

## Consultation on Ethics in Public Life

### Submission by the Social Democrats - January 2022

#### Introduction

The Social Democrats welcome the opportunity to take part in this consultation on Reform and Consolidation of Ireland's Statutory Framework for Ethics in Public Life.

As noted in the consultation document, transparency and accountability are central to a thriving democracy. Yet standards written in law and ethical conduct in practice are falling short of what is needed to protect government decision-making from being unduly influenced by the interests of well-connected individuals and organisations.

Trust is vital for a healthy democracy. If the public are to have trust in our politics and government, then transparency and integrity must be the defining features of all decision-making.

Accountability should not just be a buzz word, but a meaningful component of all our systems of governance and oversight. Individuals and organisations must pay the price for malpractice, corruption and reckless behaviour.

It is clear that the political system has not yet fully embraced transparent decision making or a culture of open government and good governance. Inadequate governance and accountability systems are at the heart of cost overruns involving massive amounts of public resources that could be spent elsewhere.

In addition, Ireland does not have an effective means of preventing, detecting and prosecuting corruption and white-collar crime. Various Tribunals and Commissions of Inquiry have come and gone with little consequences for corrupt and illegal behaviour.

We believe that the parameters set by the five questions in the consultation document serve to unduly narrow the terms of the discussion. While we have responded to the questions asked, the rest of this submission is structured under three main headings which we believe correspond to three of the most important issues around ethics in public life.

- Separation of politics and lobbying
- Dealing effectively with corruption
- Reforming the relationship between Ministers and Senior Civil Servants

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

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

The broad policy approach indicates a move in the right direction, but does not go far enough.

The proposal to replace the Standard in Public Office Commission (SIPO) with a Public Sector Standards Commissioner (PSSC) will only make a difference if the new organisation has real teeth, and is adequately staffed and resourced. Too often in the past, SIPO has held an enquiry and made recommendations, only for nothing to happen. The PSSC must have real power.

In previous submissions to various government departments in relation to ethics in politics and public life, we have suggested giving SIPO explicit powers to receive complaints, inspect records and returns on the online register of lobbying activities, and verify information. The Commission should also be resourced to conduct thorough spot checks of a proportion of all lobbying returns filed.

A Code of Conduct for lobbyists aimed at encouraging high professional standards should be produced by the Commission following consultations with stakeholders. That Code should be laid before the Oireachtas. The Commission should have the authority to issue guidance on the Code and to conduct inquiries and report on breaches.

SIPO has no authority to make public its investigation reports into contraventions of the Regulation of Lobbying Act 2015. This is at odds with other ethics laws. The lack of transparency in this area undermines public confidence in the Commission's enforcement powers, something that must be rectified by the formation of any PSSC. Routine publication of investigation report – 'naming and shaming' lobbyists who contravene the law – would facilitate public scrutiny and enhance compliance.

**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?**

While it may be difficult to define, enshrine and enforce some principles in legislation, it is still worth trying. Among the principles we would like to see in legislation are:

- Honesty
- Transparency, which can be enshrined by creating criteria to ensure investigations carried out in public to the greatest extent possible and that findings are published at an early date
- Accountability, laying out clear consequences for those engaged in wrongdoing
- Timeliness, setting out criteria for an early response to transgressions, ensuring this becomes the norm. As per above, findings should also be published in a timely manner

**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?**

The Social Democrats believe there needs to be a more rigorous system around the ‘cooling off’ period where individuals leaving public life must observe a waiting period before taking up work in certain roles, most notably those that involve lobbying government.

While restrictions on the right of an individual to employment and a livelihood are not in themselves desirable, the public interest and the need for clear demarcation between the political arena and lobbying must trump concerns around individual rights. Seamless movement between public and private sector by high-ranking individuals often fuels distrust in the political system, and gives many individuals unfair and undue access and influence. We expand upon this in the next section.

**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.**

Below, we list the additional comments we would make on this review, divided according to the sections we think most important.

**Separation of politics and lobbying**

As noted above, there is a need for clear demarcation between the political arena and lobbying. Seamless movement between the public and private sectors fuels distrust in the political system. In recent years in particular, there have been several high-profile examples of ministerial advisors moving into the private sector and then often back into the public sector again, not to mention examples of Ministers of State moving into jobs in sectors of the economy for which they previously had responsibility.

The Social Democrats recommend taking the separation of politics and lobbying further than is currently the case. At present, the rules of the Oireachtas allow all former TDs and Senators perpetual access to the Leinster House premises. This is indeed a huge privilege, and not one to be taken away lightly.

However, it has allowed an insidious situation to develop whereby several former TDs and Senators use that privilege to gain undue access to sitting Ministers and other influential members of the houses. Rather than needing to wait on an invitation from a member or a Committee, many current lobbyists can come and go as they please, allowing them almost unfettered access to policymakers

Where someone takes up a role as a lobbyist after leaving Leinster House, they should only be allowed access to Leinster House on the same basis as any other member of the public or civil society.

As noted earlier, A Code of Conduct for lobbyists aimed at encouraging high professional standards should be produced by SIPO (or any successor organisation). Existing public-sector codes of conduct do not provide sufficiently clear guidance on what constitutes good lobbying and how public officials should conduct their communications with external individuals and groups. This is further compounded by inadequate training on, and enforcement of, existing codes.

More emphasis must be put on training, particularly in relation to conflicts of interest and ethical business-government relationships. This should include clear guidance to Ministers on how they are expected to engage with lobbyists, including professional lobbyists and those who are former public officials.

### **Dealing effectively with corruption**

As mentioned in the introduction, accountability should not just be a buzz word, but a meaningful component of all our systems of governance and oversight. Individuals and organisations must pay the price for malpractice, corruption and reckless behaviour. We must develop a culture that is focused on serving the people of Ireland, not powerful interests who have the ear of ministers and officials.

Ireland does not have an effective means of preventing, detecting and prosecuting corruption and white-collar crime. Various Tribunals and Commissions of Inquiry have come and gone with little consequences for corrupt and illegal behaviour.

It's not just that these tribunals and commissions don't achieve anything, but it is also extremely demoralising and dispiriting for the public to watch corrupt behaviour going unpunished. Rather than assuring the public that actions have consequences, they act as confirmation that there is a golden circle of elites that are protected. This undermines confidence in accountability and fairness.

Commissions of Investigation are quite unsatisfactory. Ireland needs a proper system of inquiry, as opposed to one that makes findings but with no power to follow them up. Anti-corruption law is spread across a multitude of legislation, and responsibility for preventing and prosecuting corruption is spread across a multitude of agencies. For several years the Social Democrats have called for the establishment of a new Independent Anti-Corruption Agency (IACA) that would operate as a standing Commission of Investigation, ending the need for expensive ad hoc Tribunals.

The Agency would assume the anti-corruption remit of SIPO, the Corporate Enforcement Authority (which is replacing the Office of the Director of Corporate Enforcement), Registrar of Lobbyists and the Competition and Consumer Protection Commission, and would tackle white collar crime and corruption in the public and corporate spheres.

It would also act as an advisory body to several other public bodies; monitor and investigate public procurement activities; and conduct sectoral reviews and initiate investigations as and when necessary. It would also propose updates to anti-corruption legislation, including setting minimum standards for eligibility to hold public office.

## Reforming the relationship between Ministers and Senior Civil Servants

The Social Democrats believe there needs to be a reform of the Ministers and Secretaries Act to make senior civil servants accountable for their actions.

The Act currently protects the relationship between Ministers and Secretaries General. This makes it virtually impossible to pinpoint how problems (e.g. substantial overspending) have occurred. It should certainly be possible to dismiss a senior public servant for misconduct or incompetence, but it is well known that this is rarely if ever done.

Too often, Ministerial interactions with lobbyists take place in informal settings or in meetings without civil servants present. Hidden and informal influence by a cosy circle of ‘insiders’ damages public trust in how important decisions are made at the highest levels. Ministers and senior civil servants should proactively publish online details of all meetings and interactions with lobbyists – including calendars and meeting agendas.

There must also be an end to ‘No Minutes’ policies for key meetings and decisions. The reasons for important decisions made by Ministers and senior officials are often not properly documented in official files. Public officials should be obliged to keep accurate records of key government decisions and actions – and to keep these for as long as they are needed for accountability purposes. If records of important government discussions and decisions do not exist, there should be a presumption that they have been destroyed or there was negligence or maladministration.

## Conclusion

Again, the Social Democrats welcome the opportunity to contribute to this consultation on Reform and Consolidation of Ireland’s Statutory Framework for Ethics in Public Life. We would be pleased to discuss further any aspects of this submission that require further information or clarification.

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