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## Submission to:

Public Consultation on Reform and  
Consolidation of Ireland's Statutory Framework  
for Ethics in Public Life.

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# 1 Introduction

The Civil Engagement Group welcomes the opportunity to submit to this public consultation. It is our belief that there is an appropriate balance to be achieved between personal freedom, and regulating public officials to preserve the integrity of public life. In this submission, we propose measures which should be included in the framework for ethics in public life, and which we feel constitute a proportional regulation of public life. In short summary, we believe the active trading of stocks and shares should be banned, to be limited to participation in blind trusts, and should also be subject to post-term cooling off periods. We also argue that declaration obligations should be strengthened to meet international standards, with the market value of land and equity owned by public officials having to be declared. We build on the Department's proposals of a tiered, categorised system of public officials, suggesting that this is a good approach, but that the approach as outlined does not go far enough. We suggest stronger regulations and higher reporting obligations on Taoisigh, Ministers, senior advisers, and secretary generals. This tiered approach seeks to balance the need for transparency with the limiting of officials' freedom as citizens. We also highlight the clear need for differentiation between economic and political activities within an ethics framework. Electoral activity needs to be regulated more strongly than civil society activity. Similarly, cooling-off periods which apply to post-term lobbying should be stronger for high risk sectors, such as banking, business and finance. International evidence shows that there are negative impacts on the social good when a revolving door exists between public life and these sectors. On the contrary, there should be softer prohibitions on post-term lobbying when it concerns grassroots civil society organisations. The consultation has recognised that a tiered approach is required when regulating categories of officials, but we argue that a tiered approach should also be used for different categories of economic and political activity. All the above proposals are outlined in detail throughout this document.

*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, and Eileen Flynn.*  
The Civil Engagement Group.

## 2 Consultation questions

**Question 1: Do you agree with the broad policy approach as a viable basis to guide legislative reform for the statutory framework for ethics?**

We are in agreement with the broad policy approach as outlined in the consultation document. In particular, the introduction of new statutory requirements and strengthening of existing obligations are welcome. We also commend the proposals to extend the current disclosure regimes, and to streamline and centralise the disclosure systems.

However, the consultation document lacks detail in key areas. Crucially, it is unclear what form the strengthening of obligations and streamlining of disclosures will take. For example, will the disclosure system be moved online to a centralised hub? If so, it would be crucial that this online disclosure hub be easy to access and navigate, both for officials and citizens.

In response to *Question 5*, we outline several specific recommendations of how existing requirements need to be strengthened and what new measures need to be introduced. Clear gaps exist in current disclosure requirements (re: stocks and shares, and land) and these should be closed in the new framework. Also, there are several ways that the post-term employment cooling-off period should be modified in order to improve accountability and transparency.

We are in favour of the tiered categorisation of public officials, proposed in the broad policy approach. However, we suggest that this categorisation is actually too broad, and groups all elected officials together in one category. We argue that additional safeguards need to be put in place for those public officials with substantial influence, particularly Taoisigh and Ministers. In response to *Question 5*, we propose a more granular categorisation of public officials. The categorisation of a public official should determine how strong prohibitions and regulations are, on everything from cooling-off periods to declaration of interests.

## **Question 2: What, if any, drawbacks can you see with this approach? - What unintended consequences might it have?**

We advise that any overhaul of the ethics framework should take account of the substantive differences between different types of political activity. There is a potential danger that any new ethics framework might perpetuate previous mistakes in Irish policy, which has grouped very different types of political and economic activity together under broad categories.

For example, our Electoral (Civil Society Freedom) (Amendment) Bill 2019<sup>1</sup> highlighted that current legislation uses too broad a definition of “political purposes”. The result has been that the Standards in Public Office Commission are obliged to apply the same rigorous and high financial declaration standards, devised specifically for donations received by candidates for election and for referendum campaigns, to any political group who advocates for any political outcome at all. As a result, civil society organisations engaged in their normal political lobbying and advocacy work are objectively different to electoral activity and yet under our laws they are treated the same. The threat of serious criminal sanction itself serves as a huge chilling effect on the valid lobbying work of civil society groups and NGOs. Many civil society organisations are run by volunteers, some campaign groups have been forced to close in the face of the disproportionately high compliance standards required by the Act.

A new ethics framework should clearly distinguish between different types of political activity. It is important that declaration standards are high and onerous for electoral activity, but clearly such standards need not apply across the board to grassroots organisations. There is a danger that this problem will be perpetuated if not clearly addressed in the new ethics framework.

**Question 3: Placing certain basic principles on a statutory basis (i.e. concern for the public interest) are likely to form part of proposals. Do you agree with this approach? What principles would you like to see in Ireland’s statutory framework for ethics?**

- **Prioritisation of the common good:** It is fundamental that public officials should prioritise the common good in their roles as office-holders. Importantly, this means the common good as distinct from what is in the interest of the reigning government. It should be the responsibility of public officials to procure the best and most equitable long-term outcomes for society and for all citizens. All public officials should aim to procure outcomes which result in long-term good for society, rather than the most politically beneficial outcomes within the scope of an office term. Public officials should recognise it is not ethical to think in the short-term. Public life and its responsibilities should be the main priority of all public officials, without being diluted by private interests.
- **Transparency:** Currently, obligations to declare interests in Ireland are not as extensive as in other jurisdictions. Perceptions of corruption are rising in Ireland according to 2020 Eurobarometer survey data<sup>2</sup>. Obligations to report interests need to be strengthened, in order to ensure transparency.

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<sup>1</sup> <https://data.oireachtas.ie/ie/oireachtas/bill/2019/35/eng/memo/b3519s-memo.pdf>

<sup>2</sup> 2020 Eurobarometer survey [https://transparency.ie/news\\_events/perceptions-corruption-ireland](https://transparency.ie/news_events/perceptions-corruption-ireland)

- **Stewardship of resources:** It is the responsibility of public officials to be stewards of our national resources. This means not just financial resources, but environmental, natural, and social resources. Again, the long term social good should be the aim of all officials. It is not ethical to make public decisions in the interests of short-term political goals, or the success of individual political terms. Officials should be guided by the precautionary principle<sup>3</sup> in taking decisions about our natural and environmental resources, which advises that if there is a strong suspicion that a certain activity may have environmentally harmful consequences, it is better to control that activity now rather than to wait for incontrovertible scientific evidence.
- **Proportionality:** The principle of proportionality should be central to the framework of ethics, both in the setting of regulations and on the level of enforcement. For example, there should be more stringent regulations on Taoisigh and Ministers than lower level officials, and there should be stronger restrictions on business interests than civil society groups. Similarly, new enforcement powers like fines should be applied proportionally, for example, as a share of earned income.
- **Accountability/responsibility:** Public officials should have regard for their role as disseminators of key public messaging, including health messaging. They should take seriously their responsibility not to incite hatred, or to spread disinformation.
- **Integrity of public life (no revolving door):** The perceived existence of a revolving door between the public sector and certain private sectors (primarily banking, financial, pharma, and property sectors) erodes trust in public institutions. Successive crises have made the revolving door acutely relevant to Irish society. The Global Financial Crisis, the Irish housing crisis, and most recently the Covid-19 crisis, have made the political sphere particularly vulnerable to improper influence by financial, property, and pharma lobbyists. The perception of shared interests between these lobbyists and politicians is a threat to the social contract. A core pillar of the statutory framework should be to crack down on the revolving door, by giving enforcement powers to SIPO, and by extending cooling-off periods for certain officials and sectors.
- **Enforcement:** There cannot be a successful ethical framework for public life without enforcement. SIPO currently lacks powers to enforce standards. Appropriate resources and powers should be given to any body tasked with regulating public life, and enforcement powers are necessary in relation to persons, within specific limits. Bodies which regulate standards need to have a

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<sup>3</sup> European Commission Future Brief: The precautionary principle  
[https://ec.europa.eu/environment/integration/research/newsalert/pdf/precautionary\\_principle\\_decision\\_making\\_under\\_uncertainty\\_FB18\\_en.pdf](https://ec.europa.eu/environment/integration/research/newsalert/pdf/precautionary_principle_decision_making_under_uncertainty_FB18_en.pdf)

clear time window around the holding of public office within which their powers apply, and in which they have capacity to act.

**Question 4: In so far as the statutory framework for ethics may interact with personal rights (i.e. privacy by published registers of interests and the right to earn a livelihood by restrictions post-term employment) – what sort of measures would represent a fair and appropriate balance between personal rights and the public interest?**

To repeat points outlined in our response to *Question 3*, we believe there is an appropriate balance to be achieved between personal freedom and enforcement. It is clear that in order to preserve the integrity of public life, public officials must have to report their financial interests and be limited in their ability to engage in private lobbying following their term. The measures we recommend are outlined below.

Post-term employment and cooling-off periods

- Currently Taoisigh, Ministers and Senior Advisers are subject to a one year cooling off period under the 2015 Act.
- However, under the 2015 Act, “*There are no powers under the Act for the Commission to investigate or prosecute breaches of these provisions. There are no consequences of non-compliance*”.<sup>4</sup>
- First and foremost, SIPO or the future Public Sector Standards Commissioner must be given clear powers with which to sanction former public officials.
- There must be a clear designation of powers in legislation, with a clear time window around the holding of an office, in which the Commissioner can act.
- We recommend that an appropriate sanction would be monetary fines, proportional to the amount of income earned from any employment undertaken in violation of public sector standards. The fines should not be flat fines, or be so small as to be trivial, thus potentially failing to disincentivise breaches.
- We also recommend expanding the tiered approach to regulating different categories of public officials. We propose that different categories of post-term lobbying should also be regulated in a tiered way.
- We propose that areas which have been clearly identified as high risk in terms of unethical behaviour should be subject to stronger revolving door prohibitions.
- High risk areas would include: Tech, business/finance, pharma, property investment.

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<sup>4</sup> Irish Times

<https://www.irishtimes.com/news/politics/former-government-advisors-asked-cooling-off-periods-be-waived-or-reduced-1.4605932>

- International evidence has highlighted the moral peril associated with the revolving door between finance and politics.<sup>5</sup> Repeated breaches of ethics around the Global Financial Crisis highlighted the need to restrict this sector.
- In light of the Covid-19 pandemic and the resultant growing influence of pharmaceutical companies, this should also be regarded as a high risk lobbying area.<sup>6</sup>
- Low risk areas would include: Civil society organisations, grassroots activism.
- We propose that post-term lobbying be regulated in a tiered way, with certain categories of lobbying being subject to increased prohibitions.
- We argue that banking and other types of financial activity should be a special category, whereby there should be more revolving door prohibitions, and that big tech and big pharma should also be subject to longer cooling off periods.
- We note that there are two year cooling off periods in many US states, and many of the cooling off periods apply to all Representatives, not just Ministers.<sup>7</sup> This constitutes a much higher standard than currently exists in Ireland.
- We argue that while Ireland's political environment is different to that of the U.S., that we could stand to increase revolving door prohibitions in a tiered way. We argue that a two year cooling-off period is more appropriate for a Minister, Taoiseach, or Senior Adviser, and is not excessive by international standards. A one year to six month cooling-off period would be appropriate for government TDs or Senators/Senior Advisers/Secretary Generals. A three month period would be appropriate for other designated officials and non-government Members. No cooling-off period would likely be necessary for low level civil servants.
- 2020 survey showed that 44% of respondents think that there are too close links between business and politics in Ireland.<sup>8</sup> We should therefore have a robust public debate around what types of post-term lobbying, and which types of official, should be subject to stronger revolving door prohibitions.
- We argue that our above recommendations would appropriately balance personal freedom with public responsibility, and are good guidelines to lead this ongoing debate.

### Summary of recommended changes:

1. **SIPO must be given powers to enforce post-public employment cooling-off periods. Fines which are proportional to income earned from any illicit post-term employment are recommended.**

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<sup>5</sup> European Ombudsman <https://www.ombudsman.europa.eu/en/press-release/en/72566>

<sup>6</sup> New Republic <https://newrepublic.com/article/163863/big-pharma-revolving-door-reconciliation>

<sup>7</sup> <https://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx>

<sup>8</sup> [https://transparency.ie/news\\_events/perceptions-corruption-ireland](https://transparency.ie/news_events/perceptions-corruption-ireland)

2. **A system of categories should be introduced which distinguishes between high-risk post-term lobbying (business, finance, pharma, property sectors), subject to particular, stronger revolving door prohibitions, and low-risk post-term lobbying (grassroots civil society organisations).**
3. **Introduce cooling-off periods for all officials on a tiered basis. (2 years for Taoisigh/Ministers/Ministers of State. 6 month to 1 year for government TDs or Senators/Senior Advisers/Secretary Generals. 3 months for other officials and Members. No period for non-designated civil servants).**

**Question 5: What further suggestions for changes, if any, would you make? Please explain the reason for your proposed change, and where possible, advance evidence or arguments in support. Evidence might be factual, legal or based on your experience.**

Recent controversies in both the U.K. and the U.S. have highlighted the erosion of public trust that occurs when officials are not subject to prohibitions on trading of stocks and shares. Recently, the trading of individual stocks and shares by Representatives in the U.S. Congress has raised serious concerns about the conflict of interests this represents. Ownership of company equity by the spouses of Ministers has also raised serious concerns in the U.K. We recommend increased restrictions on trading of stocks and shares for public officials below:

#### Stocks and shares

- Crucially, the value of investment is included in disclosures in the U.S.<sup>9</sup>
- Politicians should be required to disclose the market value of stocks and shares owned in Ireland. There is clear precedent internationally. Currently, Register of Members' Interests does not require disclosure of amount/value of shares owned: *"You are not required to disclose the actual value of any holding"*.
- U.S. law: *"Under the STOCK Act — Stop Trading on Congressional Knowledge Act — lawmakers must file a report when they buy or sell stock. The form, known as a periodic transaction report, or PTR, must be submitted within 45 days for every trade valued at over \$1,000. The PTR is then made public."*
- One key part of debate in the US is the conflict of interest when a member's spouse or other close family member holds shares in a company. This was a huge controversy for Suzan DelBene of Washington, whose husband is a former Microsoft executive who sold between \$5 million and \$25 million in the company's stock in October.<sup>10</sup>

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<sup>9</sup> NY Times <https://www.nytimes.com/2021/12/17/business/dealbook/congress-stock-trades.html>

<sup>10</sup> Business Insider

<https://www.businessinsider.com/microsoft-suzan-delbene-stock-act-congress-2021-10?r=US&IR=T>

- A reasonable compromise which is currently being proposed in the U.S. suggests that the trading of individual stocks and shares should be banned, and that only participation in blind trusts or mutual funds should be allowed.<sup>11</sup> We argue this is a fair compromise which balances freedoms with public ethics.
- This compromise prevents possibility of insider trading, as the office holder cannot actively move money in and out of companies following the receipt of insider information.
- The consultation document says that there will be “*new statutory requirements & strengthening of existing obligations*” on “*the use of insider information*”. It does not state what form these obligations will take, but we recommend the banning of trading of individual stocks and shares.
- We also recommend the introduction of a cooling-off period on trading of stocks and shares, as high ranking public officials should not be able to use insider information once they leave office. A cooling off period of one year on individual stock trading should be enforced for all Taoisigh, Ministers, Ministers of State, Senior Advisers, and Secretary Generals.

Ethics in Public Office Act 1995:

- The current threshold for disclosure of stock ownership is 10,000 euro **per company**. This means that an official could have 8,000 euro worth of shares in AIB, another 9,000 euro worth in IRES REIT, another 9,000 euro worth in Goldman Sachs, and not have to declare any of it. We argue this is far too weak.
- We argue the current “per company holding” threshold of 10,000 should be replaced with a cumulative threshold of 10,000 euro. Once total holdings of stock exceed 10,000 euro for an individual, all of the holdings and their value should be declared.
- Currently very weak regulations on what “connected persons” have to disclose. The disclosure of “additional interests” is non-specific, and disclosures are not published.
- A related example in the UK: Rishi Sunak’s wife held shares in a company which funnelled money through Mauritius, and these interests were never declared.<sup>12</sup>
- We argue that for a certain category of high-ranking public official, their spouse’s stock and land holdings should be included in the main published register of interests (rather than in an unpublished register) above a threshold which would indicate they have very significant interest in an area, for example, 500,000 euro. A definite threshold may be decided through evidence-based consultation, but we argue this would be a proportional restriction. The high-ranking public officials subject to this spousal requirement would be Taoisigh, Ministers, Ministers of State, Secretary Generals, City and County Managers.

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<sup>11</sup> NY Times <https://www.nytimes.com/2021/04/10/your-money/congress-stock-trades.html>

<sup>12</sup> The Guardian

<https://www.theguardian.com/world/2020/nov/30/rishi-sunak-wife-akshata-murty-imm-mauritius-india-tax>

### Summary of recommended changes:

- 1. Banning of individual stock trading, restricted only to mutual funds/blind trusts**
- 2. Market value of holdings should be declared**
- 3. The 10,000 euro threshold for disclosure should be on cumulative holdings, i.e. once total holdings of stocks and shares exceed 10,000 for a public official, all holdings must be declared.**
- 4. Certain high-ranking public officials (primarily Taoisigh and Ministers) should be subject to stronger declaration obligations when it comes to connected persons. E.g. a spouse's equity holdings over 100,000 (or another threshold decided through public consultation) should have to be declared in the main register of interests.**
- 5. Additional interests register should be subject to Freedom of Information laws.**
- 6. There should be a post-term cooling off period of 6 months to 1 year on trading of stocks and shares, at the very least for Taoisigh, Ministers, Senior advisers, and Secretary Generals.**

### Land and housing

- The consultation document says that there will be new obligations on "*local elected representatives dealing professionally with land in certain circumstances.*" What form will these obligations take?
- Current Local Government Act 2001 regulations which could stand to be strengthened:
  - Land/property under the value of 10,000 is not subject to disclosure - we argue this threshold should be a cumulative one, i.e. once total land holdings exceed 10,000, it should be declared. The threshold should not apply to individual holdings of land, potentially allowing for many small units to be owned.
  - The market value of land holdings should be disclosed.
- We argue that land holdings should be regarded in a similar way to financial holdings, with certain high-ranking officials subject to higher reporting standards for connected persons. For Taoisigh, Ministers, Secretary Generals, CEOs of public bodies, and City and County Managers, spousal land-holdings (outside of primary residences) should be declared when value exceeds a certain appropriate threshold, e.g. 1 million euro. This threshold may be decided through evidence-based consultation.

#### **Summary of recommended changes:**

- 1. Monetary value of land holdings declared**
- 2. 10,000 euro land value threshold lowered**
- 3. Connected person's land holdings published above certain threshold, and for certain categories of DPO e.g. Taoisigh, Ministers, CEOs and Sec Gens, City and County Managers**

## **3 Conclusions**

It is our belief that there is an appropriate balance to be achieved between personal freedom, and regulating public officials to preserve the integrity of public life. In this submission, the Civil Engagement Group has outlined a set of fundamental principles which should guide a future ethical framework for public life. All public officials should be guided by the common good, and should importantly make decisions for the long-term social good rather than for short-term political wins. Public officials and representatives should view themselves as stewards of our natural and social resources, and should be held to high standards of transparency and accountability.

We have also outlined many specific regulatory measures which we believe should be applied in the future, based on international evidence and precedent. We argue that regulation of public life should be approached in a tiered way, with more revolving door and insider trading prohibitions on more high-ranking politicians and officials. We also argue that different types of lobbying should be treated differently in post-term restrictions, acknowledging the important reality that lobbying for a bank is substantively different to lobbying for a civil society organisation. Finally, we argue strongly that enforcement powers are needed to make an ethical framework meaningful.

*Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, and Eileen Flynn.*  
The Civil Engagement Group.