

Standards in Public Office Commission

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Standards in Public Office Commission

- Established on 10 December 2001
 - replaced the Public Offices Commission
- Supervises:
 - Ethics Acts 1995 and 2001
 - Electoral Act 1997, as amended
 - Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001
- Openness, Accountability and Transparency

The Law on Ethics

- The Ethics Acts:
 - Ethics in Public Office Act 1995
 - Standards in Public Office Act 2001
 - Regulations
- - Part 15 of the Local Government Act 2001

Members of the Standards Commission

- Mr. Justice Matthew P. Smith (Chairman), former Judge of the High Court
- Ms. Emily O'Reilly, Ombudsman
- Mr. John Purcell, Comptroller & Auditor General
- Mr. Kieran Coughlan, Clerk of Dáil Éireann
- Ms. Deirdre Lane, Clerk of Seanad Éireann
- Mr. Michael Smith, former member of Dáil Éireann
- Secretariat

The Ethics Acts provide for

- Members of the Houses of the Oireachtas
- Office holders (ministers & ministers of state etc.)
- The Attorney General
- Special Advisers to Ministers
- holders of designated directorships
(ie. members of Boards of Public Bodies - currently almost 500 public bodies)
- occupiers of designated positions of employment
(senior positions in the civil and public service)

The Ethics Acts provide for

- Codes of conduct
- Guidelines and advice
- Making complaints
- Investigations
- Tax clearance certificates (TDs, Senators, appointees to “Senior Office”)

Guidelines & Advice

- Guidelines on the Ethics Acts published by SIPOC for:
 - Office Holders
 - Public Servants
- Statutory advice given on Ethics Acts obligations to persons who request it

Ethics in Public Office Act 1995



Ethics in Public Office Act 1995

- established the Public Offices Commission
- established Parliamentary Committees of Members' Interests
- Guidelines/advice to members who are not office holders
- Complaints/Investigations re members who are not office holders

Two Disclosure Obligations

- 1. Annual Statement of Interests
 - End of year statement
 - Disclosable (Registrable) Interests
- 2. Statement of a Material Interest
 - At any time during the year where a function falls to be performed

Annual Statement of Interests

- Members of Parliament disclose all of their own registrable interests above threshold
- All others disclose interest of self, spouse, child or child of spouse, subject to objective test of relevance to their functions/duties

Disclosable Interest

Any interest

” ... which could materially influence the person in, or in relation to, the performance of the functions of the directorship by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the person, or the spouse or child, a substantial benefit
”
...

(Ethics in Public Office Act 1995)

How to deal with a Disclosable Interest

- Annual Statement of Interests
- 1 January to 31 December
- Members furnish to the Standards Commission who forward them to the Clerk of relevant House
- Office holders interests of spouse etc. to Clerk of relevant House
- Designated directors furnish to officer of the body and to the Standards Commission
- Employees provide statements to relevant authority within the body only

Availability of information

- Register of members' interests
 - Published in official government journal
- All other interests – confidential
 - Only available to person to whom the statement is furnished
- Balance between disclosure in the public interest and the right to privacy

Material Interest

- A person or a connected person has a material interest in a matter if the consequence or effect –
 - (a) of the performance by the person of a function of his or her office, directorship, designated position, or position as a special adviser, as the case may be, or
 - (b) of any decision made in relation to or in the course or as a result of the performance of such a function by the person,

(contd. next slide)

Material Interest

concerning that matter may be to confer on or withhold from the person or the connected person a significant benefit or impose on the person a significant loss, liability, penalty, forfeiture, punishment or other disadvantage without also conferring it on, withholding it from or imposing it on persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person or the connected person is a member.

(Ethics in Public Office Act 1995)

Connected Person

➤ “Connected person” is defined as:

- A person is connected with an individual if that person is a relative of the individual,
- a person, in his or her capacity as trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,
- a person is connected with any person with whom he or she is in partnership,

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Connected Person

- a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,
- any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(Ethics in Public Office Act 1995)

Where does a material interest exist?

➤ A Material Interest exists (for, e.g., a designated director):

” ... where a function of the directorship, or of any other office or position held by the person in that public body, falls to be performed and the director has actual knowledge that he or she or a connected person has a material interest in a matter to which the function relates

”
...

(Ethics in Public Office Act 1995)

How to deal with a material interest

- Prepare a statement of the facts
- Designated directors - provide the statement to all other directors
- designated employees— provide the statement to the relevant authority within the public body
- Do not perform the function unless there are compelling reasons

How to deal with a material interest

- If the function is performed in these circumstances, a statement of the compelling reasons must be provided to
 - Designated directors – to all other directors and to the Standards Commission
 - Designated employees – to the relevant authority within the public body

Registrable Interests

| Interest | Registration Threshold |
|-------------------------|------------------------|
| Occupation | €2,600 + |
| Shares/investments | €13,000 + |
| Directorships | Any company |
| Land or Property | €13,000 + |
| Gifts/Property/Services | €650 + |

Registrable Interests

| Interest | Registration Threshold |
|---|------------------------|
| Travel facilities, living accommodation, meals, entertainment | €650 + |
| Political or public affairs lobbyist, consultant, adviser | Any |
| Contract for goods or services to the public service | €6,500 + |

Prohibition on Disclosure of Information

- Statements are protected by the Ethics in Public Office Act 1995
- Freedom of Information Acts do not apply to Statements

Gifts to Office Holders

- Gift to Office Holder by virtue of office with a value of more than €650 must be surrendered to the state
- Exceptions:
 - political donation
 - gift from friend or relative for personal reasons
 - By virtue of another office (e.g. chairperson of golf club)
- Government guidelines
- Role of Secretary to Government

Guidelines

- Standards Commission/Committees on Members’ Interests publish statutory guidelines
- Standards Commission has published guidelines for:
 - Office Holders
 - Public Servants

Advice

- A person may request advice from the Standards Commission (or Committees) about their obligations under the Ethics Acts
- Standards Commission must give advice or decline to give it within 21 days of receipt of request
- A person who has obligations under the Ethics Acts is obliged to act in accordance with guidelines issued or advice given unless doing so would contravene another provision of the Ethics Acts

Standards in Public Office Act 2001



Standards in Public Office Act 2001

- Replaced the Public Offices Commission with the Standards in Public Office Commission
- Introduced new provisions re
 - Complaints about ‘specified acts’
 - Inquiry Officers
 - Evidence of Tax Clearance
 - Codes of Conduct
- Technical amendments to the 1995 Act

Tax Clearance

- Members elected to Parliament and
- Appointees to 'senior office' in the public service

- Evidence of compliance with taxation legislation

Tax Clearance

- Make statutory declaration one month either side of election/appointment
- Have issued to them a tax clearance certificate or application statement nine months either side of election/appointment
- Send to Standards Commission within 9 months
- Non-compliance – report to Parliament/Public Body
- False statutory declaration a criminal offence

Codes of Conduct

- Codes indicate the standards of conduct and integrity which apply to a person in the performance of their functions
- Part of public servant's terms and conditions of employment
- Admissible in proceedings before a Court, other tribunal, a Committee on Members' Interests or the Standards Commission

Codes of Conduct

Standards in Public Office Act 2001

- TDs / Senators - drawn up by Oireachtas Committees
- Office Holders - drawn up by Government
- Public Servants - drawn up by Minister for Finance
- published by the Standards Commission

Local Government Act 2001

- Members
- Employees
- drawn up and published by the Minister for the Environment, Heritage and Local Government

Ethical Framework for the Local Government Service



Part 15 of the Local Government Act 2001

- Disclosure of Interests
 - Annual declaration
 - Pecuniary/Beneficial Interest in a function (or, for members, at a meeting)
 - Public Register of Interests
- Codes of Conduct for members and employees
- Appointment of Ethics Registrar

Contraventions of Part 15

- If Ethics Registrar aware of contravention, must report to Manager and/or Cathaoirleach
- Manager and/or Cathaoirleach may:
 - investigate/ use disciplinary procedures
 - refer to DPP
 - take any other course of action considered appropriate in the circumstances (which may include making a complaint to the Standards Commission)

Contraventions of Part 15

- Any person can complain to Standards Commission about a 'specified act' by a 'specified person'
- View of Standards Commission – local avenues should be used first, where possible. Therefore, Ethics Registrar should be made aware of any contravention

Complaints/Investigations

- Complaint
- Own volition
- Preliminary examination (poss. by Inquiry Officer)
- Investigation
 - direct attendance
 - production of documents
 - in public
 - each side represented
- Report
 - furnished to relevant Committee/ the public body
- Sanctions a matter for the Oireachtas / the public body

Complaints to the Standards Commission

- Section 22 of the Ethics in Public Office Act 1995
 - contravention of the Ethics Acts (eg. failure to disclose an interest)
- Section 4 of the Standards in Public Office Act 2001
 - ‘Specified act’ by a ‘specified person’
 - ‘Specified person’ includes local authority members and employees

Inquiry Officer

- Standards Commission may appoint an Inquiry Officer
 - Preliminary enquiry
 - Seek statements
 - Conduct interviews
 - Request documents
 - Prepare report to the Standards Commission to assist its consideration of whether to investigate
 - No determinations or findings
 - May, if requested, express opinion as to whether there is *prima facie* evidence to sustain the complaint

Investigations

- Investigation
 - direct attendance
 - statement of alleged contraventions
 - production of documents
 - in public
 - each side represented
- Report
 - furnished to:
 - The complainant
 - The person complained of
 - relevant Committee
 - the public body
 - The Minister for Finance
 - Published by the Standards Commission

Investigations to date

- Ned O’Keefe TD (Public Offices Commission)
- Denis Foley TD (Committee on Members’ Interests)
- Michael Collins TD (Standards Commission – discontinued)
- Councillors Patrick O’ Donoghue and Sheila Casey (Standards Commission)

Training and Awareness

- Guidelines and advice
- Presentations to Public Bodies
- Website
- Annual Report
- Public bodies' responsibilities

Contact details

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General Discussion



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