



An Roinn Caiteachais  
Phoiblí agus Athchóirithe  
Department of Public  
Expenditure and Reform

# Reform and Consolidation of Ireland's Statutory Framework for Ethics in Public Life

## Public Consultation

Prepared by Department of Public  
Expenditure and Reform  
[www.gov.ie](http://www.gov.ie)

## **Reform and consolidation of Ireland's statutory framework for Ethics in Public Life: Your views**

Transparency and accountability are central to a thriving democracy. An effective, easy to understand and user-friendly ethical framework for public officials in managing conflicts of interest is integral to the quality and efficacy of public administration.

This consultation document sets out:

- the background to the current legislative framework for ethics in public life,
- an overview of the key requirements of public officials,
- the drawbacks to the current framework, and
- the proposed policy approach to reform and consolidation of the statutory framework.

We seek your views on the following 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?**

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

**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?

**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?

**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.

Submissions should be made by 5pm on Friday 14 January 2022 (late submissions will not be accepted).

Email to: [ethics@per.gov.ie](mailto:ethics@per.gov.ie) using the subject line "Review of Ethics Legislation" or post to:

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# 1 Introduction

Minimising the risks arising from conflicts that may occur between the interests that public officials are elected/employed to represent and their private personal interests is a universal challenge common to all public administrations. Although successful outcomes depend on factors such as the general effectiveness of the rule of law in a given jurisdiction, a fit-for-purpose statutory framework for ethics in public life can be an indispensable tool in addressing these risks.

Statutory frameworks for ethics typically include legal provisions covering matters such as:

- Regulations requiring disclosure of interests;
- Rules restricting gifts; and
- Oversight of the kind of employment public officials may take up after they leave office.

In addressing conflicts of interest in public life, a broader policy goal is to enhance trust and confidence in public officials and by extension, maintain the integrity of the democratic process.

As this challenge is more or less common across jurisdictions, international collaboration is well-developed. Ireland is committed to international standards under *inter alia* the United Nations Convention Against Corruption (UNCAC) and through the Council of Europe's Group States Against Corruption (GRECO) and there is expectation that we will have a robust and up to date framework for ethics in public office in place.

## 2 Background: Ireland’s Regime for Ethics in Public Life – a legacy of the 1990s

Originating for the most part in the 1990s, the legal provisions of Ireland’s framework for ethics in public life are contained in a number of statutes, with separate regimes for public officials at both national level and local level covering matters such as disclosure of interests, sanctions and other ethics requirements.

The Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001 (and associated statutory instruments) cover matters at the national level. At the local level, the Local Government Act 2001 - Part 15 – regulates the disclosure of interests by local representatives.

Enforcement of the regime rests with the Standards in Public Office Commission (SIPO), the Dáil and Seanad Select Committees on Members Interests (in the case of members of the Oireachtas) and on the Local Authorities for Local Government. While the basic disclosure system and range of interests to be disclosed is similar across categories of public official, important differences exist between the various regimes in terms of obligations, for instance whether the disclosure of interest is made public or not.

These disclosure requirements are summarised broadly in the table below:

CATEGORY OF PUBLIC OFFICIAL	Subject to Annual Disclosure Requirement	Ad Hoc Disclosure Requirements	Requirement to disclose the interests of connected persons
<b>OFFICE HOLDERS (Minister, Minister of State)</b>	Yes. (Statement of Registrable Interests; Register of Members’ Interests published).	<b>Yes.</b>	<b>Yes.</b> (Statement of Additional Interests relates to ‘registrable interests’ of the spouse, civil partner or child).
<b>Ministerial Adviser</b>	<b>Yes.</b> (Interests that could materially influence public functions). (the adviser’s statement of his/her own interests is laid before both Houses)	<b>Yes.</b> (Interests that could materially influence public functions).	<b>Yes.</b> (Spouse, civil partner or child; interests that could materially influence public functions).

CATEGORY OF PUBLIC OFFICIAL	Subject to Annual Disclosure Requirement	Ad Hoc Disclosure Requirements	Requirement to disclose the interests of connected persons
<b>MEMBERS OF THE OIREACHTAS</b>	<b>Yes.</b> (Statement of Registrable Interests; Register of Members’ Interests published).	<b>Yes.</b> (Member or connected person has a material interest in subject matter of proceedings.)	Encompassed in Ad Hoc Disclosure Requirements
<b>DESIGNATED DIRECTORSHIPS &amp; DESIGNATED POSITIONS: in both the civil and public services ‘(inc. Senior Civil or Public Servant)’</b>	<b>Yes.</b> (Interests that could materially influence public functions).	<b>Yes.</b> (Interests that could materially influence public functions).	<b>Yes.</b> (Spouse, civil partner or child; interests that could materially influence public functions).
<b>LOCAL AUTHORITY ELECTED MEMBERS/ PRESCRIBED EMPLOYEES</b>	<b>Yes.</b> (Statement of Declarable Interests; Register of interests available for public inspection).	<b>Yes.</b> (Disclosure of ‘beneficial interests’ – this includes declarable interest of person/connected person).	<b>Ad hoc.</b> (Beneficial interest disclosure extends to ‘connected persons’ i.e. brother, sister, parent, spouse, civil partner, or child).
<b>CIVIL SERVANTS (Non Designated Positions)</b>	<b>No.</b>	<b>No.</b> (Aside from general prohibition on conflicts of interest.)	<b>No.</b>

### 3 Evolution of the public debate

After the original ethics framework was put in place public and political debate on the conduct of public officials continued during the 2000s, influenced in particular by public hearings of two significant tribunals of enquiry:

- I. The Tribunal of Inquiry into certain Planning Matters and Payments (the Mahon Tribunal);

<sup>1</sup> Directorships and positions set out by Statutory Instrument; Ethics in Public Office Act, 1995, section 3

- II. The Tribunal of Inquiry into certain Payments to Politicians and Related Matters (the Moriarty Tribunal).

Debate stepped up further during the financial crisis that developed from 2008 onwards. In the crisis's aftermath, the newly established Department of Public Expenditure and Reform committed significant policy-development resources to determine how the statutory framework for ethics would be reformed to make it fit for purpose, as part of a broader suite of legislative reforms on standards in public life.

## **4 The Public Sector Standards Bill**

The Department of Public Expenditure and Reform published a General legislative Scheme for a Public Sector Standards Bill in 2015 accompanied by a detailed policy document explaining the background and provisions of the proposed legislation.

The broad aims of this legislative proposal were to:

- Modernise, simplify and streamline the existing legislative framework;
- Respond to the recommendations on conflicts of interest contained in the final report of the Mahon and Moriarty Tribunals; and
- Consolidate local and national ethics requirements.

This Bill commenced Second Stage in January 2016 and Committee Stage commenced in April 2017. However, as the Bill's passage had not been completed when the Dáil was dissolved in advance of the 2020 General Election and it lapsed (as with all Bills).

## **5 Ongoing debate on the adequacy of the current arrangements**

Since the Public Sector Standards Bill was last discussed in the Dáil in 2017, instances of further potential gaps in the ethics framework have arisen as matters of public debate and concern. The relevant recommendations of the Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption (the 'Hamilton Report'), published in December 2020, also fall to be considered in the context of reform of the statutory framework.



## 6 2020 Program for Government Commitment: First Step - Review the Statutory Framework

Following the 2020 General Election, the new Government made a commitment in its Programme for Government (PfG) to “*reform and consolidate the Ethics in Public Office legislation*”. As the Minister responsible, the Minister for Public Expenditure and Reform did not seek immediately to restore the Public Sector Standards Bill to the Dáil Order Paper. Instead, he brought proposals to Government for a review of the statutory framework for ethics in public life, as a first step in delivering on the PfG commitment. Government approved these proposals in September 2021.

## 7 Drawbacks perceived in the current system

The current statutory framework is viewed as complex: it has a number of anomalies and there is a certain lack of consistency in processes and duties across the public service. The practical experience of its operation suggests that it has certain drawbacks, for example:

- 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.
- Responsibilities for advice, development of guidelines and Codes of Conduct are diffuse.
- There is a certain lack of clarity/uncertainty on what rules apply - the level of knowledge and understanding among public officials is not optimal.
- Bureaucracy and effectiveness issues – processes are paper-based, there are no review obligations.
- Anomalies that impact adversely on the credibility of the ethics regime.
- There is perceived lack of penalties for persons who are found (after due consideration) to have breached ethical requirements or codes. This is particularly the case for public representatives to whom normal workplace disciplinary procedures do not apply<sup>2</sup>.

Standards in Public Office Commission's Annual Reports set out detail the Commission's operation of the ethics regime in a given year. Since 2004, they have included detailed recommendations for reform of the statutory framework and observations on progress made on implementation of earlier recommendations.

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<sup>2</sup> Under Part 15 of the Local Government Act 2001 there are some offences and penalty provisions under sections 181 and 182 but they are rather limited in scope

## 8 Delivering the Government's Commitment on Ethics: Broad Policy Approach

In developing proposals to meet the Programme for Government commitment, the Department proposes as its point of departure the policy approach for ethics that has been worked-up within the broader Reform of Public Life agenda that it has pursued since 2011. This approach has been informed by good practice internationally and lessons drawn from the operation of the current framework.

This approach involves the following notable advances on the current statutory framework:

- **Fundamental principles to be established in law:** Over-arching integrity principles established in legislation to apply to all public officials and to set a basis for the revision, updating and improvement of codes of standard and behaviour for different categories of public officials;
- **New statutory requirements & strengthening of existing obligations:** Imposition of key new statutory prohibitions on:
  - The use of insider information;
  - public officials seeking or accepting benefits (including gifts and favours etc.) to further their private interests; and
  - local elected representatives dealing professionally with land in certain circumstances.
  - In addition, it is proposed to establish offences for breach of certain obligations, for example, intentionally or recklessly making a declaration that is false or misleading.
- **A significant extension of the current disclosure regime:** Strengthening the legal obligation for public officials to disclose **as a matter of routine** actual and potential conflicts of interest that arise in the context of the performance of their duties, with common definitions applying at national and local level and, in particular, greater consistency and certainty on the rules governing limits on the receipt of gifts and travel benefits by public officials.
- Based on the Mahon Tribunal's observation that **the more senior the public official the more significant the existence of a conflict** from a corruption perspective, and on best international practice, disclosures requirements to be subject to a graduated approach for different categories of public official (see table below). Under this approach, declarations of interests by politicians and senior officials would be published; private declarable interests (such as liabilities over certain thresholds) would also be disclosed confidentially by public representatives and the most senior officials but would not be published.

- The following three categories of public official (based on original proposal of the Public Sector Standards Bill) are proposed:

<b>Category A</b>	<p>The most senior public officials including:</p> <ul style="list-style-type: none"> <li>• Elected representatives at national, local and European level;</li> <li>• Certain enumerated senior officials such as the Attorney General, the Comptroller and Auditor General, the Director of Public Prosecutions, and special advisors;</li> <li>• Chairpersons and CEOs of public bodies;</li> <li>• Local authority chief executives; and</li> <li>• Persons remunerated at or above the level of Deputy Secretary General.</li> </ul>
<b>Category B</b>	<p>Less senior public officials including:</p> <ul style="list-style-type: none"> <li>• Persons remunerated at Assistant Secretary and Principal Officer level;</li> <li>• board members of public bodies (other than chairpersons); and</li> <li>• Certain enumerated officials including the Master of the High Court, a Deputy Master of the High Court, a Taxing Master, a County Registrar, a City Sheriff, a County Sheriff or a Property Arbitrator.</li> </ul>
<b>Category C</b>	<ul style="list-style-type: none"> <li>• All other public officials.</li> </ul>

- **Overhaul of the oversight structures**, with new responsibility for advice and guidance and significant streamlining of declaration processes, along the following lines:
  - Replacing the Standards in Public Office Commission with a Public Sector Standards Commissioner who will have increased powers and, through the establishment of a Deputy Commissioner (who will be independent in terms of the investigations functions), will implement more streamlined and improved complaints and investigations procedures.

- The Commissioner will have stronger powers of sanction and enforcement in relation to a range of contraventions as well as a broader role in the provision of advice and guidance;
- **A more effective, streamlined and efficient process for the submission of periodic statements of interests** and notably providing that no declaration (or nil statement) will be required unless there has been a significant change; and
- **Post-public service employment conflict of interest issues addressed by a statutory board:** Establishing a new statutory board to address potential conflicts of interest as public officials take up roles in the private sector by merging the Outside Appointments Board (OAB) for the Civil Service and Local Authority system.

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

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

**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?**

## 9 Sustaining broad-based participation in public life

In its Final Report (2012), the Mahon Tribunal recognised that the overall aim of anti-corruption measures is *'not necessarily the complete elimination of all corruption. Rather it is to ensure that corruption is reduced to a level consistent with that end.'* The OECD also acknowledges that managing conflict of interest requires a balance, pointing out that *'a too-strict approach to controlling private interests may conflict with other rights or be unworkable or deter experienced and competent candidates from entering public office or public service'*.

In reforming the statutory framework therefore, the Department seeks to achieve a balance between an appropriately rigorous approach while ensuring that elected officials remain, as far as possible, representative of their constituency, so that the statutory framework does not act as an encumbrance to an extent that talented individuals who wish to make a contribution in public life are not discouraged for pursuing election by the intrusive nature of the ethics regime involved.

This presents a complex policy challenge, which emerges, for example, when officials leaving the public sector accept appointments to entities with which they had significant official dealings during their public service career. While this scenario has increasingly become a matter for public debate, any regulation in the area must seek to balance constitutional rights to earn a livelihood, attracting talented people to contribute in public life, and managing conflicts of interest.

The 2015 Regulation of Lobbying Act requires that designated public officials be subject to a one-year "cooling-off" period, during which, in specific circumstances, they cannot engage in lobbying activities or be employed by, or provide services to, a person carrying on lobbying. The post-public employment provisions envisaged for the ethics framework falls to be considered in this context, and the provision of a more widely applicable 'cooling-off period' may be required for post public-service employments that present a conflict of interest.

**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?**

**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.**

## **Making a submission to the public consultation**

Please make your submissions by 5pm on Friday 14 January, 2022 (late submissions will not be accepted).

Email to: [ethics@per.gov.ie](mailto:ethics@per.gov.ie) using the subject line "Review of Ethics Legislation"

Or post to:

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Department of Public Expenditure and Reform  
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## Privacy Notice

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

This notice relates to the use of personal data that the Department of Public Expenditure and Reform (DPER) collects as part of the public consultation process regarding the Review of Ireland's Statutory Framework governing Ethics in Public Life ('the Review'). It is a requirement under Article 13 of the General Data Protection Regulation (GDPR) that we provide you with this information.

#### Why do we process your personal data?

The Department is undertaking the Review to inform proposals for reform of Ireland's ethics framework. In order to collect and collate the views of both the general public and stakeholders who may be directly impacted by these changes, DPER is carrying out a public consultation process. The data gathered through this consultation will be used for that purpose in accordance with Departmental best practice procedures and GDPR.

In addition to such personal data as an individual may choose to disclose as part of their submission, the Department is requesting the name, where relevant the affiliation to a particular organisation, enterprise, advocacy group, etc., address, phone number and e-mail address of any parties providing a submission, as DPER may be in contact with any of the parties that makes a submission for the purposes of conducting the review (i.e. seeking clarifications / further information) etc.

The Department, in the interests of transparency, intends to publish on its website the content of all submissions received in response to this public consultation process, and the identity of the party making the submission, consisting of their name and where relevant their affiliation. Other contact information such as email addresses and phone numbers will be redacted as standard.

"Special category" personal data is defined under Article 9(1) of the GDPR as "personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and ... genetic data, biometric data ... uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation".

Special category personal data that you choose to provide in your submission will be processed for the purpose of considering same. You will be contacted before any special category personal data that may be contained in your submission is published.

Otherwise, it should be taken that all material contained in your submission, including personal data, may be published for transparency purposes without further reference to you. If you feel that any part of your submission should not be published, please clearly draw attention to this fact and set out a brief summary of your reasons. If you have flagged concerns in relation to the publication of your submission, in whole or in part, you will be contacted in this regard before any part of the submission is published.



On what lawful basis do we process your personal data?	Our Lawful basis for Processing under the GDPR
<p><b>Processing is necessary in order to meet the legal obligations of the Department (Ireland) to transpose European Union Directives</b></p> <p>Article 6(1)(c) GDPR</p>	<p>This information will assist in the Review and inform legislative proposals.</p>
<p><b>Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller</b></p> <p>Article 6(1)(e) GDPR Section 38 Data Protection Act 2018</p>	<p>This information will ensure that the Review will reflect the views of the relevant parties and sectors who are likely to be affected by the provisions which are implemented and will guide Ireland’s/the Department’s decision making process on legislative proposals intended for 2022.</p>
<p><b>In the case of any special categories of personal data you choose to provide in your submission, processing is necessary for reasons of substantial public interest</b></p> <p>Article 9(2)(g) GDPR</p>	<p>In addition to the lawful bases above, special category personal data may be processed on the basis of Article 9(2)(g). Depending on the nature of the special category data you choose to provide, other provisions may also apply, for example Article 9(2)(e) GDPR in relation to special category data that has already “manifestly been made public” by you.</p>

What personal data do we process?	Categories of Personal Data
<p><b>Personal identification data</b></p>	<p>First name, last name If relevant, details of affiliation to any a particular organisation, enterprise, advocacy group, etc.</p>
<p><b>Contact information data</b></p>	<p>Postal address, e-mail address, telephone number</p>
<p><b>Any other information that you decide to voluntarily share with us</b></p>	<p>Personal data, including any special category personal data, that is provided in the submission</p>

## Data storage and retention

We will retain your personal information as necessary, in order to fulfil the purposes for which it was collected. Material provided may be archived in due course in accordance with the provisions of the National Archives Act 1986. Identifying data, along with the submission itself, will remain on the DPER website for a reasonable period of time to allow for suitable openness, transparency and public scrutiny following the conclusion of the review process.

## Applicant data rights

You have rights under data protection law in relation to how we use your personal information. You have the right, free of charge, to:

- Request access to or a copy of the personal data held about you. This can be done by contacting the Department at the contact details below and completing a Subject Access Request Form.
- Rectify any inaccurate personal data held about you.
- Restrict processing of your personal data in certain circumstances.
- Request the erasure of personal data in certain circumstances.
- Object to the processing of personal data in certain circumstances.
- Not be subject to a decision which is based solely on automated processing where that decision produces a legal effect on you or otherwise significantly affects you. Your personal data submitted as part of this process will not be the subject of automated decisions of this nature.

## What if I do not want to provide my Personal Data?

You are under no obligation to provide your personal data to us. The extent to which you wish to include personal data in your submission, if at all, is a matter entirely for your own discretion. However, if you do not provide us with personal identification data and contact information data, as outlined above, your submission may not be considered for the purposes of the review and may not be published on the DPER website, or referred to in the final review report.

## Contact Details

The Department is the data controller in relation to this public consultation process. Any queries about the use of your personal data as part of this process can be referred to the Department's Data Protection Officer at [dataprotection@per.gov.ie](mailto:dataprotection@per.gov.ie).

If you wish to make a complaint about the use of your personal data you can contact the Data Protection Commission (DPC). Further details are available at [www.dataprotection.ie](http://www.dataprotection.ie)



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