

Regulation in Ireland: History, Structure, Style and Reform

Ciara Brown and Colin Scott
UCD Centre for Regulation and Governance

colin.scott@ucd.ie

This is the first working paper in a series within the Regulatory Capacity and Networked Governance Project, funded by the Irish Research Council for Humanities and Social Sciences and the Institute of Public Administration. A second paper is published under the title 'Regulatory Capacity and Networked Governance'. We are grateful to project colleagues Niamh Hardiman, Muiris MacCarthaigh and Imelda Maher for their advice and support and to Richard Boyle of the IPA for comments on an earlier draft.

1. Introduction

Regulation as an instrument of government has seen remarkable growth across European countries since the 1980s (Levi-Faur 2005). In this working paper we examine the development of regulation in Ireland and of developments in reform, reviewing such literature as is available. The working paper forms part of a larger project concerned with the investigation of regulatory capacity in Ireland. In this project we are examining how the use by government, agencies and others (such as self-regulatory bodies and EU institutions) of their capacities for regulation is shaped, not simply by instrument choice, but also by institutional factors, drawing on concepts of 'national styles of regulation' (Vogel, 1986). We have a particular interest in the ways in which participation in networks affects regulatory capacity. The theoretical framework for analysing the linkage between regulatory capacity networked governance is set out in the second project Working Paper, 'Regulatory Capacity and Networked Governance'.

What does the literature suggest concerning the origins of and capacity for regulation in Ireland? It is not difficult to identify literature on the early economic and political history developments which led to the creation of so many state bodies in Ireland. There is also a literature on more recent developments in regulatory reform, New Public Management, the influence of the EU and of the OECD (mainly from primary sources). Some analysis has also been undertaken on Ireland's privatisation programme and there is also a reasonable amount of academic and practitioner material available which examines social partnership and its role in Irish policymaking. Within some regulatory fields there is a good deal of secondary literature, notably competition and environmental regulation, whereas in others the main sources are the relevant EU and national legislative frameworks and reports and reviews of national governmental and legislative institutions and supranational bodies such as the OECD. Media reporting is of value in some sectors with high salience, such as financial regulation during the recent crisis.

Overall, however, little has been written to analyse or explain the totality of regulation and regulatory style in Ireland, nor to compare/contrast developments in Ireland with elsewhere.

2. Fragmentation in Governing Capacity: Regulatory State or Regulatory Capitalism?

Regulation is amongst the central instruments through which governments within the OECD member states seek to deliver on their policy priorities. However, a lack of consensus on exactly how regulation should be conceptualised can make studying its nature and effects problematic (Black 2002). A classic and much-cited definition of regulation refers to 'sustained and focused control exercised by a public agency over activities that are valued by the community' (Selznick 1985: 363). This definition chimes with popular understanding of regulation as a set of activities performed by regulatory agencies. Broader conceptions of regulation involve an expansion of modes of governing (to include market-based instruments and even mechanisms of social control) and a wider cast of regulatory actors, including central government

departments (not just agencies) and a variety of non-state actors, such as business, trade associations and NGOs (Scott 2009). Viewed in this way, regulatory regimes are places of multiple and overlapping engagements (Hancher and Moran 1989).

Recent decades have seen an increase in emphasis on regulation as a mode of government in Europe, sometimes referred to as the rise of the regulatory state (Majone 1994; Moran 2002: 391). The regulatory state is characterised by a decrease in centralised (State) provision and by new approaches to control, including contracting out of services, public/private partnerships and creation of executive and regulatory agencies to support the process of separating policymaking from day-to-day operational activity in government departments and between departments and service providers. Majone (1996) attributed the rise of the regulatory state to the increasingly technocratic nature of demands on government. The delegation of operational management to specialised agencies is thought to present a solution to this, as the necessary expertise and access to information can be harnessed appropriately. In addition, such delegation can demonstrate credible commitment on the part of government and insulate much governance activity from the political sphere (Thatcher 2002). This is the separation of ‘steering’ (policymaking) from ‘rowing’ (operational management) the ship of state (Scott 2004). Deregulation of markets, sectoral liberalisation and privatisation of formerly State-owned enterprises have all contributed to ‘the rise of the unelected’ (Vibert, 2007). These developments shift control away from elected representatives and central bureaucracy to new actors and new instruments with the phenomenon of agencification becoming one important dimension (Christensen and Laegrid 2006). The rise of the regulatory state outside the USA ‘captures the essence of the transformation in the governance of the capitalist economy’ (Jordana and Levi-Faur, 2004:9)

Levi-Faur (2005) suggests that these phenomena indicate the emergence of a new governing order, ‘regulatory capitalism’, characterised by an emphasis on rules, a new division of labour between State and society and a growth in dependence on expertise and on non-majoritarian institutions such as agencies. The growth of the regulatory state in terms of controls over business has been paralleled by an increase in regulation *inside* the state (Majone 1994; Hood 1998; Hood et al 1999). Regulatory capitalism also involves a strong emphasis on the regulatory capacity of non-state actors (Braithwaite, 2008).

These trends underpin what we may think of either as a process of fragmentation of governing capacity, or as a recognition of the significance of a fragmented quality which already existed. Elements of this fragmentation include:

- an upward vertical shift from nation states to supranational organisation;
- a downward shift from the centre to regional and local levels;
- a horizontal shift from public to private organisations;
- a horizontal shift from the centre to agencies and independent regulators;
- a shift from the central public sector to civil society and withdrawal of the state from some functions. (Bekkers et al, 2007, 20)

For some the fragmentation in governing capacity associated with regulatory capitalism represents a convergence of Western capitalist ideology around a broadly neoliberal economic agenda that emphasises the importance of competition and

market liberalisation and a switch from the traditional Keynesian welfare state model (Kirby & Murphy 2008). This thinking argued for the retreat of the state and the need to *deregulate* in order to free up constraints on business and enterprise. For others this process is about *re-regulating* with smarter and more responsive modes and instruments with a move away traditional command-and-control models and towards more flexible and innovative methods – what Ayres and Braithwaite (1992) call ‘responsive regulation’ and Gunningham and Grabosky (1998) ‘smart’ regulation’. Pressures on governments to demonstrate smarter regulation include addressing the risks associated with mobility of capital. Key choices in the EU concern whether to coordinate through harmonisation or permit a degree of competition on regulatory rules, and similar choices arise also on a global level (Bratton, Picciotto, Scott, 1996). EU membership and in particular, Single Market and competition policies have been a major factor in stimulating the development of regulatory agencies in Ireland, particularly in the network industries as these sectors were opened up to competition and deregulated. Another important factor has been globalisation and growing recognition that many problems (climate change, pollution), industries (energy) and markets (financial) cross national boundaries and transcend them, requiring international cooperation in their regulation.

The growth of regulatory governance has also brought new instruments for oversight of regulation. The striking feature is how quickly US-style regulatory governance and initiatives like regulatory impact analysis have diffused across borders. Radaelli (2000) described the diffusion of Better Regulation as an example of ‘herding’ or ‘emulation’ by states. An important trend has been the change from previously sector-specific models to ‘horizontal’ approaches – i.e. the development of institutional models and tools that can be utilised *across* sectors (Radaelli, 2007a: 12). A manifestation of this can be seen in the creation of cross-cutting regulatory regimes (and corresponding agencies) such as those in the areas of competition and consumer protection. This process also flows into the areas of social policy in which controls had previously been primarily characterised by self-regulation (Moran, 2001, 22).

A variety of explanations for trends in regulatory governance have been put forward (Gilardi, 2005). *Bottom-up* explanations work from the idea that countries face similar sorts of problems and respond in broadly similar ways. A central feature of government in many countries has been coping with fiscal crises (and declines in public trust) at various times. New public management reforms adopted in different ways have formed part of the response – seeking to squeeze greater efficiency out of public sector bodies through the advancement of practices such as strategic management, quality customer service and greater understanding of the relationship between inputs and outcomes. The elaboration of public sector audit, going beyond financial probity to assess the value for money associated with government programmes, can be viewed as a further aspect of this response to fiscal difficulty (Scott and MacCarthaigh 2009).

In addition to the ‘similar problems’ hypothesis, institutional reforms may also represent a bottom-up attempt at addressing political uncertainty (Gilardi, 2005). This argument has particular application in the world of regulation, because of a concern that the risk of political changes (and thus credible commitment) might undermine the confidence of regulated businesses and thus their willingness to invest. Does this kind of explanation have a variant in respect of accountability regimes? The shift of

decision making away from politicians might be expected to underpin a formalization of government/industry relations as the previously unwritten norms are set down in rules and also an intensification of judicial scrutiny as disputes are resolved less informally and more frequently through litigation. On this last point, John Cooke, J in his Foreword to Connery and Hodnett's book (2009) refers specifically to just such a phenomenon occurring in Ireland – an explosion in judicial review applications – he attributes 'much of this burgeoning case-load to the demand for judicial intervention to control the lawful exercise of delegation of power from government to independent regulatory agencies'.

Horizontal explanations for policy diffusion focus on emulation of institutional solutions to problems faced by national governments. Gilardi highlights the increasing interdependencies of national governments as part of the reason for observation of learning, competition, cooperation, taken-for-grantedness and symbolic imitation (Gilardi 2005: 90). He notes that 'policies or organisations become taken for granted when they are so widespread that there is little question that they are the appropriate choice' (Gilardi 2005: 90). Examples include the development of independent regulatory agency models in areas such as food, financial services and so on.

Finally, *top-down* explanations of diffusion are based on the idea of national political systems responding to exogenous factors, typically requirements deriving from international treaties or membership of international organisations such as the OECD, the IMF or the EU.

Rhodes (1997) focused on institutional isomorphism as a means of explaining what form of regulatory technique is adopted. He described institutional isomorphism as taking three forms – coercive (with governments dictating the remit), mimetic (copying other models, especially under conditions of uncertainty) and normative (generally driven by professionals). In the Irish context, we could argue that the establishment of independent regulators in sectors such as telecoms and energy was an example of 'coercive isomorphism' with the EU setting the agenda and 'dictating the remit'. The establishment of the EPA might be deemed 'mimetic' in drawing heavily on Britain's experience. Taylor and Horan went further and suggested that it also showed characteristics of institutional memory as officials drew on their own prior experience with the successful 1963 Planning Act (Taylor and Horan 2002). Such lesson drawing does not only occur between states, but also between levels of government. There has been much discussion concerning the extent and nature of lesson-drawing by the European Commission from member states in the establishment of the European Food Safety Agency. Whilst its advisory character made it closer in nature to national agencies in France and Ireland than the more strongly empowered Swedish and UK agencies, claims that EFSA was based on the Foods Safety Authority of Ireland (Taylor & Millar 2002) have been questioned on grounds of lack of evidence (Roederer- Rynning and Daugberg 2010). Examples of Rhodes' 'normative' model might be the self-regulatory regime of the legal profession or that of internet service providers.

Addressing evidence of fragmentation in governing capacity in Ireland in this paper we use the concept of regulatory regimes to capture the idea that regulatory governance frequently involves a considerable range of organisations and types of governing apparatus. Eberlein and Grande (2005) introduced the concept of a

regulatory regime in the context of the EU. In their analysis, they address the failure of the regulatory state thesis and also that of delegation to agencies to completely explain successful or effective supranational governance. In their view, the imperfect explanation presented by the earlier concepts is met by conceiving of regulation as an activity that is undertaken by a web of state and non-state actors at various levels of government. A central role in this 'web' is played by networks. Eberlein and Grande focus on transnational regulatory networks, arguing that these can (and do, in fact) fill a 'regulatory gap' that occurs as 'despite the rising need for uniform EU-level rules in the internal market, the bulk of formal powers and the institutional focus of regulatory activities continue to be located at the national level' (Eberlein and Grande, 2005).

Scott (2006) amplifies this concept at the national level, arguing that a strict focus only on the two classic dimensions of regulation, government departments and agencies, 'risks obscuring as much as it illuminates'. Instead, the model should be reconceptualised, by 'conceiving of the institutions, norms and processes of regulation in a broader way'. Within this analysis, regulation (at the national level, not only the supranational) occurs within regimes, 'characterised by diffuse populations of actors and considerable diversity in the norms and mechanisms of control'. Resources relevant to the exercise of power within regulatory regimes are typically widely dispersed and that control is not always effected through the application of formal legal authority (which itself may be fragmented – as in Ireland, government departments retain substantial powers, and in most OECD countries, there is a trend towards exerting substantial oversight over agencies, including the involvement of the courts in the application of sanctions). There are three elements to any system of control – first, norms, standards and rules, second, mechanisms for monitoring and feedback and third, ways of correcting behaviour (Scott 2008). In the regulatory context, such elements can be fragmented across actors within any given regime. For instance, rulemaking can be kept (largely or totally) by central government departments or the legislature, while monitoring of compliance or breaches is largely undertaken by agencies and the application of sanctions may necessitate application to, and the approval of a court.

The fragmentation of regulatory power and capacity often leads to diversity in mechanisms of control, including soft law options and harnessing the capacity of non-state actors – communities, networks or firms. These factors suggest the regulatory regime is a more useful unit of analysis. Thinking about regulation as a 'dynamic' process, with capacity dispersed across actors, leads to 'paying closer attention to the attributes, ideas, interests and capacities of the variety of actors involved' (Scott, 2006). The concept of 'regulatory space' (Hancher and Moran, 1989) further encourages this reconceptualisation of how things actually get done. The concepts of regulatory space and regulatory regimes facilitate thinking about the promotion of other models, such as self-regulation and co-regulation, the work of standard-setting organisations and regulation by contract - none of which fit easily within the traditional conceptualisation of either the regulatory state or the delegation of power to agencies.

Given the somewhat *ad hoc* nature of regulatory development in Ireland, the nature and extent of such fragmentation is not consistent across different sectors or regimes, nevertheless widespread evidence of the effective operation of networks and the role played by non-state actors can be found, even in sectors where most regulatory

activity is charged to a specific body. The regulatory landscape in Ireland offers some evidence for Eberlein and Grande's thesis that the operation of regulatory networks is used as a means of enhancing or extending the capacity of the more usually observed institutions. In some cases, agencies and departments have filled gaps or deficiencies in their own mandates or capacity by specific recourse to the use of other parties' resources and the deployment of a networked approach (one clear example being in the field of environmental protection).

3. Ireland – A Regulatory State *Avant la Lettre*?

The post-Independence history of state activity in Ireland has been characterised both by a high degree of centralisation, by concerns to use state capacity to stimulate economic development, and by a relatively limited direct role for the state in provision of social and educational services (and, accordingly, a more significant role both in funding and regulating non-state providers in areas such as health and schools) (Reeves and Palcic 2004: 526-7). The regulatory role of the state was very much in evidence in Ireland in the first half of the twentieth century, but with an emphasis on licensing and authorisations for private providers of services and social regulation (for example censorship) (Hardiman & Scott 2010: 186). Extensive public ownership across a wide range of industrial sectors also constituted an implicit form of regulation. In the second half of the twentieth century as a developmental agenda gave way to an interest in promoting competitiveness, policies of privatisation and re-regulation gave regulatory governance a different set of priorities concerned primarily with addressing market failures and promoting competition.

3.1 Privatization

During the 1980s, many western countries went through a reversal of policies on extensive public ownership of industry for ideological reasons or under pressure from international organizations such as the OECD or as a result of EU membership and competition directives aimed at creating a Single (and open) Market. In addition, the key role that public utilities in particular played in modern economies and the contribution they could make to economic performance were significant factors in driving the change. Technological advances were also a driver of change, especially in telecommunications. The reform process introduced in several countries, most notably the US and the UK comprised firstly, market liberalisation – i.e. the introduction of competition where possible and second, the development of new methods of regulation designed for the newly liberalised markets at least until effective competition had taken hold. The opening of markets to competition was a core focus of the EU's drive to create the Single Market. In Ireland liberalisation increasingly permitted the emergence of private competitors to state-owned and privatised enterprises, for example in air transport, communications, inter-city bus services and energy.

Ireland was late coming to privatisation and during the 1980s several new state-owned enterprises were in fact created (for example, the subsidiary operating companies of CIE) (Reeves and Palcic 2004). The eventual move to sell government stakes in large

utility enterprises in the late 1990s and early 2000s was primarily an inevitable consequence of the EU's continued forcing of liberalisation of those markets and their opening up to competition by virtues of successive EU directives. In addition, by then (and especially having seen the positive effects of deregulation and competition in the aviation sector in terms of lower airfares), public perception had subtly changed. Where once state enterprises were considered flagship symbols of a recently-independent state, increasingly public opinion came to associate state ownership with lack of efficiency, poor quality service, high subsidisation and a lack of incentive to improve either costs or services. Taken together with pressures arising from Single Market developments and learning from the wave of privatisations in the UK, change was inevitable in Ireland.

The shift towards privatisation in Ireland, although present, 'has not been as extensive as in other countries'. (Sweeney, 2004, 16). However, despite the absence of a clearly articulated political strategy of privatisation, when the Progressive Democrat party came into government in coalition with Fianna Fail in 1989, it was more than willing to consider the retreat of the State from ownership and operation of industry (Reeves and Palcic 2004: 530). In Ireland, as across the EU, European rules on abolition of state aids, competition and cross-subsidies, along with technological change that encompassed competition in areas that had once been natural monopolies, drove the move to liberalise markets and create new commercial structures for State-owned enterprises (Reeves and Palcic 2004: 533-4).

However, privatisation was *not* seen as the only available option. Successive governments have been acutely aware of the wider historical, social, employment and community roles of companies like Bord na Mona or the rural postal service, and the key role played by a company such as VHI in saving the State costs. Despite the necessity of liberalisation to comply with EU competition rules, there may have been political reluctance to jeopardise jobs by fully letting go of State control. Where the State retained full ownership or a significant stake in companies now operating in liberalised markets, this necessitated the separation of regulating that sector from direct state control.

The State has, however, divested itself of ownership in 11 enterprises to date, but mainly through trade sales with few full privatisations. The negative fall-out following the Telecom Eireann flotation acted as a brake on future potential privatisations and was a key factor in the decision to sell Aer Lingus only to institutional investors. This contrasts with one of the core objectives of British privatisation policy throughout the 1980s and 1990s, when wider public share ownership was seen as a public good in itself (popular capitalism).

Figure 1 Privatisation in Ireland

1984	Irish Continental Lines (Irish Shipping subsidiary sold on collapse of parent company)
1991	Irish Sugar (the first proper IPO, operating since as listed company Greencore)
1991-3	Irish Life (sold through IPO and then merged with Irish Permanent Building Society, trading now as listed bank Irish Life & Permanent)
1992	B&I (now part of Irish Ferries, formerly Irish Continental Lines)

1996	Irish Steel (restructured in state ownership, then sold to ISPAT with State retaining some liabilities and finally closed as unviable in 2001)
1999	Telecom Eireann/eircom (first full IPO offered to public, subsequently taken private again by investors, then refloated in 2004, now part of Babcock & Brown)
2001	INPC (sold to Tosco, now part of Conoco-Phillips)
2001	ACC Bank (sold to Rabobank)
2001	ICC Bank (sold to Bank of Scotland)
2001:	TSB (not strictly a state-owned enterprise, but a mutual company - proceeds from sale to Irish Life went to the Exchequer)
2006	Aer Lingus (sold through IPO)

Source: Sweeney, 2004, updated.

In addition, four State companies have been closed Irish Shipping in 1984, Ceimici Teo in 1986, Foir Teo in 1990 and IFI/NET in 2002. Sales of subsidiaries of State companies include CARA and PARC, both former subsidiaries of Aer Lingus and sold to management and Cablelink, a subsidiary of RTE sold to NTL.

New commercial State companies have also been established,¹ while some of the remaining utility companies have been converted into commercial state owned enterprises, to equip them to cope with liberalising markets and competition, in line with EU requirements. The ESB and Bord Gais, for example, have had their supply and generation facilities separated into different companies. The financial crisis of 2008 has resulted in the nationalisation of Anglo-Irish bank, as the only way to effectively shore up its operating requirements for capital, with the prospect that other nationalisations may follow. Fiscal pressures, however, are likely to push this trend simultaneously in the opposite direction. In 2010 the Department of Finance, motivated by remarkable drop in tax revenues and growth in public debt, established a Review Group on State Assets and Liabilities, to be chaired by Colm McCarthy. The main focus of the review is the potential for selling off commercial state bodies such as the Electricity Supply Board, Bord Gais and the variety of transport-related bodies such as Dublin Bus, Irish Rail and the port companies.²

Market liberalisation of industries where the incumbent monopoly was in state ownership gave rise to potential conflict of interest between a Minister's role as shareholder and as market regulator. From this flowed the emergence of delegation to newly established independent regulatory agencies. The realisation that incumbents needed freedom to compete on a level playing field, have access to the capital markets and so on, led to the parallel trend of full or partial privatisation of formerly wholly state-owned enterprises.

Whereas in the UK, the establishment of independent regulatory agencies was commonly linked to privatisation and liberalization (with the notable exception of the post office, which remains in public hands, but subject to a sectoral regulator), in Ireland, their creation has occurred where the incumbent remains publicly-owned (e.g. gas and electricity sectors) and gradual liberalisation of the market is involved.

¹ E.g the eight new commercial port companies.

² Details at <http://www.finance.gov.ie/viewdoc.asp?DocID=6396> (visited 20 September 2010).

3.2 Agencification in Ireland

A principal indicator of the rise of the regulatory state is the growth in the number of regulatory agencies. Ireland has certainly seen significant agencification (see below). However, the growth of agencies in Ireland is ‘difficult to explain fully by reference to unidimensional drivers alone’ (Scott and MacCarthaigh 2009). Both non-commercial and commercial agencies emerged in a largely ad hoc manner and with a wide variety of reporting and accountability relationships to their parent department.

Some of the reasons for the piecemeal approach to the creation of regulatory structures are historical: such as the lack of a robust administrative tradition (Scott and MacCarthaigh 2009) and the lack of a developed private sector which led earlier to the state’s involvement in several economic and social arenas. In more recent times, as outlined earlier, various aspects of diffusion and of fragmentation were at work – top-down (e.g. in response to EU developments and market liberalisations in particular, such as the establishment of separate independent regulatory agencies for the telecommunications and energy sectors), bottom-up (for example, fragmentation of the governance system through social partnership) and horizontal (emulation of similar models elsewhere can be identified in the creation of agencies such as the EPA and the Competition Authority, as well as in the enactment of ombudsman legislation). Such patterns of fragmentation contributed to further regulatory agencies and structures being introduced.

Unlike many other jurisdictions, where the process of agencification has occurred in ‘waves’, in Ireland the process has been one of gradual acceleration which has peaked only recently. The recent acceleration in the growth of agencies may be attributed to a certain ‘taken for grantedness’ that agencies provide a central solution to a wide range of policy problems. Since the early 1990s there has been a sustained pattern in the creation or reform of regulatory agencies. In the area of economic regulation or market governance examples include: the Office of the Director of Corporate Enforcement (established 2001), the Irish Auditing and Accounting Supervisory Body (est 2005), the Financial Regulator (IFSRA, est 2003) and the National Consumer Agency (est 2007), as well as the main economic regulators, ComReg (formerly the Office of the Director of Telecommunications, est 1996), Commission for Energy Regulation (est 1999), Commission for Aviation Regulation (est 1999) and Commission for Taxi Regulation (est 2004). The Broadcasting Commission of Ireland (est 2001, now BAI 2009), the Private Security Authority (2004), the Press Council, Press Ombudsman (2008), the Health Information and Quality Authority (est 2007) and the National Employment Rights Authority (2007) are some examples of other relatively recently established regulatory agencies but operating outside the deregulated network industries; some of them in non-economic areas. Alongside these public agencies there are both longstanding and newer non-state bodies to which regulatory powers are delegated implicitly or explicitly. The Advertising Standards Authority of Ireland, for example, was established in 1981, while the delegated powers of the Law Society of Ireland to regulate the solicitors’ profession date back to the Solicitors’ Acts 1954 to 2002.

Hardiman (2007) notes that the drop in the number of state-owned enterprises as a result of sales (privatisations) in the late 1990s/early 2000s was in fact largely offset by the number of new enterprises being established through the commercialisation of some government services. McGauran, Verhoest and Humphreys (2005) found a total of 601 commercial and non-commercial agencies operating at national, regional and local levels in 2003. Almost 60% of these had been set up since 1990. An analysis by the Better Regulation Unit of the Department of An Taoiseach in conjunction with the Institute of Public Administration determined in 2007 that a total of 213 bodies with regulatory powers existed, of which 205 were public agencies (the list included 114 local authorities and town councils as well as nine Fisheries Commissioners and Fisheries Boards).

This report '*Bodies in Ireland with Regulatory Power*' defined a regulatory body as one that has statutory recognition and has functions in at least two of the following three areas of activity:

- the formulation of goals, the making of rules and/or the setting of standards
- monitoring, gathering information, scrutiny, inspection, audit and evaluation and
- enforcement, modifying behaviour, applying rewards and sanctions.

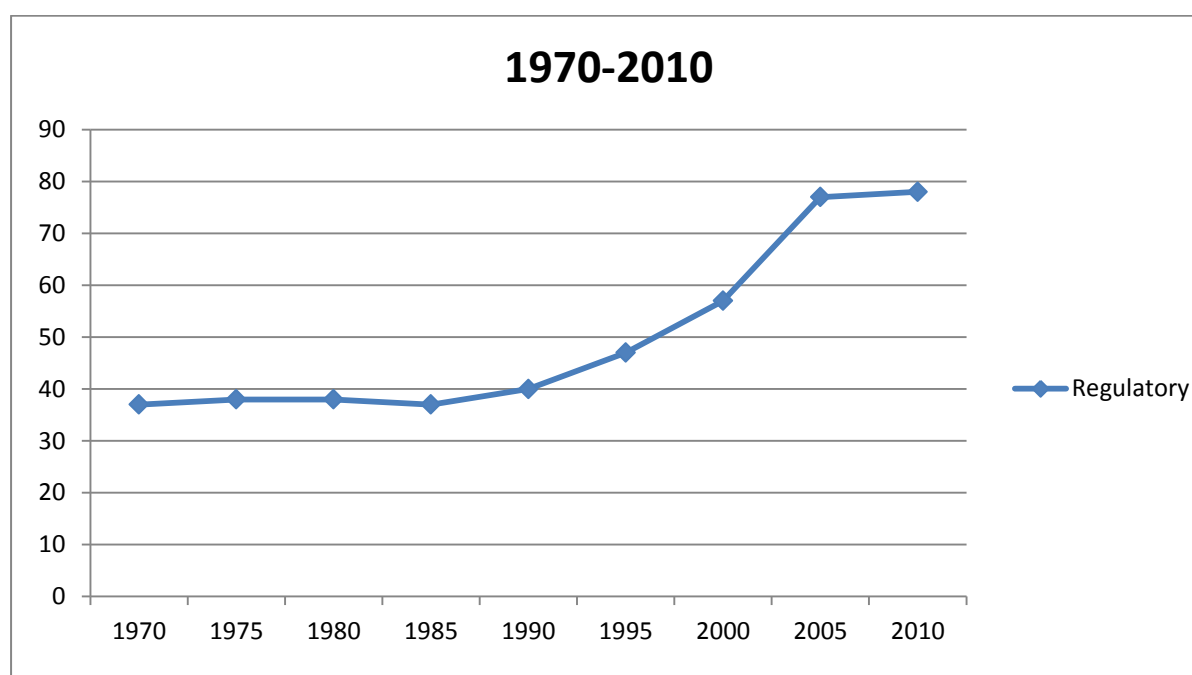
In addition to its regulatory role, in order to be considered a regulatory body, an organisation had to have the following characteristics:

- be an independent organisation, apart from any other body
- have some capacity for independent decision making
- have some expectation of continuity over time
- have some personnel and financial resources

The Economist Intelligence Unit concluded in its 2009 *Review of the Regulatory Environment in Ireland*, if local authorities are excluded, then the number of regulatory bodies in Ireland fitting these criteria number approx 100, with over 90 of these being public agencies.

Recent research at UCD Geary Institute, Mapping the Irish State project, concluded that over 80 central state bodies existed whose *principal* function was regulatory (Figure 1 and see also Appendix for list of bodies and links to Mapping the Irish State Database).

Figure 1. Growth in Regulatory Agencies 1970-2010



Source: UCD Geary Institute Mapping the Irish State Project

The seeming incoherence and *ad hoc* nature of the creation of regulators in Ireland has not resulted from a clear overarching policy goal, but rather from a general trend of agencification of core government functions (Nolan 2008). The initial pattern of regulatory policy-making in Ireland was characterised by reluctance on the part of state actors to delegate sufficient power to the utility regulators (the first agencies) in order to allow them actually to challenge the positions and practices of the incumbents (Westrup 2007). The interests of producer groups remained predominant with evidence – across the telecoms, energy and financial service sectors – of regulatory capture, specifically such that the regulatory regime reflected industry interests, rather than consumers (Westrup 2007).

Westrup identified a shift in attitudes from the early (1997-2002) period of delegation- which may have been more or less exclusively driven by EU requirements – to a second period, beginning around 2002, which saw (some) regulatory agencies gradually emerge as actors in their own right ‘with real powers and political influence’. In particular, the creation of the Aviation (1999) and Taxi (2004) Regulators and more recently in 2005, IAASI (for the accountancy profession)–none of which was driven by EU requirements – provide evidence of shifting official perceptions (Westrup 2007). If not triggered by Europeanisation, then issues such as credible commitment and the potential for blame-shifting were key factors. The Economist Intelligence Unit, in its 2009 Report, while also noting that there was no EU requirement to establish the Commission for Aviation Regulation suggested, however, that another potential form of conflict had existed which explains its creation, since the state, as the airports’ owner, would have an interest in maximising the profitability of its airports, while as the regulator, it would have a responsibility – both to carriers and consumers – of reducing airport charges. In relation to the Taxi

Regulator, the EIU report also points out that there was no discernible reason why the state should necessarily set up this body, other than to protect the consumer interest.

In a critique of the *ad hoc* approach a senior regulator has said. It is 'high time some coherence was introduced into the system. No sooner has (a regulator) been set up, than questions start to be raised about the regulator's accountability and performance policymakers feel obliged to re-assert some control over the regulators, whether through enabling Ministers to issue policy directions or by some other means'. (Purcell 2010)

Key challenges facing government in the development of Ireland's regulatory structures, and especially with the creation of independent sectoral or economic regulators included the need to 'set priorities to help sectoral regulators resolve potential conflicts between economic, social and regional objectives (Ferris 2001). A further early issue identified also in the OECD 2001 Report was the matter of overlapping jurisdiction with the Competition Authority. The OECD's 2008 report on the public service noted that 'in Ireland, the objectives of agencification are unclear, mixed and not prioritised, resulting in sub-optimal governance structures' (OECD, 2008, 298)

The consistency of regulatory policy was itself questioned in the Government's White Paper 'Regulating Better'

'The evolution of regulatory policy in Ireland has not, to date, proceeded in a uniform fashion. The result has been the establishment of regulatory institutions with different mandates, as well as different levels of responsibility, different legal bases and different structures. Most other OECD countries have seen a similar pattern of development. One of the main issues is the variety in structures and responsibilities across different sectors. While these may not be significant problems in themselves, the adoption of a national regulatory policy should ensure that consistency is introduced across the regulatory system, where possible. The issue is not about following precedent, but rather one of dealing with situations consistently. It is also about public bodies seeking information or designing application processes, as much as possible, in the same format. This would ensure greater confidence in the system, greater transparency in decision making and promote greater efficiency across the various sectors'

This 2004 White Paper, 'Regulating Better' stated that no new regulatory bodies would be created unless 'the case for a new regulator can be clearly demonstrated in light of existing structures'.

There is near-consensus among all commentators, however, that the changing preferences of state actors (politicians and senior officials) were also clearly driven by OECD trends and specifically its reports on Ireland. The seminal 2001 OECD Report '*Regulatory Reform in Ireland*' criticised Ireland's high costs of doing business (particularly telecoms and energy costs), lack of technological innovation and lack of real competition in key sectors. This picture did not fit well with Ireland's economic goals of attracting inward investment and further agencification to stimulate

competition and regulate markets may be read as part of the government's response to the situation highlighted by the OECD. The processes associated with preparing and disseminating the OECD Report were themselves part of a process of building capacity for regulatory reform and oversight in Ireland as, according to Lodge, they

‘allowed a previously unconnected group of officials to emerge as a loosely connected advocacy coalition, while the report (as well as the prior review activity) offered a foundation on which to base and legitimize demands for regulatory reform.’ (Lodge 2005: 657-658)

The OECD process underpinned progress towards significant measures of statute law reform and placed policies of better regulation at the heart of government in the Department of the Taoiseach even though, in terms of content, the Irish government substantially looked elsewhere for the norms to inform the policy (Lodge 2005: 659).

The Better Regulation agenda of the EU, separately from individual sectoral requirements for market liberalisation, also drove change and led to a flow of legislation. The most important was the adoption in the 2002 White Paper ‘*Towards Better Regulation*’, of many of the policy proposals contained in the earlier 2000 Department of Public Enterprise document which addressed measures to enhance accountability and effectiveness of the new regulatory regime. This legislation formulated objectives for regulators such as promoting competition and increasing regulators’ sanctioning powers. The Competition Authority’s mandate was also considerably strengthened in legislation in 2002. In Westrup’s (2007) perspective, this widening and strengthening both of the powers of regulators and of their accountability marked a paradigm shift in the Irish governance model, not entirely accounted for by EU requirements. It reflected – and further underpinned - a significant increase in the institutional capacity and significance of the independent regulatory agencies as key actors that had been gradually building since the mid-90s.

What other factors may have influenced the fragmentation of regulatory power and capacity and the delegation of regulation to agencies in other sectors?

Some regulatory bodies have been established following government-commissioned reviews of sectors. This happened in both the health and safety and financial services area. As the EIU 2009 *Review* notes, the Health and Safety Authority was set up to take over responsibility for functions previously carried out by the Department, following a review that recommended decisions to prosecute for breaches of legislation ought to be taken by a body independent of the Minister. It could be argued that some agencies are a relic of what Sean Barrett described as the ‘inherited tradition of state boards’ or may have their origins in those early, post-independence days of state intervention in enterprise which was not always delivered by central departments but outsourced to state-owned agencies or companies. While not all such agencies have regulatory powers, some do. In other cases (for example the Advertising Standards Authority of Ireland), industry bodies have acquired regulatory authority. It is probable that, in some cases at least, the decision to delegate has been driven by resources (or lack thereof) within central government departments.

In certain areas (the print media, the legal profession and advertising, to name three) the trend has been towards fostering self-regulatory regimes and therefore assigning

appropriate powers of monitoring and enforcement to the relevant authorities (although with different legal basis and to varying degrees). The Law Society of Ireland exercises delegated statutory power to authorise and discipline solicitors. Why would the state have delegated? Because it feared that access to information, ability to monitor or expertise would be weak at the level of central government and could be more effectively carried out by the Law Society.

The issue of implicit delegation of authority by government is also significant. Such implicit delegation can be defined as ‘a governmental act in which an actor is permitted or encouraged to engage in some action through representations of various kinds as to what may or may not happen if the actor does not take on the projected activities’ (Hardiman and Scott 2009)- in other words, bargaining in the shadow of the law. The Press Council and Press Ombudsman were recently established by the media industry in a shadow of hierarchy that the government would establish a statutory press complaints body if a more effective self-regulatory regime was not forthcoming from the industry (Gore and Horgan, forthcoming). A contrasting example (although still an instance of implicit, rather than explicit delegation by government) where the government accepted and recognised post hoc an existing self-regulatory regime is that of the ASAI.

Turning now to the institutional changes which have accompanied the growth in regulation, the various ways diffusion has happened in Ireland can be mapped following Gilardi (2005) but the Irish case presents some challenges for such an analysis since some of the key elements can be dated to the first half of the twentieth century and appear isolated from, rather than related to, changes elsewhere (Scott and MacCarthaigh 2009). Nonetheless, the more recent experiences reflect developments elsewhere in other jurisdictions.

In terms of *bottom-up* fragmentation, the response of Irish governments to fiscal and economic crisis during the 1980s was the establishment of a social partnership designed to garner the support of representative groups in the implementation of difficult policy choices. This process, which since 1987 has resulted in triennial economic agreements (apparently discontinued during the economic crisis of 2008-) between government, unions, employer organisations, farming groups and (more recently) ‘community and voluntary groups’, has become a major locus of power distribution and is arguably bottom-up because of the participation and collaboration of stakeholders in policy development (Hardiman, 2006). Others see social partnership as more top-down and driven by government.

Adopting Gilardi’s concept of symbolic imitation – the take up of institutional choices to bestow legitimacy on those making the decisions - as a small state Ireland has tended to look beyond its own borders to find models for institutional reconfiguration. The creation of agencies such as the Competition Authority and also of new accountability institutions in Ireland represents cases in point. The establishment of ombudsman schemes is so widespread in Europe and beyond that the establishment of mechanisms for providing redress for maladministration is regarded as a key part of the public accountability apparatus. Ireland was a late adopter, legislating for the establishment of a public sector ombudsman only in 1980. With freedom of information legislation, adopted in 1997, the commitment of government appears to go beyond the symbolic, as the legislation

offers a wider basis for obtaining government information than is the case with the 1998 regime of the United Kingdom. That commitment was pulled in to a certain extent by amending legislation in 2003 which applied charges. As with the Ombudsman legislation, the Freedom of Information legislation drew on similar legislation elsewhere in Westminster-style democracies.

There are, however, some significantly different aspects in Ireland's administrative system which might be explained by the Irish state's history of funding service provision (especially in healthcare and education) by private bodies such as charities and religious organizations. 'As a conservative-corporatist state, using Esping-Andersen's typology, Ireland provides a rather clear case of network governance in existence long before the term came into use' (Scott and MacCarthaigh 2009). The recent OECD report on the Irish public service (*Towards an Integrated Public Service* OECD 2008) noted that 'A networked Public Service is made up of the many component bodies of the Public Service, but also stakeholders from outside of the Public Service, be they users, Social Partners or civil society organisations' (OECD 2008: 247). It also noted how Ireland had a rich tradition of informal networks both within government and between government and stakeholders.

In relation to *top-down* drivers of fragmentation, in an Irish context we can identify such factors as the impact of membership of the European Union, a key factor in explaining growth in certain types of regulatory agencies – ComReg (formerly ODTR) and the Commission for Energy Regulation, for example. Amongst Ireland's other international activities, membership of the OECD has been a central factor in the establishment of both public sector and regulatory reform, as well as the initiation of the Better Regulation regime administered by the Department of the Taoiseach.

4. The Structure and Style of Regulatory Regimes in Ireland

The structure and style of regulatory regimes are linked but distinct issues each of which contributes to an understanding of how regulatory regimes operate in practice. Structure refers to such matters as the assignment of key responsibilities for setting, monitoring and enforcing norms, and arrangements for appointment and accountability of those holding the powers. Style refers to the preferences exhibited over the ways things are done both by governments and legislature (a preference for creating agencies to address public policy problems, for example, might be thought of as a matter of style) and by agencies and businesses. The classic focus of discussion of regulatory style has been over matters of enforcement, with traditions of legalistic or adversarial enforcement in the United State contrasted with a more consensual and less legalistic style in the UK (Vogel 1986).

Approaches to regulatory style are linked in part to national cultures and in part also to relationships with the regulated targets. Kagan has argued that the cultural preference in the US, for instance, is for a style he labels 'adversarial legalism', with greater stringency in enforcement and contestation around rulemaking (Kagan 2003). This contrasts with Japan, where compliance secured through nodality – or the

position of government at the centre of networks of influence - is the norm and formal enforcement is rarely considered necessary (Kagan 203, 228).

Moving beyond styles of enforcement the Irish case may be examined using the model of regulatory cultures developed by Richardson, Gustaffon and Jordan (1982) based on the twin dimensions of the dominant approach to problem-solving (anticipatory or reactive) and the relationship existing between the government and society (consensus or imposition). Cultures may range from anticipatory, rationalist, consensus-oriented to the imposed, reactive, negotiation and conflict one, with a reactive but consensus-oriented negotiation culture and the imposed, anticipatory concertation culture in between these two extremes. States need to have high administrative capacity and legitimacy in order to use certain policy instruments (e.g. impositional, command-and-control style) in situations where they wish to target large numbers (Howlett, 2004). As Hood described it, the severity of constraints faced by states with respect to their financial, authoritative, informational and personnel (organisational) resources and in terms of the size of the group targeted governs the choice of instrument. Howlett suggests that, where the size of the target is large and where the state is largely constrained on one or more of the resources, then it is likely to promote third and fourth sector activity by state agencies (which he calls 'institutionalised voluntarism'). The Irish case arguably is a clear example of a reactive, but consensus-oriented culture, with the state drawing in non-state actors (principally, but not only, business and unions) to enhance its own capacity – and perhaps also to help legitimate 'tough' policy measures (as in the early days of social partnership).

This discussion bears on choices about rule types. The debate that has emerged during the financial crisis over the weakness of principles-based approaches is not simply about choices of instruments to deploy or lack of enforcement capacity, but is concerned with choices made about the style of regulation adopted, which itself usually reflects the nature and intensity of trust within particular settings (Black 2008).

The picture in Ireland perhaps has historically approximated most to a consensual style of decision-making and policymaking. It is a reasonable assumption that social networks have long been important to the process of government and government-industry relations in Ireland, in common with highly centralised systems such as that of the UK (Hecló and Wildavsky 1974) and Japan (Schaede 2000). The institutionalisation of such relationships in the practices of social partnership in Ireland has been well documented (Hardiman 2006). The collaborative nature of social partnership permeated policymaking and influenced key actors in the wider regulatory governance arena for the past 30 years. This, taken together with its small size and the inevitable interconnectedness of business and political elites may go some way towards explaining a cultural inclination towards persuasion, education and use of publicity by Irish regulators (the lower half of the classic Ayres and Braithwaite pyramid of sanctions), with more stringent enforcement measures generally being reserved for persistent repeat offenders.

At the sectoral level, administrative styles combine both such cultural attributes as legitimacy and trust and structural ones such as state capacity and organisation (Timonen 2001). Further, the dimension of regulatory styles can be defined by two

aspects – the mode of state intervention and interest intermediation (ie patterns of interaction between administrative and societal actors). On this framework, one needs to look at hierarchical vs self-regulation; uniform and detailed requirements vs ‘open’ regulation that allows for flexibility and discretion on the part of the administration (or regulatory agency). Different patterns of interest intermediation can also be identified – formal vs informal, legalistic vs pragmatic, open vs closed relationships. (Knill, 2001).

Following the analysis of Howlett, Timonen and Knill in the wider Irish regulatory context leads us to an examination of social partnership. First, as a model of policymaking it arguably reflects weak state capacity and fulfils Howlett’s prediction of the engagement of the third and fourth sector by agencies. Further, due to its longevity, it influenced how both government departments and agencies went about their business, especially with respect to ‘interest intermediation’.

Even though the Social Partnership model may now be to all intents and purposes dead, or at least moribund, since the failure to reach agreement on action to address Ireland’s economic and banking crises in 2009/10, the model was fundamental to policymaking over the past 20 years. Social partnership involved employers, trade unions and more latterly, wider civil society representative groups in the framework agreements on pay and much else besides. The Social Partnership model in effect, gave these stakeholders a strong voice in setting the national economic and social policy agenda. Although not part of a regulatory reform agenda and predating its development, the system became part of Ireland’s institutional structures for policymaking. What follows therefore, is a necessary analysis of social partnership workings.

Social Partnership agreements extended across a broad range of policy issues. At their core was the negotiation of pay deals for both the public and private sectors. However, a whole array of macroeconomic, labour, welfare and social policy issues have been negotiated alongside the pay deals. From a theoretical perspective, social partnership has been conceptualised as a new mode of network governance with government placed in a central position to facilitate communication with the social partners and to exercise leverage (Hardiman 2006).

The cross-class support base of major parties contributed to the broad agreement across the political spectrum since 1987 that a consensus-seeking process actually yields the best outcomes. All parties and all governments since then approved the social partnership system. This arguably both provides further evidence for, and perhaps validated a consensual style of doing business which subsequently extended also to independent regulatory agencies and other arms of government as they evolved.

Social partnership ‘offers government a flexible method of addressing emerging problems, testing possible policy responses and building support for subsequent legislative measures’ (Hardiman, 2006). Over time, social partnership developed a dense network of working parties, committees and task forces, in addition to the more formalised procedures of monitoring and overseeing implementation of pay terms. Several government departments operated more or less semi-permanent partnership forums to facilitate ongoing consultation on emerging issues. These various formal

and informal forums provided an arena for ongoing dialogue and an open door into departments for key stakeholders.

From a theoretical perspective, social partnership or social pacts are often claimed to belong to the school of neo-corporatism or competitive corporatism. O'Donnell (2008) challenges this view. According to him the actors in social partnership are both 'maximising and reflexive' and while the process certainly relied on negotiation and a degree of bargaining, it also 'involves the parties in...deliberation that has the potential to shape and reshape their understanding, identity and preferences' (O'Donnell 2008). The characteristics of partners in classic corporatist states (monopoly representation and centralised structures) are giving way to new ones, with information as the key resource and a new emphasis on public advocacy, shared understanding and dialogue. At the same time, the role of the centre is shifting to give way to policy entrepreneurship, monitoring and facilitation of communication and joint action between disparate interests.

Viewing social partnership through the lens of employer/labour relationships is an incomplete analysis in the Irish case as the structural factors and pre-conditions previously thought to underpin neo-corporatism (such as peak associations and class-based political parties) did not exist in Ireland (O'Donnell 2008). The phenomenon of social partnership which drove much Irish policymaking for more than 20 years was an early form of networked governance and involved the utilisation of capacity of non-state actors to deliver increased economic competitiveness and productivity.

Other instances of deployment of network forms of governance are evident in Ireland. The Government's 2009 Statement on Economic Regulation promoted networking as a means both to achieve synergies and greater coordination of regulatory approaches (as well as to foster shared learning). In this instance network governance appears to offer a means shorten the reins on the sectoral regulators and increase their accountability. A High Level Regulators Group has been functioning for years, but the Government has now sought to intensify networking arrangements with an annual Regulatory Forum (chaired by An Taoiseach) as a mechanism for steering nine of the public economic regulators.

4.1 Delegation

A central issue of regulatory structure and style concerns the broad issue of the role of the state in social and economic life and the nature and extent of delegation of state power. Kirby and Murphy (2008) suggest that Ireland's regulatory landscape exhibits the characteristics of a 'competition state' (a claim partially rejected by Hardiman and Scott 2010). This conceptualisation suggests that states restructure themselves in response to the pressures and opportunities of globalisation. In this perspective, states move further away from welfare or developmental state models. The imposition of competitive pressures on the economy and on society becomes the central logic informing state actions (for example, social security policy may be redesigned to meet the needs of international capital, as with the introduction of legislation to exempt certain non-EU migrant workers from social insurance coverage, a direct result of corporate lobbying). The concept of a competition state also accounts for greater state activism and even extension of state activity, even as more power is delegated to new

private sector actors, empowering business and technical elites. In a competition state, more power shifts to business and capital, while the state plays an increasingly regulatory role. Fragmentation occurs as different agencies are charged with implementing different aspects of public policy 'with little coordination between them'. Delegation of policy to committees (or agencies) 'avoids communicative discourse and minimises public debate about values, while 'potentially conflictual policies are negotiated in a consensus framework'. The shift to a competition state governance model is evidenced by developments such as 'social partners chair key state boards, key policymaking functions are delegated to private consultancies and agencies, there are public/private partnerships in social services and when consensus is not reached, policy tends to be paralysedemployers and businesses are major veto players' (Kirby and Murphy 2008). Further, as the institutions and practices of the state become increasingly marketised, domestically oriented interest and pressure groups become marginalised, while transnationally linked groups (and networks) gain influence.

In addition, it has been suggested that, within the common law family, Irish law has some distinct characteristics that impact on the form and content of its regulatory regime. Ministerial powers to make secondary legislation on foot of an enabling provision in primary legislation have been delimited by successive Supreme Court judgements (eg *Mulcreavy v Minister for Environment, Heritage & local Government and Dun Laoighaire Rathdown Co Council*, 2004) where such powers were considered ultra vires Article 15.2.1 of the Constitution which states that the sole and exclusive power of making laws is vested in the Oireachtas. It has been suggested that constitutional constraints have the effect of rendering provisions in Irish law more 'black letter', longer and more detailed than in comparable common law jurisdictions, as well as circumscribing the use of secondary legislation (statutory instruments) to amend or develop regulatory measures (Nolan, 2008, p 56).

The Economist Intelligence Unit in its 2009 Report notes that Government Ministers and their departments remain responsible for the formulation of policy and suggests that 'questions arise about where the line should be drawn between the minister's policymaking role and the role of the regulator'. It is noted that in the case of the main economic regulators (CAR, ComReg, the CER and the CTR), the relevant legislation enables the minister to 'issue policy directions to the regulator'. In the case of ComReg, 15 such policy directions have been issued, three to the CAR and one to the CER (none to the CTR) In some cases, the minister is required to engage in a consultation process before issuing any policy directions. In thinking about the implications of this ministerial power in terms of authority – EIU's research would seem to suggest that first, policy directions may be couched in such broad terms that it can be difficult to establish whether the regulator complied with them and second, that the ministerial power is also constrained by the need in some cases to undertake prior consultation. It is not at all clear that the power to issue directions really therefore constitutes strong evidence of authority remaining with the central department.

In fact, the OECD's comments in its 2008 review *Towards an Integrated Public Service* advocated strengthening the authority of departments (a point noted also by EIU):

‘Departments should re-establish themselves as the focal point for issues that arise in their sector. They need to capitalise on their broad view and knowledge of their sector area by identifying trends and anticipating problems and convening actors – drawn both from their agencies as well as other stakeholders – around clusters of issues that require a joined-up approach. By fostering such networks, departments can respond to some of their own capacity limitations by drawing on outside expertise and communities of practice. As the policy experts, departments should also be responsible for identifying innovative practices as part of the performance dialogue with their agencies’.

The Government’s response to the latest OECD report has, inter alia, consolidated agencies, created new requirements for annual reporting and production of strategy statements and created new networks (the Regulators’ Forum) specifically to encourage knowledge transfer and shared learning. In this sense, one could argue that there has been a pulling back of authority – re-centring government – and also that there is to be a greater emphasis on accountability.

Another feature of Irish political and administrative culture, which has had a bearing on regulatory developments and, especially in respect of regulatory style is the strong culture of clientelism and, perhaps also of political preferment. Former Taoiseach Bertie Ahern once admitted that he had no compunction appointing personal friends to State boards. No other politician criticised this attitude. Advocates of public sector reform have attributed waste and inefficiency in the public sector at least in part to the practice of appointing political friends.

One further aspect of style relating to delegation is the preferences concerning the extent and nature of delegation to or recognition of self-regulatory regimes. As we noted above in the discussion of growth of agencies, whilst there are a number of prominent self-regulatory bodies in Ireland with powers that have been explicitly delegated (eg the Law Society of Ireland) or implicitly recognised (for example the Advertising Standards Authority of Ireland), they are relatively few in number compared to the United Kingdom and self-regulation is treated with considerable suspicion. The Competition Authority has argued for several years that self-regulation of the legal profession is not working effectively and has called for an independent regulator ‘in the public interest’. In its latest Annual Report, the Authority once more reiterated this and further, suggests that the newly created Legal Services Ombudsman does not provide a solution. (The Ombudsman has been created by government in response to the sustained campaign of criticism by the Competition Authority). According to the chairman of the Authority however, the new Ombudsman is not truly independent (having to consult the Bar Council and the Law Society on staffing) and ‘is not really an Ombudsman at all’, lacking powers to give relief to a complainant, as complaints have to be referred back to the Bar Council or Law Society. In this case, the Government does not appear to be persuaded by the public interest argument. The Minister stated instead that the legal profession is ‘going through very very tough times and I am not going to bring in legislation that makes the situation worse’.

In the case of the accountants, public (and official) faith in the ability of the profession to self-regulate had been dented through a long period of corporate scandals (O’Regan 2009). Pressure for change had mounted, as the independence of

the auditing profession was questioned, as the role of accountancy firms in facilitating tax evasion by their clients emerged during investigations into the bogus non-residents' accounts and DIRT scandals. A Review Group on Auditing was established in 1999 to report to the Minister with recommendations on future regulation of the profession. The profession wished to continue with essentially a self-regulatory body, while recognising that some changes would be necessary, specifically to allay concerns over the weakness of its disciplinary capacity and processes.

Notwithstanding sustained opposition from the profession, the Government ultimately introduced (in the Companies Act (Auditing and Accounting) 2003) an independent statutory authority – the Irish Auditing and Accounting Supervisory Authority (IAASA) – to regulate the profession. Although both sides had cited the public interest as a basis for their arguments, in the case of the profession, its thesis ‘failed to resonate with government, media or the public itself’ (O’Regan 2009). Concerns about lack of transparency and the effectiveness of the profession’s disciplinary procedures were met with the profession’s refusal to surrender its attachment to self-regulation. Moreover, its response to the Review Group’s report even suggested a challenge to the state’s ability to construct any regime that did not draw on the profession’s own expertise and capacity. Given ‘overwhelming’ media and public hostility to this attitude, the government resisted the profession’s claims and ‘asserted its primacy in defining and protecting the public interest in the face of private interests’. (O’Regan 2009). Perhaps the difference in approach lies in the fact that, although there have been some incidents, we have not yet seen lawyers embroiled in scandals to the same extent experienced by the accountancy profession, and that further, to date, the Competition Authority has been ploughing a relatively lonely furrow; a groundswell of media and public demand for independent regulation has not developed to the same extent.

4.2 Rule Making and Norms

Control over the legislative powers of the state is a key feature of contemporary government, and frequently forms the central focus of analysis of regulatory regimes. The preference in Ireland for the retention of legislative powers by legislature and ministers (under secondary legislation) gives limited powers to agencies and others to set regulatory rules. While the capacity for authority lies most obviously with state actors – government departments, regulatory agencies and the courts, others possess it too. Non-state actors can express authoritative power over others through contracts (Hale 1923), while the capacity to legislate and enforce privately extends beyond contracts because of delegation by governments to non-state actors such as professional bodies (as with the Law Society in Ireland, for example). In some self-regulatory regimes the rules are established through contractual processes –as with the Advertising Standards Authority of Ireland.

The limited capacity for delegating rule making powers frequently requires agencies and others to use non-legal instruments to set norms. While the capacity for issuing non-binding instruments of general effect may be greater for governments than others, the more targeted use of such soft resources is not confined to government. For example, the Competition Authority has a statutory responsibility to promote competition and has an advocacy division specifically dedicated to this task. The National Consumer Agency also emphasises its role in education and awareness-building, frequently deploying media strategies to achieve this. In the case of the

Environmental Protection Agency severe constraints on its capacity have led to its promotion both of informal and pragmatic approaches to interaction with societal actors and industry. Further, drawing on Hood's analysis, the EPA, classically short of financial and organisational resources, has frequently used informational approaches (education and encouragement, and collaborative problem-solving) rather than a purely legalistic, authoritative style. It has also made up for its own lack of organisational resources by partnering with, and utilising the organisational resources of others (Brown and Scott, 2009).

4.3 Enforcement

Regulators' powers have generally been set out in dedicated statutes. Although created by statute and appointed by Ministers, they function as independent agencies. Their legal authority is, however, constrained to a degree, principally by the Constitution. Specifically, although they have duties to monitor and powers to enforce, their capacity to apply sanctions such as the levying of fines or the awarding of civil damages is limited as such powers are generally reserved to the Courts or to dedicated judicial and quasi-judicial tribunals. A significant exception – the power of the Financial Regulator to levy such fines directly without reference to a court – remains contentious. In the case of the main economic regulators (CAR, ComReg, the CER and the CTR), the relevant legislation enables the Minister to 'issue policy directions' to the regulator.

The trend among most Irish regulators has been to prefer soft enforcement measures – the lower end of the classic Ayres & Braithwaite pyramid of enforcement tools – with extensive focus on education, awareness-building among consumers/users and on media-supported information campaigns around problem issues. Neil Collins (2009) noted that 'the propensity of Irish regulators is for persuasion, rather than punishment, although both methods are deployed' and that 'the tendency among Irish regulators is to favour persuasion and avoid suspension/revocation'. Whether this is principally attributable to culture, or to the constitutional issues and limitations on the availability of criminal sanctions outlined above is an interesting question. The (former) Financial Regulator, Patrick Neary, speaking to a parliamentary committee (Joint Committee on Economic and Regulatory Affairs, 29 April 2008) outlined the approach as follows:

'In undertaking all our work, we believe a regulatory approach grounded in a broad consensus among all stakeholders is the best way. For this reason, we operate a consultative and collaborative approach...this engagement is positive and constructive.'

With social partnership as a backdrop, policymaking and decision-making style in Ireland has often been collaborative and consensus-seeking in nature, a culture that may also have influenced regulators established in the past 10-15 years.

Enforcement style differs between regulators and is liable to change over time. The National Consumer Agency specifically adheres to a 'pyramid' (Ayres & Braithwaite) approach to the application of sanctions (indeed, its founding legislation, the Consumer Protection Act 2007, empowers it in such a form). The Competition Authority has also been thought to be adopting a more stringent approach on

enforcement, particularly in the area of cartels where it now routinely deploys criminal law enforcement powers (Scott 2010).

Following the financial crisis 2008-10, a marked shift in attitude and approach to enforcement issues can be gleaned. In particular, the Financial Regulator has clearly indicated that a more stringent approach will apply. It is clear from various Government pronouncements (not least the 2009 Statement on Economic Regulation), that enhanced dialogue between regulators and central government, while aimed at increasing accountability, is also likely to foster a more proactive and potentially more stringent approach to monitoring and enforcement generally

4.4 Accountability

Accountability is often viewed as the *quid pro quo* for the holding of public power, whether by legislature, government, agencies or others. Concerns over the exercise of public power in Ireland, coupled with international trends, have combined to ratchet up mechanisms of accountability over government generally and regulation in particular over recent years. For one regulator accountability should mean that the regulator is answerable

‘to someone for money spent, for value for that money and for meeting performance standards that have been clearly set out. Being accountable does not, on the other hand, mean being excoriated for a decision which may be correct, but unpopular ...the standards and outcomes expected of a regulatory body are not clearly set out somewhere with enough clarity to make that body accountable in a fair way’ (Purcell 2008).

At an early stage in recent Irish debates over the accountability of regulatory agencies a senior civil servant said

‘...the interests of democracy demand that the delegation of responsibility to regulators must be accompanied by clear and defined accountability mechanisms within the broad public sector context.’ (Brendan Tuohy, then Secretary-General of the Department of Public Enterprise, paper delivered at UCC, 2000).

As far back as 2000, the then Minister for Public Enterprise published a report entitled *Governance and Accountability in the Regulatory Process: Policy Proposals*, following a consultation process in 1999. The proposals included means for promoting accountability to the public (such as formal decisions procedures), consultation requirements, publication of comments and decisions, codes of conduct and protection of confidentiality. Regulators would be accountable to the relevant minister through regular strategy statements and work programmes. As for the model for regulators, the paper opted for ‘regulatory commissions’, organised at the sectoral level and comprising three persons. Other proposals included the introduction of legislation to clarify the right to judicial review of regulators’ decisions and the updating of legislation on fines and penalties (to strengthen enforcement capacity and ensure that punitive measures would reflect both the nature and consequences of a breach of regulatory rules). The matter of overlaps – as between regulators’ jurisdictions and as between them and the Competition Authority – was also raised. Some of these issues were subsequently addressed in the various papers on Better

Regulation as discussed earlier; others have been recently endorsed – for example, the concept of three person commissions has been adopted as the ideal format in the Government’s response to the EIU Review of the Economic Regulatory Environment.

Hardiman (2009) refers to recent developments to increase scrutiny and an extension of the ‘nature and scope of accountability mechanisms’ emerging in light of the growth in numbers of public agencies. Examples include the intensification of scrutiny by select committees, evidence of increased judicial scrutiny and the extension in the powers of the Office of the Comptroller & Auditor General to include Value for Money audit. The limited scope of freedom of information legislation, and in particular the exemption of most agencies, has been the subject matter of sustained criticism (eg Clancy and Murphy 2006)

It remains to be seen whether initiatives outlined in the recent Government responses to both the 2008 OECD report reviewing the public sector and to the 2009 EIU Review of Economic Regulation, which clearly seems aimed at restoring a measure of authority to the centre and of imposing greater reporting and accountability requirements on (at least, the economic) regulators will address or overcome these perceived problems.

5. Public Sector & Regulatory Reform

The proliferation of regulation in the 1970s and 1980s gave rise to growing international pressure for regulatory reform. Regulatory reform programmes may be linked to the broader pressure on government to address the efficiency and effectiveness of its activity which emerged in the 1980s (Kirkpatrick and Parker, 2007, 18; Massey and Daly, 2003, 339). The OECD in 1997 defined regulatory reform as those changes that improve regulatory quality by enhancing the performance, cost-effectiveness or legal value of regulations and related official government procedures. The dominance of neoliberal economic policy in Western democracies starting in the 1970s gave ‘strong impetus to regulatory reform, including the creation of new instruments of regulation and the establishment of new regulatory authorities’ (Levi-Faur, 2005, 19). With respect to changes in public administration generally, Ireland implemented a less radical programme of new public management reforms than many other countries. Despite the aims designed to enhance public service efficiency, the 2008 OECD report was critical of the largely *ad hoc* growth in different forms of structure and policy style which emerged.

There has also been an international trend towards seeking to promote greater efficiency of public services. The name New Public Management (NPM) has evolved into a label that embraces many of these reform initiatives. Hood (1991, 1) attributes emerging public sector management reform to the following factors:

- attempts to slow down the expansion of government (in terms of both staffing and public spending);
- the shift towards privatisation and away from core government institutions with renewed emphasis on subsidiarity in service provision;
- changes in information technology and its impact on the provision of public services;

- the development of a more international agenda (particularly among OECD members), with increasing diffusion of similar doctrines around styles of decision-making, policy design and public management, on top of the older traditions of individual countries' public administration systems.

The rise of NPM can be attributed in part to the popularity of managerial styles borrowed from business, with its emphasis on outputs and performance management, along with the focus on economic competitiveness that developed with improved economic performance (Hood, 1991:7).

Key elements of NPM, mainly described as shifts in thinking towards a more business or managerial orientation can be set out as follows :

- a shift in priorities towards efficiency and individualism, emphasising 'homo economicus';
- a shift in focus of management systems from inputs and processes towards results and outputs;
- a shift towards measurement and quantification, especially through performance indicators and benchmarking systems;
- the substitution of formal hierarchical relationships by contract-like relationships
- the wider deployment of markets and market-type mechanisms for the delivery of public services;
- an emphasis on service quality and a customer orientation;
- a 'broadening and blurring of the frontiers' between the public sector, business and NGOs (Pollitt and Bouckaert, 2000, 27).

Since 1994, the Irish public service was involved with a long-term programme of modernisation along NPM lines and regulatory reform, including Better Regulation initiatives. The twin management aims of the regulatory reform programme are to 'sustain national competitiveness and economic growth' as well as 'promoting inclusiveness and good government for all citizens' ('Regulating Better' 2004, 1).

Ireland's initial step was the Strategic Management Initiative (SMI) launched in 1994. It articulated regulatory reform in the context of simplification and the 'growing need for clarity between the provision of a service and its regulation', particularly 'where there is potential for a conflict of roles in a changed environment of Civil Service regulation of the increasingly competitive provision of services' such as utilities, which previously had been 'delivered directly by the public sector without competition'. ('*Delivering Better Government*' 1996, 12). '*Delivering Better Government*' recommended that regulatory reform should include elimination of unnecessary regulation, lowering the cost of regulatory compliance, improving the quality, rather than the quantity, of regulation and making regulations more accessible to the public, while protecting the public interest.

An SMI Working Group on Regulatory Reform was established. Its subsequent recommendations on consolidation and codification were published in 1999 as '*Reducing Red Tape*'. This was followed in 2000 with '*Policy Proposals on the Governance and Accountability of the Regulatory Framework*' in the specific policy areas of transport, energy and communications.

The OECD's Report '*Regulatory Reform in Ireland*' (2001) reviewed the progress made since the '*Delivering Better Government*' report and gave increased impetus to systematic regulatory reform. That report found that Ireland had a poorly developed consumer culture, a policy bias in favour of producer and incumbent interests and special-interest rules inhibiting competition and pushed for further implementation of Better Regulation principles. The OECD concluded that 'Ireland's future strengths lie in continued attention to domestic competitiveness through regulatory efficiency and flexibility, good governance and competition policy'.

Additionally at around the same time (2002), the P.A Consulting Group published an assessment of progress made under the SMI which found that 'a shared understanding of what better regulation/regulatory reform entails does not exist across all Departments'. When asked about the origins of Better Regulation, one senior civil servant remarked that: 'when we started on the public sector reform process in the '90s, we focused on making things more accessible to the citizen, on customer service and better delivery of services. You start with digitisation and e-government and longer opening hours, then you find yourself getting entangled in the quality of what you're making more accessible and realise you need to reform the product, as well as the delivery.'

In large part, the regulatory reform debate was dominated by a rhetoric focused on 'lifting the burden'. Regulation was seen as imposing administrative and financial burdens on business in particular, and calls to 'reduce red tape' became common. International organisations have added significant impetus to the regulatory reform movement. Both the OECD and the World Bank have prioritised regulation in their programmes for good governance. Their position is to link regulatory reform both to economic growth and to more inclusive and transparent modes of governance. On the global stage, the OECD has been the major advocate of regulatory reform and of Better Regulation. In 1995, it published an influential report comprising a 10-point Reference Checklist for Regulatory decision-making, which became internationally accepted. The OECD continued to pay attention to regulatory policies in its member countries through peer reviews (Ireland's in 2001) and in 1997 published its 'Report on Regulatory Reform'. This report linked regulatory policy with the broader governance and public sector reform agendas. In 2002, the OECD published a comparative review '*Regulatory Policies in OECD Countries*'. Both the OECD (2002) and the World Bank have acknowledged the potential of regulatory reform in the context of stakeholder participation and 'more balanced state/society relations' (Radaelli and De Francesco 2007, 14). The OECD has championed Better Regulation and promoted specific initiatives which have now come to be recognised as the essential Better Regulation toolkit. 'What started as a movement to open up economic sectors to competition has now become a debate about modes and models of governance, accountability and the role of the public interest in international and domestic regulatory choices' (Radaelli, 2007a: 15)

In addition to the OECD reform initiatives, the European Commission began to engage with governance issues as part of the Lisbon process, which sought to promote greater competitiveness and economic growth for the European economy (European Council 2000). The Commission's White Paper on Governance (2001) stressed the link between good governance and Better Regulation. The Lisbon Agenda concluded

that ambitious reform was needed at EU and national level in order to make the EU the ‘most dynamic and competitive knowledge-based economy in the world by 2010’.

The Mandelkern Report (2001) produced a blueprint for Better Regulation to improve policymaking and regulation in the EU. It drew on much OECD material on regulatory reform. Then, at the halfway review of the Lisbon process, it was decided to increase the pace to improve productivity and employment. Recognising that Member State action was also required to deliver this, the importance of developing Better Regulation policies at the national level was stressed in the Lisbon Integrated Guidelines. It was specifically provided that: ‘to provide a more competitive business environment...through Better Regulation, Member States should:

- reduce the administrative burden that bears on enterprises;
- improve the quality of existing and new regulations...through systematic and rigorous assessment of their economic, social and environmental impacts, while measuring the administrative burden associated with regulation and
- encourage enterprises in developing their corporate social responsibility’.

Since Mandelkern, the Commission has had a specific policy of encouraging the fine-tuning of domestic regulatory frameworks and the adoption of Better Regulation policies. Member States are expected to draw up plans for the development and application of Better Regulation principles. For all member states, ‘membership matters’ (of both the OECD and especially the EU) and the institutional context has been highly significant. Radaelli (2007b, 7) has said that Better Regulation discourse ‘is the channel through which regulatory reform gains legitimacy’.

Overall, the development of the Better Regulation agenda in the Irish case has been largely folded into the wider programme of public sector – or more precisely, civil service reform. Partly this may be a matter of timing. The emergence of both NPM-style reforms (under the SMI/ ‘*Delivering Better Government*’ umbrella) and the response to OECD and EU prodding on Better Regulation happened within six years of each other. The period 1996-2002 saw a plethora of reform-oriented initiatives and reports which might be attributed to either one or both of the two agendas. Meanwhile, in this same period, the greatest changes were taking place in market liberalisation – especially in the network industries. EU-led programmes to complete the Single Market and open markets to competition which in turn led to the creation of some independent regulatory agencies further fuelled the drive to enhance the regulatory framework. The development of Better Regulation in Ireland, therefore, was not linked so obviously as it had been in the UK to pressures from business and the regulated to reduce burdens. Coming as it did, though, after Britain’s earlier experience, the reduction of red tape and simplification were on the agenda from the outset in Ireland. There was also a link between the Better Regulation agenda as it came to be implemented in Ireland and the concept of making it easier generally for citizens/consumers to deal with government and with the overall principles such as transparency and accountability espoused in ‘*Delivering Better Government*’.

In 2002, in response to the OECD Report, a newly established Steering Group in the Department of An Taoiseach launched a consultation process ‘Towards Better Regulation’ that ultimately led to the White Paper ‘*Regulating Better*’ in 2004. The Taoiseach’s Foreword to this acknowledges a major impetus for Better Regulation

saying: ‘increasingly, in all OECD countries, attention is being paid to choosing the most appropriate regulatory framework’, while also citing the commitment to Better Regulation at EU level, in the context of the Lisbon Strategy.

A Better Regulation Unit was established in the Department of An Taoiseach to drive forward implementation across the Civil Service. In 2002, a draft Regulatory Impact Assessment (RIA) model was developed and ‘*Regulating Better*’ contained a commitment to pilot this model. In 2004, five different government departments conducted this pilot.

The Irish RIA model required that ‘impact on national competitiveness, economic markets, consumers and competition’ must be considered. Impact assessment ‘must identify and estimate costs of compliance and ensure that the burden of compliance is proportionate’.³ It is interesting to compare the model’s focus with issues raised in the public consultation before the White Paper. One concern that emerged from that process queried the extent to which competition ought to be an ‘overriding criterion’ in regulatory decision-making and also asked ‘how to better balance economic objectives with important social goals’. The focus on ‘consumers’, rather than citizens was also criticised.⁴

The Better Regulation Unit within the Department of An Taoiseach reported on progress since the White Paper with the publication of the ‘*Report on the Introduction of Regulatory Impact Assessment*’ in 2005, accompanied by ‘*Guidelines on Public Consultation for Public Sector Bodies*’. Initiatives adopted under Better Regulation, and especially following consultations with business in recent years include:

- reform of land registration and a move to electronic conveyancing;
- consolidation and modernisation of financial services regulation;
- codification of Irish criminal law into one easily accessible penal code;
- creation of the Commercial Court to facilitate speedier resolution of commercial disputes (aimed at easing burdens for business);
- establishment of statutory consumer panels in regulated sectors.

In 2006, the OECD again reviewed regulation and competition issues in Ireland. It cited the electricity industry, telecoms sector, bus market, retail issues, the pharmacy industry and the self-regulating professions as specific areas requiring regulatory reform.

The High Level Group on Business Regulation reported in 2008. Following the Business Regulation Survey conducted in 2007 by the Economic & Social Research Institute, the High Level Group made a number of recommendations for further ways of reducing burdens for business, specifically in relation to ways of eliminating duplication of information provision by businesses to government departments and agencies, as well as establishment of an appeals mechanism for parties affected by regulators’ decisions (High Level Group on Business Regulation 2008).

³ Other developments on RIA since then include the provision of RIA training courses for officials, the establishment of a RIA network among officials and sector regulators to promote learning and skills transfer.

⁴ www.betterregulation.ie.

In 2008, a report was published on the operation of RIA to date within the Irish administrative system (Goggin and Landers 2008, www.betterregulation.ie). It found, inter alia, evidence of a lack of necessary econometric and other modelling skills in core Government departments, a tendency to regard RIA as more of a box to be ticked than a fundamental element in policymaking and also, a recognition of its value in improving the quality (and accountability) of decision-making. Among many specific recommendations, the report recommended abandoning screening RIAs (since delivered, in the latest RIA guidelines released by the Department of An Taoiseach) and a commitment to more consistent, more comprehensive and earlier publication of consultations, responses to same and feedback to respondents across departments.

In 2008 the OECD published its Public Management Review of Ireland, '*Towards an Integrated Public Service*'. Like so many other commentators, it too, remarked on the fragmented administrative and regulatory landscape, the ad hoc pattern of the creation of many elements of the public service and the parallel phenomenon of 'agencification'. Its many recommendations included an emphasis on maintaining and building capacity, a citizen-centred focus, a focus on whole-of-government and longer-term planning, improved flexibility across units, 'moving from a stage of performance reporting to managing for performance' and, significantly, 'a performance dialogue between departments and agencies to promote consensus on performance and targets'. The Review also recommended reviewing 'the agencification framework in order to promote efficiency, innovation and better services' – this to include better alignment of governance structures with agency objectives. It recommended a network approach to achieving an integrated public service, with more effective horizontal coherence and improved accountability structures, the latter to be aligned with broad social outcomes and more whole-of-government oriented, rather than built on responsibilities for individuals and specific organisations. Behavioural change, rather than structural, was emphasised with the need to 'promote more networked ways of working, in which all parts of the public service are empowered to work together to solve ...problems'.

The Government's response to this review was to establish the Taskforce on the Public Service, whose own Report culminated in the document '*Transforming Public Services*' (November 2008). Key patterns and themes become apparent, which have had impact on the organisation of regulation and of agencies and independent regulators, continuing into 2009 and to date (see also below). Amalgamations of agencies, the drive for enhanced efficiencies and better value for money, a greater focus on whole-of-government problem-solving and policymaking, and the specification of priority targets in relation to key cross-cutting issues, requiring better co-ordination between the relevant departments and agencies are clear messages in '*Transforming Public Services*'. Specifically in relation to 'agencies' the Government stated that 'a more vigilant approach is now required so that the need for individual state agencies to continue is regularly evaluated and to ensure that agencies continue to meet their intended objectives'. In addition, synergies were to be sought – not only from agency mergers, but also from their use of shared services and even the winding up of agencies that had achieved their original objectives. 'Ministers will be required to demonstrate a clear business case for any incremental resources associated with the creation of any new agency or the conferring of new functions on an existing agency., in particular why an existing agency or Department cannot take on the task within

existing resources'. New arrangements for 'setting performance targets and for monitoring their delivery' were to be put in place.

In 2009 the Economist Intelligence Unit's *Review of the Economic Regulatory Environment in Ireland* was published. The Government's response to the Review, the Government Statement on Economic Regulation, was published in October 2009. The most significant initiatives decided – many of which reflect recommendations from the OECD's 2008 Review, as well as the EIU's - were designed to enhance the accountability of regulators and the capacity of departments and the Oireachtas to scrutinise their activity.

Networked Governance

A central concept was to increase the dialogue between regulators, and between them and government, with a view both to shared learning and also towards achieving synergies and cooperation. New structures for dialogue (the Regulators' Forum and Regulators' Network) were established specifically to achieve this.

Capacity of the centre

The Statement recognised both a need to increase the expertise and analytical capacity within central departments (designed to put an end to the situation where the necessary technical capacity might be contained in agencies alone and thus to enhance departmental oversight) and the value of networking and sharing of expertise across regulators.

Accountability

It also introduced specific initiatives designed to call regulators more frequently and comprehensively to account (through production of strategy statements that must take account of the policy directions or weighting of priorities by the relevant Minister or the Government through the new annual Regulatory Forum, and integrated annual reports that relate resources to achievements, etc) and clearly reminded regulators that their function remained primarily operational; whilst policy responsibility should remain with departments (performance indicators to be agreed between departments and regulators; Government and Ministers to identify clear priorities in line with which regulators should deploy resources)

Ministers would now be required to review the mandate and role of regulators every five years; reviews to be aligned such that 'opportunities for common approaches and efficiencies, mergers and abolitions are identified and pursued'.

Other initiatives included the possible extension of concurrent competition powers (as ComReg now has) to other regulators. In the meantime, all regulators are required to update or conclude Memoranda of Understanding with the Competition Authority and increased scrutiny by Departments to be put in place (in the interests of transparency) regarding expenditure plans and arrangements for the setting of industry levies by regulators. The views of the National Consumer Agency and relevant industry, advisory and consumer panels are to be sought by Departments on regulators' draft income and expenditure estimates each year.

Rationalisation

Rationalisation was also planned with the creation of a single Transport Regulator to be created (to incorporate the Commission for Taxi Regulation, the Commission for Aviation Regulation and the regulatory functions of the Irish Aviation Authority) as well as measures announced earlier such as the merger of the National Consumer Agency with the Competition Authority. Rationalisation had been a key recommendation of the McCarthy Report (An Bord Snip Nua), published in July 2009. The McCarthy Recommendation included a variety of merger proposals including:

the Communications Regulator and the Broadcasting Authority of Ireland;
the Health and Safety Authority and the National Employment Rights Authority;
various transport safety regulatory bodies ;
a variety of mergers of public sector regulators centred around the Office of the Ombudsman (McCarthy 2009: 25-28).

Style

A stronger focus on consumer interests was promoted. Specifically, a stronger focus is to be placed on ‘effective engagement between regulators and the public. ‘Regulators must be seen not just as effective regulators of the market, but also as champions of the consumer interest’. All regulators were instructed to place an increased emphasis on the protection of consumer interests and, in addition, industry panels or advisory councils are to be established for ComReg, CER and the planned National Transport Authority. Tellingly, the Government Statement on Economic Regulation made no mention of Better Regulation.

6. Conclusions and Questions for Further Research

In all of the above, what can we detect? Our literature survey supports the often-cited view that the development of regulatory structures in Ireland has been *ad hoc* and fragmented, partly as a result of unique historical circumstances (heritage or legacy agencies and a tradition of state involvement in, and ownership of, swathes of economic and social endeavour) and partly owing to the rapid growth of agencies in particular, as a result of diffusion.

The Irish case offers further evidence of the widespread diffusion of regulatory capitalism and of regulatory governance approaches in general. Following Gilardi, it can be argued that Ireland’s somewhat limited privatisation programme is an example of bottom-up factors driving change – in response to fiscal needs. The forces of the EU market liberalisation and competition agendas and OECD influence offer examples of top-down processes, while horizontal factors are represented by the emulation in Ireland of NPM and Better Regulation agendas, as well as directly in the approach to creation of certain agencies (e.g. the EPA and the Competition Authority), although these developments may also be partly attributable also the administrative response to top-down EU requirements.

The Irish story does display certain distinctive characteristics however. Privatisation was not the major driver either in the creation of independent regulatory agencies (the

EU agenda being the more important factor) nor of regulatory reform such as Better Regulation which was a result of both EU policy diffusion and also was linked closely with civil service/public sector reform and the concept of delivering better government more generally. Ireland was also a relatively late adopter of such initiatives as NPM and Better Regulation and the flurry of activity between 1995-2010 to implement these agendas may explain, to some degree, the fragmented and often inconsistent nature of some of Ireland's regulatory structures and, in particular, of its agencies' mandates.

On style, Ireland could arguably be described as either a corporatist, a social-concertationist or a competition state, according to the literature. However, the uniquely important factor which certainly influences regulatory (and regulators') style to date was the pre-eminence of social partnership at the heart of policymaking and decision-making. The Government occupied a central position in what was an early form of networked governance, involving state and non-state actors and a consensual, non-adversarial, even arguably a deliberative approach to problem-solving dominated.

This culture probably also coloured the approach of independent agencies, and, when considered together with the smallness of the community, may have allowed a degree of cronyism and a reluctance to challenge within the social network to develop. The focus on lower-end-of-the-pyramid enforcement measures such as education, persuasion etc on the part of several regulators reflected this culture, although, a counter-argument would be that favouring persuasion and education is actually a pragmatic recognition of limited resources – financial, investigative or otherwise – that constrain regulators. However, recent developments, following the financial crisis, suggest that this culture and the ingrained attitudes may be changing.

OECD recommendations that central government departments needed to retake a central position in policymaking and agenda-setting were echoed also in the recommendations of the 2009 EIU Report (OECD 2008, EIU 2009). It remains to be seen precisely how these ideas will play out in stimulating greater scrutiny (and possibly control) of independent regulatory agencies and some reversion of authority to central departments. We can identify an objective of increasing the network capacity for government departments through enhancing their expertise and ability to deal with regulators on a level playing field – from a position of equal strength with respect to understanding and technical knowledge. An important flexing (or clawback) of government authority can be identified in the new reporting regime and – above all – the frequent references to Ministerial directions and communication of government priorities (and that regulators must take account of these, and account annually for delivery of same).

There is clear evidence that the Financial Regulator is, after the financial crisis, emphasising a more proactive and stringent approach to future monitoring of regulated targets and tougher enforcement, an approach that is heavily flagged in the media and clearly has the support of the minister for Finance and the Government. The Honohan report into the banking crisis (2010) amounted to a damning criticism of the regulatory regime that had prevailed, with respect to structures, culture and style and to procedures or modes of regulation deployed. The regulator relied excessively on a regulatory philosophy 'emphasising process over outcomes', while the Central Bank and the Financial Regulator had an 'unduly deferential approach to

the banking industry'. When problems unfolded, corrective regulatory intervention for the system as a whole was 'delayed and timid', while a more rigorous insistence on increase in capital requirements on risky loans implemented several years earlier would have made a major difference. 'Intrusive demands' to the banks from regulator staff 'could be, and were set aside after direct representations were made to more senior staff'. In addition to listing the failures of the regulator, the report also concluded that 'auditors and accountants should have been more alert to the weaknesses in the banks' and that macroeconomic and budgetary policies contributed to economic overheating, with the Government relying 'to an unsustainable extent' on the construction sector and other transient sources for revenue. In summary, 'it is clear that a major failure in terms of bank regulation and the maintenance of financial stability occurred'.

Both the Competition Authority and, to some extent also, the National Consumer Agency also show greater preparedness to adopt stringent enforcement tools. The Government has also shown that it recognises the challenges (and risks?) associated with the highly networked nature of Irish society and culture by recently recruiting externally for key positions in the Financial Regulator and ComReg, to name two examples. All of this provides compelling evidence for the thesis that in times of crisis, governments and parliaments tend to pull back on prior delegation of powers (Scott 2006, 2008). In matters of high salience, there appears to be a clearly-articulated strategy of clawing back - not merely oversight, but also authority to the centre.

Significant challenges remain however. Specifically, these include skills shortages within central government departments (exacerbated to some degree by policies to reduce public sector staffing numbers through early retirement), some sense of 'mission creep' on the part of some regulators into more mainstream policy development (as distinct from operational responsibility) and the remaining issue of some inconsistent legislative drafting that has created inexplicably different models for agencies that are effectively mandated to carry out similar oversight roles of similar industries. Issues pertaining to enforcement styles are influenced, not only by cultural factors, but also by Ireland's common-law system and particularly its Constitution which curtails the capacity of actors other than the courts with respect to the imposition of sanctions.

Recent trends in regulatory governance in Ireland are suggestive of organizations and government seeking simultaneously to complement regulation through authority with greater use of networked modes of governance, recognizing the limitations of their own capacity. At national level this is seen with government itself seeking to assert greater coordination over economic regulation through engaging in networks with regulatory bodies. Regulatory organizations themselves place increasing reliance on participation in international, especially European networks, not only to engage in mutual learning about policy but also in respect of operational matters where the exchange of both information and strategies, in some cases, offers a significant bolstering of capacity. Although a shift towards more networked modes of governance is evident from our research, there is at the same time a significant challenge to aspects of regulatory governance where its credibility has been threatened by excessive steering through softer, or network modes. There is a clear sense that enforcement practices in particular, have perhaps been overly influenced by

a keenness to maintain the equilibrium of well-established social networks (and also, up to the very recent past, to maintain the equilibrium of the pact between the social partners and government). Government has lately sought to disrupt the effects by appointment of outsiders to key positions (as with the Financial Regulator) and with the adoption of new language and practices that indicate a more stringent approach to enforcement is at hand. This policy is underpinned by commitments to provide resources to secure appropriate expertise to reduce dependence on regulatees for sectoral knowledge. This is also intended to bolster capacity and address skills shortages in central government departments, thus reducing over-reliance on, or the delegation of policy leadership, to agencies.

To the extent that self-regulation is associated with networked governance, its legitimacy may be threatened by perceptions that ineffectiveness or laxity is attributable to excessive identification with industry interests. This critique has been most evident everywhere in relation to financial services regulation, but is also found in Ireland with respect to, for example, the Competition Authority's frequent criticism of the self-regulation of the legal profession. However, paradoxically, the participation of self-regulatory regimes in European and international networks has provided at least part of the means to bolster both capacity and legitimacy of regulators.

This analysis of regulatory capacity, governance networks and regulatory style in Ireland raises a number of questions for further research. What are the effects of the fragmentation of resources? Do non-state bodies (firms, NGOs, individuals) use similar mixes of hierarchical and network modes to regulate, not only participants in their regimes, but also to regulate government itself? How do other actors use their resources to engage with and steer government actors? To what extent is enforcement a matter of negotiation versus coercion and what are the factors that pull enforcement in either direction?

To what extent is the dispersal of resources reflected also in processes of monitoring and information-gathering? Our research has offered a tantalizing glimpse into the importance of European and international networks for these activities for regulatory bodies as diverse as ComReg, the Competition Authority, ASAI and the Press Council. It would be interesting to look further into this aspect of regulatory governance. We know that some regulatory bodies have bolstered their own weak enforcement capacity through deliberate use of networks (e.g. the EPA). To what extent does collaborative problem-solving reach into other sectors and under what conditions does mutual learning take place, and how effective are such strategies?

On style, what indicators should we use to determine the stringency of monitoring or enforcement within a particular regime? (This might be a matter of measuring numbers of formal enforcement actions against numbers of actions identified for action, such as live complaints). Such an analysis requires comparative assessment of regulators' powers. Stringency can also be assessed through a qualitative analysis of media coverage – both in terms of the publicly stated attitude to enforcement and also the use of media access as a network-based alternative to the exercise of more hierarchical modes for steering behaviour. Styles of enforcement are often explained by regulators by reference to instrumental choices and expressed in terms of the kind of pyramidal approach of Ayres and Braithwaite (1992). However, it would be

interesting to explore the enforcement relationship as creating a space in which a variety of interests are advanced, frequently shaped by cultural as much as by instrumental factors. In this context, the relational distance between regulator and regulatee would need to be investigated.

Finally, putting considerations of capacity, networked governance and style together suggests the inevitability of more collaborative governance arrangements and raises important normative issues (not least: democratic legitimacy, accountability and transparency) about the boundaries between state and non-state actors in steering social and economic activity.

APPENDIX

LIST OF AGENCIES IN IRELAND (2009)

- [Adoption Board](#) 1952 Still Active Maintenance by reorganization: transition to the Adoption Authority of Ireland is planned for 2009 ... McGauran et al. 2005; <http://www.adoptionboard.ie/>; Adoption Act 1952 ...
- [Advertising Standards Authority of Ireland](#) 14 April 1981 Still Active ... <http://www.asai.ie/>...
- [An Bord Altranais](#) 7 June 1951 Still Active ... McGauran et al. 2005; <http://www.nursingboard.ie/>; Nurses Act 1950 and 1985; S.I. No. 164/1951 ...
- [An Bord Pleanála](#) 1977 Still Active ... McGauran et al. 2005; <http://www.pleanala.ie/>; Local Government (Planning and Development) Act 197...
- [An Coimisinéir Teanga](#) 23 February 2004 Still Active ... Official Languages Act 2003; <http://www.coimisineir.ie/>...
- [Bord Iascaigh Mhara \(BIM\)](#) 24 April 1952 Still Active ... McGauran et al. 2005; <http://www.bim.ie/>; Sea Fisheries Act 1952 and subsequent amendments ...
- [Bord na gCon](#) 11 July 1958 Still Active ... McGauran et al. 2005; <http://www.igb.ie/>; Greyhound Industry Act 1958; S.I. No. 150/1958 ...
- [Broadcasting Commission of Ireland](#) 1 September 2001 Still Active Prior to 2001, existed under the name of the Independent Radio and Television Commission (IRTC) est... McGauran et al. 2005; <http://www.bci.ie/>; Radio and Television Act 1988; the Broadcasting Act 2001; ...
- [Censorship of Publications Board](#) 16 July 1929 Still Active ... McGauran et al. 2005; Censorship of Publications Act 1929 ...
- [Central Bank and Financial Services Authority of Ireland](#) 1 May 2003 Still Active Created through restructuring of the Central Bank ... McGauran et al. 2005; <http://www.centralbank.ie/>; Central Bank and Financial Services Authority of I...
- [Circuit Court Rules Committee](#) 1936 Still Active ... Courts of Justice Act, 1936; 28th Interim Report of the Committee on Court Practice and Procedure...
- [Commission for Aviation Regulation](#) 27 February 2001 Still Active ... McGauran et al. 2005; <http://www.aviationreg.ie/>; Aviation Regulation Act 2001...
- [Commission for Communications Regulation](#) 1 December 2002 Still Active ... McGauran et al. 2005; Communications Regulation Act 2002; <http://www.comreg.ie/>...
- [Commission for Energy Regulation](#) 2002 Still Active Replaced the Commission for Electricity Regulation... McGauran et al. 2005; <http://www.cer.ie/>; Gas (Interim) (Regulation) Act, 2002...
- [Commission for Public Service Appointments](#) 19 October 2004 Still Active Prior to 2004: similar functions were fulfilled by the Civil Service Commissioners (1956-2004) and L... Public Service Management (Recruitment and Appointments) Act 2004; <http://www.cpsa-online.ie/>...
- [Commission for Taxi Regulation](#) 1 September 2004 Still Active Its powers were significantly extended on the basis of the Taxi Regulation Act 2003 (Part3) (Commenc... <http://www.taxireg.ie/>; Taxi Regulation Act 2003; S.I. No. 610/2005...
- [Commissioners of Charitable Donations and Bequests for Ireland](#) 1844 Still Active Pre-independence body but remit revised by legislation in 1961 and 1973 <http://www.charitycommiss...> Charitable Donations and Bequests (Ireland) Act 1844; McGauran et al. 2005; <http://www.pobail.ie/e...>

[Commissioners of Irish Lights](#) 1935 Still Active ... McGauran et al. 2005; <http://www.cil.ie/>; " An Act for Promoting the Trade of Dublin, by rendering...

[Companies Registration Office](#) 1908 Still Active Also Registrar of Friendly Societies (plan to formally merge)... McGauran et al. 2005; <http://www.cro.ie/>; Companies Acts, 1908 To 1917; Companies (Re-Constitution o...

[Competition Authority](#) 1 October 1991 Still Active Took over functions of Restrictive Practices Commission in 1991. First established as a statutory no... McGauran et al. 2005; <http://www.tca.ie/>; Irish Takeover Panel Act 1997; S.I. No. 249/1991; Competit...

[Comptroller and Auditor General, Office of the](#) 1923 Still Active ... McGauran et al. 2005; <http://audgen.gov.ie/>; Comptroller and Auditor General Act, 1923 ...

[Data Protection Commissioners, Office of the](#) 9 January 1989 Still Active ... McGauran et al. 2005; <http://www.dataprotection.ie/>; Data Protection Act 1988 and Data Protection Am...

[Dental Council](#) 13 November 1985 Still Active ... McGauran et al. 2005; <http://www.dentalcouncil.ie/>; The Dentists Act 1985...

[District Court Rules Committee](#) 1936 Still Active ... Courts of Justice Act, 1936; 28th Interim Report of the Committee on Court Practice and Procedure...

[Environmental Protection Agency](#) 1992 Still Active ... McGauran et al. 2005; <http://www.epa.ie/>; Environmental Agency Protection Act 1992; Waste Management...

[ERDF and Cohesion Fund Financial Control Unit](#) 1998 Still Active ... McGauran et al. 2005; <http://www.ndp.ie/>; ERDF and Cohesion Fund Financial Control Unit Annual Repor...

[Food Safety Authority of Ireland](#) 1998 Still Active ... McGauran et al. 2005; www.fsai.ie/; Food Safety Authority of Ireland Act 1998...

[Further Education and Training Awards Council](#) 11 June 2001 Still Active Is responsible for making awards previously made by BIM, Fáilte Ireland (CERT), FÁS, NCVA and Teag... McGauran et al. 2005; <http://www.fetac.ie/>; Qualifications (Education and Training) Act 1999...

[Health and Safety Authority](#) 1 September 2005 Still Active Replaced the 'National Authority for Occupational Health and Safety' (est. in 1989); renamed as 'Hea... McGauran et al. 2005; <http://www.hsa.ie/>; Safety, Health and Welfare at Work Acts 1989 and 2005...

[Health and Social Care Professionals Council](#) 20 March 2007 Still Active ... Health and Social Care Professionals Act 2005; SI 124 of 2007...

[Health Information and Quality Authority](#) 21 April 2007 Still Active Integrated and expanded functions of two agencies: the Social Services Inspectorate (SSI) (est. in 1... Health Act 2007; <http://www.hiqa.ie/>...

[Health Insurance Authority](#) 1 February 2001 Still Active ... McGauran et al. 2005; <http://www.hia.ie/>; the Health Insurance Act 1994; the Health Insurance (Amend...

[Higher Education and Training Awards Council](#) 11 June 2001 Still Active It is a successor body to the National Council for Educational Awards (NCEA) which was established i... McGauran et al. 2005; <http://www.hetac.ie/>; Qualifications (Education and Training) Act 1999...

[Horse Racing Ireland](#) 18 December 2001 Still Active Succeeded the Irish Horseracing Authority (founded in 1994) and its predecessor the Racing Board (fo... McGauran et al. 2005; <http://www.goracing.ie/>; Horse and Greyhound Racing Act 2001...

[Inspector of Prisons](#) 2007 Still Active Replacement of non-statutory Inspector of Prisons and Places of Detention by statutory Inspector of ...
<http://www.inspectorofprisons.gov.ie/>; Prisons Act 2007...

[Irish Auditing and Accounting Supervisory Authority](#) 13 December 2005 Still Active ...
... <http://www.iaasa.ie/>; Companies (Auditing and Accounting) Act 2003; S.I. No 791 of 2005...

[Irish Aviation Authority](#) 1 January 1994 Still Active ... McGauran et al. 2005;
<http://www.iaa.ie/>; Irish Aviation Authority Act 1993...

[Irish Expert Body on Fluorides and Health](#) 7 April 2004 Still Active ...
<http://www.fluoridesandhealth.ie/>...

[Irish Film Classification Office \(IFCO\)](#) 20 July 2008 Still Active Replaced Irish Film Censor's Office... www.ifco.ie; Civil Law (Miscellaneous Provisions) Act 2008 ...

[Irish Medicines Board](#) 1995 Still Active ... McGauran et al. 2005; <http://www.imb.ie/>;
Irish Medicine Board Act 1995...

[Irish National Accreditation Board](#) 1993 Still Active an autonomous division of Forfás ... McGauran et al. 2005; <http://www.inab.ie/>; Dáil Éireann - Volume 465 - 09 May, 1996 Private Memb...

[Irish Patents Office](#) 1 October 1927 Still Active ... McGauran et al. 2005;
<http://www.patentsoffice.ie/>; Industrial and Commercial Property (Protection...

[Irish Sports Council](#) 1 July 1999 Still Active ... McGauran et al. 2005;
<http://www.irishsportsCouncil.ie/>; Irish Sports Council Act 1999; S.I. No. 173...

[Irish Stock Exchange Ltd.](#) 1793 Still Active Roots stretch back to 1793 when the Exchange first opened for trading in Dublin. Before was known as... McGauran et al. 2005; www.ise.ie...

[Irish Takeover Panel](#) 1997 Still Active ... <http://www.irishtakeoverpanel.ie/>; Irish Takeover Panel Act 1997...

[Irish Universities Quality Board](#) 2002 Still Active Universities Act 1997 set up Quality Assurance framework, from which the IUQB was developed; CRO has...
<http://www.iuqb.ie/>; Universities Act 1997...

[Law Society of Ireland](#) 1830 Still Active n/a... McGauran et al. 2005;
www.lawsociety.ie; Solicitors Acts 1954-2002...

[Licensing Authority for Sea-fishing boats](#) 1 July 2003 Still Active ... Fisheries (Amendment) Act 2003...

[Medical Council](#) 26 April 1979 Still Active ... McGauran et al. 2005;
<http://www.medicalcouncil.ie/>; Medical Practitioners Act 1978...

[Mental Health Commission](#) 5 April 2002 Still Active ... McGauran et al. 2005;
<http://www.mhcirl.ie/>; Mental Health Act, 2001; S.I. No. 91/2002...

[National Consumer Agency](#) May 2007 Still Active Prior to 2007 was known as the Office of the Director of Consumer Affairs (est. in 1978)...
<http://www.consumerconnect.ie/>; Consumer Protection Act 2007...

[National Council for Curriculum and Assessment](#) 1998 Still Active ... McGauran et al. 2005; <http://www.ncca.ie/>; Education Act 1998 ...

[National Council for the Professional Development of Nursing and Midwifery](#) 1 November 1999 Still Active ... McGauran et al. 2005; <http://www.ncnm.ie/>; S.I. No. 376/1999...

[National Education Welfare Board](#) 5 July 2002 Still Active ... McGauran et al. 2005;
Education (Welfare) Act 2000; <http://www.newb.ie/>...

[National Milk Agency](#) 1994 Still Active Prior to 1994: existed as Milk Boards (1936-1993)... McGauran et al. 2005; <http://www.nationalmilkagency.ie/>; The Milk (Regulation of Supply) Act 1994...

[National Property Services Regulatory Authority](#) 2006 Still Active It is planned to establish the NPSRA on a statutory basis (Property Services Regulatory Authorities ... <http://www.npsra.ie/>...

[National Qualifications Authority of Ireland](#) 1 February 2001 Still Active ... McGauran et al. 2005; <http://www.nqai.ie/>; Qualifications (Education and Training) Act 1999...

[National Social Work Qualifications Board](#) 27 February 1997 Still Active Replaced the National Validation Body on Social Work Qualifications and Training; will be replaced b... McGauran et al. 2005; <http://www.nswqb.ie/>; S.I. No. 97/1997; Health and Social Care Professionals...

[National Standards Authority of Ireland](#) 14 April 1997 Still Active ... McGauran et al. 2005; <http://www.nsai.ie/>; National Standards Authority of Ireland Act 1996...

[Office of the Director of Corporate Enforcement](#) 2001 Still Active ... McGauran et al. 2005; <http://www.odce.ie/>; Company Law Enforcement Act 2001; the Companies Act 1963 ...

[Opticians Board](#) 14 November 1956 Still Active ... McGauran et al. 2005; <http://www.opticiansboard.ie/>; Opticians Act 1956; S.I. No. 286/1956; and Op...

[Pensions Board](#) 21 December 1990 Still Active ... McGauran et al. 2005; <http://www.pensionsboard.ie/>; Pensions Act 1990...

[Pharmaceutical Society of Ireland \(II\)](#) May 2007 Still Active In May 2007 the old Pharmaceutical Society of Ireland (est. in 1875) replaced by the new Pharmaceuti... Pharmacy Act 2007; <http://www.pharmaceuticalsociety.ie/>...

[Pre-Hospital Emergency Care Council](#) 10 April 2000 Still Active Replaced the National Ambulance Advisory Council... McGauran et al. 2005; <http://www.phecit.ie/>; S.I. No.108/2000; S.I. No. 109/2000; S.I. No.575/2004; ...

[Press Council of Ireland](#) 6 November 2007 Still Active Independent press regulation body; prior to 2006, similar functions were exercised by the Press Indu... CRO lists date of registration as 06/11/08; see also <http://www.pressombudsman.ie/> (which has 1 Jan ...

[Private Residential Tenancies Board](#) 1 September 2004 Still Active ... Residential Tenancies Act 2004; <http://www.prtb.ie/>...

[Private Security Authority](#) 28 October 2004 Still Active ... Private Security Services Act 2004; <http://www.psa.gov.ie/>...

[Property Registration Authority](#) 4 November 2006 Still Active Replaced the Registrar of Deeds and Titles (est. in 1964) as the 'registering authority' in relation... Registration of Deeds and Title Act 2006; <http://www.landregistry.ie/eng/>...

[Radiological Protection Institute of Ireland](#) 1 April 1992 Still Active ... McGauran et al. 2005; <http://www.rpii.ie/>; Radiological Protection Act 1991...

[Railway Safety Commission](#) 1 January 2006 Still Active ... Railway Safety Act 2005; <http://www.rsc.ie/>...

[Registrar of Friendly Societies, Office of the](#) 1896 Still Active Statutory footing can be traced back to the Friendly Societies Act 1896, adapted and modified by the... McGauran et al. 2005; some information on www.cro.ie; Friendly Societies Act 1896 to 1977; Industr...

[Registration of Deeds and Titles Rules Committee](#) 4 November 2006 Still Active Formerly Registration of Titles Rules Committee... Registration of Deeds and Title Act 2006; Question Number: 370, Question Posed By: Deputy Leo Varadk...

[Road Safety Authority](#) 1 September 2006 Still Active ... Road Safety Authority Act 2006; <http://www.rsa.ie/>...

[Sea Fisheries Protection Authority](#) 2007 Still Active Prior to 2007, these function were exercised by the Seafood Control Division of the Department of Co... Sea-Fisheries and Maritime Jurisdiction Act 2006; <http://sfpa-ie.access.secure-ssl-servers.biz/>...

[Standards in Public Office Commission](#) 2001 Still Active Replaced the Public Offices Commission, which was established in 1995 on the basis of the Ethics in ... McGauran et al. 2005; Standards in Public Office Act 2001; <http://www.sipo.gov.ie/>...

[State Examinations Commission](#) 6 March 2003 Still Active The Commission assumed responsibility from the Dept. of Education and Science from 2003 onwards... McGauran et al. 2005; Education Act 1998; S.I. No.373/2003; <http://www.examinations.ie/>...

[Superior Court Rules Committee](#) 1936 Still Active ... Courts of Justice Act, 1936; 28th Interim Report of the Committee on Court Practice and Procedure...

[Teaching Council](#) 28 March 2006 Still Active Replaced the Registration Council for Secondary Teachers... <http://www.teachingcouncil.ie/>; Teaching Council Act, 2001; S.I. No. 185/2006...

[Turf Club](#) 1784 Still Active The Turf Club (and INHSC) is the Regulatory Body for horseracing in Ireland... McGauran et al. 2005; http://www.turfclub.ie/site/index.php?option=com_content&task=view&id=8&Itemid

...

[Veterinary Council of Ireland](#) 1 January 2006 Still Active Created by reconstitution of former Veterinary Council (1931-2006)... Veterinary Practice Act 2005; <http://www.vci.ie/>...

REFERENCES

- Adshead, Maura (2006). 'New Modes of Governance and the Irish Case: Finding Evidence for Explanations of Social Partnership', *The Economic and Social Review*, 2006, 37, 3
- Adshead, Maura, Kirby P and Millar M (eds) (2008). *Contesting the State*, Manchester University Press
- Ayres, Ian and John Braithwaite (1992). *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press
- Barrett, Sean (2004). 'Privatisation in Ireland', available at papers.ssrn.com
- Bekkers, Geske Dijkstra, Arthur Edwards and Menno Fenger (2007). *Governance and the Democratic Deficit: Assessing the Democratic Legitimacy of Governance Practices*, Ashgate Publishing
- Black, Julia (2002): Critical Reflections on Regulation CARR Discussion Papers, London
- Black, Julia (2008): 'Forms and Paradoxes of Principles-Based Regulation', *Law and Policy*, 3 (425-457)
- Bouckaert G., Peters BG, and Verhoest K (2010): *The Coordination of Public Sector Organisations: Shifting Patterns of Public Management*. Basingstoke, Palgrave Macmillan
- Braithwaite, John (2008): *Regulatory Capitalism: How it works, ideas for making it better*, Elgar Publishing
- Coakley and Gallagher (eds) (1999). *Politics in the Republic of Ireland*. Routledge
- Clancy P and G Murphy (2006) 'Outsourcing Government: Public Bodies and Accountability', TASC report, available from www.tascnet.ie
- Christiansen, T., P. Lagegreid and L. Wise (2002). 'Transforming administrative policy', *Public Administration* 80
- Collins, Neil, T Cradden and P Butler (2007). *Modernising Irish Government*. Gill and Macmillan
- Collins, Neil (2010). 'Re-imagining Regulation for Democratic Political Systems'. *Journal of Comparative Politics*, 3,1 (21-44)

- Compston (2009): *Policy Networks and Policy Change: Putting Policy Network Theory to the Test*. Basingstoke, Palgrave Macmillan
- Connery, Niamh and David Hodnett (2009) *Regulatory Law in Ireland*, Tottel Publishing
- Eberlein, Burkard and Edgar Grande, (2005). 'Beyond delegation: transnational regulatory regimes and the EU regulatory state', *Journal of European Public Policy*, 12, 1 (89-112)
- Eisner, Marc Alan (2000). *Regulatory Politics in Transition*, Johns Hopkins University Press
- Ferris, T. (2001). 'Regulatory Governance: An Evolving Process for Public Utilities', *Administration* 49, 4 (70-80)
- FitzGerald, Garrett (1960): *State Sponsored Bodies*, Institute of Public Administration, Dublin
- Gilardi Fabrizio (2005). 'The Institutional Foundations of Regulatory Capitalism: The Diffusion of Independent Regulatory Agencies in Western Europe', *Annals of the Academy of Political and Social Science* 598 (84-101)
- Gore, William and John Horgan, 'Practice Review: Maintaining Freedom With Responsibility: The Evolving Role of Non-Statutory Press Councils in a Changing Media Landscape' ((forthcoming)) *Journalism Practice*
- Gunningham, Neil and Peter Grabosky (1998). *Smart Regulation*, Oxford University Press
- Gunningham, Neil and Robert A Kagan (2005) *Regulation and Business Behaviour*. *Law and Policy* 27(2)Special Issue
- Hale, Robert 'Coercion and Distribution in a Supposedly Non-Coercive State' (1923) XXXVIII *Polit. Sci. Q.* 470-494
- Hancher, Leigh and Michael Moran (eds) (1989). *Capitalism, Culture and Economic Regulation*, Oxford, Clarendon Press
- Hardiman, Niamh (2006). 'Politics and Social Partnership: Flexible Network Governance', *The Economic and Social Review* 2006, 37, 3
- Hardiman N and MacCarthaigh (2008) *Breaking with, or Building on the Past? Reforming Irish Administration*. Geary.ucd.ie
- Hardiman, Niamh and Scott C (2007). 'Puzzles of Agencification: An organisational Analysis'. www.irserver.ucd.ie
- Hardiman, N. and Scott, C. 2010 'Governance as Polity: An Institutional Approach to the Evolution of State Functions in Ireland', *Public Administration* 88: 170-189.

- Hardiman, Niamh, MacCarthaigh M and Scott C (2010) Mapping the Irish State. <http://geary.ucd.ie/mapping>
- Hardiman, Niamh (2010): Economic Crisis and Public Sector Reform: lessons from Ireland. Geary Institute Working Papers 2010/13
- Hardiman, Niamh and Scott C (2009). 'Ordering Things: Classifying agencies to understand the changing structures of the central state'. UCD Geary Institute Working Papers Series <http://ideas.repec.org/p/ucd/wpaper200907.html>
- Heclo, H and Wildavsky, A (1974): *The Private Government of Public Money*. Macmillan, London
- Hogan and Gwynne Morgan (1998): *Administrative Law in Ireland*, Round Hall Sweet and Maxwell, 3rd Ed
- Hood, Christopher (1983). 'The Tools of Government in an Information Age' in the Oxford Handbook of Public Policy (ch 22, pp 469-479). OUP.
- Hood, Christopher (1998). *The Art of the State*, Oxford University Press
- Hood, Christopher, Colin Scott, Oliver James, George Jones and Tony Travers (1999). *Regulation inside Government*, Oxford University Press
- Hood, Christopher and Helen Margetts, 2007. 'The Tools of Government in the Digital Age' in *Public Policy and Politics* (2nd Ed), Basingstoke, Palgrave.
- Howlett, M and Michael Ramesh (1993). 'Patterns of Policy Instrument Choice: Policy Styles, Policy Learning and the privatisation Experience', *Policy Studies Review*, Vol 12, Issue 1-2, (3-24)
- Howlett, M (2004) Administrative Styles and Regulatory Reform: institutional arrangements and their effects on administrative behaviour. 7 *International Public Management Journal* 317-333
- Humphreys, Peter C. and Jeanette Mair (2006). 'Ireland's complex regulation landscape'. Paper delivered to ECPR Conference on Regulatory Governance, University of Bath, September 2006
- Humphreys, Peter C, Jeanette Mair, Ann-Marie McGauran, Koen Verhoest and Stephen Weir (2006). 'Finding a way through Ireland's Regulation Maze'. Paper delivered to 3rd ECPR Conference: Regulation in an Age of Governance (Dublin, Institute of Public Administration)
- Jordana Jacinta and David Levi-Faur, eds. (2004). *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, Edward Elgar, CRC Series

- Kagan, RA (2003): *Adversarial legalism: The American Way of Law*. Cambridge, MASS, Harvard University Press
- Kirkpatrick, Colin and David Parker (2007). *Regulatory impact Assessment: Towards Better Regulation?* Edward Elgar
- Knill, C (2001) *The Europeanisation of National Administrations: Patterns of Institutional Change and Persistence*, Cambridge. Cambridge University Press
- Levi-Faur, David (2005). 'The global diffusion of regulatory capitalism', *Annals of American Academy of Political Science* 598, 1
- Lodge, Martin,. 'The Importance of Being Modern: International Benchmarking and National Regulatory Innovation' (2005) 12 *Journal of European Public Policy* 649-667
- Majone, Giandomenico (1994). 'The rise of the regulatory state in Europe', *West European Politics* 17, 3
- Majone, Giandomenico. 1994. "Paradoxes of Privatization and Deregulation." *1994* 1:53-69.
- Majone, Giandomenico (1996). *Regulating Europe*. Routledge
- Majone, Giandomenico (1999). 'The regulatory state and its legitimacy problems' *West European Politics* 22,1
- Marginson P and K Sisson, J Arrowsmith and HC Katz (2004). 'European integration and industrial relations: Multi-Level Governance in the making', *Industrial and Labor Relations*, Cornell University
- Massey, P. and D. Daly (2003). *Competition and Regulation in Ireland: The Law and Economics*, Oak Tree Press
- May, Peter J. (2007). 'Regulatory regimes and accountability', *Regulation and Governance*
- McCarthaigh, Muiris (2010, forthcoming). 'Multi-Level Regulation of the Utilities Sector: Telecommunications in Ireland', Final Report of work package B4 of the REGUNET project 44p.+ann
- MacCarthaigh Muiris (2008). *Government in Modern Ireland*. Dublin. Institute of Public Administration.
- MacCarthaigh Muiris (2010). 'Parliamentary Scrutiny of the Administration'. UCD Geary Institute Working Papers Series available at geary.ucd.ie
- McCahery J, B Bratton, S Picciotto and c Scott (1996): *International Regulatory Competition and Coordination*. Oxford, Oxford University Press

- McGauran, A-M, Koen Verhoest and Peter c Humphreys (2005). 'The Corporate Governance of Agencies in Ireland,. CPMR Research report, Dublin, IPA
- Moran, Michael (2001): The Rise of the Regulatory State in Britain, *Parliamentary Affairs*, Hansard Society
- Moran, Michael (2002). 'Understanding the regulatory state', *British Journal of Political Science* 32, 2
- Murray, Michael (2006). 'Multi-Level Partnership and Irish Waste Management: the Politics of Municipal Incineration', *The Economic and Social Review* 2006, 37,3
- Nolan, Pat (2008). *Dynamics of Regulation in Ireland: Advocacy, Power and Institutional Interests*. Dublin. Institute of Public Administration.
- O'Donnell, R (2008): The Partnership State: Building the Ship at Sea, in Adshead, Kirby & Millar (eds) *Contesting the State*, Manchester University Press
- O'Regan, Philip (2009) 'Regulation, the Public Interest and the establishment of an accounting supervisory body', *Journal of Management and Governance*, Special Issue, Summer 2009
- Pollitt, C. and G. Bouckaert (2000). *Public Management Reform: A Comparative Analysis*, Oxford University Press
- Power, Michael (1997). *The Audit Society: Rituals of Verification*, Oxford University Press
- Purcell, Declan (2008): *Rough Guide to Irish Regulators* www.tca.ie
- Radaelli, Claudio (2000). 'Policy transfer in the European Union: institutional isomorphism as a source of legitimacy'. *Governance* 13,1
- Radaelli, Claudio (2007a). 'Towards better research on better regulation'. Paper delivered to the Advanced Colloquium on Better Regulation, University of Exeter, January 2007
- Radaelli, Claudio (2007b) 'Whither better regulation for the Lisbon Agenda?', *Journal of European Public Policy*, 14,2
- Radaelli, Claudio and Fabrizio De Francesco (2007). *Regulatory Quality in Europe*, Manchester University Press
- Reeves, Eoin and Palcic, Donal 'Privatization Policy and Enterprise Performance: The Case of Ireland' (2004) 75 *Annals of Public and Cooperative Economics* 525-548
- Rhodes RAW (1997), *Understanding Governance: Policy Networks, governance, reflexivity and accountability*. Open University Press.
- Richardson J, G Gustafsson and G Jordan (1982). *The Concept of Policy Style*

- Roederer-Rynning, C. and Daugberg, C (2010) 'Power Learning or Path Dependency: Investigating the Roots of the European Food Safety Authority' 88 *Public Administration* 315-330.
- Rose, Nikolas (1999). *Powers of Freedom: Reframing Political Thought*, Cambridge University Press
- Sabatier, Paul (1987). 'Knowledge, policy-oriented learning and policy change: An Advocacy Coalition Framework', *Science Communications* Vol 8, 4 (649-692)
- Schaede U (2000): *Cooperative Capitalism: Self Regulation, Trade Associations and the Antimonopoly Law in Japan*. Oxford, Oxford University Press
- Scott, Colin (2000). 'Accountability in the regulatory state', *Journal of Law and Society* 27, 1
- Scott, Colin 'Regulation in Age of Governance: The Rise of the Post-Regulatory State' in J Jordana and D Levi-Faur (eds), *The Politics of Regulation* (Edward Elgar, Cheltenham 2004)
- Scott, Colin (2006). 'Understanding Variety in Public Agencies'. UCD Geary Institute Working Papers Series, available at geary.ucd.ie
- Scott, Colin 'Governing Without Law or Governing Without Government? New-ish Governance and the Legitimacy of the EU' (2009) 15 *European Law Journal* 160-173
- Scott Colin (2006). 'Privatisation and Regulatory Regimes' in Moran M, Rein M and Goodwin, R.E. (eds) *Oxford Handbook of Public Policy*, Oxford. OUP
- Scott Colin (2001) 'Analysing Regulatory Space: fragmented resources and Institutional Design', *Public Law*, Summer (329-353)
- Scott, Colin (2008) 'Regulating Everything'. Inaugural UCD lecture, 26 February 2008, available at Geary Institute Discussion Papers series, geary.ucd.ie
- Scott, Colin (2010) 'Regulatory Crime: History, Functions, Problems Solutions' in U Kilkelly and S Kilcommins (eds), *Regulatory Crime in Ireland* (First Law, Dublin)
- Scott C and M MacCarthaigh (2009), *Fragmenting Accountability in a Fragmented State* geary.ucd.ie
- Selznick (1985): *Focusing Organisations: Research on Regulation* in R Noll, (ed) *Regulatory Policy and the Social Sciences*, Berkeley, University of California Press
- Stigler, G. J. (1971). 'The theory of economic regulation', *The Bell Journal of Economics and Management Science* 2
- Sweeney, Paul (2004). *Selling Out? Privatisation in Ireland*, New Ireland Press

Taylor, George and Averil Horan (2001). 'From Cats, Dogs, parks and Playgrounds to IPC Licensing: Policy Learning and the evolution of environmental policy in Ireland', *British Journal of Politics and International Relations* 13, 3 (369-392)

Taylor, G. and M. Millar. 2002. "'The Appliance of Science': The Politics of European Food Regulation and Reform", *Public Policy and Administration*, 17, 2, 125-46.

Thatcher, M (2002): Internationalisation and Economic Institutions: Comparing European Experiences, *West European Politics*

Thatcher M and D Coen (2008): Reshaping European Regulatory Space: An Evolutionary Analysis, *West European Politics*

Timonen, Virpi (2001): What explains public service restructuring? Evaluating contending explanations. *Journal of European Public Policy* 8, 1 43-59

Verhoest Koen, Anne-Marie McGauran and Peter C Humphreys (2007). 'To agencyify or not to agencyify? A more systematic approach to the creation of Irish agencies' *Administration* 50,1 (149-180)

Verhoest Koen, Roness PG, Verscheure B, Rubecksen K and MacCarthaigh M (2010) *Autonomy and Control of State Agencies: Comparing States and Agencies*. Basingstoke, Palgrave.

Vibert, Frank (2007). *The Rise of the Unelected: Democracy and the New Separation of Powers*. Cambridge University Press

Vogel, Stephen K. (1996). *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*, Cornell University Press.

Westrup, J (2007) 'Regulatory Governance'. Paper delivered as part of UCD Geary Institute Discussion Paper Series [geary.ucd.ie](http://www.geary.ucd.ie)

Research Papers and Official Documents (Ireland, EU, OECD)

Department of An Taoiseach, Better Regulation Unit, Government of Ireland. *Delivering Better Government: A programme of Change for the Irish Civil Service* (1996); *Towards Better Regulation* (public consultation document 2002 and also the report on submissions received from this public consultation), White Paper on *Regulating Better* (2004); *Report on the Introduction of RIA* (2005); *Review of the Operation of Regulatory Impact Analysis*, by Isolde Goggin and Gillian Landers (July 2008), all available at www.betterregulation.ie

Department of An Taoiseach, Government of Ireland, 2008. Transforming Public Services; Report of the Taskforce on the Public Service (www.taoiseach.gov.ie)

Department of An Taoiseach, Government of Ireland, 2008. Towards 2016: Review and Transitional Agreement 2008-2009. (www.taoiseach.gov.ie)

Department of An Taoiseach, Government of Ireland. (October 2009). Government Statement on Economic Regulation, (www.taoiseach.gov.ie)

Department of An Taoiseach (2004). 'Bodies with Regulatory Powers in Ireland' (available at www.betterregulation.ie)

Department of Public Enterprise (2000). Policy Proposals on the Governance and Accountability of the Regulatory Framework. Dublin. Department of Public Enterprise

Department of Transport, Government of Ireland, February 2008. 2020 Vision-Sustainable Travel and Transport, Public Consultation Documents (www.transport.ie)

Economist Intelligence Unit (2009) Review of the Regulatory Environment in Ireland (available at www.betterregulation.ie)

Economist magazine (2009). 'Ireland's Economy, The Party is Definitely over', March 19th

Joint Oireachtas Committee on Economic and Regulatory Affairs; hearings of 29 April 2008, (www.oireachtas.ie)

Hampton, Philip. 2005. "Reducing Administrative Burdens: Effective Inspection and Enforcement." London: HM Treasury.

High Level Group on Business Regulation (2008) First Report. www.entemp.ie

Honohan, Patrick (2010): The Irish banking Crisis, Regulatory and financial Stability Policy 2003-2008, Report to the Minister of Finance. Central Bank, Dublin

Mandelkern Report: Regulation Final Report (CEC Brussels November 2002)

National and Economic Social Council, Dublin, Ireland 2005 NESC Strategy 2006: People, Productivity and Purpose (www.nesc.ie)

OECD: Policy Recommendations on Regulatory Reform, Paris 1995

OECD: Improving the quality of Government Regulation OECD/GD (95), Paris 1995; also Report on Regulatory Reform

OECD: Privatisation, Competition and Regulation, Paris 2000

OECD: Regulatory Reform in Ireland, Paris 2001

OECD: Regulating Policies in OECD Countries, Paris 2002

OECD (2008). Towards an Integrated Public Service, Paris 2008 (review of Irish public management)

P.A Consulting (2002) Evaluation of the progress of the Strategic Management Initiative, report prepared for Department of An Taoiseach.