

Suggestions for the Open Government Partnership National Action Plan

As the newly appointed Ombudsman, I warmly welcome the initiative of the Minister for Public Expenditure and Reform, Mr Brendan Howlin, in securing Government agreement in May 2013 to join the Open Government Partnership. The Office of the Ombudsman is very glad to have an opportunity, in conjunction with other stakeholders, to contribute to the development of a concrete and ambitious OGP Action Plan.

Such a Plan, if properly implemented, could do much to build public confidence and trust in our public institutions and the democratic process. Trust must also be reciprocated; public bodies also need to demonstrate that they trust citizens. It is one of the jobs of the National Ombudsman to strive to foster good relations between the citizen and government.

This brief document contains a number of suggestions which might be considered for the Action Plan; each suggestion is attainable within the two year time frame envisaged for the plan and each suggested commitment relates to one or more of the five Grand Challenges as required by the Open Government Partnership.

Open Government Partnership Grand Challenges
1. Improving public services – measures that address the full spectrum of citizen services including health, education, criminal justice, water, electricity, telecommunications and any other relevant service areas, by fostering public service improvement or private sector innovation
2. Increasing public integrity – measures that address corruption and public ethics, access to information, campaign finance reform, and media and civil society freedom
3. More effectively managing public resources – measures that address budgets, procurement, natural resources and foreign assistance
4. Creating safer communities – measures that address public safety, the security sector, disaster and crisis response, and environmental threats
5. Increasing corporate accountability – measures that address corporate responsibility on issues such as the environment, anti-corruption, consumer protection and community engagement

Four Core Principles

The four core principles which underpin the Open Government initiative are - transparency, citizen participation, accountability, and technology and innovation.

Transparency

True transparency requires that information on government activities and decisions is open, comprehensive, timely, freely available to the public and meets basic open data standards. A proactive policy of publication of government information could have the useful side effect of reducing the number of Freedom of Information requests to public agencies. Transparency is founded on a policy which requires that public bodies create, capture and ensure the survival of essential public records. Without good records and information management, there can be no transparency.

Citizen Participation

As far as citizen participation is concerned, governments should seek to encourage citizens to engage in public debate, provide input, and make contributions that lead to more responsive, innovative and effective governance. One important form of such citizen engagement is to welcome and encourage feedback, including complaints, from citizens. Citizen engagement in the democratic process, including at elections and referendums, is also essential for the health of our public institutions.

Accountability

Accountability means that public agencies are required to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments. In the case of complaints from individual citizens those agencies must consider these and provide appropriate redress where this is warranted. In addition, public agencies must inform their clients of any other avenues of redress open to them – particularly their right of recourse to the Ombudsman.

The independence, authority and standing of the Office of Ombudsman should be reinforced by implementing the 1996 recommendation of the Constitution Review Group to provide for the Ombudsman in the Constitution. This is also a Council of Europe recommendation – the Parliamentary Assembly concluded in

2003 that establishment at constitutional level was essential if any institution of Ombudsman was to operate effectively (Recommendation 1615 (2003) – The Institution of Ombudsman). That Recommendation also describes as an essential characteristic of any Ombudsman institution that it should have the authority to give opinions on proposed legislative and regulatory reforms with a view to improving administrative standards and respect for human rights.

The fundamental tenets of a properly established Public Service Ombudsman are independence, objectivity, fairness and transparency. Constitutional status would help to satisfy complainants that the office is independent and that its decisions are objective.

Technology and Innovation

In relation to technology and innovation, open government requires that governments embrace the importance of providing citizens with open access to technology, the role of new technologies in driving innovation, and the importance of increasing the capacity of citizens to use technology. Well designed applications can simplify government systems for citizens. Regard must also be had however to the digital divide and those citizens who do not have access to information and communications technology. In harnessing technology to serve citizens, public bodies should not lose sight of the need to deal with citizens as human beings; to show empathy, to be prepared to customise services and not use technology as an excuse to dispense with personal contact. The Ombudsman is uniquely placed to bear witness to the whole spectrum of citizen interaction with public bodies.

The UK Experience

The UK's first National Action Plan was published in September 2011 and concentrated on commitments in relation to open data and corporate accountability. The second Plan was published in November 2013 with a much broader focus including the themes of –

- government integrity – fighting corruption and strengthening democracy through transparent government
- fiscal transparency – helping citizens to follow the money
- empowering citizens – transforming the relationship between citizens and governments, and

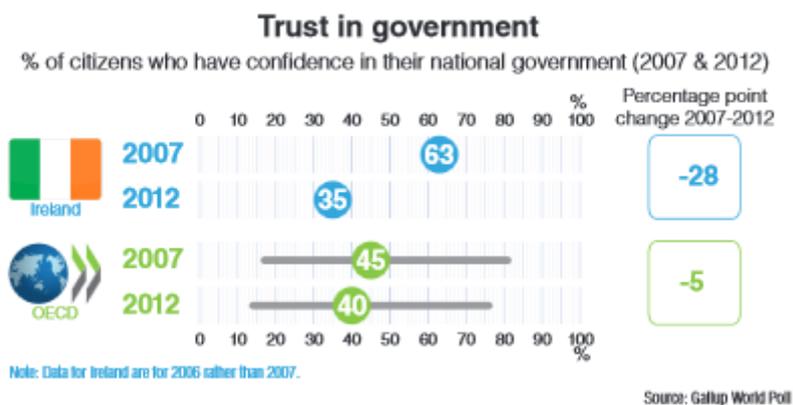
- natural resource transparency – ensuring natural resources and extractive revenues are used for public benefit

Ireland's Action Plan

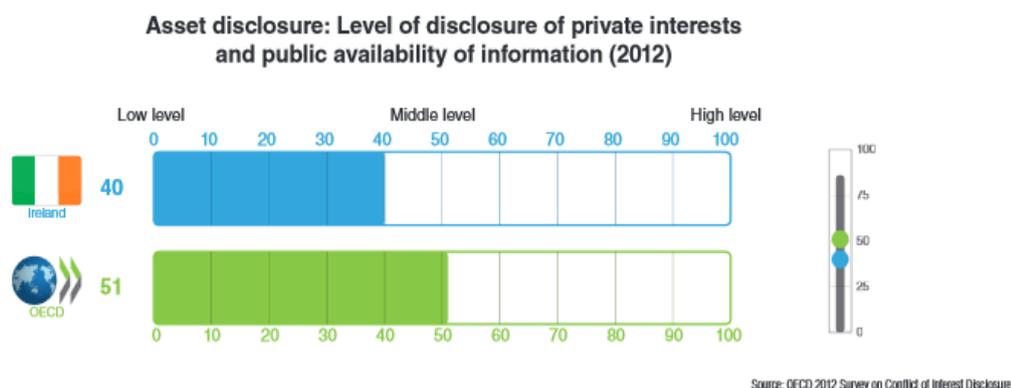
Ireland now has the opportunity to draw up a comprehensive Action Plan, implementation of which could transform the relationship between citizens and government and re-establish trust and confidence in our public institutions. The Office of the Ombudsman, the Office of the Information Commissioner and Commissioner for Environmental Information, together with our staff members who serve the Standards in Public Office Commission, the Commission on Public Service Appointments and the Referendum Commission are very keen to play a part in meeting the 5 OGP “grand challenges” of improving public services, increasing public integrity, more effective management of public resources, creating safer communities and increasing corporate accountability.

Trust in Government

Trust in government in Ireland is at a low ebb. The recent OECD publication Government at a Glance 2013 highlights the fact that between 2007 and 2012, Ireland suffered the highest fall in confidence in government across the OECD, from 63% to 35%.



The drop of 5 percentage points in the average OECD figure seems to point to a trend of falling confidence levels. However, it should be noted that for the same period, the United Kingdom showed an increase from 36% to 40%. Ireland also scored well below the OECD average in relation to open and inclusive government. On asset disclosure, for example, the OECD average of was a score of 50 and Ireland scored 40. The UK, in contrast, scored 58.



The current review of ethics legislation provides an ideal opportunity to address any deficiencies in Ireland’s disclosure of interests regime.

Suggestions

The National Action Plan might include the commitments outlined below. Only those with a direct relevance to the statutory functions performed by the Ombudsman and Information Commissioner and the staff of the Office as a whole are summarised here. The suggestions are grouped under four key themes of accountability and fairness, integrity, citizen engagement, and transparency. Each suggestion relates to one or more of the OGP Grand Challenges.

1. **Accountability and fairness**

1.1 *Constitutional recognition for the Office of the Ombudsman.*

The Report of the Constitution Review Group in 1996 recommended that the independence of the Office of the Ombudsman be guaranteed in the Constitution. The Group stated - “A constitutional guarantee for this independence would reinforce freedom from conflict of interest, from

deference to the executive, from influence by special interest groups, and it would support the freedom to assemble facts and reach independent and impartial conclusions".

Constitutional status akin to that of the Comptroller and Auditor General would greatly reinforce the authority of the Office and enhance its ability to hold public service agencies to account. Submissions to the Constitutional Convention have supported this proposal and the Parliamentary Assembly of the Council of Europe recommends that constitutional recognition is essential for any Ombudsman institution to operate effectively. The decision to seek constitutional status could be underpinned by a thorough review of the arrangements to safeguard the independence of the office, including appointment, funding and accountability.

1.2 *Recognition of the Ombudsman as the guardian of the public interest.*

The constitutional recognition for the Office of Ombudsman should explicitly assign to the Office the role of guardian of the public interest. It was the distinguished former Ombudsman and former Secretary for Public Service Management and Development in the Department of Finance, the late Kevin Murphy who suggested, that the role of assertion and protection of public rights should be properly be the role of the Ombudsman.

This suggestion has also been supported in presentations made to the Constitutional Convention. In addition, it is consistent with the recommendations of the Council of Europe Parliamentary Assembly on the essential characteristics of an Ombudsman institution. In a presentation to the Constitutional Convention on 30 October 2013, Professor Donncha O'Connell of NUI Galway proposed that the office of Ombudsman be reconfigured as a constitutional office (akin to the Comptroller & Auditor General) with a clearly defined mandate to protect human rights. He continued to say "... A 'constitutionalised' office of Ombudsman could provide a framework for other agencies such as the Human Rights & Equality Commission and be explicitly designated as an emanation of the Oireachtas thus emphasising its independence, and that of statutory bodies within its framework, from the Executive. ... It would alter the political culture by rebalancing things as between the Parliament and Executive and allow for the

possibility of amplifying systemic injustices as opposed to individual grievances. If effective it could even lessen the kind of litigation that is so feared by opponents of justiciable socio-economic rights.”

1.3 *Administrative accountability and compliance with the Ombudsman’s principles of good administration.*

Accounting Officers or equivalents should have a statutory duty to ensure that their Departments and agencies are administratively accountable for their actions. Each Accounting Officer should report annually – perhaps to the Ombudsman – on the measures taken to ensure that citizens are treated legally and fairly by their organisations.

In 2013, the Ombudsman published a guide to good public administration – *Six Rules for Getting it Right*. In summary these require public bodies to –

- i) Get it right.
- ii) Be customer oriented.
- iii) Be open and accountable.
- iv) Act fairly and proportionately.
- v) Deal with errors effectively.
- vi) Seek continuous improvement.

1.4 *Public bodies should be required to share their legal advice with the Ombudsman.*

Ombudsman investigations are held otherwise than in public. The Ombudsman can require any person who, in the opinion of the Ombudsman, has information relevant to an examination or investigation to supply that information to the Ombudsman and the person must comply. Some agencies have begun to rely on claimed legal professional privilege to deny the Ombudsman access to their legal advice and furthermore have refused to waive that privilege when requested to do so. Except in cases where there is a current legal action involving the agency and the Ombudsman and the advice relates directly to those proceedings, there should be an explicit duty on the agency to share their advice and the request for such advice, in confidence,

with the Ombudsman. It should also be made clear that the Ombudsman must also be permitted access to relevant *in camera* records.

It may also be worth considering a joint request for legal advice on the part of both the agency and the Ombudsman. This option might be a cost-effective alternative to the Ombudsman's power to refer any question of law arising in an investigation to the High Court for determination.

1.5 *Comprehensive remit for the Ombudsman*

The Irish Ombudsman is one of the few Ombudsman institutions in Europe and internationally to be excluded from certain areas – notably complaints in relation to immigration matters and prisons. While acknowledging that the Ombudsman's remit has been significantly extended by the recent amendments to the Ombudsman Act, no area of public service should be arbitrarily excluded from the remit of the Ombudsman. A further review of the Office's remit should be conducted in year 2 of the Action Plan to ensure that this is the case.

1.6 Directive 2013/11/EU on alternative dispute resolution for consumer disputes

The ADR Directive is in the course of being transposed into Irish law. This is an opportunity to grant to the Ombudsman a coordinating role in relation to ADR entities. There should be a default position that access to redress for public services, whether provided by public or private organisations, should be via the Ombudsman. However, where public services are provided by private organisations, the costs of those aspects of the Ombudsman's service should be funded by levy.

Section 1A of the Ombudsman Act 1980, as amended, also now grants the Minister for Public Expenditure and Reform the power to extend the Ombudsman's remit to other types of organisation who are involved in delivery of public services and who receive significant public funding to this end. This option should now be activated by the Minister to ensure that no citizen is denied recourse to the Ombudsman in relation to a complaint about a public service simply because of the manner in which it is delivered.

2. Integrity

2.1 *A statement of public service values*

Both the Mahon and Moriarty Tribunals emphasised the need for the highest ethical standards among both elected and appointed public servants and made many recommendations in relation to both ethics and electoral legislation. In its response to the Mahon Tribunal report, the Government indicated that it would carry out a root and branch review of the ethics legislation and this is in progress.

The development of a clear and simple statement of the values and principles to which each and every public servant must adhere should form a central part of this review. Such a statement – to be based in statute or a statutory code – has been a long standing recommendation of the Standards Commission. The statement should be widely available and visible to all public servants and to the general public. The “Nolan Principles” developed by the UK Committee on Standards in Public Life would serve as a useful starting point. These have been adopted by the Northern Ireland Assembly and adapted for the particular circumstances there.

The Welsh Assembly has also embraced these seven principles of conduct and incorporated them into the Assembly Code of Conduct. The seven principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership ([CSPL - seven principles](#)).

2.2 *Liabilities should be a registrable interest*

The Standards Commission has recommended that liabilities should be declared by public representatives and public servants in their annual statements of interests. The Ethics Acts provide for annual disclosure of 'registrable interests', but these do not include liabilities. A public representative or public servant who has significant liabilities to, for example, a financial institution, could be materially influenced in the course of performing their duties where such duties involve dealing with that financial institution and where the actions of the public servant could conceivably affect their own interests.

It is in the public interest that such liabilities be appropriately disclosed. The ethics legislation should be amended to provide that a liability above a certain threshold be regarded as a registrable interest.

2.3 *Publication of beneficial ownership details*

There should be a publicly accessible central registry of company beneficial ownership information so tax collection, law enforcement agencies and others know who really owns and profits from Companies. Equally beneficial interests in a company or in an asset held by another person should be a registrable interest.

2.4 *Cross-government anti-corruption plan*

Responsibility for anti-corruption measures is distributed among several government departments and agencies. A coherent anti-corruption plan is needed to coordinate efforts in this area. For example, responsibility for anti-corruption legislation in the public service is split between the Departments of Public Expenditure and Reform, Justice and Equality, and Environment, Community and Local Government.

2.5 *A public service code of conduct*

Other than the Civil Service Code of Standards and Behaviour, and the Codes of Conduct for Employees and Members of Local Authorities, there is no statutory code of conduct for the wider public service under the Standards in Public Office Act 2001. There is provision for such a code in section 10 of the 2001 Act, but it has not been drawn up by the Minister. The purpose of such a code would be to indicate the standards of conduct and integrity required in the performance of their functions to employees and directors of public bodies. Such a code might also provide for annual certification by the Accounting Officer or equivalent that those covered by the code are in compliance with it.

2.6 *A broad definition of “public servant”*

In the UK, the terms of reference of the Committee on Standards in Public Life have recently been clarified so that the definition of “holder of public office” now embraces all those involved in delivery of public services, not solely those appointed or elected to public office. The role of the UK Committee is to examine concerns about standards of conduct of office holders and to recommend any changes that may be required to ensure that the highest standards are maintained. The view of the Committee is that the broader definition had become increasingly relevant to its work as moves to outsource or contract public services gained pace. Similar considerations are relevant in this jurisdiction.

3. **Citizen Engagement**

3.1 *Foster citizen engagement with public bodies, including complaints systems*

Government and public bodies should pro-actively engage with the people whom they serve. One very useful way of doing this is to encourage feedback through complaints systems. Each public body should provide clear and timely information about methods by which people can appeal or complain. They should also consider providing information about possible sources of help for the citizen, particularly for people who may find a complaints process difficult. In addition, public bodies must advise people of their right of recourse to the Ombudsman.

An effective complaints procedure is one which investigate complaints thoroughly, quickly and impartially and which can provide an appropriate range of remedies to the complainant and any others similarly affected when a complaint is upheld. As a minimum, an appropriate range of remedies should include an explanation and apology to the complainant, any possible remedial action, financial compensation for the complainant or a combination of these. The remedy offered should seek to put the complainant back in the position they would have been in if nothing had gone wrong. Where this is not possible, the remedy offered should fairly reflect the harm the complainant has suffered.

In 2013, the Ombudsman published *Listen, Respond, Learn, Improve* – a guide to complaints systems; this guide emphasises that complaints are a valuable source of feedback for a public body. They can provide an early indication of failures in service delivery. When well handled, complaints provide an opportunity for public bodies to improve their service and enhance their reputations.

Consideration might also be given to recognition of the Office's thirty years of experience in dealing with complaints from citizens and to acknowledge the Office as the national Complaints System Standards Authority. There is a plethora of complaint mechanisms operating across public services. There is no evident added value in this diversity and these should be standardised in the interests of citizens. This would reduce cost, provide a consistent service to complainants, facilitate training and make access easier. Making the Ombudsman the Complaints Standards Authority, as in Scotland, is one way to achieve this.

3.2 *Pilot "open policy-making" exercises involving NGOs and citizens*

There have been some very successful initiatives in engaging the public and interested organisations in development of policy proposals in recent years – particularly in the case of the Minister for Public Expenditure and Reform's development of Regulation of Lobbying policy and legislation and reforms to the Freedom of Information regime. These excellent initiatives need to be extended to other areas.

3.3 *A campaign for voter registration and exercise of the franchise*

Successive referendum commissions have expressed concern about low voter turnout in constitutional referendums – particularly where referendums are not held in conjunction with a national election of some kind. There should be ongoing active campaigns to encourage voter registration and to encourage people to vote. A single organisation with an appropriate statutory remit – perhaps an electoral commission – would be the most suitable body to do this.

3.4 *Target second level schools and develop citizen activism programmes*

A worrying feature in research conducted by each referendum commission has been the low turnout among young people and among less well-off groups in society. One way of addressing this might be to focus on second level schools by providing resources for citizen activism programmes and incentives for voter registration.

4. **Transparency**

4.1 *Duty to create, capture and ensure the survival of essential public records*

There should be a statutory duty to publish and implement efficient records management policies. The creation, use, storage, retrieval, retention and destruction of information is an increasingly difficult challenge for public bodies. Records are central to the work of all organisations. Among other things, an efficient and effective records management policy supports process efficiency, consistency in decision-making, and ensures the preservation of important records.

Ensuring the creation, capture and survival of essential public records is the ultimate guarantee of transparency for governments. Without good information management, there can be no transparency. There are no records for public scrutiny and use and evidence-based policy making is rendered even more difficult.

By introducing a statutory duty on public bodies to introduce records management policies, it should be possible to define clearly what records public bodies need to keep in the digital era, both in paper and digital format, and to enable them to do this efficiently and effectively. This will help to ensure that information is available and survives for scrutiny both now and in the future.

4.2 *Develop a public service data transparency code*

Transparency is the foundation of accountability and the key that gives people the tools and information they need to enable them to play a bigger role in society. The availability of data may also open new markets for business, the voluntary and community sectors and social enterprises to run services or manage public assets.

In principle, all data held and managed by public bodies should be made available to people unless there are specific sensitivities (e.g., protecting privacy, vulnerable people or commercial and operational considerations) to doing so. The data needs to be presented so that it can be understood by citizens and community groups, reused in web and mobile phone applications to drive innovation and business growth, analysed and compared, and commented and consulted on in social media.

The government should encourage public bodies to view data as a valuable resource not only for themselves but also for citizens.

4.3 *Amalgamation of AIE and FOI regimes into a single access process*

The Commissioner for Environmental Information has previously referred to a number of practical difficulties relating to the operation of the Access to Information on the Environment (AIE) regime in Ireland, a number of which appear to relate to the fact that the AIE and Freedom of Information (FOI) regimes have not been amalgamated into a single access process as is the case in the UK.

Consequently, a considerable amount of avoidable confusion between AIE and FOI access rights and procedures seems to exist among public authorities and the public alike. On a general level, the amalgamation of the AIE and FOI regimes would serve to promote awareness of the right to environmental information and would provide a more user-friendly access regime for citizens.

4.4 *Establish a virtual library*

To simplify access to a range of government information available to the public establish an online searchable repository of published Government documents of all kinds (e.g., publications, consultant reports, government research, presentations, white papers, etc.). Public input should be sought in developing the library to make sure that it reflects the needs of citizens.

The library should include FOI disclosure logs for all public bodies. The usual instruments of transparency are well known and include, among other things, comprehensive access to information laws and voluntary disclosure practices by key organisations. In recent years, while there have been some worthwhile developments in some public sector organisations in the area of voluntary data disclosure, there is significant scope for improvement. In some jurisdictions, public bodies are required to publish FOI disclosure logs.

The release of material made available under freedom of information requests in a discoverable, accessible fashion would clearly increase transparency; it would have other citizen-centred benefits, such as greater availability of government data for reuse by the public.

Summary of commitments

The suggested commitments are summarised under each of the four themes in the following tables; an indication of the relevant grand challenge for each commitment is also given.

Open Government Partnership Grand Challenges
1. Improving public services – measures that address the full spectrum of citizen services including health, education, criminal justice, water, electricity, telecommunications and any other relevant service areas, by fostering public service improvement or private sector innovation.
2. Increasing public integrity – measures that address corruption and public ethics, access to information, campaign finance reform, and media and civil society freedom.
3. More effectively managing public resources – measures that address budgets, procurement, natural resources and foreign assistance.
4. Creating safer communities – measures that address public safety, the security sector, disaster and crisis response, and environmental threats.
5. Increasing corporate accountability – measures that address corporate responsibility on issues such as the environment, anti-corruption, consumer protection and community engagement.

Theme 1 – Accountability and fairness

Commitment		Contributing Office	Grand Challenge				
No.			1	2	3	4	5
1.1	Constitutional recognition for the Ombudsman	Ombudsman Referendum Commission	X	X			X
1.2	Recognition of the Ombudsman as the guardian of the public interest	Ombudsman	X	X	X	X	X
1.3	Administrative accountability and compliance with Ombudsman's principles of good administration a statutory duty of Accounting Officers	Ombudsman	X	X	X	X	X
1.4	Statutory requirement for public bodies to share legal advice in confidence with Ombudsman	Ombudsman	X	X	X	X	X
1.5	Comprehensive remit for Ombudsman to include immigration matters and prisons	Ombudsman	X	X		X	X
1.6	Ombudsman role in ADR Directive	Ombudsman	X		X		X

Theme 2 - Integrity

Commitment		Contributing Office	Grand Challenge				
No.			1	2	3	4	5
2.1	Develop and promulgate a statutory statement of public service values	Ombudsman Standards Commission	X	X	X		X
2.2	Include liabilities as a registrable interest in the ethics legislation	Standards Commission		X	X		X
2.3	Publication of the beneficial ownership of companies	Standards Commission		X			X
2.4	Develop a cross-government anti-corruption plan	Ombudsman Standards Commission	X	X	X		X
2.5	Publish a public service code of conduct	Ombudsman Standards Commission	X	X	X	X	X
2.6	Broad definition of "public servant".	Ombudsman Standards Commission	X	X	X		X

Theme 3 – Citizen Engagement

Commitment		Contributing Office	Grand Challenge				
No.			1	2	3	4	5
3.1	Foster citizen involvement in public agencies, including complaints systems	Ombudsman	X	X	X		
3.2	Pilot “open policy-making” exercises involving NGOs and citizens	Ombudsman	X	X	X		
3.3	Campaign for voter registration and exercise of the franchise	Referendum Commission or proposed electoral commission		X		X	
3.4	Target second level schools and develop citizen activism programmes	Proposed electoral commission		X		X	

Theme 4 - Transparency

Commitment		Contributing Office	Grand Challenge				
No.			1	2	3	4	5
4.1	Duty on public bodies to create, capture and ensure the survival of essential public records	Information Commissioner	X	X	X	X	X
4.2	Develop a public service data transparency code	Information Commissioner	X	X	X	X	X
4.3	Amalgamation of AIE and FOI regimes into a single access process	Commissioner for Environmental Information Information Commissioner	X	X	X	X	X
4.4	Establish a virtual library	Information Commissioner	X	X	X	X	X