. These would be appropriate in the light of the economic and social justifications for intervention and of their predicted impact on the regulated community. The second relates to the procedures or processes by which the instruments are formulated and applied. Clearly a regulatory regime cannot succeed unless its operation has legitimacy within the community it serves. To this end, certain process values must be recognised, including those of expertise, transparency, and accountability' (Ogus, 2001, p. 2).

According to Scott (2003) post-regulatory analysis of the plural legal norms at work within regulatory regimes places a strong emphasis on thorough development of principles and practices for regulating rule making. 'A well developed example of

such meta-regulation is found in the principles for control over the imposition of regulatory burdens developed in the United States, United Kingdom and many other OECD countries' (pp. 16-17). A common thread in these regimes, as mentioned by Scott, is the role of vigorous evaluation, such as regulatory impact assessments on proposed new regulations. 'The Australian federal government applies its regulation review regime additionally to soft law instruments made by public authorities (see Productivity Commission 2001)' (2003, pp.16-17).

This paper has reviewed some international trends and outcomes of regulation from international literature. Having placed Ireland in the national and international policy context, the analysis strand has presented the case of Ireland in some detail by looking at recent regulatory reform measures and reflecting on the relative youth of Ireland's regulatory institutions. Issues and questions have been raised as to where Ireland goes from here in terms of governance and accountability, and integration of regulatory bodies within the regulatory framework. It is important to pause and take stock so that the rapid regulatory developments of the past decade can be assessed and evaluated so we may continue to reduce the regulatory burden on businesses, and at the same time guarantee the optimum regulatory assurances permeate our economic, social, environmental and legal lives. Finally, it is worth noting the words of the Secretary General of the Department of the Taoiseach at the launch of the RIA Guidelines, 27 October 2005, "regulatory reform and managing the regulatory framework while largely a cabinet responsibility is also a collective responsibility".

ANNEX 1

Key concepts and definitions

To qualify for inclusion in the database, as a separate entry, a 'body' has to have the following features:

- It is structurally differentiated from other organisations
- Some capacity for autonomous decision-making
- Some expectation of continuity over time
- Performs some regulatory function
- Has some personnel and financial resources[14].

Such a regulatory body may often, but not necessarily, be in the 'public sector'**.** For the purposes of the database, a 'public sector body' is defined as one which: (a) directly derives the majority of its share capital from Irish public funds, or (b) has the majority of its Board members appointed by an Irish Minister, or (c) directly derives the majority of its revenue from Irish public sources[15]. The Central Statistics Office (CSO) uses this definition of the public sector[16]. Non-public sector or private regulatory bodies include professional health organisations, private bodies (responsible for the organisation of standards) and voluntary bodies that have an optional regulatory role

Details of the Database

As previously indicated, the database contains the following fields:

- *Name of body*: As cited in the *IPA Yearbook and Diary 2005*
- *Website***:** Where available this is derived from the latest available Internet sources.
- *Parent body*: For public sector regulatory bodies, the parent body is indicated, most typically a government department e.g. Agriculture and Food; Arts, Sport and Tourism etc.
- *Start date*: For public sector regulatory bodies, the date of establishment in its current form is given, as specified in public domain sources.
- *Legislative Framework*: For public sector regulatory bodies, the enabling legislation is indicated, as specified in public domain sources.
- *Type of Body***:** For private sector regulatory bodies, such a classification is not appropriate and instead the type of regulatory body is indicated, e.g. professional health organisation, private regulatory body responsible for the harmonisation of standards etc.
- *Primary Function***:** In order to define primary regulatory function in a nationally and internationally consistent fashion, the Sub-Group decided to use the *General Industrial Classification of Economic Activities within the European Communities* (NACE) as a nationally and an internationally recognised framework. NACE Rev.1.1 is designed to allow comparisons of economic activities at national, European and global levels and for its *Standard Classification of Industrial Activity*, the Central Statistics Office

(CSO) currently uses NACE Rev 1.1. The criterion used to define an economic activity is based upon an input of products (goods or services), a production process and an output of products. An activity is defined in NACE Rev.1.1 as "when resources such as equipment, labour, manufacturing techniques, information networks or products are combined, leading to the creation of specific goods or services". NACE Rev.1.1 coding is based on the 'principal activity' of a unit, where most of the gross value is added.

- *Regulatory Tasks***:** With regard to regulatory task**,** many bodies perform more than one specific regulatory task. To reflect this situation**,** the Group adopted a typology derived from Mitnick[17]. This definition covers "the organisation of all branches of regulatory administration be they *economic* (business and corporate regulation, product standards, public utilities), *social* (environmental protection, workers' health and safety, consumer protection) or *general legal* (individual rights and duties, property rights, penal and procedural law, traffic laws). With this in mind, regulatory task within the database is classified as follows. Each body has been given up to six values recording the variety of tasks performed. These tasks are not rank ordered. The tasks are:

    - Business Conditions
    - Competition
    - Financial markets
    - Product standards
    - Utility regulation
    - Labour market and employment law
    - Social affairs
    - Workers' health and safety
    - Environmental protection
    - Land planning
    - Consumers' protection
    - Penal law, judicial sector & proceedings, police intelligence
    - Immigration, foreigners' status and naturalisation
    - Private law
    - Public law – regulation of individual rights and obligations
    - Traffic law
    - Others.

- **Administrative Level:** This database contains bodies that operate at the national and local levels.
- **Commercial/Non-commercial status:** The database includes those bodies that are both commercial or non-commercial in character, i.e. bodies that both do and do not derive their bulk of their revenue from trading and commercial activities.
- **Contact details**: This normally comprises full postal address, telephone and fax numbers, as well as email address.

ANNEX 2

Table 1

Date of establishment	No. of bodies	Parent department(s)
2006	1	Education
2005	4	Health, Justice, Transport
2004	7	Community, Finance, Transport, Communications, Enterprise, Environment
2003	6	Finance, Environment, Arts, Central Bank and Financial services, Education
2002	11	7 new government departments, Communications, Health, Education
2001	9	Communications, Transport, Education, Arts, Enterprise, Finance
2000	1	Finance (Standards in Public Office Commission)
1999	2	Justice, Communications
1998	2	Justice, Health
1997	6	Education, Enterprise, Justice, Environment, Finance
1996	8	Transport, Enterprise (Port Companies)
1995	2	Health, Enterprise
1994	4	Transport, Agriculture, Transport, Environment
1993	1	Environment
1992	1	Environment
1991	1	Enterprise
1990	2	Enterprise, Social and Family Affairs
1989	3	Environment
1988	2	Enterprise, Justice
1987	1	Transport
1986	1	Transport
1985	1	Health
1984	1	Communications
1980	8	Communications (Fisheries Boards)
1978	2	Health, Enterprise
1977	2	Environment, Enterprise
1971	1	Education
1963	1	Enterprise
1960	1	Communications
1958	1	Arts
1956	1	Health
1952	1	Health
1950	1	Health
1946	15	Transport (Harbour Commissioners),
1931	1	Agriculture
1927	1	Enterprise
1924	5	Defence, Finance (2) Taoiseach, Justice
1898	101	Environment (County, City and Town Councils)
1875	1	Health (Pharmaceutical Soc)
1842	1	Justice (Dublin Carriage Office)
1793	1	Finance (Irish Stock Exchange)
1786/1894	1	Transport (Commissioners of Irish Lights)

Table 2

Primary Regulatory Function – NACE code	No. of bodies
Other supporting water transport activities	24
Other supporting air transport activities	1
National post activities	1
Administration of financial markets	1
Investigation and security activities	1
General (overall) public service activities (local government authorities mostly)	125
Regulation of the activities of agencies that provide health care, education	19
Regulation and contribution to more efficient operation of business	39
Supporting service activities for the government as a whole	3
Defence activities	1
Justice and judicial activities	3
Public security, law and order activities	1
Compulsory social security activities	1
Technical and vocational secondary education	2
Higher education	2
Human health activities	1
Dental practice activities	1
Other human health activities	4
Veterinary activities	1
Social work activities without accommodation	1
Other sporting activities	1
Gambling and betting activities	1

Table 3

Regulatory task	No. of bodies	Commercial	Non commercial	National	Local
Business conditions	16	13	3	9	7
Competition	3	0	3	3	0
Financial markets	4	1	3	4	0
Product standards	14	0	14	14	0
Utility regulation	12	5	7	11	1
Labour market and employment law	5	0	5	5	0
Social affairs	14	0	14	14	0
Workers' health and safety	1	0	1	1	0
Environmental protection	3	0	3	3	0
Land planning	115	0	115	1	114
Consumer protection	6	1	5	6	0
Immigration, foreigners' status and naturalisation	1	0	1	1	0
Private law	1	0	1	1	0
Public law – regulation of individual rights and obligations	16	0	16	16	0
Traffic law	22	22	0	0	22
Others	1 (Standards in Public Office Commission)	0	1	1	0

Notes

1. The views expressed in this paper are solely those of the authors and do not necessarily reflect those of the IPA or any other organisation.
2. This paper updates and extends an initial report of research findings to the   3rd. ECPR Conference in Budapest 2005 on *Regulation in an Age of Governance.* This paper by Humphreys, Mair, McGauran, Verhoest and Weir can be downloaded at http://www.essex.ac.uk/ecpr/events/generalconference/budapest/papers/3/4/humphreys.pdf.
3. Regulatory Impact Analysis (RIA) is a tool used to assess the likely effects of a proposed new regulation or regulatory change. It involves a detailed analysis to ascertain whether or not the new regulation would have the desired impact. It helps to identify any possible side effects or hidden costs associated with regulation and to quantify the likely costs of compliance on the individual citizen or business. It also helps to clarify the costs of enforcement for the State. RIA can enhance the quality of lawmaking in social and economic areas, enhance systems of governance and improve the capacity and performance of the public service (see Boyle 2005).
4. In agreeing these actions on RIA, the Government was influenced both by the EU Commission's work on impact assessment and the extensive benefits that have been associated with RIA internationally. RIA methodologies have been introduced in many other Member States and recent statistics suggest that it is compulsory in twelve of the twenty-five Member States. It is also increasingly being applied by Member States to draft EU Directives both during the negotiation and transposition phases. RIA has clear benefits in terms of identifying the national impacts of EU proposals on a timely basis. In particular, it can highlight impacts that proposals may have on Ireland that are not identified in the EU Commission's impact assessment, which focuses on aggregate impacts across, rather than within, Member States.
5. The first phase, known as a Screening RIA, is applied in all cases where RIA is required. The second phase, or Full RIA, is only required in relation to more significant proposals. The Screening RIA should apply to all primary legislation which proposes changes to the regulatory framework apart from the Finance Bill and some emergency, security or criminal legislation. It should also be used for significant Statutory Instruments. A Full RIA will be conducted where any one of the following applies:
    - there will be significant negative impacts on national competitiveness;
    - there will be significant negative impacts on the socially excluded or vulnerable groups;
    - there will be significant negative impacts on the environment;
    - the proposals involve a significant policy change in an economic market;
    - the proposals will impinge disproportionately on the rights of citizens;
    - the proposals will impose a disproportionate compliance burden;
    - the costs to the Exchequer or third parties are significant, or are disproportionately borne by one group or sector.
6. With the support of the Department of the Taoiseach, on behalf of the BRG, this database has been compiled by the IPA.
7. The White Paper quotes the UK Better Regulation Task Force definition of an independent regulator as "a body which has been established by an Act of Parliament, but which operates at arm's length from Government and which has one or more of the following powers: inspection; referral; advice to a third party; licensing; accreditation; or enforcement." *Independent Regulators,* Better Regulation Task Force, 2003, p. 6.
8. Even so, the BRG felt that even a very specific definition of what constituted a 'regulator' would still allow for the inclusion of a substantial number of bodies who might meet the criteria for inclusion, but that it felt would not intuitively be recognised as the kind of regulatory body that the audit wished to capture, or whose regulatory remit was so small or specific, as to be considered not relevant to the purposes of this audit. It argued that the underlying rationale for the audit of the regulatory landscape in Ireland was to identify and set out all those bodies with regulatory functions, which can and do impact in various sectors of society, so as to better identify how the regulatory framework is operating in Ireland, and thereby ensure that the range of regulatory institutions is optimal and that accountability mechanisms are appropriate. In this regard, it was therefore decided that a number of bodies,

while strictly speaking regulators when the agreed definition was applied to them, should be <u>excluded</u> from the database. Examples of such bodies are: –

- The Judiciary, the Courts, their Rules Committees, and quasi-judicial bodies such as the Coroners Service.
- Ombudsman services and offices, such as the Office of the Ombudsman, the Pensions Ombudsman, the Office of the Ombudsman for Children.
- Regulators internal to the Civil & Public Service (Public Appointments Commission, the Comptroller & Auditor General, the Standards in Public Office Commission)
- The Gardai & the Defence Forces (including voluntary or part-time security bodies such as the Reserve Defence Force & Civil Defence).
- Voluntary & Charitable Organisations.
- Sporting Associations.
- Certain health associations.
- Representative organisations such as trade unions, employers groups.

9. It is important to note the definition of agencies with a regulatory function for the purposes of the study by McGauran et al (2005) differs from that finally adopted by the Steering Group for the mapping of the regulatory framework project (see Section 3 in the paper).
10. It must be stressed that these initial results are subject to E&OE. In particular, they may be subject to change before publication and should not be quoted or cited without the joint authors' written consent.
11. The authors gratefully acknowledge the advice and support of Dr. Anne-Marie McGauran who undertook a special analysis of the Irish agencies database on our behalf. See McGauran et al 2005.
12. See Conway, P., V. Janod, and G. Nicoletti (2005) 'Product Market Regulation in OECD Countries, 1998 to 2003', *OECD Economics Department Working Paper*, No. 419.
13. See:http://www.sfa.ie/sectors/SFA/sfadoclib4.nsf/wvPressReleasesCurrent/A15F5354271FA7A5802571D200337816?OpenDocument
14. This definition is consistent with that used in the wider study of agencification in Ireland (see Mc. Gauran, A-M, Verhoest, K. and Humphreys, P.C. (2005), *The Corporate Governance of Agencies in Ireland*, CPMR Research Report No. 6, Dublin: IPA.
15. See Humphreys, P.C. and Gorman, P. (1987), *Information on Public Sector Employment and Manpower*, Dublin: IPA.
16. See, for example, 'Public Sector Employment and Earnings' data in the *Statistical Bulletin* series.
17. See Mitnick, B. (1982), 'Regulation and the Theory of Agency', *Policy Studies Review* 1.3, pp. 442-453. This definition is being used as part of the cross-national analysis of agencification being undertaken the auspices of COBRA (see http://www.publicmanagement-cobra.org/).

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