

FINDING A WAY THROUGH IRELAND'S REGULATORY MAZE

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1. Introduction

As with many other OECD countries, Ireland is 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). This paper seeks to outline:

- the development of the national regulatory reform agenda, within the wider context of efforts to modernise public services in Ireland;
- the different phases in the development of recent Irish regulatory policy and the role of internal/external drivers;
- the next steps in moving this agenda forward, including the need to map Ireland’s regulatory framework and
- some of the definitional, conceptual and operational challenges such a mapping exercise entails.

While set in the specific context of Irish experience, it is anticipated that this paper will raise broader issues for discussion of relevance to regulatory reform efforts in other jurisdictions.

2. Public service modernisation

Since 1994, the Irish public service has been engaged upon a long-term programme of public service modernisation, also known as the Strategic Management Initiative (SMI), broadly along New Public Management (NPM) lines (see, for example, Pollitt and Bouckaert 2004). It can also be argued that, in many ways, Ireland’s approach to modernisation has been somewhat unremarkable. For example, Pollitt (2005) has recently observed, “the case of Ireland is not a very interesting one, in the sense that the headline reforms are absolutely in the international mainstream”. However, this may be somewhat faint praise because some aspects of Ireland’s approach have been distinctive, particularly the ways in which these headlines have 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 (see <http://www.bettergov.ie/>). For example, verified performance against modernisation-

linked targets (including those relating to regulatory reform) has been a requirement for centrally determined public sector pay awards.

However, because Irish public sector modernisation/reform has primarily been self-driven, gradualist and consensual in approach, it would, however, be fair to characterise progress to date, on both the general and regulatory agendas, as having been less dramatic and radical than in some other jurisdictions. Effectively what senior managers have been seeking to do has been to both push and steer the process simultaneously. Even so, significant advances have been made. For example, Ireland has pioneered the introduction of Strategy Statements by Government Departments and their accountability to the Oireachtas (National Parliament) (See Boyle and Fleming 2000). A number of independent reviews have also indicated that while progress has been slow, significant advances have been made in the modernisation agenda over the past decade, for example particularly in the area of quality customer service (QCS) (see Boyle and Humphreys 2001; P.A. Consulting 2002).

3. 'Reducing red tape'

It is within this policy context that the national regulatory reform agenda has been taken forward (<http://www.betterregulation.ie/>). Interestingly, as will be seen later, in this particular case reform has not just been internally driven, external players, such as the Organisation for Economic Cooperation and Development (OECD), have also had a significant part to play in stimulating change in recent years. However, initial efforts to 'reduce red tape' were made within the context of the SMI reform programme.

In *Delivering Better Government* (1996), which remains the *de facto* agenda for modernisation at the national level, the emphasis upon regulatory reform was 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 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 the 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/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 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 also 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).

4. OECD stimulus

While the early 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 challenging 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).

As previously indicated, 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).

5. 'Regulating Better'

In response to the OECD Report, 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),² (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), submissions were received from a wide variety of interests including social partners, regulatory bodies, government departments, state bodies, voluntary bodies, representative associations, private enterprises and individuals.

In the subsequent White Paper, *Regulating Better* (2004), six principles of Better Regulation were identified and a detailed Action Programme 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?
- *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?

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/offices³. 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).⁴

6. A fragmented landscape?

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). Additionally, *Regulating Better* (2004) makes the 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;
- the Government will assess, on an ongoing basis, the possibilities for rationalisation of sectoral regulators including through the merger of existing regulators and/or through the sharing of common services; and
- strengthened contacts between the sectoral regulators, the Office of the Director of Consumer Affairs and the Competition Authority would be promoted.

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 nationally in rolling further forward the programme of regulatory reform is that of mapping Ireland’s regulatory framework. However, such an exercise is not as straightforward as might first appear.

7. Mapping Ireland’s regulatory framework

For a start, no one really knows how many regulatory bodies there are in Ireland, never mind how they relate to each other. Thus, while the headline figure in *Regulating Better* (2004) of over 500 public agencies/regulatory bodies may be 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. Without such basic information, the further progression of evidence based policy development in the regulatory area is handicapped.

Acknowledging this shortcoming, *Regulating Better* proposes 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).⁵ In terms of potential benefits, such a mapping exercise 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 the question of definition as a core issue.⁶

8. What is a regulatory body?

Without wishing to appear unduly simplistic, in order to map Ireland regulatory framework, an essential first step is to attain a satisfactory definition of what constitutes a 'regulatory body' for the purposes of this exercise. In order to meet the 'satisfactory' criterion, such a definition would not only need to be as intellectually coherent as possible, in the light of existing research knowledge, but also capable of being operationalised, as well as being "owned" by those tasked with moving the regulatory reform forward. However, such a balance can take time to achieve.

For a start, even a cursory review of the literature indicates that there are a variety of definitions of regulation currently employed internationally, for example:

- The OECD (2004) definition of regulation is legislatively/administratively based and relates to 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.
- Lowi's (1966) definition emphasises that regulatory decisions involve a direct choice as to who will be indulged and who deprived. So while implementation is case-by-case, individual decision must be made by application of general rules (mostly at the sector level).
- Mitnicks' (1982) definition of regulation focuses upon the public administrative policing of private behaviour according to rules and laws.

Additionally, regulation may encompass three different levels of activity:

- a) the transition of general policy and laws to more concrete rules, norms and standards where actors in policy fields have to comply with the issuing of norms/standards and advising on this process;
- b) the application of rules, norms and standards in individual cases (e.g. allocating building permissions based on construction laws) by the issuing of decisions on individual cases and advising on decisions on individual cases and

- c) controlling compliance to the rules, norms and standards through monitoring, sanctioning, enforcing and legal powers as necessary. Of course, not all regulatory bodies would demonstrate all these qualities, while some bodies may operate at more than one level.

Translating such international definitions and concepts into the Irish context of *Regulating Better* (2004) did not prove to be straightforward given that the White Paper speaks simply of ‘rule-makers’ and ‘rule-enforcers’⁷. *Regulating Better* (2004) adopts a liberal rather than conservative definition of what constitutes a regulatory body and a number of different types and level of regulatory body are identified 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 Irish Financial Services Regulatory Authority (IFSRA).
- Non-commercial public sector bodies under the aegis of departments/offices such as the Office of the Director of Consumer Affairs, the Competition Authority, the Food Safety Authority and the Censorship/Appeals Boards.

However, if regulatory bodies constitute potentially all organisations that can exert powers over, or impose burdens upon, other organisations and individuals, then the regulatory landscape is considerably wider. For example, it includes not just the variety of public bodies listed above but also an Garda Síochána (National Police Force), the Health Services’ Executive and so on. It would also include non-public sector bodies performing public functions, e.g. through the regulation/specification of standards/accreditation of professional services. Such bodies would include the Law Society, Bar Council and Medical Council etc.

Following stakeholder consultation, the definition used by Hood et al appears to provide the best fit for this mapping exercise; namely “Regulation encompasses a range of activities, such as: (a) goal formulation, rule-making and standard setting; (b) monitoring, information-gathering, scrutiny, inspection, audit and evaluation; and (c) enforcement, behaviour modification, and the application of rewards and sanctions⁸. While there may be other aspects to the work of regulators, such as advocacy, awareness raising or education not covered by this definition, these three aspects would cover the core regulatory functions of any given body for the purposes of BRG⁹. On this basis, there appear to be the following administrative types of body in Ireland’s regulatory landscape¹⁰:

- *Public Sector Bodies*¹¹: Oireachtas and government departments/offices, other central government bodies, the Defence Forces and An Garda Síochána (National Police Force), judicial bodies, local government/administration, financial institutions and state-sponsored bodies (see Annex One).

- *Non-Public Sector Bodies*: including professional health organisations, private bodies (responsible for the organisation of standards) and voluntary bodies that may have an optional regulatory role (see Annex Two).

While these lists appear to be extensive, they do reflect the pragmatic view held by policy makers as to the definition of a “regulator” for the purposes of supporting Better Regulation. For example, it was decided that bodies largely involved in the regulation/issuing grants are not to be included yet it could be argued that such bodies certainly operate as both ‘rule-makers’ and ‘rule-enforcers’.

9. Tentative beginnings

By scanning the lists in Annexes One and Two, it is possible to gain some initial indication of the mix of regulatory bodies operating in Ireland currently. However, such lists beg more questions than they answer. For example, they give no real indication of the importance, however defined, of the regulatory functions performed by these bodies. In addition, the bodies listed are deliberately limited in terms of geographical scope. Yet the role of the EU and other European/international regulators is absolutely critical in so many areas of Irish socio-economic activity. Thus any nationally undertaken mapping exercise needs at least to be cognizant of such issues, not least because the national parliament acts, in part at least, as an entrepôt for European regulatory activity.

Despite best efforts, the list of non-public sector bodies may be unbalanced and incomplete, partly because of imperfect knowledge of these sectors. For example, Annex Two contains four professional associations concerned alone with chiropody and podiatry. While this reflects the reality of the current position in this small sub-sector, it might imply a disproportionate pre-occupation of Irish people with their feet. Conversely little is known about the alternative medicine sector and its regulation or lack of it. Additionally, inclusion of the Turf Club for the horseracing sector, in the lists, should be accompanied by the equivalent, governing bodies for other sports. However, where do you draw the line? There are a proliferation of professional and amateur sporting bodies in Ireland, all with a regulatory role for their sports: from the Gaelic Athletics Association (GAA) and Football Association of Ireland (FAI) to the more esoteric like Horseshoe Pitchers Association of Ireland and the Baton Twirling Sport Association of Ireland. There are 75 such bodies affiliated to the Federation of Irish Sports, all with a valid claim to be included in the database, which they are not at present.

10. Next steps

Having obtained consensus on a meaningful, if imperfect operational definition of regulatory bodies in Ireland, work is now in hand to develop a unique national database for future analytical work. Once more, after detailed consultation with key stakeholders, the database will contain the following fields:

ID number
Date of establishment in current form
Statutory/non-statutory basis for establishment
Name of body

Parent body
Primary function (NACE Rev. 1.1)¹²
Regulatory Tasks
Level of administration
Website
Contact details (for future follow-up/survey work)

All information currently being used to develop the database is from published sources. The use of secondary sources, in this way, should allow the mapping of regulatory bodies, along the lines outlined above, in terms of their range and type. Based on previous experience, however, the extent to which information on the governance arrangements and/or the effectiveness with which the regulatory function is exercised is likely to be limited from public domain sources.

Accordingly, when the database has been completed, it is proposed to map Ireland's regulatory framework not just in terms of age, functions, task etc. but also in terms of their inter-relationships and the quality of those relationships. It is proposed to explore such inter-relationships not just in organisational terms but also from a citizen/victim perspective. As may be gathered, this research is still very much 'work in progress'. However, it is hoped that sufficient issues have been raised, of broader interest to fellow researchers in the regulatory area, as to stimulate some interesting questions for us all to address.

ANNEX ONE: PUBLIC SECTOR REGULATORY BODIES

1. Oireachtas (National Parliament)

2. Government Departments:

Agriculture and Food
Arts, Sport and Tourism
Communications, Marine and Natural Resources
Community, Rural and Gaeltacht Affairs
Defence
Education and Science
Enterprise, Trade and Employment
Environment, Heritage and Local Government
Finance
Foreign Affairs
Health and Children
Justice, Equality and Law Reform
Social and Family Affairs
Taoiseach
Transport

3. Other central government bodies:

Adoption Board
Censorship of Films Appeal Board
Censorship of Publications Appeal Board
Censorship of Publications Board
Coimisinéir Teanga (Official Languages Commission)
Commissioners of Charitable Donations & Bequests
Commission for Public Service Appointments
Companies Registration Office
Director of Public Prosecutions
Employment Appeals Tribunal
Equality Tribunal
Film Censor's Office
Irish Auditing and Accounting Supervisory Authority (IAASA)
Irish Medicines Board
Irish Takeover Panel
Labour Court
Labour Relations Commission
National Children's Office
Office of the Appeals Commissioners
Office of the Attorney General
Office of the Comptroller and Auditor General
Office of the Director of Corporate Enforcement

Office of the Director of Consumer Affairs
Office of the Data Protection Commissioner
Office of the Ombudsman for Children
Office of the Ombudsman/Information Commissioner
Office of the Refugee Applications Commissioner
Office of the Registrar of Friendly Societies
Office of the Revenue Commissioners
Patents Office
Pensions Ombudsman
Poisons Council
Private Residential Tenancies Board
Registration Council
Registration of Title Rules Committee
Refugee Appeals Tribunal
Sheriffs Service
Social Services Inspectorate
Social Welfare Appeals Office
Standards in Public Office Commission
State Examinations Commission
State Laboratory
Valuation Office/Valuation Tribunal

4. Defence and security

Defence Forces
Garda Síochána (National Police Force)
Garda Síochána Complaints Board
Garda Síochána Complaints Appeal Board

5. Judicial bodies:

Supreme Court
Court of Criminal Appeal
High Court
Central Criminal Court
Special Criminal Court
Circuit Court
District Court
Circuit Court Rules Committee
Committee on Court Practice and Procedure
District Court Rules Committee
Criminal Injuries Compensation Tribunal
Superior Courts Rules Committee

6. Local government and administration:

Borough and Town Councils (80)
Regional Fisheries Boards (7)
City Councils (5)
County Councils (29)
Harbour Authorities (20)

7. Health Bodies:

Beaumont Hospital
Cork Teaching Hospital
Galway Regional Hospital
Mater University/Private Hospitals
Our Lady's Hospital for Sick Children
St. James'/Adelaide/Meath/National Children's Hospital
St. Vincent's Hospital
Health Service Executive
Health Protection Surveillance Unit
Health Service Employers Agency
HSE North-East Area
National Hospitals Office
Office for Health Management

8. State-Sponsored Bodies:

Bord Altranais (Nursing Board)
Bord Pleanála (Planning Board)
Broadcasting Commission of Ireland (BCI)
Broadcasting Complaints Commission
Central Fisheries Board
Commission for Aviation Regulation
Commission for Communications Regulation
Commission for Energy Regulation
Commission for Taxi Regulation
Commissioners of Irish Lights
Competition Authority
Dental Council
Dublin Airport Authority plc
Dublin Docklands Development Authority
Dublin Carriage Office
EPA – Environmental Protection Agency
FÁS
Food Safety Authority of Ireland
FETAC: Further Education and Training Awards Council
Health and Safety Authority
Health Insurance Authority
HETAC – Higher Education and Training Awards Council
HEA – Higher Education Authority
Irish Aviation Authority

Irish Water Safety
Medical Council
Mental Health Commission
National Council for Curriculum and Assessment
National Council for the Professional Development of Nursing and Midwifery
National Disability Authority
National Milk Agency
National Pensions Reserve Fund Commission
National Qualifications Authority of Ireland
National Roads Authority
National Social Work Qualifications Board
National Standards Authority of Ireland
Office of the Director of Equality Investigations
Office of Tobacco Control
Opticians Board
Ordnance Survey Ireland
Pensions Board
Pharmaceutical Society of Ireland
Radiological Protection Institute of Ireland
Rent Tribunal
Residential Institutions Redress Board
Temple Bar Properties Ltd
Veterinary Council

9. Financial Institutions:

Irish Financial Services Regulatory Authority
Central Bank and Financial Services Authority of Ireland
Financial Services Ombudsman's Office

ANNEX TWO: NON-PUBLIC SECTOR REGULATORY BODIES

Professional Health Organisations:

Association of Occupational Therapists of Ireland
Association of Optometrists, Ireland
Irish Association of Speech and Language Therapists
Irish Chiropodists/Podiatrists Organisation Ltd.
Society of Chiropodists/Podiatrists in Ireland
Institute of Chiropodists/Podiatrists in Ireland
Irish Branch of the British Chiropody and Podiatry in Ireland
Irish Health Services Accreditation Board
National Ambulance Training Board
Pre-Hospital Emergency Care Council
Professional Register of Traditional Chinese Medicine

Private regulatory bodies responsible for the harmonisation of standards:

Academy of Medical Laboratory Science
Acupuncture Association
Advertising Standards Authority for Ireland
Association of Building Engineers
Bar Council
Chartered Institute of Building in Ireland
CIMA Chartered Institute of Management Accountants
Chartered Institute of Personnel and Development in Ireland
Chartered Institute of Public Finance and Accountancy
Construction Industry Federation
Driving Instructor Register of Ireland Ltd
Equestrian Federation of Ireland
Goldsmiths of Dublin
Institute of Accounting Technicians In Ireland
CPA – Institute of Certified Public Accountants in Ireland
Institute of Chartered Accountants in Ireland
Institute of Chartered Secretaries and Administrators
Institute of Incorporated Public Accountants
Institute of Industrial Engineers
Institution of Professional Auctioneers and Valuers
Institution of Chemical Engineers
Institute of Civil Engineers
Institution of Electrical Engineers
Institute of Engineers of Ireland
Institute of Mechanical Engineers
Institution of Structural Engineers
Irish Association of Physical Therapists
Irish Brokers Association

Irish League of Credit Unions
Irish Society of Chartered Physiotherapists
Law Society of Ireland
Psychological Society of Ireland
Regulator of Premium Rate Telecommunications Services LTD (Regtel)
Royal Institute of the Architects of Ireland
Society of Chartered Surveyors
The Turf Club – Office of the Governing Bodies

Voluntary bodies that may have an optional regulatory function:

Electro-Technical Council of Ireland Ltd

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. 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).
 3. In agreeing these actions on RIA, the Government was influenced both by the EU Commission's work on impact assessment and the benefits that have been associated with RIA internationally. RIA methodologies have been introduced in many other Member States and RIA is understood to be 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 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.
 4. 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.
- 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).
5. This audit is being undertaken for the Department of the Taoiseach, on behalf of the BRG, by a multi-disciplinary research team from the Whitaker School of Government and Management (IPA: Dublin).
 6. 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.
 7. Such terminology requires clarity and consensus as to what does or does not constitute a 'rule', 'making' and 'enforcement'. Such terms are not unambiguous and as a consequence are capable of wider or narrower interpretations.
 8. To be included, a regulatory body had to display two of the three characteristics (a), (b) or (c).
 9. The primary secondary source used for this purpose is the *2005 IPA Yearbook and Diary*.
 10. To be included in these lists as a separate entry, a body needs 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.

This definition is consistent with that used by McGauran, Verhoest and Humphreys (2005) in their wider study of agencification in Ireland.

11. An Irish public sector organisation is defined as any employing body 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 (see Humphreys and Gorman 1987). The Central Statistics Office for official estimates uses this definition of the public sector.
12. For classification of primary regulatory function, it is proposed to use the General Industrial Classification of Economic Activities within the European Communities (NACE) should be used because it is an internationally recognised framework¹. 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.

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