

# Strengthening Civil Service Accountability and Performance

*Consultation  
Paper on  
Programme for  
Government  
Commitments*

**Government Reform Unit  
Department of Public Expenditure and Reform  
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## Overview and Executive Summary

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### Purpose

The Minister for Public Expenditure and Reform requested his Department to prepare this Consultation Paper in order to initiate an extensive consultation process. This process aims to bring about change and reform to the current accountability arrangements.

The Programme for Government highlights this critical set of issues because stronger accountability goes hand in hand with improved performance. Maximising performance is vital to delivering on the overall ambition of the Public Service Reform Programme. The Programme for Government commitments focus on enhancing accountability arrangements so that both the civil service and the political system can be empowered to be more effective and help build trust among citizens that well informed choices are being made as to how taxpayers' money is spent. The public service can benefit greatly from a fresh look at the long standing convention of ministerial accountability. This Consultation Paper acknowledges the centrality of political accountability to our democratic system while also exploring how politicians and public servants can most effectively operate together in an increasingly complex environment, to best meet the range of economic and societal challenges which lie ahead. The purpose of this Paper is to focus on where the appropriate balance lies in holding ministers and officials to account while supporting essential innovation and creativity in public administration.

### Accountability Systems

Robust and effective accountability systems are confirmed as an essential characteristic of high-performing and high-reputation organisations. Where effectively implemented, clear accountability frameworks:-

- support performance improvement;
- foster a culture of accountability;
- provide for clearer delineation and allocation of responsibilities; and
- support stronger systems for ownership of outputs, and more robust and transparent performance measurement.

Accordingly, accountability arrangements make a significant contribution to the achievement of wider organisational goals, and also reinforce civil service values of integrity, impartiality and fairness (See Section 1).

The strengthening of accountability systems requires a clear sighted examination of the forms and structures of accountability that best support the broader agenda of public service reform and its core objective of high quality and more efficient provision of public services (see Section 2).

### Current Environment

In Westminster-style parliamentary systems such as Ireland, government ministers are responsible to the legislature for each and every aspect of the performance of their departments – the doctrine of ministerial responsibility (see Section 3). This includes situations where the minister has had no direct involvement with or specific knowledge of particular administrative actions taken, or decisions made by officials on the minister's

behalf.<sup>1</sup> Detailed formal accountability mechanisms, in particular for Secretaries General including in their role as Accounting Officers, are a long-established and central feature of the operation of the Irish civil service (see Section 4). The Programme for Government commitments are essentially designed to strengthen accountability obligations currently applying to all senior civil service personnel (see Section 5).

It is widely acknowledged that accountability is a complex concept, embedded in the constitutional and existing legislative frameworks. It encompasses many relationships between the civil service and the political system, between the civil service and parliament, and between the civil service and the citizen, and has significant consequences for the work of Ministers and civil servants, and their respective roles (see Section 6).

The majority of major civil service reform initiatives undertaken in Ireland over the past half-century acknowledged the central importance of the principle of ministerial responsibility as the linchpin of the culture and operation of the civil service. Recent research on the challenges for Irish public administration and priorities for public service reform highlight the case for a detailed examination of accountability relationships at the highest levels of government (see Section 7).

Reform projects in other jurisdictions, as detailed in Section 8, appear to have succeeded in promoting sharper and more transparent accountability for departmental heads. These appear to have been achieved by continuing to attach a high value to the quality of the relationship between ministers and department heads.

### Options for Consideration

One of the primary aims of this consultation process is to assess how greater clarity, certainty and common understanding may be achieved regarding *who is accountable to whom for what*. It is clear from the discussion in this Paper that there is no easy answer to the question of division of responsibility between ministers and senior civil servants (see Section 9). It is essential to investigate through the consultation process how best to establish clearer lines of accountability between ministers and their departments as well as stronger internal/managerial accountability between senior officials and heads of departments/offices. Any steps taken to reinforce civil service accountability have very significant implications for the political system. The suggested elements of any new accountability model, set out in Sections 10 and 11, include:-

- reform of the legislative framework to provide greater clarity and certainty as to the roles and responsibilities of ministers and civil servants including accountability to parliament;
- development of a governing entity for the civil service;
- more effective accountability of senior management including exploring the publication of specific objectives;
- review HR practices including contractual arrangements for senior officials;

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<sup>1</sup> As authorised through the application of the Carltona principle under which powers vested in a Minister can be exercised by responsible officials on behalf of the Minister without any express act of delegation (i.e. the decision of the official is the decision of the Minister).

- reaffirm and reinforce the ethos and values of the civil service;
- build structures to underpin effective horizontal governance to address the issue of ‘silos’ between Departments which is counter to the most effective approach to addressing complex social and economic challenges; and
- review robust governance frameworks.

Crucial issues to be addressed in the consultation process include:-

- the desirability, costs, benefits and unintended consequences of any recalibration in the relationship between civil servants and ministers, as well as
- to what extent the current legislative provisions need to be strengthened to ensure that a workable system of devolution is achieved beyond Secretaries General to other senior level civil servants.

To assist this process, a number of key questions are set out in the next section of this Paper.

## Key Questions for Consultation Process

In order to ensure that the consultation process on this complex issue is fully and comprehensively informed and deliberative, all citizens and sectors are invited to submit their views on the key issues outlined in this Paper. **The questions for consultation set out below are intended - based on the discussion contained in this Paper - to elucidate whether significantly greater clarity is necessary regarding *who is accountable to whom for what* in particular as between ministers, Secretaries General and senior civil servants and, if so, how best it can be achieved.**

### Key Questions

*Q1. What are the hallmarks of a system of effective civil service accountability? What would such a system look like?*

*Q2. Do you think civil servants are sufficiently accountable? If not, what are the main weaknesses in the system? To whom should civil servants be directly accountable and what form should this accountability take?*

*Q3. To what extent do current arrangements for civil service accountability meet the following four principles of accountability (as explained further at page 36 below):*

- *clarity of accountability;*
- *sufficiency of control;*
- *clarity of consequences; and*
- *sufficiency of information?*

*Q4. How could civil service accountability be strengthened? Could such mechanisms be expected to lead to a significant improvement in civil service performance or are there additional measures that would be more effective in achieving this goal?*

*Q5. What could be the likely impact, including the practical changes, in strengthening civil service accountability? What could be the impact on the civil service, Ministers, the overall political system, and on individual civil servants? Consideration could be given to any possible unintended consequences.*

*Q6. What, if any, are the implications of the measures proposed in this Paper for traditional civil service values such as honesty, impartiality and integrity? Are there other measures that could usefully be taken to reinforce such values?*

*Q7. What are the main advantages and the main disadvantages of the specific reform options set out in Section 11 of this Paper? What options merit further consideration and what options could be discounted? How would the different elements of the reform options be likely to influence each other?*

*Q8. What elements of the Public Service Management Act 1997 have been successful and what elements have not been? Has this had an impact on the performance of Government Departments? What are the practical steps that need to be taken to ensure the sound and effective implementation of legislative measures in place?*

*Q9. Would legislative change, in particular to the Ministers and Secretaries Act 1924 and the Public Service Management Act 1997, be an effective way to strengthen the accountability of civil servants?*

*Q10. What is the appropriate balance between the accountability of civil servants and the maintenance of the traditional doctrine of ministerial responsibility?*

*Q11. Has the assessment contained in the 2002 Report of the Working Group on the Accountability of Secretaries General and Accounting Officers<sup>2</sup> stood the test of time? In what specific respects may the analysis, conclusions and recommendations in the report need to be updated?*

*Q12. Is there any scope for extending the accountability model for Accounting Officers to other aspects of the role of Secretaries General and also to other senior-level civil service personnel?*

*Q13. Are there factors specific to the Irish political and administrative context that need to be considered when addressing the issue of civil service accountability and performance?*

*Q14. What are the main lessons to be learned from the international experience of civil service reform? What international reforms are believed to be most relevant to civil service reform in Ireland (evidence from non-Westminster models will be appropriate)? What elements of civil service reforms undertaken or envisaged in other jurisdictions are not believed to be appropriate to the civil service and Ireland?*

*Q15. What are the lessons to be learned from the experience and practices of accountability and corporate governance in the private sector that could be examined and considered?*

*Q16. If delegating greater individual accountability to civil servants, does the delegation of greater authority also need to be considered? To what extent could this involve changes in the current allocation of decision making authority between ministers and civil servants and/or between individual departments and those departments exercising central controls?*

*Q17. Should differentiated accountability arrangements apply depending on a civil servant's role e.g. providing advice to a Minister, execution of agreed policies and programmes etc.? If so, in what way?*

*Q18. What aspects of previous reform elements were successful and what were not? What lessons can be learnt from these reform experiences?*

*Q19. Does the summary assessment of the legal / constitutional basis to the doctrine of ministerial responsibility presented in this Paper encompass all relevant considerations?*

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<sup>2</sup> Available at <http://www.finance.gov.ie/viewdoc.asp?DocID=935>

*Q20. What organisational and operational reforms would be necessary – including additional supports to ministers and civil servants and safeguards - to ensure the effective implementation of the reform options set out in this Paper (see Section 11), if they were to be adopted?*

**Please explain the basis for your response in the case of each question that is answered.**



## 1. Introduction

1.1. This consultation Paper examines the case for strengthening civil service accountability in light of the far-reaching commitments contained in the Programme for Government. The reforms are considered in light of the accountability arrangements already in place, particularly at the level of Secretary General, the Irish political context, and the international experiences of embedding a culture of performance and accountability.

1.2. Ensuring that accountability arrangements at all levels across the civil service are robust is, as discussed in this Paper, a very important objective in its own right. The Programme for Government commitments strongly imply that under present accountability arrangements the contribution of individuals to particular outcomes – both positive and negative - is very difficult to identify.

1.3. A strong culture of assessment and performance is acknowledged internationally as a key prerequisite to a system of public administration that is highly responsive and highly capable in terms of execution and delivery. The ongoing development of an effective performance management system within the civil service also requires clarity as to roles and responsibilities.

1.4. Internationally, the most persuasive element of the case made for seeking to secure more optimal accountability arrangements is the contribution they can make to the achievement of a much wider set of objectives that support a high-performing system of public administration. These goals encompass:-

- successfully managing organisational performance and decisively addressing organisational and individual underperformance;
- copper-fastening core civil service values to act impartially, conform to the highest ethical standards, provide quality support to ministers and ensure the provision of high quality public services to citizens;
- increased effectiveness and greater efficiency in carrying out the civil service's core function of policy development, policy advice and operational delivery;
- enhancing the reputation of the civil service and the broader public service and the public's trust in its officials and institutions;
- meeting the public's expectation of public service;
- enhancing the civil service's capacity to work effectively across departmental boundaries;
- widening and deepening its skills base to ensure necessary organisational capability;
- achieving a step-change in leadership capacity, in particular at senior levels;
- establishing a stronger centre with the capacity to think strategically, develop policy, manage civil service-wide change and drive standards up; and
- demonstrating greater responsiveness in the delivery of political priorities.

1.5. The main elements of the Paper:-

- set out some context for the review through further consultation on the scope for more effective delegation/devolution of responsibilities from Secretaries

General to other senior-level civil servants and on securing greater accountability in respect of these assignments;

- explain the concept of ministerial responsibility including a summary of the current institutional and legal arrangements which is inextricably linked to the respective accountabilities of the civil service and ministers;
- discuss some of the considerations relating to the appropriate balance between ministerial responsibility and civil service accountability drawing on national and relevant international experience;
- assess what are believed to be the central issues to be addressed for strengthening civil service accountability while not eroding the fundamental constitutional concept of ministerial responsibility to the Oireachtas; and
- set out a suite of reform options for consultation – both legislative and related to human resource management practices and in the latter instance drawing on reforms introduced or under consideration in other Westminster-type jurisdictions.

1.6. This Consultation Paper has been prepared with the aim of contributing to an extensive and inclusive consultative process on these themes prior to the implementation of the necessary reforms. While any proposals for civil service reform are obviously very important for all civil servants, they would also be a matter of interest and concern for all citizens given the central importance of the civil service to the effectiveness of public governance overall. The primary objective of this consultation is to review the assessment, conclusions and options identified in this Paper. It is intended that this process will help determine and provide impetus to the identification and implementation of key priorities for the reform of civil service accountability. Such reform is considered to be a critical element of the successful delivery of the broader programme of public service reform now underway.

1.7. The sources listed at the end of this Paper were reviewed in the preparation of this Paper. The development of the Paper was also informed by discussions held in 2012 and 2013 with a number of international and national experts<sup>3</sup> as well as by discussions with senior officials at a small number of round-table meetings. The finalisation of the consultation Paper also benefited from discussion with Secretaries General of all government departments and heads of civil service offices in May 2013 and a second round of consultations that took place with Secretaries General in autumn 2013 and subsequent observations received.

1.8. The content of the consultation Paper is the responsibility of the Government Reform Unit in the Department of Public Expenditure and Reform. No attribution should be made or inferred to those consulted in the course of the preparation of the consultation Paper.

1.9. The next section of the Paper examines some crucial differences between different interpretations and objectives relating to the term ‘accountability’. It helps set

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<sup>3</sup> Dr Richard Boyle, Institute of Public Administration; Dr Bernadette Connaughton, University of Limerick; Professor Bob Gregory, Victoria University of Wellington, New Zealand; Professor John Halligan University of Canberra, Australia; Dr Muiris MacCarthaigh, Queens University Belfast; Dr Eddie Molloy, Management Consultant; Professor Colin Talbot, University of Manchester, United Kingdom.

the scene for the discussion contained in the remainder of the Paper by shedding light on the backdrop to this issue including the existing accountability structures applying in the civil service.

## 2. Accountability – What does it Mean?

2.1. There is a lack of clarity created by the quite different connotations associated with the use and meaning of the term “accountability” that have proliferated in more recent times. Acknowledgement and recognition of the varying and divergent interpretations and objectives connected to the use of the term can be of significant benefit in considering how the specific commitments contained in the Programme for Government might be advanced in practice. In doing so, it is important to note that the focus of this Paper is ministerial responsibility and accountability, and the associated managerial or internal accountability of the civil service and individual civil servants. In view of the Consultation Paper’s focus on ministerial responsibility, it does not deal with the question of the political accountability of arms-length bodies such as independent statutory bodies and regulators that do not operate directly within the accountability framework of ministerial responsibility.

2.2. In this context, a fundamental question to be addressed in light of the very broad range of formal legal accountabilities to which public servants are subject (as detailed in Table 1 following) is what factors underlie and might validate the assessment contained in the Programme for Government that significant reform is imperative.

**Table 1 - Types of Accountability**

Type of Accountability	Constitutional, Legal or Administrative Basis
<b>Legal Relationship between Ministers and Civil Servants</b>	Article 28 of Constitution Ministers & Secretaries Acts 1924-2011 Public Service Management Act 1997
<b>Political / Parliamentary</b>	Article 28 of Constitution / Parliamentary Oversight Ministers & Secretaries Acts 1924-2011 Committees of the Houses of the Oireachtas (Compellability, privileges and immunities of witnesses) Act Comptroller & Auditor General (Amendment) Act 1993 Parliamentary Questions Appearance before Oireachtas Committees
<b>Financial</b>	Article 11 of Constitution Exchequer and Audit Departments Act 1866; Comptroller & Auditor General Act 1923 State Guarantees Act 1954 Performance Budgeting
<b>Managerial &amp; Organisational</b>	Civil Service Regulation Act 1956 Civil Service Regulation (Amendment) Act 2005 Public Service Management Act 1997 Public Service Management (Recruitment and Appointments) Act 2004 Civil Service Personnel Code and Civil Service Disciplinary Code Performance Management Development System Public Service Reform Plan and Industrial Relations Agreement (such as Haddington Road Agreement) Charter on Dignity in the Workplace 2004
<b>Administrative</b>	Legal Services Ombudsman Act 2009 Ombudsman (Defence Forces) Act 2004 Ombudsman for Children Act 2002 Ombudsman (Amendment) Act 1984 Ombudsman Act 1980 Ombudsman Act 2012 Garda Síochána Ombudsman Commission (established under Garda Síochána Act 2005) Central Bank and Financial Services Authority of Ireland Act 2004 (established the Financial Services Ombudsman) Pensions Ombudsman (established by the Pensions (Amendment) Act 2002)
<b>Direct Public</b>	Freedom of Information Acts 1997- 2003 Official Languages Act 2003

Type of Accountability	Constitutional, Legal or Administrative Basis
<b>Accountability</b>	Data Protection Act 1988 Re-use of Public Sector Information Regulations 2005 Access to Information on the Environment Regulations 2007 Statements of Strategy Quality Customer Service
<b>International Obligations</b>	Obligations to EU law and Institutions Other International Fora- UN, OECD, etc.
<b>Other Legal/Judicial</b>	Article 34 & 50 Oversight of the Courts / Judicial Review Tribunals / Commissions of Inquiries Disability Act 2005 National Disability Authority Act 1999 Equality Act 2004 Equal Status Act 2000 Employment Equality Act 1998 Employment Equality Act 1977
<b>Ethical and Professional Standards</b>	Prevention of Corruption Act 1889 Human Rights Commission Act 2000 Ethics in Public Office Act 1995; Standards in Public Office Act 2001 Civil Service Code of Standards and Behaviour (2008)

2.3. What is described as public accountability is considered intrinsic to such objectives as providing a democratic mechanism to, for example:-

- monitor, oversee and control government and administrative conduct;
- ensure popular sovereignty;
- prevent corruption and the abuse of power ;
- enhance the learning capacity of public bodies;
- ensure value for money and safeguard the interests of the taxpayer.

2.4. In particular circumstances following, for example, an avoidable disaster or tragedy, accountability can also provide the opportunity for public catharsis. In overall terms, accountability is seen as discharging a pivotal role in bolstering the legitimacy of government authority and public confidence in the effectiveness of public administration. The term ‘accountability’ is, therefore, characterised by some commentators as an *icon* for good governance. However, in seeking to define it precisely in practice it has become a complex and elusive concept with different meanings for different people and different usages often in the same contexts.

2.5. The original and long-standing core meaning of accountability and its conventional usage within the governmental system in Ireland (and other parliamentary democracies with their origins in the Westminster system) is the formal obligation to submit to a mechanism designed to achieve external scrutiny in explaining and justifying past conduct or actions with the possibility of facing consequences arising. The primary and overriding purpose of such accountability arrangements is to ensure control and provide checks and balances to organisational and institutional behaviour.

2.6. In other scenarios, where any specificity is brought to bear on the meaning of the term, accountability is equated with a set of standards for the evaluation of the behaviour of public agents. In this setting “being accountable” is represented as a positive quality or virtue of organisations and individuals. This particular concept of accountability primarily relates to compliance by individuals or organisations with substantive standards

for good governance. However, even when this is the intention, it is often quite difficult to generate a substantive definition owing to often differing and frequently shifting perceptions of the appropriate standards for accountable behaviour across public organisations, political systems and individual views and perspectives as to what constitutes appropriate moral and ethical conduct in a particular individual's work activities.

2.7. While there are a number of different characterisations of the formulation of accountability discussed above (i.e. “being accountable”) in common usage, one of particular interest for the purposes of this Paper is the view that it can be regarded as corresponding to a sense of personal obligation to take responsibility for one's own actions. This key distinction between these divergent interpretations of ‘accountability’ echoes a classic debate in public administration on how far public servants rely on their professionalism and sense of personal morality and how far they simply follow instructions from political masters. Determining the appropriate balance between inward responsibility of public servants to their professional standards and values and the primacy of responsibility to external political direction remains a core issue to be determined. It can also be queried whether the specific manifestations of accountability, set out in Table 1 above, support or detract from the operation by individual civil servants, in the first instance, of a self-regulating sense of personal accountability.

2.8. As set out in the detailed and comprehensive series of formal accountability mechanisms applying to the public service in Ireland summarised in Table 1 above, government departments under direct ministerial control are notable for the extensive nature of their accountability demands. This accountability is implemented through a range of different institutional mechanisms. The traditional key channel of accountability remains the chain of ministerial responsibility through the departmental hierarchy to the Secretary General and the minister and via the minister to the Oireachtas, media and the public. This central channel is supplemented by a number of other accountability mechanisms including the accountability of public servants directly to parliamentary committees, to independent accountability agencies such as Comptroller and Auditor General, the Ombudsman, tribunals of inquiry, commissions of investigation, parliamentary inquiries and the Courts. In general the importance of such other channels has increased with, for example, more frequent appearance by senior officials before Oireachtas Committees (both with the relevant Minister and without). Such appearances now extend well beyond specific Accounting Officer responsibilities and beyond Secretaries General. The Government's Oireachtas reform initiatives are also relevant, with the requirement to discuss legislative proposals at an earlier stage of development (i.e. Heads of Bill) seeing officials, rather than ministers, appear before Committees at such hearings.

2.9. In practice, there is also a degree of accountability to other Departments, particularly central departments such as the Department of the Taoiseach and the Department of Public Expenditure and Reform. There are increased reporting requirements through Senior Official Groups chaired by Department of the Taoiseach, and cabinet committees organised around key Government priorities.

2.10. The main mechanism, in terms of internal managerial accountability, is the Performance Management and Development System (PMDS) which seeks to provide

clarity at an individual level on the role of each officer, and the goals to be achieved within a twelve month period.

2.11. Returning to the question of how the existence of such a broad range of accountability systems can be reconciled with the view presented in the Programme for Government and more generally in public debate that “no one is accountable”, it is particularly noteworthy that the mechanisms set out in Table 1 are underpinned by the conventional or traditional definition of accountability.

2.12. This analysis also highlights the requirement to ensure that the steps taken to strengthen civil service accountability result in a more effective accountability regime rather than simply the creation of further accountability obligations, the value of which have not been fully assessed and evaluated in advance. Authoritative international experts stress that each of the posited positive functions of public accountability arrangements can easily turn into dysfunctions if public accountability becomes excessive or falls victim to negativism and becomes inordinately focused on finding flaws, faults and other forms of failure. In addition, the flexibility of senior managers, which is essential to a well-functioning civil service, must be recognised within any new accountability process.

2.13. These tendencies are assessed to be very likely to squeeze any potential for entrepreneurship and creativity out of public managers to seek improvements and may turn public agencies into rule-obsessed bureaucracies, with an entrenched bias against any risk taking. This is not desirable considering the important lessons often gained from the failure as well as the success of policy development and implementation. The case is also made that it can result in the emergence of what is sometimes described as a ‘gotcha’ mentality where accountability is seen to be synonymous with blame games and scapegoating for those who are perceived as culpable. This often diverts attention from the more fundamental question of how to improve public services and administration. In addition, consideration of reform would be mindful of the findings of recent report<sup>4</sup> from the Top Level Appointments Committee (TLAC) which commented that ‘*while level of civil service participation in the TLAC process remains high, in some instances highly qualified civil servants did not put themselves forward and concerns about public criticism of senior civil servants have been cited*’. A key conclusion to be drawn is that a balance needs to be struck between external scrutiny and accountability on the one hand and the professional responsibility of agents on the other.

2.14. In addition, the strengthening of accountability systems requires a clear-sighted examination of the forms and structures of accountability that best support the broader agenda of public service reform and its core objective of higher quality and more efficient provision of public services. The traditional association of accountability with answerability, implying limited direct and mostly formalistic response to accountability demands, is clearly too narrow to meet fully all contemporary challenges.

2.15. Many of the types of accountability in Table 1 relate to considerations of fairness, impartiality and due process. Reforms intended to recalibrate the relationship between ministers and civil servants must have regard to the different types of accountability that

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<sup>4</sup> Top Level Appointments Committee (TLAC) ‘First Report to the Minister for Public Expenditure & Reform - Developments & Trends: July 2011 to December 2012 (2013).

are expected of different actors so as to ensure there is alignment, not just in the types of accountabilities that fall to each actor, but in the interaction between these accountabilities.

2.16. Reforms also need to be realistically based on a recognition that in many circumstances there are most often multiple parties (rather than a single individual) who carry at least some responsibility for serious failures – the problem in assigning accountability of ‘many hands’. Moreover, specific performance failures frequently take place against the backdrop of serious shortcomings in organisational performance overall reflecting weak or ineffective governance at all levels (i.e. systemic failure). Consequently, attempts to attribute blameworthy conduct to a single individual may not address the underlying problem.

The context within which the Programme for Government commitments are seeking to strengthen accountability mechanisms is that of ministerial responsibility. This concept and its implications for the accountability of civil servants are explored in the next section.



### 3. Ministerial Responsibility

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3.1. The kernel of the issues assessed in this Paper relates to the long-established principle in Westminster-type parliamentary systems<sup>5</sup> of ministerial responsibility to parliament for all elements of the exercise of a minister's departmental responsibilities. The purpose of this section is to explain in broad terms the definition and implications of the doctrine of ministerial responsibility.

3.2. Ministerial responsibility forms a central element of the institutional structure of Irish parliamentary politics and government, yet it continues to provoke competing interpretations due to the changing nature of politics and the increased complexity of public administration<sup>6</sup>. The scope of ministerial responsibility can range from significant political decision-making on major policy issues - in relation to which a minister's role has been instrumental with a high-level of direct personal involvement, direction and control - to routine administrative responsibilities discharged by civil servants on the minister's behalf without the minister having any role, knowledge or involvement.

3.3. The high degree of complexity of modern public administration and the large volume of detail encompassed by it would, in practical terms, make it impossible for any minister to have direct personal knowledge of all operations of his or her department.

3.4. In such circumstances, the concept of strict ministerial responsibility could be represented as an artefact, redolent of administrative practice as it might have been in a government department in the 19<sup>th</sup> or the early to mid-20<sup>th</sup> century. Ministerial responsibility was created to reconcile the work of a burgeoning bureaucracy with the scrutiny functions of the democratic parliamentary system. Since that time, the degree of specialisation of public service functions and the complexity of relationships has increased very substantially.

3.5. However, the democratic and constitutional imperative - codified in Ireland's case in the Constitution and legislation – requires a government to be politically responsible to parliament for each and every aspect of departments' and ministers' activities.

3.6. The experience in Westminster parliamentary systems has been, in general, that ministerial resignation due to serious departmental error where there has been no personal involvement of the minister has not, in practice, been particularly prevalent. Even in a partisan political environment there is usually some recognition that government ministers in Westminster-style parliamentary democracies cannot reasonably be held fully responsible for many comparatively routine administrative decisions that officials and departments make.

3.7. The practical political reality is often that notwithstanding a minister's constitutional responsibility to the legislature - both for the fact that something has gone

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<sup>5</sup> The Westminster system is a democratic parliamentary system of government modelled after the politics of the United Kingdom. In addition to Ireland and the UK it also includes Australia and New Zealand

<sup>6</sup> MacCarthaigh, M., (2005) 'Accountability in Irish Parliamentary Politics', IPA.

wrong and also for providing an account to parliament of why that has happened as well as for ensuring that corrective action is taken – the minister is not necessarily required to take personal responsibility for these performance failures. Consequently, ministerial responsibility is sometimes characterised as representing little more than “answerability”, “explanatory responsibility” or even “accountability avoidance”.

3.8. Acceptance of the absence of personal culpability on behalf of a minister would be unlikely to hold if, for whatever reason, a minister was personally involved in the decision or any problems were a manifestation of a systemic issue (e.g. the argument is made that the minister should have acted in circumstances in which there was clear evidence of recurring poor performance in relation to day-to-day administration carried out on the minister’s behalf by her or his department). In such a situation, the question of responsibility would be argued to arise and, if the specific issue was sufficiently serious, the sanction of ministerial resignation might be strongly advocated.

3.9. The experience in parliamentary systems in which it applies is that the doctrine of *strict* ministerial responsibility is usually honoured more in the breach of the convention that any serious administrative failure should result in resignation by the minister. While ministers may, on occasion, resign for private misconduct or unethical behaviour, ministerial responsibility is not usually taken to this point where there is serious maladministration by civil servants, notwithstanding the precepts of the doctrine of ministerial responsibility.

3.10. This situation has also contributed to a differentiation being made (although it is far from a consensus view) between ministerial *responsibility* (as outlined above) and ministerial *accountability*. In the latter case ministers continue to be held accountable to parliament (in the sense of being obliged to answer to it when parliament so demands and to indicate corrective action if that is called for) but that does not, in itself, give rise to ministerial culpability and consequences such as resignation or dismissal (unless the action which stands condemned was theirs, or taken on their direction or was an action with which they obviously should have been concerned).

3.11. The common experience both in Ireland and in other Westminster-type parliamentary systems is that it is very often difficult to distinguish between an issue giving rise to personal *responsibility* on behalf of a minister where he or she has been culpable and liable to take the blame, from a situation of constitutional / legislative *accountability*.

3.12. Consequently, when serious policy or operational errors occur, ministers and their civil servants are often caricatured as either “hiding behind each other” or attempting to “push one another out into the firing line” as “blame games” are played out behind the scenes between the administrative and political system. This culminates in the strong and enduring perspective, frequently expressed in public debate, that “no one is accountable”.

3.13. The nature of the administrative-political relationship in an environment where the doctrine of ministerial responsibility applies is characterised by researchers internationally as inherently one in which one of the main incentives for the administrative system is, above all, to seek to avoid mistakes that have the potential to cause controversy impacting directly on the minister. This is characterised by

commentators as promoting and rewarding risk averse and conservative behaviour and an administrative culture that values and rewards continuity, stability and the maintenance of the *status quo* ahead of political and public demands for responsiveness and delivery. These risks are assessed to be compounded if the prevailing value system of the civil service is for the protection of the minister to have primacy over promotion of what might be regarded as the public interest. An important avenue for examination might be to reinforce the role of senior civil servants in objectively assessing and articulating the wider public interest.

3.14. Whether the characterisation summarised above is appropriate in the case of the Irish political and administrative system needs to be ascertained in the context of the consultative process.

### Internal / Managerial Accountability

3.15. Notwithstanding multiple formal and informal accountability requirements (as outlined in Section 2) an even more serious problem is the extent to which there is, in practice a significant shortfall in the internal or managerial accountability of the civil service to ministers. This is evident in all Westminster-type jurisdictions and is attributed as flowing directly from the application of the doctrine of ministerial responsibility.

3.16. It can be argued that this reflects a broad range of structural, legal and institutional factors that will vary between different countries within the Westminster model. Chief among these are the extent of the constraints on the direct exercise of powers by ministers over civil servants on account of the strict need to avoid politicisation and retain the independence of the civil service. As a result, in order to respect the principle of civil service impartiality and neutrality, even where evidently there are serious shortfalls in organisational performance, there can be, depending on the national context, quite limited scope for the political system to effectively hold senior civil servants and departments to account for their performance.

3.17. Civil servants in Westminster parliamentary systems do not generally have direct political accountability to parliament<sup>7</sup> but are accountable to their direct superiors in the chain of command in their organisations. Consequently, unless robust individual and organisational performance management systems are in place, given the uncertainty regarding the boundaries between ministerial and civil service responsibility, this can contribute to a situation where, in practice, internal organisational or managerial accountability is largely ineffective and sub-optimal.

3.18. As outlined later in this Paper, other Westminster-type parliamentary democracies have implemented far-reaching reforms to seek to resolve this accountability dilemma.

3.19. Most of the various civil service reform initiatives undertaken over the past fifty years have identified similar challenges for the Irish civil service. However, the steps taken are not judged by commentators to have been successful in underpinning the development of robust and effective systems of accountability for senior officials beyond those arrangements in place for Secretaries General particularly in their role as Accounting Officers.

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<sup>7</sup> Other than in the performance of the role of Accounting Officer – see Section 4.

3.20. However, in acknowledging the potency of accountability arrangements for top level civil servants, as discussed in the next section the authoritative 2002 *Report of the Working Group on the Accountability of Secretaries General and Accounting Officers* did draw attention to the key point that the accountability of Secretaries General (as Accounting Officers as well as in their Secretary General role) is appreciably stronger than for other senior levels managers in the civil service.

## 4. Accountability of Secretaries General and Accounting Officers

4.1. The accountability of Secretaries General and Accounting Officers is one of the key accountability mechanisms in the civil service. The roles and their responsibilities were examined in detail in the July 2002 *Report of the Working Group on the Accountability of Secretaries General and Accounting Officers* (i.e. the “Mullarkey report”). The Working Group was established to:-

- examine the authority, responsibility and accountability of Secretaries General and Accounting Officers in relation to financial management in the context of the performance management within the overall Strategic Management Initiative (SMI); and
- prepare rules of good governance for the consideration of the Government taking account of the complexities and sensitivities of the relationship between Secretaries General and ministers as well as the specific functions exercised by Secretaries General who are Accounting Officers.

4.2. The Mullarkey Report reviews the key features of the Accounting Officer role, in particular the personal responsibility of the Accounting Officer for:-

- the regularity and propriety of the transactions in the accounts for which s/he is answerable;
- the control of assets held by the Department;
- economy and efficiency in the use of the Department’s resources; and
- for systems, practices and procedures used to evaluate the effectiveness of its operations.

4.3. The report also sets out the accountability of Secretaries General to Ministers under the Public Service Management Act (PSMA) 1997. The report stresses that the PSMA is very significant from an accountability perspective because it makes more explicit what Secretaries General are responsible for and to whom they are accountable. It also provides a framework, through the processes introduced, to facilitate the discharge of the Secretary General’s statutory accountabilities set out in the Act as follows:-

- managing the Department;
- implementing Government policies appropriate to the Department;
- monitoring Government policies that affect the Department;
- delivering outputs as determined with the Minister;
- preparing the Department’s Strategy Statement;
- providing advice to the Minister, ensuring the resources of the Department are used in a manner that is in accordance with the Comptroller and Auditor General (Amendment) Act, 1993;
- examining and developing means of improving the provision of cost effective public services;
- making sure arrangements are in place to maximise efficiency in cross departmental matters; and
- managing all matters relating to the appointment, performance, discipline and dismissal of staff below the grade of Principal Officer or equivalent.

4.4. It is crucial to note that under the PSMA the Secretary General is also responsible for assigning specific responsibilities to other officers. The extent to which this power has been exercised in practice is discussed later in this Paper.

4.5. The Report describes the working relationship between the Secretary General and the minister who is in charge of the Department as a key factor in the effective administration of Government Departments. It discusses how Secretaries General in their capacity as managers of Departments have a responsibility to ensure that the systems and procedures are in place to enable them to perform their functions within the resources available and to enable the Minister to answer for the performance of those functions to the Dáil. It discusses the requirement for a Minister to place trust and confidence in the Secretary General stressing that this places the Secretary General in a different position to other civil servants. The relationship extends beyond the Minister and requires the Government as a whole to place confidence in the Secretary General.

4.6. The Mullarkey Group also examined governance arrangements for Secretaries General/Accounting Officers including issues of performance and discipline and whether there should be any change to the existing arrangements. It noted that formal review mechanisms to evaluate the extent to which Secretaries General are achieving their objectives are still relatively underdeveloped but that there are aspects of a Secretary General's functions (i.e. such as giving advice to the Minister) that do not lend themselves readily to objective external review and evaluation.

4.7. The Group's assessment was that the Strategic Management Initiative (SMI) was very significant from an accountability perspective because it made more explicit what Secretaries General (and other officers) are responsible for and to whom they are accountable as well as providing a framework, through the processes introduced, to facilitate the discharge of these statutory accountabilities. The group pointed out, in particular, that a Department's Strategy Statement and its Progress Reports did provide a mechanism for the Minister to assess the progress of the Department and that of the Secretary General as principal officer of the Department.

4.8. The Report drew attention to the important differences in the relationship between the Accounting Officer and the Minister from the relationship which otherwise exists between a Minister and his/her Secretary General. An Accounting Officer's responsibilities are personal to that role and give rise to a personal responsibility to safeguard the interests of the taxpayer. The duties of an Accounting Officer are, therefore, outside the normal system of civil service delegation. An Accounting Officer is personally answerable to the Committee of Public Accounts (PAC) for regularity, propriety and value for money by means of rigorous *post factum* examination of the manner in which Accounting Officers have discharged their responsibilities by means of independent audit and examinations by the Comptroller and Auditor General and scrutiny by the PAC.

4.9. Having considered the existing system for performance evaluation the Mullarkey Group considered that there is adequate scope within the system to provide for an assessment of the performance of the Secretary General/Accounting Officer functions and that the Government is the appropriate authority in relation to any issue of

disciplining Secretaries General. The consultation process should explore the options for a more structured framework to underpin these arrangements.

4.10. The Group recognised, however, that measuring and accounting for performance are important issues and highlighted a need for formal structures within Departments to review the achievement of objectives at senior management level by the Management Advisory Committee and at Divisional level through the business planning process. The Report also calls for a more results-based approach to public service management highlighting for example:-

- the need for clarity in relation to responsibility and accountability;
- the desirability of making full use of existing accountability mechanisms; and
- the requirement that the existing system provide for an increasing focus on the performance of the Secretary General/Accounting Officer.

4.11. In overall terms, therefore, while drawing attention to the need to strengthen internal accountability for civil servants more generally, the Report concluded that there was no requirement for any new or additional initiatives related specifically to the performance assessment for Secretaries General.

4.12. Assessing whether these important and significant conclusions remain valid over ten years later - in light of, for example, subsequent events / developments and the Programme for Government commitments in this area, requires examination of whether the SMI/Delivering Better Government reforms of the late 1990s are believed to have delivered on their potential, as well as whether there are believed to be any lessons to be learnt from the design and impact of civil service reform agendas in other jurisdictions.

4.13. Separately, further consideration might also focus on whether the accountability arrangements for Accounting Officers has, in the absence of other strengthened accountability and performance measures, unintentionally contributed to reduced accountability of other civil servants at a practical level.

4.14. The following section of this Consultation Paper sets out the particular commitments contained in the Programme for Government which are specifically designed to sharpen the accountability of civil servants.

## 5. Programme for Government Commitments

5.1. The Programme for Government commitments set out to achieve a far reaching reform and reconfiguration of the relationship between ministers and their departments and civil servants through an extensive and radical series of reforms relating to accountability arrangements in the civil and public service.

5.2. Three commitments contained in the Programme for Government deal specifically with the formal accountability relationships, including between civil service officials and ministers, between ministers and parliament, and officials and parliament as follows:-

*“We will pin down accountability for results at every level of the public service – from Ministers down – with clear consequences for success and failure. Ministers should be responsible for policy and public service managers for delivery”.*

*“We will legislate for a reformulated code of laws, replacing both the Ministers and Secretaries Acts and the Public Service Management Act, which will spell out the legal relationship between Ministers and their civil servants and their legal accountability for decisions and for management of Departments”; and*

*“Restrictions on the nature and extent of evidence by civil servants to Oireachtas committees will be scrapped and replaced with new guidelines for civil servants that reflect the reality of the authority delegated to them and their personal accountability for the way in which it is exercised.”*

5.3. The direct antecedent to the specific commitments on civil service accountability contained in the Programme for Government can be found in the Labour Party’s policy document *New Government Better Government* published in early-January 2011 by then Labour Party’s Spokesman on Constitutional Matters and Law Reform. The November 2010 Fine Gael policy document *Reinventing Government* also addressed this issue in highlighting that that civil servants are hidden by the “veil” of ministerial responsibility for everything done in their name leading to a “huge” accountability gap.

5.4. The *New Government, Better Government* policy document advocates a wide-ranging series of reforms to ministerial responsibilities which were subsequently included in the Programme for Government and in particular extensive legislative reform to re-define the relationship between ministers and their Departments, so as enshrine three basic propositions.

- If the Minister takes a decision personally, he or she should say so and account for it;
- If the decision is taken by the Department, under a delegated power, then the relevant, named official should say so and account for it; and
- The Minister would then have to account for the degree of supervision he or she exercised over the Department in relation to the exercise within it of delegated powers.



5.5. The recommended accountability model is essentially underpinned by the concept of responsibility. In circumstances where either a minister or an official has direct and significant personal involvement in an important action or decision he or she would personally attract the credit or blame which flows from that action or decision.

5.6. In essence, the analysis underpinning the proposed reforms in the Programme for Government is that significant clarification of accountability arrangements applying in the upper echelons of the civil service, which resulted in such officials being held more directly and individually responsible for their performance, would be likely to lead to a substantial strengthening in both individual and organisational performance of the civil service overall. Under such an accountability system ministers would be politically accountable and appropriately held to account for matters for which they have direct responsibility, for example, strategic direction, setting policy priorities and the outcomes achieved within an open and transparent system.

5.7. Applying that framework, once policies are decided and priorities are set it should be possible, recognising the reality of what currently happens in practice, to delegate formally substantial aspects of implementation to civil servants. The guidance and strategy that ministers provide should be sufficient to enable civil servants to make the decisions required to successfully deliver the policy objective. The relevant civil servants would be directly accountable for the delivery of government policies which have been formally delegated to them.

5.8. It is clear, however, that it is not possible to draw a line through the policy process after which no more ministerial involvement is required. The process of implementing a particular scheme can raise policy issues that will often require a minister to make further political judgments. When policy has been set it does not mean a minister will have no further involvement; the implementation of policies can be as politically sensitive as the policy decision itself and may require direct ministerial involvement at different times to ensure successful implementation.

5.9. Under such a model, unless ministers explicitly take responsibility for particular projects or other operational areas, there would be a clear identification of senior civil servants for day-to-day operations or administration of their department. Giving civil servants greater formal responsibility and accountability for the day-to-day administration and operations of a department, while simultaneously clarifying the prerogatives and duties of ministers, should, it is argued, further increase the accountability of both.

5.10. The possible implications for the operation of the political system and its interaction with the administrative system in a situation of formal devolution of policy implementation will also need to be fully explored in the context of the consultative process. Any actions considered to strengthen the accountability of civil servants will need to be examined in parallel to a review of their impact on and implications for ministerial responsibility and accountability. Changes to accountability arrangements will have implications for allocation and prioritisation of resource arrangements. Additionally, such examination might include the extent to which any changes countenanced to such management systems would need to be accompanied by changes politically, particularly in relation to specifying objectives of Ministers and desired outcomes.

5.11. The characterisation of ministerial accountability underlying the Programme for Government is aligned with international critiques of central administration in Westminster-type systems that highlight a lack of meaningful accountability and the absence of an embedded performance culture. This has provided strong momentum to the reform process elsewhere.

5.12. It is also evident from international developments that securing substantially improved civil service accountability is believed to be a significant driver of improved performance and delivery overall. However, as is also clearly demonstrated from the international experience, it may be easier to diagnose these problems rather than to find enduring solutions to them. A priority objective of the consultative process is, therefore, to shed light on whether the analysis which has proved influential in driving civil service reform elsewhere is applicable to Ireland.

5.13. An insight into the basis to the Programme for Government commitments to strengthen civil service accountability can be found in a speech given at the Burren Law School (BLS) in May 2010 entitled *Public Service Reform Should Not Let Ministers Off the Hook*. A summary of the assessment presented in this address is contained in Annex A of this Paper. Additionally, there is evidence from media commentary that there is a public perception<sup>8</sup> that deficits in current accountability systems in the civil service exist.

5.14. The Programme for Government commitments direct attention to the case for reform of the basic legal infrastructure underpinning civil service accountability as exemplified by the Ministers and Secretaries Acts and the Public Service Management Act, as well as the rules that applied to the evidence of civil servants to Oireachtas committees which, at the time, were founded in the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997. This has since been repealed and updated by the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013.

5.15. The potential for implementing or for securing the objectives of the proposed reforms contained in the Programme for Government can be best understood by summarising the key elements of the legal framework governing the principle of ministerial responsibility in Ireland, as well as the existing scope for delegation of ministerial powers to officials. This is discussed in the next section of this Consultation Paper.

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<sup>8</sup> Siggins, L. (2011) Civil Servants must ‘Step Back’ from Ministers, *Irish Times*, March 28  
Humphreys, J. (2012) ‘Lack of Accountability has a devastating ripple effect’, *Irish Times*, 24 May.  
O’Brien, C. (2012) ‘No One is Responsible for Anything’, *Irish Times*, 5 March.  
Editorial, (2012) ‘Public servants paying the price’, *Irish Times*, 12 March.  
O’Toole, F. (2013) ‘Reform is not abstract: misgovernment does real, tangible harm to our citizens’, *Irish Times*, 8 October (‘...a system of delivery of public services and of public administration that struggles with basic ideas of responsibility and accountability..’).  
Molloy, E. (April 2013) ‘We must stop blaming ‘systems’ for shameful human failures’.  
Hayes, M (2013) ‘Civil service must take a bullet in deficit war’, *Sunday Independent*, 7 April

## 6. Legal Position

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### Constitutional Position / Ministers and Secretaries Acts

6.1. Under Article 28.12 of the Constitution ministers are “in charge of” Departments of State. The Ministers and Secretaries Act 1924, as amended, provides<sup>9</sup> that each minister shall be the responsible head of the department or departments under his/her charge and “.....shall be individually responsible to Dáil Éireann alone for the administration of the department or departments of which he is head....”. This gives statutory effect to the constitutional principle of ministerial responsibility.

### Corporation Sole

6.2. The Ministers and Secretaries Acts also designate the minister as a "corporation sole", which is often characterised as determining that the minister is the department and civil servants have no separate legal existence. With the passage of time, this has sometimes been seen as excluding any other person or agency (including government departments or individual civil servants) from taking on the powers, duties and functions vested in the minister.

6.3. In essence, corporation sole is a legal device that allows for continuous legal personality and continuity of legal title as well as ensuring that persons contracting with the State have the ordinary remedy of action available in case of breach of contract. The concept of corporation sole is not directly relevant to the examination of the minister/department relationship as compared to constitutional requirements applying to ministers, the doctrine of ministerial responsibility and the effect of the Carltona Principle, though the term is sometimes used as a shorthand to characterise the absence of effective civil service accountability on account of the legal indivisibility of ministers and their departments.

### Carltona Principle

6.4. The Carltona principle or doctrine is the long-established practice of the UK administration (and continued in Ireland post-independence) that the powers vested in the minister may be exercised by appropriate responsible officials without any express act of delegation, on his or her behalf. The legal principle underlying this practice was formally established by the UK Courts in 1943 and was ultimately recognised by the Irish Supreme Court in *Tang v Minister for Justice* [1996] 2 ILRM 46 and *Devanney v Sheils* [1998] 2 IR 130.

6.5. This doctrine formally established as a point of law that duties and powers vested in a minister may be performed or exercised by appropriate officials in his or her department. In upholding and applying the Carltona principle the Irish Supreme Court confirmed that an official in a minister’s department could exercise powers that were vested in that minister. The organisational reality relating to the scale and complexity of departmental business and the sheer impossibility of a minister personally performing all such administrative functions were critical to the Court’s reasoning in endorsing the Carltona principle.

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<sup>9</sup> In the preamble of the Act.

6.6. The Supreme Court also accepted that the Carltona principle reflected the requirement of the constitutional principle that all statutory powers are exercised in the minister's name, as the minister is accountable to the Dáil. The minister is, therefore, responsible for answering before the Oireachtas for anything his officials have done under his or her authority. The doctrine enables ministers to remain responsible, and accountable to the legislature, whilst having responsible officials make very many administrative decisions on behalf of the minister.

### Legal Delegation of Ministerial Functions

6.7. In terms of the scope for the legal delegation of ministerial functions to officials, the legal assessment is that this would have to be achieved in a manner consistent with the constitutional requirement set out above that the minister is “in charge” of his or her department. In addition, where, as is clearly envisaged by the Carltona principle, the minister remains responsible for officials' actions, the legal view is that a court would hold that delegation in line with the Carltona principle was constitutional<sup>10</sup>.

### Public Service Management Act<sup>11</sup>

6.8. The Public Service Management Act 1997 (PSMA) sought to redefine the relationship between ministers and their departments (as personified by the Secretary General). In keeping with the reform objectives for the civil service conceived under the Strategic Management Initiative (SMI), the PSMA was intended to secure an appropriate devolution of authority and responsibility within government departments from ministers to their officials. The Act provides a statutory framework for the assignment of specific functions for which the Secretary General is responsible to officers or grades of officers within departments with accountability flowing to the Secretary General for the performance of those functions.

6.9. The Act reaffirmed that, notwithstanding any assignment (i.e. delegation) of functions of civil servants under the Act, a minister of the Government is in charge of his or her department and is responsible for the administration of that department as provided for in the Constitution and the Ministers and Secretaries Acts. It confirmed the primacy of the principle of ministerial responsibility and does not supplant or supersede the Carltona principle.

6.10. In order to examine what further legislative measures consistent with the broad framework of the PSMA may be feasible, a crucial question to be considered is the extent to which legislation may not have been strictly required to effect much of what is contained in the PSMA. In particular, under the terms of the Carltona doctrine the power of a civil servant to perform functions on behalf of his or her minister is found to be inherent in the office without delegation. So, while an express delegation can be made, legally it is not strictly necessary.

6.11. A key conclusion is that the doctrine of ministerial responsibility - as established under the Constitution and expressed in statute under the Ministers and Secretaries Acts - does not, in reality, represent a major constraint to securing greater delegation of

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<sup>10</sup> The exercise of judicial or quasi-judicial powers by a minister cannot, however, be delegated to officials.

<sup>11</sup> See also paragraphs 7.10-7.14 below.

responsibilities within government departments provided that the constitutional principle of political accountability of the minister to the Oireachtas is maintained.

### **Restrictions on Evidence to Oireachtas Committees**

6.12. In line with the position in other jurisdictions where parliaments operate according to the Westminster model, Irish civil servants, when giving evidence to Oireachtas committees, are restricted from commenting on the merits of government policy or the merits of an objective of government policy under the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013. This reflected the need to maintain the integrity of the principle of ministerial responsibility by avoiding any erosion of the principle of civil service impartiality and preventing civil servants from being drawn into matters of political controversy. Paragraphs 11.22 – 11.25 provide an update in relation to this issue.

### **Proposed Reform of the Ministers and Secretaries Acts**

6.13. The Programme for Government commitments extend to replacing the Ministers and Secretaries Acts with an updated and modernised legal framework specifying the powers exercised by each minister and his or her department. Changes to this legislation could also have benefits in providing an opportunity to simplify the underlying structures of government and amend arrangements for further transfer of functions.

6.14. The Ministers and Secretaries Acts 1924 to 2013 provide the legislative underpinning of ministerial and departmental functions over the past 90 years. This legislation has evolved in an ad-hoc and fragmented manner over that period and does not represent a structured, systematic or modern legal framework for the exercise of key ministerial powers. There is a case for modernising, consolidating and updating this statutory framework to provide a comprehensive and detailed basis to the statement of the functions, role and responsibilities of ministers and their departments. This would also provide the opportunity to put in place a statutory framework that is more closely aligned with contemporary requirements and future developments.

6.15. The experience in the course of 2011 in relation to the amendment of the Ministers and Secretaries Acts to establish the Department of Public Expenditure and Reform highlights that this is a major legislative project which can only be undertaken with the full co-operation of all government departments on a planned and organised basis. This would help to minimise the legal risks inherent in the legislative reform.

6.16. The preceding overview of the legal position highlights that there appear to be no insuperable legal or constitutional obstacles to implementing the relevant Programme for Government commitments if it were ultimately concluded by Government that they should be put into effect.

6.17. This conclusion does, however, raise the question as to why it seems to have proved particularly challenging in the course of several previous civil service reform initiatives to devise and implement a new accountability model comprehending all senior-level civil servants that would provide a practical and workable framework for determining the broad mainstream scope of ministerial / political functions on one hand and administrative / managerial functions on the other. Such a framework would obviously have to take cognisance of the inherent ambiguity that will inevitably always

exist - in terms of the precise limits and boundaries of ministerial and civil service responsibility.

6.18. It is important to reiterate that any redefinition of ministerial accountability framework that aimed to more clearly differentiate between political responsibility for policy and administrative responsibility for implementation would be expected to have very significant implications for the conduct of public administration and in particular for the interface between the political and civil service systems. The quality of Irish government is dependent on shared understandings and commitments between these systems.

6.19. For example, where responsibility and accountability for the delivery of particular political priorities was more formally devolved to the civil service, the scope for and nature of political involvement and intervention in the implementation of policy changes would undoubtedly change. Greater autonomy regarding execution would seem to go hand in hand with the formal delegation of greater accountability. This would be likely to result in the need for a more formalised mechanism for inputting political perspectives and directions in relation to the delivery of policy priorities as well as additional governance arrangements (which may need to be codified in legislation) to seek to safeguard the interests of both parties and also to underpin the integrity of the devolution. These issues require further analysis in the course of the consultation process.

6.20. In this regard careful examination would also be required of the changed organisational dynamic that would be expected to result from such an approach as well as any unintended adverse consequences that may be generated. These issues have been analysed extensively internationally and particularly in relation to New Zealand which has gone the furthest among the Westminster-type jurisdictions in seeking to implement a clearer separation between policy and implementation in order to achieve clearer accountability and more effective civil service performance. Lessons from other Westminster-type jurisdictions such as Australia, Canada and the UK, that have implemented reforms to address this issue whilst protecting core civil service values would also be valuable.

6.21. The challenge that effective implementation of this type of accountability model gives rise to may explain, at least in part, the progress achieved in enhancing accountability within the civil service through reform efforts undertaken over the past fifty years. These are summarised in the next section of this consultation Paper.

## 7. Previous Civil Service Reform

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7.1. All of the main civil service reform initiatives undertaken in Ireland over the past fifty years acknowledged (to a greater or lesser extent) the central importance of the doctrine of ministerial responsibility as the preeminent principle on which the operation of the civil service is based. It was also identified as a fundamental element of the administrative/management culture, as it affects the civil service and how it operates.

7.2. This culture has been typified by some researchers as necessitating that civil servants act cautiously to ensure that ministers are not embarrassed by civil service actions and decisions and also requiring ministers to protect themselves by seeking to tightly control civil service activities. It is also characterised as ultimately leading to an environment in which the focus of senior civil servants and the political leadership of departments is diverted to matters of detail and administration rather than sufficiently prioritising strategy, evaluation and policy development.

7.3. The 1969 Public Service Organisation Review Group or *Devlin Report* highlighted the burden of administrative work falling on ministers and higher civil servants, as well as inadequate emphasis on policy making and lack of coordination within the administrative system as a whole. The blueprint for change recommended in the report comprised a new division between civil service activities which is subject to political direction and control, and those that could be left to more independent executive units working through agreed systems towards policy objectives.

7.4. The *Devlin Report* recommended a distinction of departmental roles relating to policy formulation and planning as well as the organisation's general direction and those relating to execution of policy and/or the delivery of public services which would be assigned to an executive agency within the department. The reform measures initiated on the basis of this report were not considered successful and the report's main recommendations were not implemented, including those relating to the greater distinction of policy and execution.

7.5. The 1985 White Paper *Serving the Country Better* emphasised the need to install management systems based on personal responsibility for results. However, its detailed implementation was essentially superseded by efforts during the second half of the 1980s to reduce the size of the civil service in a period of fiscal austerity.

7.6. As part of the Strategic Management Initiative (SMI), the *Delivering Better Government (DBG)* Report in 1996 recommended as one of its key themes a review of the existing "outmoded" accountability mechanisms. The Programme for Government commitments echo the recommendation contained in the *DBG* Report to make the civil service "more transparent and more effective by allocating authority and corresponding accountability at various levels." The Co-ordinating Group of Secretaries General which prepared the report recommended legislative change to clarify the allocation of authority, accountability and responsibility in the civil service system to ensure that individuals know and recognise the extent of their responsibility, and the ways in which they are answerable for the exercise of that responsibility. The detailed framework for authority

and accountability contained in the *DBG* Report set out the major responsibilities of ministers, Secretaries General and senior departmental officials respectively.

7.7. This framework – a summary of which is set out in *DBG* and included as Annex B of this Paper – is a very useful benchmark for assessing the extent to which current accountability arrangements in the civil service meet good practice standards set out in the mid-1990s under the SMI.

7.8. Under the proposed new management and accountability structure recommended in the *DBG* Report it was envisaged that ministers would set broad policy objectives and specify desired outcomes. Ministers would, therefore, have to be satisfied that mechanisms were in place in their departments/offices for the implementation and monitoring of these policies and that the objectives set were realistic and achievable given the constraints of time and the availability of resources set by government.

7.9. The reforms recommended in the *DBG* Report had the objective of making the administrative system more transparent and effective by allocating authority and corresponding accountability at various levels consistent with the constitutional requirement of maintaining governmental/ministerial responsibility to the Dáil. The *DBG* Report also identified the need, in circumstances where the personal accountability of individual civil servants was identified, for appropriate measures to allow civil servants to protect and vindicate their character and reputation.

7.10. The legislation that followed, the Public Service Management Act (PSMA) 1997 arose from the recommendations of the *DBG* Report. Under the PSMA managerial responsibility for the department was assigned to the administrative head of the Department, the Secretary General. This acknowledged the key strategic and managerial role played by Secretaries General. However, ministers were expected to retain overall responsibility for the performance of functions of the department in line with statutory and constitutional requirements.

7.11. The PSMA essentially sought to focus substantially greater attention on key features of corporate governance within government departments. This would be expected to enhance management effectiveness and the transparency of departments and also to help secure increased accountability of civil servants. The mechanisms through which it was intended that this would be achieved included, for example, the setting of key objectives, priority outputs, strategy statements and business plans. The legislation, therefore, strongly promoted the principle of managerial accountability and signalled a strong intent to allocate authority and accountability for service delivery to those that provided the service as well as to embed a robust culture of performance management and a results and outcomes oriented approach to decision-making.

7.12. While founded on the doctrine of ministerial responsibility to the Dáil, the legislation provides an enabling legislative framework for the assignment of specific responsibilities to named officials flowing downward through the civil service hierarchy.

7.13. In hindsight, the reforms embodied in the PSMA have not had the anticipated and desired impact in sufficiently clarifying the responsibilities of ministers and civil servants



or the extent to which the latter can reasonably be held accountable and responsible for their actions and decisions.

7.14. In practical terms, there is evidence of a number of important weaknesses in the effectiveness of the PSMA 1997 Act, including:-

- Firstly, the assignment of responsibilities from the Secretary General to senior officers within his or her department is not required to be carried out on an annual basis and is not required to be published. While this aspect of the legislation had the potential to contribute significantly to the transparency of the system in terms of “who does what”, this has not happened in practice.
- Secondly, compliance with the requirement to have a current formal assignment framework in place is not uniform across departments with several departments having no assignment in place in 2012<sup>12</sup>;
- Thirdly it is not evident from, for example, the findings and conclusions of the 2008 OECD study *Towards an Integrated Public Service* that the PSMA has been conspicuously successful in securing the accountability model envisaged in DBG. This applies, in particular, in relation to extending the concept of civil service accountability beyond that of the Secretary General in his or her role as managerial head of a department to senior officials at other levels.

7.15. The major 2008 OECD public management review of the Irish public service – *Towards an Integrated Public Service* stated that Ireland is on a ‘*sound trajectory of modernisation*’, and highlighted the need for reforms in accountability. It stated that “*further delegation of managerial responsibilities to senior management as originally envisaged in the SMI should be implemented incrementally*”. It highlighted the need for new accountability structures to allow for more integrated system-wide action where this is required. It noted the challenge of developing accountability structures that take into account shared responsibility for commonly agreed outcomes (i.e. networked governance). These recommendations are reflected in the 2008 report of the Task Force on the Public Service, *Transforming Public Services, Citizen Centred, Performance Focused*, which recommended that “*existing accountability arrangements must be revisited to allow a greater focus on performance...*”. This Report included a focus on increasing organisational and individual accountability for achieving performance targets through a revision of existing accountability arrangements to allow for a greater focus on performance, facilitating managed risk-taking and innovation as well as supporting more cross-cutting planning and action.

7.16. Neither the substantive analytical OECD report nor the follow-on action plan prepared by the high-level Task Force contain recommendations that directly address the specific issue of civil service accountability. Notwithstanding the high level of ambition reflected by the OECD and the Task Force for reforming Ireland’s public service, the absence of any concrete proposals aiming to strengthen individual accountability effectively would seem to be at variance with the tenet that this is one of the most important instruments for securing a step-change in individual and organisational performance.

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<sup>12</sup> Based on research conducted by the Department of Public Expenditure and Reform, just thirteen Departments and Offices assigned responsibilities under the PSMA, with five of these not having updated these assignments in recent years.

7.17. The Statements of Strategy, a move towards Resource Budgeting focused on outputs rather than solely on expenditure levels, and the development of PMDS are positive developments following from the SMI process. However, it is clear that the ambition set for that process has not been fully realised. The progress achieved in previous civil service reform efforts has been attributed by some to significant obstacles to reform, including such factors as organisational inertia, the natural attraction of the *status quo*, the impact of change on individuals, inherent institutional resistance to reform, and the prevailing political culture. A concern about undermining an established system which has developed over time, albeit with limitations as recognised above, is also a relevant factor.

7.18. Risks arising from the size and complexity of the civil service and its integral role in the operation of the political-administrative system are probably the strongest arguments against ‘root and branch’ reform. However, the evidence that can be drawn from other countries where similar obstacles exist suggests that these challenges can be overcome or mitigated. A crucial element of the consultation process will be to assess progress achieved under previous reform endeavours and the factors that have facilitated or impeded progress.

7.19. Richard Boyle and Muiris MacCarthaigh in the report *Fit for Purpose* on the challenges for Irish public administration and priorities for public service reform reinforce the case for a detailed examination of accountability relationships at the highest levels of government. This report argues that managing accountability at the political-administrative interface at national and local level is at the heart of the challenge of securing effective accountability in the public service stressing “*the pressing need to further clarify the relationship between ministers and senior civil servants.*”

7.20. Eoin O’Malley and Muiris MacCarthaigh in the publication *Governing Ireland – from Cabinet Government to Delegated Governance* highlight that “*problems persist in pinpointing accountability for maladministration and other failures within government is perplexing, given that a number of initiatives have been developed precisely to improve oversight and to establish responsibility*”. This Report concludes that “*it would seem, however, that reforms targeting specific aspects of accountability are insufficient and that what is required is a whole-of-government approach to the issue...Legislative and organisational change will not be sufficient for this to be successful; cultural change is also needed to give meaning to accountability at all levels of government.*”

7.21. The purpose of the next section of this Paper, which provides an overview of civil service reform conducted in other Westminster-type jurisdictions, highlights that while there is no panacea for resolving the accountability dilemma, very significant reforms can be delivered which can help underpin an administrative environment in which accountability is taken, and is seen to be taken, seriously.

## 8. International Civil Service Reform Experiences

8.1. Civil service reform initiatives in other Westminster type parliamentary democracies such as New Zealand, Australia, Canada and the UK have all grappled with the challenge inherent in establishing clear accountability in a political/parliamentary environment defined by the doctrine of ministerial responsibility.

8.2. It is evident from their efforts that no one single, comprehensive, and all-embracing solution can be applied to resolve this problem in a categorical way. This is unsurprising since the primary motivations for reform differed in important ways between countries and while there are consistent elements in the reforms, there is no convergence towards a single uniform civil service system.

8.3. Careful consideration is required of meaningful and far-reaching reforms elsewhere that are designed to secure greater individual accountability and enhanced organisational performance and that are fully consistent with retaining the doctrine of ministerial accountability to parliament.

8.4. The delegation of responsibilities that has taken place (to different extents and in different ways) in these jurisdictions, the sharper division of roles achieved between ministers and the civil service and the performance assessment systems for senior civil servants that have been introduced have not required a setting aside of the traditional role of ministers in accounting to parliament for the performance of all aspects of their ministerial portfolios.

8.5. Some examples of key steps taken to strengthen the individual accountability of civil servants that can be found in one or more country internationally include<sup>13</sup>:

- a focus on selecting the best-suited candidate for each position, whether by external recruitment or internal promotion or mobility;
- very significant efforts have been made to open up the top reaches of government departments to high-quality executives and managerial talent drawn from the private sector;
- the introduction of fixed-term performance related contracts;
- changes to the unified career structure;
- there has been full devolution of personnel management powers to agency heads;
- measures to establish, develop and reinforce the role of bodies such as the Senior Executive Service in Australia and the State Services Commission in New Zealand as central vehicles for monitoring/overseeing, assessing top-level performance, recruitment and capacity building bodies for the senior civil service;
- a statutory set of public service values has been introduced; and
- formal sources of policy advice to ministers have been diversified and there is no longer, in effect, a monopoly on the provision of policy advice to the political executive.

<sup>13</sup> Detailed information on the specific measures taken as part of civil service reform initiatives internationally can be found in, for example Institute for Public Policy Research (2007, 2013), and the Institute for Government Paper 'Civil Service Accountability to Parliament' 2013

Some of these measures have already been implemented in the Irish Civil Service (see paragraph 11.18). In considering the experiences of these states it is hoped it will be possible to avoid some of the unintended consequences of reforms elsewhere (regarding the relationship between ministers and their officials, ability to attract sufficient quality applicants, ability and willingness of agencies to work collaboratively etc.)<sup>14</sup> and to place Ireland in a leading position in the area of civil service reform. It is interesting to note that many of the countries examined have retained many of the elements of a career based civil service and there is an ongoing debate regarding the merits of different options.

8.6. In Canada for example:-

- the Prime Minister appoints the two most senior levels of officials (Deputy Ministers and Associate Deputy Ministers) but this is not assessed to have damaged the civil service independence;
- there is a comprehensive system of performance assessment in place for top civil servants (i.e. Deputy Ministers equivalent to a Secretary General) administered by the head of the public service – the Clerk of the Privy Council;
- while Deputy Ministers in Canada enjoy permanent tenure in principle, they can be moved or dismissed by the Prime Minister

8.7. A consistent theme in the evolution of these reform processes over time is the recognition of the need to look beyond legislative, institutional and structural change to focus on the factors that drive cultural change in organisations.

8.8. Notably, while legislative reform has formed a part of reform initiatives in other jurisdictions, none have sought to specifically change the legal relationship between the minister and the civil service. The reforms introduced seem to have succeeded in promoting sharper and more transparent accountability for departmental heads. This appears to have been achieved by continuing to attach a very high value to the quality of the relationship between ministers and department heads.

8.9. Indeed - notwithstanding what might be perceived in an Irish context as profound and far-reaching reforms that have taken place in some jurisdictions - the relationship between the top official in government departments and ministers responsible for those departments is judged not to have changed fundamentally as a result of these reforms. Trust and confidence based on mutual respect continue to be placed by the political leadership in the head of a department's ability to manage the department and to offer advice and to implement decisions.

8.10. In this area, the scale of civil service reform in Ireland has not been as extensive as in other jurisdictions. Indeed, Ireland does not feature largely in comparative research on public service reform. This in part is due to the 'once-off' and 'stop-start' nature of the civil service reforms undertaken. Reform projects in other jurisdictions remain an ongoing process and the extent to which they have realised their objectives remains an active source of debate among expert researchers and commentators.

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<sup>14</sup> Gregory R. (2012), *The challenging quest for governmental accountability in New Zealand*, Administration, Vol. 60, No. 2(2012), pp 109-118. Gregory R. (2000), *Getting Better but feeling worse? Public Sector Reform in New Zealand*, International Public Management Journal, 3 (2000), 107-123

8.11. Nevertheless, important lessons can be drawn from international experience and best practice. Although many structural and institutional similarities exist between the various Westminster-type jurisdictions, each national political and administrative culture is quite unique and diverges in very significant respects from one country to another. This is evident in relation to scale of values and the emphasis placed on the primacy of the public interest.

8.12. Careful examination is therefore required in the course of the forthcoming consultation process of the specific conclusions and recommendations that can be drawn for Ireland from the experience and outcomes of international reforms. The next section of the Paper seeks to draw together the main implications of the analysis presented in the preceding sections.

## 9 Assessment

9.1. In a complex, diverse and multi-faceted organisation such as the civil service where there is a unique interplay between the functions and roles of a minister and that of the civil service, a comprehensive and robust framework of who is accountable to whom is considered integral to effective civil service performance.

9.2. As discussed in Section 5, the Programme for Government commitments are grounded by an analysis which broadly mirrors international assessments that refining the principle of ministerial responsibility would, in principle, help ensure:-

- greater definition of the relationship between civil servants and ministers;
- sharper clarity and differentiation between the respective roles and responsibilities of ministers and civil servants;
- stronger lines of internal or managerial accountability within government departments;
- a greater focus on governance arrangements in government departments; and
- potential for a greater emphasis on safeguarding the public interest.

A central aim would also be to put in place arrangements which would facilitate learning from past mistakes and failures in the system. Robust accountability arrangements could also allow attention to be focused on the positive lessons that can be learned from successes both at an individual and organisational level. This has the potential to enhance performance rather than placing undue focus on the attribution of blame.

9.3. A central objective of the consultative process which is intended to follow the publication of this Paper is to secure the views of all interested parties on the extent to which the proposed reforms would yield these benefits and to determine if they might be expected to have any unintended effects that need to be factored into further analysis.

9.4. In doing so, it is useful to note that the academic research highlights four principles of accountability<sup>15</sup>. These include:

- clarity of accountability – the person accountable must know what he or she is accountable for, and to whom he or she is accountable and these accountabilities must be documented and publicly available;
- sufficiency of control – the person accountable must have sufficient control over the outcomes for which he or she is held responsible;
- clarity of consequences – the person accountable must be made aware of the likely consequences that will result from carrying out responsibilities at above or below defined levels (and consequences should be proportionate); and
- sufficiency of information – there must be enough information available to judge whether responsibilities have been performed.

9.5. It is clearly the case that in common with other Westminster-type parliamentary jurisdictions, translating the doctrine of ministerial responsibility (including situations

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<sup>15</sup> Wood, J., and Moyes, B., *Nothing to do with me?*, Institute for Government, 2011 (synthesis of a range of sources, including Pollitt and Bouckaert 2004 and Bovens 2007)

where the minister has had no direct involvement with or specific knowledge of particular administrative actions taken, or decisions made by officials on the minister's behalf) into a workable practice in Ireland has proved complicated and challenging. This complexity and difficulty is obviously exacerbated in circumstances where issues related to departmental and ministerial performance have given rise to serious political controversy. An Oireachtas Committee which examined one of these instances concluded that there was an:-

*"..urgent need to clarify the responsibilities of ministers and the extent to which they can reasonably be held accountable for the actions of the department and agencies under their charge. The Joint Committee notes that while the public sector modernisation programme has clarified the role and responsibilities of secretaries-general to match the growing complexity of policy formulation and implementation, the vital political dimension has received nothing like the same attention....."*<sup>16</sup>

9.6. It is clear from the discussion in this Paper that there is no easy answer to the question of the division of responsibility between ministers and their senior civil servants. In overall terms, ministers are responsible for determining policy and for overseeing implementation and senior civil servants are responsible for advising on policy and managing the implementation and delivery of policy priorities. In practical terms there are very substantial overlaps between policy and implementation. Consequently, developing effective and robust accountability systems is challenging. Relationships at the apex of administration are necessarily complex, complicated and shifting. At the same time the efficacy of such relationships is clearly crucial as to whether public governance is effective or otherwise.

9.7. In the Irish system of public administration, the intersection of policy and administration reinforces the crucial importance of the key relationship between ministers and top civil servants. This relationship is conventionally described as founded and strongly dependent upon the maintenance of trust. As discussed in Section 4 above the 2002 *Report of the Working Group on the Accountability of Secretaries General and Accounting Officers* emphasised that the working relationship between the minister who is in charge of a government department and the Secretary General of the department is a key factor in the effective administration of government. The report pointed, in particular, to the distinctive relationship of trust and confidence between the minister and the Secretary General as crucial to the effective administration of departments.

9.8. By its very nature, such a relationship is quite ambiguous and lacks clarity as to the specific roles and responsibilities of each party. This ambiguity is traditionally defended on the basis that it underpins a flexible, politically responsive civil service in Ireland, one that works in a highly collaborative and cooperative manner with the political system.

9.9. As highlighted in *Delivering Better Government* (1996), by the OECD (2008) and the IPA (2011) as well as in *Transforming Public Services* (2008) it has contributed

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<sup>16</sup> Oireachtas Joint Committee on Health and Children 2005: Report on the report on certain issues of management and administration in the Department of Health and Children associated with the practice of charges for persons in long stay health care in health board institutions and related matters.

significantly to a situation where there is a basic uncertainty between ministers and officials (i.e. Secretaries General and senior departmental personnel) regarding who, in practice, is specifically responsible and has authority over what and to whom each party is accountable.

9.10. This highlights the essential requirement in line with the Programme for Government commitment and indeed the objectives of the *Delivering Better Government* Report and the Strategic Management Initiative (SMI) for investigating through the consultative process how best to establish clearer lines of accountability between ministers and their departments as well as stronger internal/managerial accountability between senior officials and heads of departments/offices. It also requires consideration as to the appropriate public dimension to such accountabilities. Consideration of this public aspect is a much more substantial issue in the case of political and public administration than is routinely the case in most private organisations.

9.11. International experience and analysis points to an unresolved (and possibly irresolvable) debate as to whether it is either possible or desirable to seek to differentiate ultimate accountability for operational decisions and administrative actions (largely but not exclusively attributable to civil servants) from the implications of policy choices (largely but not exclusively attributable to ministers). This is sometimes characterised as referred to above as the “ragged edge” between policy and operations.

9.12. In fact, it is very clear that, in practice, there is no clear-cut distinction between policy and operations. Any attempt to systematically separate them creates substantial risks of fragmentation and of putting too much distance between policy and implementation. This creates the potential for what is effectively ‘non-implementable’ policy as it is not informed by practical implementation experience or adequately resourced to deliver on its objectives.

9.13. It is important to highlight very strongly that the considerations set out above do not, in themselves, yield a compelling argument in principle against striving for a much sharper definition of administrative and political responsibilities. The fact that the answer is not to be found in an inflexible and unrealistic separation of policy and administration would not lead to a conclusion that nothing further can be done over and above the current assignment arrangements under the PSMA (which, as discussed above, are not considered effective in practice in clarifying key accountabilities). It would, in principle, be possible to be more explicit about the legitimate expectations and duties of both parties to this key governing relationship.

9.14. It is important to emphasise that any steps taken to seek to reinforce civil service accountability has very significant implications for the political system. This may impact on the extent and manner in which ministers may influence the implementation of policy beyond the agreed parameters set out in a delegation framework. In particular, the analysis of the case to take specific actions to further clarify and provide greater certainty regarding the accountability of civil servants must take place in lockstep with the analysis of the implications of seeking to provide commensurate clarity and certainty regarding the accountability of ministers.



9.15. One of the primary aims of the consultation process is to assess how greater clarity and certainty may be achievable regarding *who is accountable to whom for what*. A key objective in that respect would be to assess the scope to more clearly set out the respective roles of ministers and officials in relation to policy, operational delivery and management. This would, for example, require:-

- embedding delegated responsibilities;
- consideration of public mechanisms for the discharge of accountability through, for example, enhancing direct parliamentary oversight of devolved functions; and
- effectively implementing principles extending to clarity of accountability and sufficiency of appropriate discretion/control and resources to successfully deliver delegated responsibilities.

9.16. The legal analysis summarised in this Paper would not support the view that a fundamental recasting of basic legal and perhaps even constitutional principles is necessary to achieve these objectives. Reforms that are not carefully grounded in an examination of the legal and constitutional position run the risk of neglecting what may be key parameters of the change that can be accommodated. It is equally important that neither the legal and constitutional position nor the inherent culture is regarded as an insurmountable obstacle to the examination of significant reform options through the consultation process.

9.17. In addition, it does not seem prudent or necessary to seek to fundamentally reformulate the convention of ministerial accountability defined under the Ministers and Secretaries Acts to make politicians responsible for policy decisions and civil servants responsible for clearly defined operational ones.

9.18. The consultative process will, in light of the Programme for Government commitments, analyse the case for legislative reforms. This could include the modernisation of the PSMA, the steps that may be necessary to ensure that it is effectively implemented and has a real and practical impact in strengthening accountability and performance where necessary.

9.19. The key principles underpinning the approach taken in the PSMA to the identification of distinct responsibilities of ministers and Secretaries General appear to remain valid. If the consultative process concludes that greater delegation of responsibility and accountability is necessitated and can improve performance, it would aim to examine how it can be achieved in practice. This would include a focus on ways to ensure that the delegation is clear and robust and that there is also sufficient clarity regarding the nature of the accountability created by the assignment of responsibility.

9.20. The proposition to be tested in the consultation process is, therefore, whether a clearer, more specific and refined approach to ministerial responsibility and civil service accountability is both desirable and feasible in the first instance, through a strengthening of the framework of assignments set out in the PSMA.

9.21. It is also important that any delegation of responsibility which it is concluded as necessary is both reasonable and credible.

- The reasonableness test relates to ensuring that the purpose of the delegation is not perceived to be essentially to assign the risk of blame, scapegoating or sanctions from the public accountability that appropriately accompanies it.
- The credibility test refers to ensuring that the organisational requirements that sustain the delegation are appropriately respected.

9.22. Finally, the international experience highlights that consideration of legislative reform, in itself, is unlikely to be sufficient in arriving at a full picture of the options that may be available to strengthen accountability and performance.

9.23. The OECD, in its review of the Irish Public Service, remarked that many OECD countries have introduced legislative reforms to improve civil service performance but that these have not resulted in the required behavioural changes. This highlights the need to look beyond legislative change and examine reform options to existing and long-established HR and management practices that are also likely to be relevant influences on change.

## 10. Conclusions

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10.1. Consideration of practical options is now required to strengthen civil service accountability and performance in line with the objectives underpinning the Programme for Government commitments.

10.2. Any new accountability model that could evolve from the outcome of the consultative process would:-

- build on the reforms to-date;
- build on what has been demonstrated to work in civil service reforms nationally and internationally;
- reflect the lessons to be learned from what has not proved effective; and
- ensure that changes to institutional balances which have been maintained over a long period of time are undertaken on the basis of evidence confirming the desirability and necessity of the proposed reform.

10.3. As discussed above, in addition to appropriate legislative change, any examination of how sharper civil service accountability can best be achieved requires examination of a number of reform options focused on:-

- securing substantially greater managerial (i.e. internal) accountability amongst Principal Officers and Assistant Secretaries and equivalent grades;
- significantly enhancing the emphasis on performance – both individual and organisational; and
- cultivating and inculcating common values and a culture of openness, transparency and performance.

10.4. The whole spectrum of governance arrangements for any institution or organisation obviously play a vital role in shaping its culture, sense of purpose, capacities, capabilities and effectiveness. This is also critical to anchoring the organisation's roles and responsibilities in securing both external and internal accountability.

10.5. The objectives of the Programme for Government in relation to civil service accountability are based on an assessment that reforms of the legislative framework for civil service accountability have a pivotal role to play in addressing the fundamental challenge to more clearly identify *who is accountable to whom for what*.

10.6. As discussed earlier in the Paper, it would necessitate differentiating between the distinct, but often closely interrelated, roles and responsibilities of ministers on the one hand and civil servants on the other. A key theme of the consultation Paper is whether greater clarity and more delegation of formal accountability throughout the system is likely to contribute to improved responsiveness, delivery and performance.

10.7. The relationship between ministers and civil servants needs to balance political trade-offs. Civil Servants are accountable to the Government of the day and implement their agenda and be responsible. They are also independent of the political system and act fairly and impartially on behalf of all citizens. This requires the provision of independent advice which serves at all times the national interest and common good

rather than any particular sectional or sectoral interests. The challenge is to accommodate within the overall responsibilities and associated accountability framework of civil servants both responsiveness in delivering upon the priorities of the democratically elected Government and provision of frank advice based upon objective assessment of the public interest.

10.8. As discussed above, the international experience highlights that a number of key reforms to civil service human resource management can create significant impetus to improve management performance as well as significantly sharpening internal accountability. These reforms include, for example:-

- the introduction of fixed-term contracts for senior staff, the renewal of which would be linked to performance;
- the introduction of formal external and independently validated performance assessments and review mechanisms for departmental heads and other senior civil servants;
- the creation of and/or developing of the corporate centre's role in relation to leadership, organisation and assessment of individual performance at senior management level in the civil service;
- reinforcing the civil service's ethos and values;
- putting formal structures in place to promote conjoined working between departments to address cross-cutting issues.

10.9. The broad options in these areas are set out for consultation in more detail in Section 11 below. These types of reforms would, of course, be examined as additions to, and not in substitution for, the intensification of existing efforts to further develop the existing pool of skills and talent of staff within the civil service to ensure that the long-term capacity of the system continues to be nurtured and strengthened. They would also build on the considerable strengths within the system where civil servants are committed and working towards the broader public interest.

10.10. Any package of measures that may emerge from the consultative process needs to be developed in an integrated and coherent way underpinned by strong communication to each civil servant that accountability, personal responsibility and a focus on the public good are core values of, and a priority for, the civil service overall.

10.11. The suite of options for consideration, which are not necessarily exhaustive, are set out for consultation in Section 11. They draw on the experience of other jurisdictions operating within the Westminster model of ministerial responsibility that have also grappled with the challenge of enhancing and refining civil service accountability within that framework. Each one of the options require further detailed examination and review to assess if they have any role to play in any recalibration of the core relationship between ministers and civil servants and further inculcating a culture of accountability and the associated behaviours.

## 11. Reform Options for Consultation

### Introduction

11.1. A number of reform options are set out below for consideration. This is not an exhaustive menu of options and it is hoped that further proposals will be brought forward by stakeholders and by the public in the course of the consultation process. It is the Minister's intention to establish an Independent Panel to review submissions received and put recommendations to Government following the consultation process.

### Reform of legislative framework

11.2. The main aim of any reform of the overall legislative framework within which the civil service currently operates (i.e. the Ministers and Secretaries Act and the Public Service Management Act) would be to seek to provide greater clarity and certainty as to the respective roles and responsibilities of ministers and civil servants respectively. In view of the current formal accountability mechanisms to which Secretaries General/Accounting Officers are subject, these legislative reforms would be intended to focus, in particular, on putting in place more effective and operational accountability systems for senior level civil servants.

11.3. In legal terms this option would involve the establishment of clarity on the legal relationship between ministers and their civil servants in the context of a comprehensive, robust and effective system of delegated responsibility from ministers to Secretaries General and onwards to other senior civil servants fully consistent with constitutional and political requirements for ministerial responsibility and accountability.

11.4. The potential scope for delegation of responsibilities from the minister to officials and establishing clear accountability from such a delegation is likely to be notably more wide ranging than has been achieved to date in practice. This could establish, for example, the Senior Responsible Officers responsible for the delivery of large projects and the officials responsible for implementing policy decisions. It would also clarify the policy advisor role of officials and where practicable distinguish the role of officials and ministers.

11.5. The appropriate legislative framework to govern ministerial responsibility and the exercise of delegated powers by civil servants and formally introduce a greater degree of independence for civil servants in implementing agreed objectives will be examined. It would be important that devolved management accountability would be considered in the context of a devolved management authority including in relation to flexibility in the use of resources within agreed parameters.

11.6. Experience since the PSMA first came into effect would support the contention that unless any delegation of responsibilities is rigorously implemented and supervised and oversight is clear and transparent, the legal changes are likely to be ineffective. There are several options which would need to be considered. One potential approach would be to clarify to at least Principal Officer level the specific responsibilities of each officer. These would be published and officers would be directly accountable to the Dáil in respect of these responsibilities. It would also set out where an officer is acting under delegated power as decided by the Minister. This could build on the assignments

framework already envisaged under the PSMA, and the approach which underpins the current PMDS.

11.7. As discussed in Section 5, the second pillar of a programme of legislative reform could relate to the Ministers and Secretaries Acts to provide an integrated and consistent framework for management of government departments.

### **Enhance the corporate centre**

11.8. The delivery of the goals of a programme of reform requires a review of the capacity of the “corporate centre” in relation to senior level civil service personnel. A strong corporate centre could encompass establishing the overall strategic direction of the civil service, setting standards, supervising the division of responsibilities between the political and the administrative level, strengthening civil service leadership and management, operating effective and robust performance management systems and overseeing appointments to that cadre. A strong corporate centre could also develop and oversee appropriate contractual arrangements for senior management.

11.9. This role is discharged in some other jurisdictions by a specific governing entity for the civil service appointed by and answerable to parliament, or a Head of the Civil Service role. In Ireland, the Senior Public Service (SPS) may provide a platform for the development of a structure which would have the potential to discharge these types of key functions for the senior civil service in Ireland. The extent to which the creation of a Head of the Civil Service could discharge a key role in enhancing the capacity of the senior level civil service also warrants detailed consideration. Such a review would include the implications for career planning.

11.10. Current practice is that senior civil servants are responsible to their Secretary General for the conduct of their duties. The case for Secretaries General to be accountable also to a strong “corporate centre” for example, a specific governing entity similar to the State Services Commission in New Zealand, or the Head of the Civil Service in the UK for their performance needs careful analysis. As is the case in other jurisdictions, this could involve the publication of clear Secretary General objectives, over and above the Statements of Strategy, and the assessment of these by a strong centre. In effect, there would be different terms of accountability for Secretaries General: to the Minister; to a strong centre for the delivery of clearly prescribed and published objectives; and as Accounting Officers to the Committee of Public Accounts.

11.11. Structures such as a Head of the Civil Service play a pivotal and constitutionally significant role in other jurisdictions as an appropriate buffer between the political and administrative system in terms of the performance assessment of senior-level civil service personnel. As discussed below, it can also facilitate appropriate political-level input into the review of performance of these roles and responsibilities consistent with the core principle of maintaining civil service impartiality and independence. The consultation process provides an opportunity to review whether the corporate centre for the civil service in Ireland requires strengthening, informed by an assessment of the evidence of its impact elsewhere.

11.12. It is noted that currently senior civil servants have no authority to communicate externally in rare and exceptional situations where there is a fundamental concern

attaching to a particular decision of a Minister. There is, however, a provision that allows Accounting Officers to report a difference of opinion with a Minister in relation to matters within their Accounting Officer responsibilities<sup>17</sup>.

### **More Effective Accountability of senior civil service management**

11.13. Legislative reform could help put in place a framework enabling clearer personal accountability for the delivery of specific governmental objectives and priorities delegated or assigned to the administrative level. This may be in circumstances where it was assessed to contribute to effectiveness and efficiency of individual and organisational performance overall. Such a process could build on the existing Statements of Strategy and the resource budgeting model currently being implemented as part of the Estimates process.

11.14. The experience from other jurisdictions highlights the benefit of focusing on a limited number of key deliverables which are afforded particular priority by political leadership. These priorities would be published and reviewed periodically.

11.15. Pitfalls to be avoided include focusing on too great a number of objectives, or basing assessments too heavily on outputs that can easily be quantified to the detriment of pursuing outcomes that are more important but more difficult to measure. In addition, evaluation of outcomes should be based on appropriate timeframes, with an explicit acknowledgement that longer time frames may be necessary to evaluate some policy outcomes. Other unintended consequences such as excessive formalisation of processes would also need to be considered.

11.16. Drawing on the international experience, such a process has the potential to deliver substantial added-value where the focus is on the adoption of a forward-looking process, rather than just a retrospective process, of judging performance at the end of year on the basis of pre-arranged objectives. A focus on developing the capacity of the organisation and ensuring that it is equipped to meet both current and future demands would be a priority. This would be expected to contribute to improved performance capability rather than simply appraising it<sup>18</sup>.

### **Align recruitment / promotion practices with HR requirements**

11.17. The capability of any knowledge-based organisation such as a government department is overwhelmingly determined by the quality and capacity of its human resources. Clearly, any organisation which limits the pool of talent on which it can draw on to fill posts will fail to maximise its full potential. No private sector organisation aiming to be high-performing would restrict its ability to recruit from the widest possible pool of suitable candidates.

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<sup>17</sup> Guidelines for Public Financial Procedures, 2008.

<sup>18</sup> In Australia the performance of the head of a department is based on the following criteria:-

- contribution to whole of government priorities;
- support for the Minister;
- management of the department;
- leadership;
- upholding and promoting the values of the Australian Public Service; and
- implementing government decisions.

11.18. It would be a particular priority to ensure that the recruitment/appointment of civil service personnel at all levels is focused on securing the skills, knowledge, experience and expertise required to meet organisational requirements. This would build on progress to date:- .

- top civil servants are selected on the basis of the position to be filled;
- all top-level posts have been opened up for some time<sup>19</sup>;
- tenure is not permanent for many top-level positions (Secretaries General are appointed to their positions for a 7 year term and 5 year contracts have been introduced for many other top posts, particularly those requiring specialist expertise); and
- all recruitment and promotion processes at all levels and throughout the civil service are competency or merit-based.

11.19. In order to attract and retain external talent and build internal capability remaining restrictive recruitment and promotion practices would be eliminated. Realisation of this goal would also help secure some of the benefits of a unified public service system. There would be a further shift towards open recruitment for all civil service grades.

11.20. Drawing on the approach adopted elsewhere to help reinforce a culture of performance and accountability for senior-level civil service personnel (as well as providing a mechanism to address under-performance) the case for replacing permanent tenure for newly-appointed senior departmental officials and replacing it with fixed-term performance related contracts would be reviewed in the course of the consultation process. The implications of putting such contracts in place, including pensions, severance issues, other legal aspects of employment, attractiveness of positions, as well as impact on the political interface with senior officials and the ethos of the civil service, will require detailed consideration and examination. The strengths of the traditional civil service system would also form part of the examination of this area.

### **Enable formal political input into the development of the job specification of senior level officials and their performance assessment processes**

11.21. It would clearly be altogether inconsistent with the principle of civil service independence and impartiality for ministers to have any direct role in the selection or assessment of senior officials. The option of devising structured mechanisms to allow ministers to formally contribute to the specification of requirements/appropriate recruitment criteria for senior level posts in their departments would be examined during the consultation process to assess whether it would be feasible without creating any risk of politicisation. This could, for example, be implemented in the context of the development of the corporate centre to oversee and assess top-level management performance.

11.22. The corporate centre for the civil service in some other countries allows for formal structured input by ministers into the performance assessment of their top officials. The operation of this option where it applies could be reviewed during the

<sup>19</sup> Appointment of candidates from outside the civil services increased to 25% of appointments in 2012, primarily from the private sector. Private Sector candidates appointed to TLAC posts increased from 4.5% in 2010 to 21% in 2012. (Top Level Appointments Committee (TLAC) ‘First Report to the Minister for Public Expenditure & Reform - Developments & Trends: July 2011 to December 2012 (2013)’)



consultation process to ascertain its potential applicability and relevance for the assessment of senior level civil servants in Ireland.

11.23. Both of the above options have the potential to help contribute to greater administrative accountability and responsiveness of top officials to ministers.

### **Legislate to change the restrictions on the evidence of civil servants to Oireachtas Committees**

11.24. Civil service accountability can also be sharpened by enhancing the legislature's ability to hold senior civil servants to account. Parliamentary committees provide a form of accountability that have the potential to make a significant contribution to driving improved performance. In some other jurisdictions senior civil servants have far more freedom to account for the operational or administrative responsibilities assigned to them while ministers remain accountable for policy.

11.25. The Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 updated and modernised the overall legal framework for the work of Oireachtas committees. It provides that civil servants providing evidence to Oireachtas committees are permitted to give any evidence necessary for the committee to have a complete factual narrative of the events it is examining including evidence as to anything said or communicated by any person during the course of events of which an account is being given.

11.26. This would extend, in relevant circumstances, to giving evidence to an Oireachtas committee on what policy advice was given or policy options discussed with a minister. The objective is to ensure that an Oireachtas committee is assisted as much as possible in ascertaining the full narrative of a series of events relating to the matter under examination. The provision is subject to the caveat that civil servants should not comment on the merits of any government policy or the merits of any objective of government policy. Officials may not be asked or give any opinion on the correctness and appropriateness or otherwise of the policy decision ultimately made by a Minister or Government.

11.27. This approach seeks to strike a balance between enhancing the ability of Oireachtas Committees to hold the executive to account while:-

- preserving governmental effectiveness;
- seeking to safeguard the integrity of the relationship between a minister and his or her senior civil servants; and
- avoiding, insofar as is possible, being drawn into matters of political controversy which could seriously undermine the principle of civil service impartiality and neutrality.

### **Reaffirm and reinforce the ethos and values of the civil service**

11.28. It is imperative to take steps to reinforce and reaffirm core values and ethos of the civil service. The civil service has a long tradition of promoting and sustaining fundamental organisational values, such as integrity, honesty, openness and transparency and promotion of the public interest. These must continue to be strengthened and

promoted because they are values that are immensely important and worth keeping, and are detailed in the Civil Service Code of Standards and Behaviour (2008).

11.29. It is noteworthy that New Zealand and Australia, as well as the UK, have given these principles legislative effect. The introduction of the Code of Standards and Behaviour for Civil Servants introduced under the Standards in Public Office Act 2001 was intended to play a similar role in Ireland.

11.30. Such an approach has clearly a very important demonstration or signalling effect but is unlikely, in and of itself, to secure enduring change in culture or mind-set.

11.31. It is timely and opportune to assess what the main values of the contemporary civil service are; how these values are currently being inculcated, and the extent that these values coincide with or diverge from the conventional or traditional statement of such values.

11.32. In view of the enormous change and upheaval experienced across Irish society over the past decade or so and in view of the performance of public service institutions during that period, it would not be unexpected to find that important shifts in the traditional value system had taken place.

11.33. It is clearly important that the process of reform is anchored in a complete and accurate picture of the current set of values that underpin the actions and behaviours of civil servants. This work has been commenced by the Public Service Reform and Delivery Office, Department of Public Expenditure & Reform, and will dovetail with this accountability/performance mandate. This work, under the direction of the Civil Service Task Force on Renewal and Vision has five themes of renewal; affirming the role and purpose of the Civil Service, investing in our people, strengthening cross departmental working and leadership, building organisational capability and capacity, and engaging staff and communicating the role and purpose of the civil service.

11.34. This could provide the basis for an up-to-date statement of what values civil servants are expected to demonstrate to support democratic principles, to maximize civil service effectiveness and the contribution of the civil service to sustained economic and social progress.

### **Build structures to underpin effective horizontal governance**

11.35. A major effort is essential to tackle serious problems associated with pervasive and damaging ‘departmentalism’ between, and ‘siloesation’ within, government departments. This fragmentation runs strongly counter to the need to adopt a coherent and cohesive approach across multiple government departments/agencies to resolve complex public policy challenges. It also raises the question as to responsibility for the health or capacity of the overall civil service or public service system within which each public service organisation is required to deliver on its mandate.

11.36. The challenge of building effective horizontal governance would, therefore, be a significant component of any programme of civil service reform. Notwithstanding organisational realities, individual civil servants and departments can no longer perceive themselves and act as distinct and separate entities within the civil service system. This

mindset has resulted in a situation where good practice examples of ‘joined-up’ government remain the exception rather than the norm.

11.37. In the absence of the adoption of this approach, some of the other options outlined in this Paper to sharpen accountability may create an even stronger incentive for departments to focus on delivery of specific outputs at the expense of attention to the ultimate outcomes government wished to achieve.

11.38. Institutional and organisational changes may also be required to secure a much closer alignment between civil service organisational structures and the key outcomes in many different areas of social and economic policy that the system is charged with delivering. Organisational and institutional change can, however, often represent a significant distraction to the cultural shift needed to ensure that the collective capacity of the civil service system is harnessed to realise desired outcomes. An examination of the effectiveness or otherwise of Section 12 of the PSMA, regarding the assignment of responsibility in respect of cross-departmental matters, would be useful. The tensions between clearer accountability at individual and organisational level and the need to adopt a whole of government perspective will need to be teased out further as part of the consultation process.

### **Establish a robust governance framework**

11.39. A detailed and comprehensive governance framework for civil service departments could be developed and put into operation in each government department. This type of framework could act as a practical and accessible ‘user-manual’ to help to address many of the issues discussed in this Paper. In the case of each government department, the governance framework could help scope out and specify more precisely the appropriate roles, responsibilities and accountabilities of civil servants, taking fully into account the particular and sometimes unique circumstances that apply in each organisation.

11.40. The framework could also provide a durable platform for strengthening the management of government departments by focusing attention on important dimensions and features of management responsibilities that can, on occasion, be afforded a lower priority than might be appropriate on account, for example, of day-to-day work pressures flowing from the operation of the political and media cycles.

### **Vision for the Civil Service**

11.41. In light of the issues discussed in this Paper, its conclusions and recommendations, there appears to be an urgent and essential requirement to initiate a process to renew and refresh the civil service’s vision with a view to ensuring that it has the integrity, capacity, professional capability, commitment and appetite to successfully meet the serious challenges it currently faces. In this regard, the role of the civil service in promoting and protecting the public good in the context of existing constitutional arrangements warrants particular attention. As outlined in paragraph 11.33 above, this work has been commenced and will dovetail with this accountability/performance mandate.

## **Annex A – Summary of the Speech by Mr. Pat Rabbitte T.D., ‘Public Service Reform Should Not Let Ministers Off the Hook’, Burren Law School, May 2010.**

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The main rationale for the recommended reforms presented in the speech given at the Burren Law School (BLS) in May 2010 entitled “*Public Service Reform Should Not Let Ministers Off the Hook*” is that ministers are responsible, in theory, for everything done in the civil service but, in practice, for almost nothing, leaving a huge accountability gap. According to the speech, because ministers are said to be accountable for everything, they end-up being accountable for nothing.

The speech highlights the ambiguity and lack of clarity inherent in the concept of ministerial responsibility (consistent with the discussion in Section 3 above). It discusses the steps taken, through various national reform efforts over the years (as discussed in Section 7 of this Paper), to bring greater clarity in relation to the authority, responsibility and accountability of civil servants, while maintaining a minister’s responsibility to Dáil Éireann for the performance of precisely the same functions.

A key conclusion sharply argued in the BLS speech is that constitutional accountability as delivered through the convention of ministerial authority has become confused with and by managerial accountability.

The nub of the paradox discussed in the speech is the situation under current legal and constitutional arrangements whereby government departments are assigned and administered by ministers who remain responsible for the performance of departmental functions but these same departments are managed by a Secretary General and assigned functions are performed by departmental officers who are accountable to the Secretary General and not to the minister.

It argues that in the case of major policy or administrative failure, if questions are asked as to who actually decided what, when and why, the corporate veil descends upon the entire department which obscures the actual decision-making process. Consequently, when seeking to establish what went wrong and why it is argued in the BLS address that the “usual temptation” is for ministers and civil servants to “circle the wagons and engage in collective self-defence” often pleading systems or systemic failure.

The speech concludes that while ministerial responsibility must remain an essential linchpin to any workable system of parliamentary oversight, responsibility for specific outputs should be assigned to identifiable and accountable officers whose performance would be subject to parliamentary and public scrutiny.

It recommends a redefinition of the relationship between ministers and their departments to secure increased accountability from officials. However, this would be in addition to, rather than in substitution for, ministerial responsibility. In particular the speech recommends:-

- The Carltona doctrine should be replaced by a statute-based reformulated code replacing the Ministers and Secretaries Acts and the Public Service Management

- Act 1997 which would permit the delegation by a minister of specific ministerial powers to specific officers;
- Officials would be accountable to the extent of the authority delegated to them both within the department and also directly to the Oireachtas for the exercise of those powers; and
  - Delegation orders would spell out the functions of a minister in relation to the supervision of the exercise of delegated powers.

The reform advocated in the address is intended to be fully consistent with the maintenance of comprehensive ministerial responsibility to the Oireachtas. It is argued that the purpose of civil service reform would be to ensure that the civil service is effective in carrying out its functions and is responsive to the government of the day on the basis that a situation in which the civil service was itself beyond political accountability would not be effective or indeed is unlikely to be constitutionally permissible.

A key conclusion that can be drawn from the analysis in the BLS speech above is that the Programme for Government commitments do not seek to achieve a fundamental reconfiguration of the doctrine of ministerial responsibility. Rather, they highlight the requirement - within the parameters of the constitutional requirement for, and the political reality of, ministerial responsibility to the Oireachtas – for clarity and certainty on “who is responsible to whom for what”, to help bridge the accountability deficit.

## Annex B - Extract from Delivering Better Government 1996

### FRAMEWORK FOR AUTHORITY AND ACCOUNTABILITY

The following paragraphs now set out the arrangements proposed for allocating authority, responsibility and accountability to the various levels of the system in more detail.

#### MINISTERS

##### Authority

- for the formulation of policy;
- for the specification of the outcomes required of the Department and agreement with Secretary/Head of Office on the outputs required to achieve these outcomes, having regard to the resources available;
- for ensuring that mechanisms and arrangements are in place for the implementation and monitoring of policy and the achievement of those specified outputs;
- for the overall allocation of resources;
- for co-ordination of issues specified by the Government which transcend Departmental boundaries and which require high-level political input to achieve solutions, under the direction of the Government.

##### Accountable

- ultimately, to the electorate;
- to the Government as a collective authority;
- to the Taoiseach, who nominates Ministers;
- to Dáil Éireann;
- to relevant Oireachtas Committees, specifically for policy and for ensuring the arrangements for the implementation of that policy, in accordance with the particular remit of the Committee.

#### SECRETARIES/HEADS OF OFFICES

##### Authority

- for the management of the Department, and specifically for:
  - creating the conditions in which all those who work in the Department can develop to her/his maximum potential in contributing to the best of her/his ability in the attainment of stated goals; this includes authority for appointments and discipline;
  - the provision of policy advice and briefing to the Minister/Minister of State in the formulation of policy;
  - the implementation of policy as formulated;
  - agreeing, with the Minister/Minister of State, outputs or results for the Department in the implementation of policy;
  - the operation of the mechanisms and arrangements put in place to achieve those results, including, where necessary, cross-Departmental issues;
  - monitoring the work of the Department as just described and, as Accounting Officers, ensuring that expenditure is within agreed limits and used for purposes for which it was voted, and that it is value for money.
- for the preparation on a periodic basis (i.e. every three years) of a statement of the business of the Department, setting out the key objectives and service delivery standards,

targets and related strategies and performance measures, together with evaluation procedures.

These latter statements will be an essential feature of the continuing process of strategic management within the civil service and will be published and be subject to scrutiny and examination by an appropriate Oireachtas Committee. Statements on the business and policy of a Department should take account specifically of the policy priorities of the Government/Minister of the day.

**Accountable**

- to the Government;
  - to the Minister/Minister of State for the delivery of the specified outputs;
  - for reporting to the Oireachtas in respect of the implementation of policy and for the proper expenditure of Departmental funds and for obtaining value for money;
  - for reporting to the public through Strategy Statements and regular reports on progress.
- Other mechanisms such as specific statements of service, Customer Charters, will also be used. The proposed framework will align the role of Secretaries with that assigned to them as Accounting Officers under the Comptroller and Auditor General (Amendment) Act 1993.

**INDIVIDUAL/TEAMS OF CIVIL SERVANTS**

**Authority**

- for the implementation and evaluation of specific aspects of policy as decided by the Secretary, following from the outputs agreed with the Minister/Minister of State;
- for the provision of policy advice and briefing as part of a team/unit;
- under specific legislation, for the operation of statutory schemes, the application of which is based on well-defined criteria akin to the current arrangements for Deciding Officers in the Department of Social Welfare;
- for the provision to the customer;
- for ensuring that specific Departmental expenditure is in accordance with the of a quality service direct purposes for which the monies are voted and that value for money is obtained.

**Accountable**

- to the Secretary in respect of the responsibilities given to them, including appointments and discipline;
- to the appropriate line manager/head of division as relevant;
- in relation to powers conferred under statute, to the Secretary or Head of Agency as appropriate;
- in the case of senior Civil Servants, to report to Oireachtas Committees in respect of the delivery of specified outcomes in individual areas of responsibility, as agreed with the Secretary.

## Annex C – Process for Accountability Agenda

Publication of Policy Paper
Formation of Independent Panel
Placement of Adverts in Newspaper
Consultation Period
Consideration of Submissions Received During Public Consultation
Preparation of Recommendations for Minister



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