

AILG

Association of Irish Local Government
Aontas Rialtas Áitiúil na hÉireann

AILG Paper on the Reform and Consolidation of Ireland's Statutory Framework for Ethics in Public Life

Introduction

The Association of Irish Local Government (AILG) is the primary national body representing the 949 democratically elected Local Authority Elected Members across our 31 local authorities. As a representative body we provide a networking, policy development and training and education resource for the elected members of local authorities.

AILG represents the collective interest of our members as key stakeholders in our local government system. Through regular engagement with central government, government departments and state agencies, we ensure that the voice, views and contribution of our members is heard and appreciated in all areas of local government throughout the full range of public agencies.

AILG's statutory remit includes:

- The carrying out of the activities necessary to represent the interests of our members and our member local authorities.
- Policy research, development and advocacy.
- Delivery of education and training.
- Assessment of public policy as regards any matter relating to local government.
- The provision of advice and the making of submissions to the Minister, department(s) or other state agencies on areas of local government or other public policy areas as appropriate.

The Association is structured on each of the 31 local authorities nominating three delegates to AILG (93 delegates in total) for the full 5 year-term of any local election period.

General Comment

AILG have always advocated that Local Authority Elected Members carry out their duties, and in particular their statutory duties, to the highest of standards to ensure that they maintain proper standards of integrity, conduct and concern for the public interest at all times. Local government has a long tradition of honest and impartial service to its communities. The core principles underlying democratic local government are based on Councillors acting in good faith and with fairness and impartiality for the common good and to promote the public interest.

AILG welcomes any measures to strengthen the standards which the public rightfully expect from those in public office especially our Elected Members. However, we would

reiterate that the vast majority of the 949 local Councillors across the country are hardworking men and women whose only interest is to serve the communities that have elected them. ALLG welcomes a robust and transparent ethical framework and agrees that this is in need of reform including the possible consolidation of the statutory framework.

Current Ethics and Governance Code for Local Authority Elected Members

Part 15 of the Local Government Act 2001 (Part 15) sets out an ethical framework and imposes a statutory duty on all in the local government service to maintain proper standards of integrity, conduct and concern for the public interest.

Part 15 provides that the Ethics Registrar has a duty to notify members and relevant employees of the requirement to submit their annual declaration and must compile the public register of interests. In January of each year the Ethics Registrar must send to each member and relevant employee;

1. A notice/declaration informing them of the requirement to furnish an annual declaration. The notice draws attention to the elected members that:
 - a. they must declare that they have read the Code of Conduct for Councillors
 - b. they declare that they understand its meaning and sign it.
2. The prescribed annual declaration further requires each Elected Member to give an undertaking to have regard to and be guided by the Code of Conduct in the exercise of their functions.

The annual declarations must be returned to the Ethics Registrar no later than the last day of February and entered into the register.

Part 15 of the 2001 Act also provides that an annual declaration of interests must be made in respect of the following;

- Profession, Occupation etc. relating to dealing in, or developing land
- Other profession, Occupation etc.
- Land (ownership, interest) (includes all property e.g. buildings, dwellings etc.)
- Company Business of dealing in land etc.
- Shares – value in excess of €12,697.38
- Gifts, Property and Services in excess of €634.87
- Local Authority Contracts in excess of €6,348.69
- Political or Public Affairs, Lobbying etc.

- Any other Additional Interests

The Register of Interests is a Public Register and may be viewed by a member of the public on request. Copies of completed declaration forms are published on the Council Website.

Finally, under the 2001 Act, each Elected Member must disclose a pecuniary (i.e. financial) or other beneficial interest, of which he/she has “actual knowledge” of, or a connected person has, in a matter which arises at a meeting of the local authority or a meeting of a committee, joint committee or joint body of a local authority. He/she must take no part in the discussion or consideration of the matter. If he/she has “actual knowledge” that such a matter will arise at a meeting at which he/she will not be present, he/she must make a disclosure in writing to the Ethics Registrar in advance of the meeting. An Elected Member is prohibited from influencing or seeking to influence a decision of the local authority in respect of any matter in which he/she (or a connected person) has ‘actual knowledge’ of a pecuniary or other beneficial interest. A connected person means a brother, sister, parent, spouse or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of the person or a child of the person or of the spouse.

DPER 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?

Comment: As stated above, ALLG welcomes any measures to strengthen the standards which the public rightfully expect from those in public office especially our Elected Members and agrees that the current ethical framework is in need of reform including the possible need for a consolidation of the statutory framework. However, ALLG would advocate that in the goal to consolidate the overall statutory framework a correct balance needs to be struck between an obligation to submit declarations to a centralised body e.g. a Standards Commissioner or the relevant public body that the person is a member of i.e. Local Authorities, as is the current requirement under the various Ethics and Local Government Act.

ALLG agrees with the view that separate regimes at national level and local level for disclosure of interests, sanctions, disclosure of donations and other ethics requirements lead to confusion and uncertainty as to what is required. We also agree that there is perceived lack of penalties for persons who are found to have breached ethical requirements or codes. There is no local level process to address alleged conflicts of interest by Councillors, unlike national politicians who have the Oireachtas Committee on Members’ Interests which provides guidelines on a wide range of aspects of declaration of interests. Local authorities should have a comparable structure made up of

Councillors, or that the national level committee of Members interests be replaced with a structure that deals with both national and local elected representatives. Such a structure should have a supportive role, and not only a role in relation to breaches of ethics legislation.

ALLG would suggest that this review should also take the opportunity to review the overall definition of ethical conduct and investigate if this could be broadened. As detailed above, currently in the area of local government, ethical conduct is restricted to the areas of declaration of interest/conflict of interest issues. This may be an opportunity to take a broader view of ethical conduct to include areas such as code of conduct, behaving with integrity, ensuring good governance etc.

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

Comment: Some drawbacks to the suggested approach for our members will centre around striking the corrected balance between an obligation to submit declarations to a centralised body or the relevant public body that the person is a member of. The review and final approach must ensure that any agreed measures do not place additional extensive and onerous obligations and responsibilities on our members. This may be an unintended consequence of consolidating the ethical framework for people in public life.

The previous 2015 Public Sector Standards Bill in our view would have placed additional substantial obligations and responsibilities on our members including Local Authority Members being classed as Category A Public Officials, additional obligations in relation to the requirement to provide private declarations on top of the normal public declarations, the obligation make a multitude of declarations of up to 3 times per annum and in certain circumstances the obligation to retain certain statements for up to a 15-year period. This approach can have the unintended consequence of placing erroneous administrative obligations on our members, who serve at local authority level with minimal secretarial and administrative backup.

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?

Comment: It is imperative that any framework being developed should contain basic principles which members are aware of and assist them in ensuring that they carry out their duties as members of their local authority to the highest standards of integrity.

These principles should collectively assert that the ethical framework is about local government maintaining proper standards of integrity, conduct and concern for the public interest, behaving with integrity and acting in ways that are consistent with legal, regulatory, ethical and governance obligations.

It is well established that the “Nolan Principles” on standards in public life underpin public life "for the benefit of those who serve the public in any way". These seven principles would be a good basis for this review and include;

1. Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or other friends.
2. Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
3. Objectivity: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
4. Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5. Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
6. Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
7. Leadership: Holders of public office should promote and support these principles by leadership and example.

Additional principles that could be considered include;

1. Public Service: Public office have a duty to act in the interests of the public body of which they are a member and to act in accordance with the core tasks of the body.
2. Respect: Holders of public office must respect fellow members of their public body and employees of the body and the role they play, treating them with courtesy at all times.

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?

Comment: Measures that need to be considered that would represent a fair and appropriate balance between personal rights (of the office holder) and the public interest would include;

1. As stated throughout this submission a correct balance needs to be struck between an obligation to submit declarations to a centralised body and the relevant public body that the person is a member of.
2. While we accept and understand the requirement to make a public declaration on an Elected Member's employment, profession, business and directorship status, we would question the need to make a further private declaration in relation to the amount of their remuneration particularly in relation to a PAYE employment. We would argue that if an Elected Member has a conflict of interest on a local authority matter as a result of his or her employment, the amount of their remuneration is irrelevant as the conflict of interest already exists by virtue of their employment and they should recuse themselves from the matter in their role as an elected member.
3. The powers of a centralised body e.g. a Commissioner, would need to be carefully examined and be balanced both in terms of dealing with the public interest and the interests and rights of the office holder. AILG has serious concerns with the previous Public Sector Standards Bill in relation to the proposed powers of a Commissioner including;
 - a. Accepting written complaints from any person for a period of up to 12 months from the date on which evidence sufficient to justify the complaint comes to such person's knowledge, and not later than 5 years from the date on which the alleged contravention was committed to make a complaint against a public official.
 - b. A complaint only had to be based on evidence sufficient to justify the making of the complaint. AILG would contend that the yardstick for measuring "sufficient evidence" needs to be set at the higher end to combat malicious, vexatious or repetitious complaints.

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

Comment: As stated under question 2 above the review should look at a local level process to address alleged conflicts of interest by Local Authority Elected Members.

Conclusion

AILG welcomes the opportunity to engage with DPER on their review on the Reform and Consolidation of Ireland's Statutory Framework for Ethics in Public Life and we would like to confirm that we are available for further consultation and engagement as the process continues.

Kind Regards

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President AILG 2021/2022