



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

Review of Ireland's Statutory Framework for Ethics in Public Office

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1 Introduction

Minimising the risks arising from conflicts that can occur between the interests that public officials are elected/employed to represent and their personal interests is a challenge common to all public administrations. These conflicts are natural and, to a greater or lesser extent, the inevitable consequence of the fact that public officials occupy more than one social role. Successful outcomes may depend on factors such as the general effectiveness of the rule of law in a given jurisdiction, but a fit-for-purpose statutory framework is generally regarded as indispensable in setting an appropriate tone for standards in public life and signalling a commitment to the highest ethical standards in terms of individual behaviour and organisational culture.

Statutory frameworks typically include legal provisions that cover matters such as:

- Disclosure of interests requirements;
- Rules restricting gifts; and
- Oversight of the type of employment public officials may take up after they leave office.

In seeking to openly address conflicts of interest, a broader policy goal is to enhance trust and confidence in public officials and by extension, underpin the integrity of the democratic process.

1.1 Ethics in a dynamic global context

In democracies, the integrity of politicians, their advisers and public officials, notably in the Executive, has become a major preoccupation of citizens.

Statutory provision for disclosure of interests by public officials emerged in the United States in the 1970s in the aftermath of the Watergate scandal and have become part of international best practice. Over 160 countries have introduced asset and interest disclosure systems¹ and international collaboration is well developed. Ireland is committed to international standards through *inter alia* the United Nations Convention Against Corruption (UNCAC) and the Council of Europe's Group States Against Corruption (GRECO) structures. Therefore, there is an expectation that we will seek to have a robust and best-practice framework for ethics in public office in place.

¹ Ivana M. Rossi Laura Pop, Tammar Berger, Getting the Full Picture on Public Officials A How-To Guide for Effective Financial Disclosure, 2017, International Bank for Reconstruction and Development / The World Bank at Figure 1.4

2 Ireland's ethics provisions - a legacy of the 1990s

2.1 Background

The Ethics in Government and Public Office Bill, private member's legislation tabled by Deputy Brendan Howlin in 1991² proposed the regulation of ethics at a national level, bringing national ethical standards into line with those of local government to underpin adherence to democratic norms.³ The Bill covered the regulation of gifts to certain office-holders, a register of members' interests and a register of income and expenditure of political parties.

While this Bill did not reach the statute book, it paved the way for the Ethics in Public Office Act, 1995, which is the keystone of the current framework for ethics at national level. Political donations were addressed by the Electoral Act, 1997 and the Freedom of Information Act, 1997 further contributed to enhancing the transparency of our public administration.

Concurrent with these legislative initiatives, standards in public life came into sharp focus during the 1990s as the Hamilton Tribunal⁴ and McCracken Tribunal⁵ examined payments made by commercial actors to senior politicians. The 1997 McCracken Report endorsed the 1995 Act, suggesting that the question of further oversight and investigation of ethics breaches might be effectively dealt with by expanding the remit of the Ombudsman. It further recommended mandating the production of tax clearance certificates and a stronger sanctions' regime.⁶ The Standards in Public Office Act, 2001 carried forward these recommendations into the statutory framework.⁷

2.2 The current statutory framework for ethics

Ethical conduct in public office continues to be governed by the Ethics in Public Office Act, 1995⁸ and the Standards in Public Office Act, 2001⁹ (cited together as 'the Ethics Acts'), and, at local level by Part 15 of the Local Government Act 2001 ('LGA').¹⁰ The thrust of this statutory framework is the disclosure of interests in the interests of transparency and regulation of conflicts. Powers of oversight and/or sanction lie with the Standards in Public Office Commission (SIPO) established under the 2001 Act, the Dáil and Seanad Select

² Available: <<https://www.oireachtas.ie/en/bills/bill/1991/4/>>

³ Dáil Deb 7 May 1991, vol 407, col 9, available: <<https://www.oireachtas.ie/en/debates/debate/dail/1991-05-07/28/>>

⁴ The Honourable Mr. Justice Liam Hamilton, President of the High Court (1994). *Report of the Tribunal of Inquiry into the Beef Processing Industry*. Official publications. Pn.1007. Dublin: Stationery Office, Government of Ireland, available: <<https://opac.oireachtas.ie/AWDData/Library3/Library2/DL029085.pdf>>

⁵ The Honourable Mr. Justice Brian McCracken (1997). *Report of the Tribunal of Inquiry (Dunnes Payments)*. Official publications. Dublin: Stationery Office, Government of Ireland, available:

<<https://www.documentcloud.org/documents/683393-report-of-the-tribunal-of-inquiry-dunnes-payments.html>>

⁶ *Ibid.* at pp. 75 - 76

⁷ Available: <<https://revisedacts.lawreform.ie/eli/2001/act/31/revised/en/html>>

⁸ Available <<http://www.irishstatutebook.ie/eli/1995/act/22/enacted/en/print#sec30>>

⁹ Available <<http://www.irishstatutebook.ie/eli/2001/act/31/enacted/en/html>>

¹⁰ Available <<http://www.irishstatutebook.ie/eli/2001/act/37/enacted/en/html>>

Committees on Members Interests, and Local Authorities, while potential criminal matters are referred to the Director of Public Prosecutions.

The legislation is supplemented by various Codes of Conduct that facilitate compliance and are integral to the statutory framework as they inform standards of integrity. In addition, the Regulation of Lobbying Act, 2015 and the Planning and Development Act, 2000 restrict post-term employment as a lobbyist.

2.3 National Level Provisions - The Ethics Acts

The Ethics Acts provide a statutory framework for the disclosure of interests, regulation of gifts, personal appointments (of special advisers), and oversight by SIPO or the Select Committee on Members' Interests in each House of the Oireachtas. There is also a requirement to furnish tax clearance certificates on election/nomination to either house of the Oireachtas, and, appointment to judicial office or senior office.

The principal objective is to demonstrate that those who are participating in public life do not seek to derive personal advantage from the outcome of their actions. The statutory framework is founded on the presumption of integrity but recognises that specific measures should exist to underpin compliance.

Further details of these key features are set out below.

DISCLOSURE OF INTERESTS

Disclosure obligations under the Ethics Acts differ according to the positions and levels of responsibility held and are intended to control potential 'conflicts of interests' in the Oireachtas and public bodies (i.e. conflicts arising when a public official has private interests that could improperly influence the performance of their official duties and responsibilities).

The following is a summary of the disclosure obligations as they relate to:

The Oireachtas

- **Oireachtas:** Member of the Dáil or Seanad
- **Office Holders:** i.e. Ministers, Ministers of State, Taoiseach, Tánaiste, a member of the Oireachtas who is Attorney General, Chairman and Deputy of both Houses, Chair of a House Committee and Special Advisers.

Public Bodies

- An Attorney General who is not a member of the Oireachtas
- Special Advisers
- Designated Director i.e. The Chairman and members of the Board of a public body

- Designated Position of Employment i.e. positions of employment in the civil and public service at and above Principal Officer grade level or equivalent and certain other positions whose work area could produce conflicts of interest (e.g. procurement)

The applicable monetary thresholds for disclosure under the Ethics Acts are as follows:

Monetary Thresholds for Disclosure in the Ethics Acts	
Occupational income	€2,600
Shares	€13,000
Land	€13,000
Travel and related	€650
Public Service Contracts	€6,500
Gifts	€650

MEMBERS OF THE OIREACHTAS - REGISTRABLE INTERESTS

Members of the Oireachtas must make an 'Annual Statement of Registrable Interests' or 'Nil' Statement, covering the period in a year in which that person is a member. These are published by the Clerk of the Dáil or Seanad in the Register of Members' Interests and are available to the public.

A 'registration date' is 31 December. If the Dáil is not sitting on 31 December, special rules, specified in the Ethics Acts, apply to determine what the registration date is.

The Interests Statements are furnished to SIPO, who send them to the Clerks **of either House**, who compile the Registers of Members' Interests.

Registrable interests are, in summary:

- A remunerated profession (exceeding €2,600),
- Shares or other investments (value exceeding €13,000)
- A directorship of any company
- Interest in land (exceeding €13,000)
- Interest in any contract for the purchase of land

- Certain gifts (excluding personal) (any gift over €650)¹¹
- Below cost supply of travel facilities and entertainment
- Remunerated position as political lobbyist or consultant
- Certain contracts in relation to supply of goods and services to a public body
- Below cost supply of property or a service
- Voluntary disclosure of any other interests that could materially influence the person in his or her official functions

If an Oireachtas member resigns during the year or is not returned in an election, the ex-member has no obligation to furnish a statement. Where an Oireachtas member has no interests, he or she must furnish a 'nil' statement to the relevant Clerk, so all members must make a statement.

Declaration of Material Interest

In addition to the statement of **registrable interests**, an Oireachtas member must also declare any **material interest** in proceedings of a House or Committee. There are different procedures if the member:

- intends to speak or;
- intends to vote but not speak

This obligation extends beyond personal interests and includes the material interests of a "connected person" i.e. a relative, anyone in partnership, a trustee or a company controlled by a person or by the person and a connected person. Such statements must be furnished to the Clerk of either House.

OFFICE HOLDERS

As members of the Oireachtas, Office-Holders have the same obligations as non-office holding Oireachtas members concerning:

- tax clearance;
- annual disclosure of registrable interests; and
- the disclosure of a material interest in the proceedings of a House or Committee.

However, for Office-Holders there is the additional requirement to:

- furnish a statement of additional interests;
- surrender and disclose gifts received by virtue of office; and
- disclose a material interest in a function of office.

There is a separate form for 'Additional interests', which are the interests of a spouse or civil partner, child or child of spouse or civil partner that **could materially influence** the office holder in his or her official functions 'so as to confer on or withhold from the office holder or the spouse or civil partner or the child **a substantial benefit**'. The statement of additional

¹¹ See Appendix

interests is furnished to the Clerk of the House of which the Office-Holder is a member. The additional interests form is **private** whereas the statement of registrable interests form is **public** as personal registrable interests are published in the registers of members' interests (see above) although there is no requirement for the monetary value to be specified.

There is an obligation to furnish an additional interests form or a nil statement even if the person is no longer an Office Holder or no longer an Oireachtas member on 31 December. Once a person has been an office holder, they must comply with the requirements on additional interests. However, there is no requirement for the monetary value of the statement to be specified. Statements of additional interests are furnished to the Clerk of the relevant House.

Declaration of a material interest in a function of office

Where an Office-Holder intends to perform a function of office, and has actual knowledge of a personal material interest in that function or of a connected person, or another office or of a person connected to another Office Holder, then a statement must be made of the facts and nature of the interest concerned. Statements are furnished to the Taoiseach and SIPO, or by the Taoiseach to the Chairperson of SIPO.

THE PUBLIC SERVICE

Disclosure obligations - Designated Director of a Public Body

The holder of a designated directorship has three obligations under the Ethics Acts:

1. Tax clearance, if remunerated at 'senior office' level in the role of designated director in a public body prescribed under the 1995 Act in relation to which the remuneration is not less than the lowest remuneration of a Deputy Secretary General, i.e. remunerated at or above €185,380¹²
2. An annual statement of disclosable interests; and
3. The disclosure of a material interest in an official function.

The Annual Statement of Disclosable Interests

- Any interest held by the director;¹³ and
- Any interests held, to the director's actual knowledge, by a spouse or civil partner, a child of the director, or a child of the spouse, that could materially influence the director in or in relation to the performance of the director's official functions (i.e. confer or withhold a substantial benefit).

¹² Available at: PS Guidelines 10th edition English updated October 2022 (sipo.ie)

¹³ Interests are those in the Second Schedule to the Ethics in Public Office see list for Oireachtas Members above

A person who holds a designated directorship on 31 December or who held a designated directorship for any period during the year must furnish a statement of interests, where disclosable interests exist.

Interests statements are to be furnished by the following 31 January to the officer of the body and SIPO. The “officer of the body” is usually the Chair of the Board or the Company Secretary.

Disclosure of a material interest in an official function

Designated directors must disclose to the other directors of the relevant body any material interest (or that of a connected person) in a matter that relates to an official function of the directorship, or of any other office or position held by the director in that public body, which falls to be performed.

If a director or a connected person has a material interest in an official function – the director must not perform the function, unless there are compelling reasons requiring them to do so. If the director proposes to perform the function, he or she must furnish a statement of the compelling reasons to the other directors of the body and to SIPO. The statement must be in writing and be furnished before the director performs the function or, if that is not reasonably practicable, as soon as may be afterwards.

All public bodies are also required to have procedures in place to remind their directors annually of their obligations under the Ethics Acts. This would include informing the directors of the name of the officer of the body.

Statement on leaving

Where the appointment as a designated director ends during the year (i.e. before 31 December), they must provide a statement on leaving. Statements are furnished to the “officer of the body” and SIPO.

Designated position of employment (Civil Service below Principal Officer (PO) level and positions of employment below PO in the wider public service)

- Every position in any public body in respect of which the maximum salary is not less than the maximum salary of a Principal (general service grade, Class B PRSI) in the Civil Service (this encompasses civil service positions above PO level).
- Every office or position prescribed as a “designated position of employment” under section 18(3)(b)(v) of the Ethics in Public Office Act as well as the offices of the Ombudsman and the Comptroller and Auditor General (See list of Offices at Appendix B, These are offices or positions (other than a judge) established by statute and the Minister considers it necessary in the public interests to prescribe them).
- Every position of employment in a public body that is prescribed as a “designated position of employment” in regulations made by the Minister for Public Expenditure and Reform. These are positions in the wider public sector, again below PO level.

Disclosure obligations

The occupier of a designated position of employment has three obligations under the Ethics Acts (which are the same as the designated directors):

- tax clearance if remunerated at 'senior office' level as the occupier of a designated position of employment in a public body;
- an annual statement of disclosable interests; and
- the disclosure of a material interest in an official function.

In general the disclosure obligations under Section 18 for designated positions of employment are the same as for Section 17 in regard to designated directors, the difference is that the holders of these positions are employees and any declaration is made to the 'the relevant authority' and not 'the officer of the body' and not to SIPO. For a civil servant, the relevant authority is the Secretary General of the department in which the civil servant is serving (and to the Head of the Office, for a Civil Service Office).

For Secretaries General the relevant authority is the Secretary General of the Department of Public Expenditure & Reform. For the Secretary General of the Department of Public Expenditure & Reform it is the Secretary General of the Department of the Taoiseach.

GIFTS

Under the Ethics Acts, gifts with a value above €650 must be disclosed in an annual statement of interests where the gift could materially influence the person in the performance of his or her official functions.

Gifts by virtue of office (Office Holders)

All gifts to office holders by virtue of their office with a value above €650 are deemed to be gifts to the State and must be disclosed and surrendered. However, there is exclusion for office holders where a gift is from a friend for personal reasons only.

The threshold above which a gift by virtue of office must be surrendered is set in section 15 of the 1995 Act (Gifts to Office Holders), but the threshold above which the gift must be disclosed is set in 5(a)(ii) of the Second Schedule (Registrable Interests) as the gift is also a registrable interest.

The Ethics Acts define a gift as 'a gift of money or other property' excluding political donations. As well as being registrable interests (see above), gifts are subject to disclosure by non-members. Under the Act, 'material interest in a matter' involves the withholding or conferring of a significant benefit, where the term benefit includes a gift.

TAX CLEARANCE

The Ethics Acts require that tax clearance certificates to be furnished on election/nomination to either house of the Oireachtas, in advance of appointment to judicial office or on appointment to senior office.

Holders of 'senior office'

A person who is appointed as Attorney General or to 'senior office' must comply with the tax clearance obligations of the Ethics Acts.

Designated position or designated directorship in a public body

Section 23 of the 2001 Standards in Public Office Act requires senior office holders (i.e. appointees to a designated position or designated directorship in a public body, in relation to which the remuneration is not less than the lowest remuneration of the position of Deputy Secretary General in the Civil Service) to provide the following to the Standards in Public Office Commission, not more than 9 months after the date of their appointment:

- A tax clearance certificate that is in force and was issued to the person not more than 9 months before, and not more than 9 months after, the appointment date; or
- An application statement that was issued to the person and was made not more than 9 months before, and not more than 9 months after, the appointment date; and
- A statutory declaration made by the person not more than 1 month before, and not more than 1 month after, the appointment date to the effect that, at the time of the making of the declaration, the person is, to the best of his or her knowledge and belief, in compliance with the obligations specified in subsection (1) of section 25 and that nothing in subsection (2) of that section prevents the issue to him or her of a tax clearance certificate.

SPECIAL ADVISERS

The Public Service Management Act 1997 provides that office holders may personally appoint special advisers to support them in delivering their political programme without recourse to competitive procedure. These appointments are temporary and cease when the office holder leaves office. Where their remuneration exceeds a certain threshold,¹⁴ special advisers are subject to disclosure requirements. The Acts require that certain details be laid before the Houses of the Oireachtas by the Office Holder (The special adviser's contract of appointment, whether the appointee is a relative of the office holder and (subject to level of remuneration) details of qualifications and disclosure of the advisers' interests).

¹⁴ The threshold is the second long service increment on the HEO Standard Scale, €64,038. Therefore, all special advisers earning above this amount must make a disclosure. See: <https://assets.gov.ie/7915/4e02a0251f144e20b34c4042e7e7aa62.pdf>

OVERSIGHT, ENFORCEMENT & COMPLAINTS

Under the current statutory framework, oversight and enforcement falls to relevant Oireachtas Committees and the Standards in Public Office Commission (SIPO). The Committees are responsible for investigations into members of the Oireachtas who are not Office Holders, while SIPO has oversight of Office Holders, special advisers, public servants (including civil servants) and senior executives and directors of State bodies.

The Ethics Acts refer to 'sittings' (as opposed to hearings) in which either the Committee or SIPO enjoys broad discretion and 'may receive such evidence as it thinks fit'. Investigative powers include the calling of witnesses and requiring the production of records. Non-compliance with investigative directions is an offence, as is giving false evidence.

Procedures include provision for cross-examination and for sittings to be held in private. Both Committees and the Commission have reporting obligations. Where relevant, SIPO reports are referred to the Director of Public Prosecutions.

Constitutional considerations underpin the distinct arrangements for office holders and ordinary members given that the Houses of the Oireachtas are self-regulating. In the case of non office-holding members of the Oireachtas, a complaint or a Committee's self-initiative triggers investigation and reporting. If the Report finds a breach of declaration (statement of interests or ad hoc), the Report is laid before the House. In contrast, written complaints to the Clerk regarding office holders are dealt with under section 22; a complaint that is not found to be frivolous or vexatious is referred to SIPO. Following investigation, the SIPO's report is furnished to the Committee. With the exception of reports that conclude good faith, the Committee has discretion to cause a motion to be moved before the House for taking note, censure or suspension and withholding of salary.

Processing of Complaints under the Ethics Acts

In regard to contraventions of Parts II, III and IV, the Ethics Acts provide for:

- Complaints to SIPO regarding contraventions of Parts II, III, and IV of the Ethics Acts concerning disclosures of interests and related obligations;
- Complaints on the basis of 'specified acts' defined as '*...an act or made an omission ... inconsistent with the proper performance by the specified person of the functions of the office or position ...or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance*'.¹⁵ This standard applies to those who are or were office holders and other 'specified persons' at the time to which the complaint concerned relates.
- SIPO to appoint Inquiry Officers to carry out preliminary enquiries into complaints and for complainants to claim immunity.

¹⁵ Standards in Public Office Act, 2001, s 4(1)(a)

Complaints can also be made to the Clerk of the relevant House or by a member to the relevant Committee on Members Interests in regard to a contravention by serving members of sections 5 or 7 or alleged specified acts. The Committees do not have the power to appoint Inquiry Officers.

Complaints may not be made about contraventions/specified acts by former members who were not office holders at the time of the alleged contravention/specified act (this issue has been highlighted by SIPO as a lacuna).

Over the past five years, SIPO has received more than 300 complaints and published 18 investigation reports (including tax clearance reports published under section 23 of the Standards in Public Office Act 2001). The Table below collates information from SIPO Annual Reports (2017-2021) in relation only to SIPO's oversight role under the Ethics Acts.¹⁶

Year	Complaints Received	Complaints Closed ¹⁷	Preliminary Inquiries Initiated	Investigation Hearings Concluded	Investigation Reports Published
2021	127	121	4	-	-
2020	60	40	4	-	1
2019	56	44	3	1	4
2018	36	41	1	4	3
2017	52	48	1	-	1

Note: The figures in the table represent work completed in any given year, however many complaints are ongoing at year-end and will be included in the figures for future years. An example of this may be a complaint that is received in 2019 that may not be complete until 2020 (or even 2021) following a preliminary inquiry and investigation hearing.

SIPO's reports are furnished to the following competent authorities to decide on possible sanctions:

- for Ministers and Ministers of State, to the Committee on Members' Interests for Dáil Éireann or Seanad Éireann as appropriate for consideration under section 28 of the 1995 Act;
- for the Attorney General, to the Taoiseach in relation to his/her functions under the provisions of Article 30 of the Constitution or a specified act;

¹⁶ Available: <ps://www.sipo.ie/reports-and-publications/annual-reports/>

¹⁷ This includes complaints closed from previous years

- for Special Advisers and Secretaries General - the Minister of the relevant Department, for consideration under the Civil Service Disciplinary Code.

2.4 Provisions at the Local Level - The Local Government Act 2001

Part 15 of the Local Government Act ('LGA') sets out the 'Ethical Framework for the Local Government Service'.

Key features of the framework for local government are:

- I. **Standards of integrity:** the Act imposes a general duty to maintain 'proper standards of integrity, conduct and concern for the public interest.'
- II. **Codes of conduct for Local Government Service:** the Minister on whom local government functions are conferred¹⁸ may (following consultation) issue codes of conduct for local authority members and employees. Their purpose is twofold; not only to set standards of conduct and integrity but also to uphold public confidence in that integrity. An undertaking to be guided by a code is deemed included in employees' terms and conditions of employment. Furthermore, a court or the Commission may have regard to a code of conduct.
- III. **Prohibition of favours, rewards, etc.:** without excluding liability under corruption legislation, the LGA prohibits 'seeking, exacting or accepting' 'any remuneration, fee, reward or other favour for anything done or not done by virtue of employment/office'.
- IV. **Annual declaration:** local authority employees, holders of designated positions, employees of a certain grade and members must make an annual declaration of interests. Additionally, certain employees must provide an undertaking regarding the code of conduct, while members must provide a statement that no statutory grounds for disqualification apply. The prescribed classes of employees whom must complete annual declarations and the prescribed forms to be used by employees and members are set out in regulations made by the Minister.
- V. **Declarable interests relate only to the person themselves:** They include any profession, business or occupation of dealing in or developing land, any other paid employment or occupation, interests in land, any business of dealing in or developing land, shares, bonds debentures or other like investments, company directorships, a gift, including foreign travel (excluding personal gifts from a relative or friend, or gifts less than a certain value), property or a service supplied or lent at less than commercial value or free, contracts over certain values for the supply of services or goods to a local authority with which the person was directly or indirectly concerned,

¹⁸ These functions are currently delegated to Kieran O'Donnell TD, Minister of State with responsibility for Local Government and Planning

a paid position of political adviser, consultant or lobbyist, any other interest set out in regulations by the Minister, or which the person wishes to volunteer.

- VI. **The Ethics Registrar:** The registrar maintains the public register of interests and is the locus of ethics administration for each local authority. There is provision for two registers: one containing members' interests and the other the interests of employees and other persons. Both are available for public inspection. The registrar also issues notices of information to members and employees regarding annual declaration obligations, flags errors or omissions and brings possible contraventions to the attention of specific persons. Appointment is made by the chief executive for a maximum period of 2 years.
- VII. **Ad Hoc Disclosure:** sections 177- 179 essentially provide for ad hoc disclosure by members, managers and employees respectively. Broadly, disclosure, and withdrawal¹⁹ from or delegation of decision-making responsibilities is required where there is 'actual knowledge' of material interests (pecuniary or other beneficial interest) of the person or a connected person. For all three categories, there is additional prohibition against influencing or seeking to influence such decisions.
- VIII. **Beneficial interests:** extend to the interests of connected persons, defined as a brother, sister, parent or spouse or civil partner or a child. Such interests include (material) company memberships, partnerships or employment, arrangements or agreements concerning land, trusts, company control or acting with another person to secure or exercise control of a company which has a beneficial interest in, or which is material, or actual knowledge of a material declarable interest. Remote and certain other interests are excluded.
- IX. **Enforcement:** Elevation of possible contravention of the LGA by the ethics registrar triggers consideration of actions. Actions 'may include' investigative or disciplinary procedures, referral to the DPP or appropriate alternatives.
- X. **Oversight:** The LGA confirms the oversight role of the Standards Commission, which has investigatory and reporting functions as to both breaches of the LGA and Ethics Acts at local authority level. There are distinct arrangements for furnishing of reports. Where a report relates to the chief executive, it must be furnished to the Cathaoirleach. Where the report relates to the Cathaoirleach, it must be furnished to the Leas-Cathaoirleach and chief executive of the local authority. Where a report relates to any other member of a local authority, it must be furnished to the Cathaoirleach and chief executive of the local authority. Finally, where the report relates to an employee, it must be furnished to the chief executive of the local authority.²⁰

¹⁹ Members must withdraw from a matter, as per Local Government Act 2001 s.177(1)(b)

²⁰ Browne finds the position in relation to the furnishing of reports 'unsatisfactory' and highlights that '...in all likelihood, where an adverse finding is made by SIPO against a member of a local authority, the consequences for that member are essentially decided by fellow members of the local authority and the process may become politicised.' David Browne, *The Law of Local Government* (2nd edn, Round Hall 2020) para. 2.242

- XI. **Offences & other consequences:** Subject to certain defences including good faith a person is guilty of an offence for failing to comply with declaration requirements, or making a false or misleading declarations, both periodic and ad hoc. Conviction under Part 15 triggers disqualification from election/being co-opted to or from being a member of a local authority for a period of five years.²¹

2.5 Related Legislation

THE PLANNING AND DEVELOPMENT ACT, 2000

Preventing corruption is especially pertinent in planning matters. The Planning and Development Act, 2000 addresses potential conflicts of interest arising discretely in this area.

It provides for:

- Declaration of certain interests;
- Ad hoc declarations of material/beneficial interests;
- Consequences of contravention;
- Codes of conduct.

These provisions apply in addition to the disclosure provisions contained in the Ethics Acts, which also apply to Board Members and certain employees of An Bord Pleanála.

Declaration of Interests

Section 147 applies to a member of An Bord Pleanála, a planning authority, an employee of the Board or any other person whose services are availed of by the Board of a class, description or grade prescribed, an officer of a planning authority who is the holder of an office, which is of a class, description or grade so prescribed. It sets out the duty to provide a signed declaration, on at least an annual basis, containing particulars of every relevant interest. In the event of a change, there is a further obligation to provide a 'fresh'/updated declaration (on the day of the change).

Interests subject to such declaration are:

- those that raise potential conflicts in the context of planning decisions;
- any estate or interest in land, but excluding a private home;
- any business engagement/employment/membership where the business is dealing in or developing land; and
- any profession, business or occupation in which such a person is engaged, whether on his or her own behalf or otherwise, and which relates to dealing in or developing land.

²¹ Browne highlights that offences and penalties do not apply to section 168 (standards of integrity) and/or section 169 (obligation to adhere to the code of conduct). David Browne, *The Law of Local Government* (2nd edn, Round Hall 2020)

Expressly excluded are interests 'so remote or insignificant...' that they could not reasonably exert an influence or where the interest is a beneficial interest by virtue of a shareholding under a certain value. Based on the declarations, An Bord Pleanála maintains a register of interests is available for public inspection. Subject to certain 'good faith' defences, failure to comply with declaration requirements or the provision of false or misleading is an offence.

The requirements for employees and members of local authorities to make annual declarations have subsequently been subsumed into annual declarations made to an ethics registrar under section 171 of the Local Government Act 2001²².

Requirements Material/Beneficial Interests

Section 148 sets out ad hoc requirements for members and employees/consultants who have a material financial or beneficial interest in a matter. The section provides broadly for the declaration of the interest, removal from the decision-making process and prohibition from influencing the same. Beneficial interests are defined and extend to interests of spouse or civil partners. Like the declaratory regime, beneficial interests 'so remote or insignificant...' that they could not reasonably exert an influence and shareholdings under a certain value are excluded. Subject to the defence that there was no knowledge of the interest, failure to comply is an offence. Consequences of Contravention

Proceedings for an offence under section 147 or 148 may only be instituted by or with the consent of the Director of Public Prosecutions Conviction under these sections triggers disqualification from Board membership, membership of a planning authority or a member of any committee of a planning authority.

Codes of Conduct

Section 150 provides for the adoption of codes of conduct by every planning authority and An Bord Pleanála for dealing with conflicts of interest and promoting public confidence in the integrity of the conduct of its business.

Elements to be included in the code of conduct are prescribed and include:

- disclosure of relevant interests and relationships;
- membership of other organisations, associations and bodies, professional or otherwise;
- membership or financial interests in, companies, partnerships or other bodies;
- undertaking outside work 'both during and after any period of employment with the authority or the Board, whether as a consultant, adviser or otherwise';
- acceptance of gifts, sponsorship, considerations or favours;
- disclosure of information;
- proper procedure in relation to (specified) functions of the authority and the Board.

²² Section 167(5)(b) of the Local Government Act 2001

Codes of conduct issued under section 169 of the Local Government Act 2001 for members and employees of local authorities replace any codes of conduct issued under the Planning and Development Act 2000.²³

THE REGULATION OF LOBBYING ACT, 2015

In addition to post-term employment provisions of the various Codes, the Regulation of Lobbying Act, 2015²⁴ sets out restrictions on post term employment as a lobbyist. A person who has been 'a designated public official' is prohibited from carrying on lobbying activities, or being employed, or providing services to a person carrying on lobbying activities in certain circumstances, during the 'relevant period' except with the consent of the Commission. The purpose of the restrictions is to manage potential conflicts of interest between the public and private sectors, and to manage the so-called 'revolving door' between the public and private sector.

A relevant designated public official is a Minister or Minister of State, special adviser or prescribed public servant. The relevant period is one year from the date public office ceased. The definition of 'carrying on lobbying' turns on making relevant communications. It is noteworthy, nevertheless, that failure to seek consent is not enumerated as a 'relevant contravention' of the legislation.

A comprehensive review of the Lobbying Act undertaken by the Department of Public Expenditure and Reform concluded in summer 2021. The Government subsequently approved the preparation of Heads of a General Scheme to amend the Act. In particular, the purpose of the amendments will be to:

- Improve the operation and functionality of the Lobbying Register;
- Strengthen the existing legislation and its enforcement; and
- Make failure to comply with the post-term employment restrictions set out in section 22 of the Act a relevant contravention under the Act.

In February 2022, the Government approved the publication of the General Scheme of the Regulation of Lobbying (Amendment) Bill that had been prepared by the Department, following its referral to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach for pre-legislative scrutiny, and the priority drafting of the Bill. The Bill was subsequently drafted and in September, Government approval was gained for its publication and initiation in the Houses of the Oireachtas.²⁵ Second Stage of the Bill commenced on 20th October 2022.²⁶

²³ Section 169(6) of the Local Government Act 2001

²⁴ Available at: <<https://revisedacts.lawreform.ie/eli/2015/act/5/revised/en/html>>

²⁵ Available at: [b8522d.pdf \(oireachtas.ie\)](https://www.oireachtas.ie)

²⁶ Available at: Regulation of Lobbying (Amendment) Bill 2022: Second Stage – Dáil Éireann (33rd Dáil) – Thursday, 20 Oct 2022 – Houses of the Oireachtas

THE CRIMINAL JUSTICE (CORRUPTION OFFENCES) ACT 2018

The Criminal Justice (Corruption Offences) Act 2018²⁷ was commenced on the 30th July 2018. The Act aims to consolidate the law regarding the prevention of corruption and give effect to international instruments. The Act applies to Irish and foreign officials, the definition of the former correlates broadly with those subject to ethics framework.

Part 2 creates a number of offences subject to the requirement of 'acting corruptly'. 'Corruptly' is defined as 'acting with an improper purpose.' The offences are active and passive corruption, active and passive trading in influence, corruption in relation to office, employment, position or business and giving a gift, consideration or advantage that may be used to facilitate an offence under the Act. Section 5 (active and passive corruption) criminalises both the corrupt offering (active) and acceptance (passive) of a gift, consideration or advantage as an inducement to, or reward for, or on account of official acts. Trading in influence refers to offering or accepting gifts in return for exertion of influence over official acts. Section 7 broadly prohibits performing official functions or using confidential information for the purpose of a gift or reward. Section 8 places criminal liability on the giver of a gift.

The offences are supported by three (rebuttable) presumptions at Part 4; the presumption of corrupt gifts, consideration or advantage, presumption of corrupt donations and presumption of corrupt enrichment. The thrust of section 14 is that a gift, consideration or advantage given to an official or a connected person by a person with an interest in the discharge of their functions is presumed corrupt. The term gift is not defined so there is no apparent value threshold. The presumption of corrupt enrichment relates to the use of land and cross-references the Ethics in Public Office Act 1995 to delineate key terms. Failure of a member or office holder to comply with an obligation to declare land under the ethics framework triggers a presumption of corrupt enrichment.

The provisions on gifts may be inconsistent with the present ethics framework (and as proposed under the PSSB) which permits gifts connected with the performance of functions under a certain value. For the sake of coherence, the advances to corruption legislation may support the proposition advanced by the Mahon Tribunal of a blanket prohibition of gifts connected with performance of functions, other than nominal. This would mirror the position under the LGA and various Codes of Conduct. The contrast that employees at the lowest levels may not accept gifts other than nominal while elected representatives may accept gifts to certain value thresholds may undermine apparent integrity of public representatives.

ANTI-MONEY LAUNDERING – INTERNATIONAL, EU AND NATIONAL PROVISIONS

International standards in respect of anti-money laundering are set and monitored by the Financial Action Taskforce (FATF), an inter-governmental body with 39 members, including

²⁷ Available: <<http://www.irishstatutebook.ie/eli/2018/act/9/enacted/en/pdf>>

Ireland, and a large number of observers and associate members. Over 200 countries are committed to implementing FATF standards.

The EU's standards generally reflect those of FATF and are currently set out in the Fourth Anti-Money Laundering Directive (2015), as amended by the Fifth Anti-Money Laundering Directive (2018). Ireland is bound by these Directives and implements them through the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended.

Politically Exposed Persons - FATF Recommendations

FATF defines a politically exposed person (PEP) as an individual who is or has been entrusted with a prominent public function (while at the same time emphasizing that PEP status is intended to apply higher vigilance, rather than suggesting that individuals are involved in suspicious activity).

Mandatory requirements covering foreign PEPs, their family members and close associates were first issued by FATF in 2003. Mandatory requirements were expanded to domestic PEPs and PEPs of international organisations in 2012, in line with Article 52²⁸ of the United Nations Convention against Corruption (UNCAC).

EU Provisions

EU requirements for PEPs are set out in Articles 20-23 of the Fourth Anti-Money Laundering Directive. The Fourth Directive broadened the application of the regime to include domestic PEPs.

'Politically exposed person' is defined in Article 3 of the Directive as a natural person who is or who has been entrusted with prominent public functions and includes the following:

- a) heads of State, heads of government, ministers and deputy or assistant ministers
- b) members of parliament or of similar legislative bodies
- c) members of the governing bodies of political parties
- d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances
- e) members of courts of auditors or of the boards of central banks
- f) ambassadors, *chargés d'affaires* and high-ranking officers in the armed forces
- g) members of the administrative, management or supervisory bodies of State-owned enterprises
- h) directors, deputy directors and members of the board or equivalent function of an international organisation

²⁸ Article 52 of the UNCAC defines PEPs as "individuals who are, or have been, entrusted with prominent public functions and their family members and close associates", and includes both domestic and foreign PEPs.

The Directive also states that no public function referred to in points (a) to (h) above shall be understood as covering middle-ranking or more junior officials.

Relevant entities (e.g. financial institutions) are obliged to:

- have in place appropriate risk management systems, including risk-based procedures, to determine whether the customer or the beneficial owner of the customer is a politically exposed person;
- apply the following measures in cases of business relationships with politically exposed persons:
- obtain senior management approval for establishing or continuing business relationships with such persons;
- take adequate measures to establish the source of wealth and source of funds that are involved in business relationships or transactions with such persons;
- conduct enhanced, ongoing monitoring of those business relationships.

These measures are also apply to family members or persons known to be close associates of politically exposed persons.

National Provisions

Ireland implements the Directive through the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. As required for transposition, this Act closely follows the Directive in respect of PEPs, with section 37 establishing the relevant requirements.

The Act must provide for the requirement to take adequate measures to establish the source of wealth and source of fund that are involved in business relationships and transactions.

The Central Bank of Ireland publishes guidance for financial institutions in respect of PEPs, which notably provides (in section 5.6.3):

Firms should take adequate measures to establish the source of wealth and source of funds, which are to be used in the business relationship in order to satisfy themselves that they do not handle the proceeds of corruption or other criminal activity.

The measures, which Firms should take to establish a PEP's source of wealth and source of funds will depend on the degree of risk associated with the business relationship. Firms should verify the source of wealth and the source of funds based on reliable and independent data, documents or information.

When determining the source of wealth and source of funds, Firms should, at least consider:

- *The activities that have generated the total net worth of the customer (that is, the activities that produced the customer's funds and property); and*

- *The origin and the means of transfer for funds that are involved in the transaction (for example, their occupation, business activities, proceeds of sale, corporate dividends).*

2.6 Codes of Conduct

Primary legislation is supplemented by Codes of Conduct. Relevant Codes are:

- The Code of Conduct for Office Holders;²⁹
- The Codes of Conduct for Members of Dáil Éireann;³⁰
- The Code of Conduct for Members of Seanad Éireann;³¹
- The Civil Service Code of Standards and Behaviour;³²
- The Code of Conduct for Councillors;³³ and
- The Code of Conduct for Local Authority Employees.³⁴

The above Codes of Conduct are a crucial element of the ethics framework. They are both principled and rules-based documents which act to inform standards of conduct and integrity. This is not only for the benefit of those subject to them but also the public they serve, thereby supporting the policy aim of promoting public trust and confidence.

Codes of Conduct are admissible in proceedings taken under both the Ethics Acts and LGA.³⁵ For employees (civil servants and local authority employees), the relevant Codes form part of employment terms. A key issue of note is that the inconsistency of the Codes in terms of the principles and obligations they espouse.

Appendix C of the Code of Practice for the Governance of State Bodies issued by the Department of Public Expenditure and Reform sets out a Framework for a Code of Conduct on the basis of which many public bodies have adopted their own non-statutory codes.

A summary of the provisions of the respective Codes is provided at Annex A.

²⁹ Available: < <https://www.sipo.ie/documents/english/Code-of-Conduct-for-Office-Holders-.pdf>>

³⁰ Available: < <https://www.sipo.ie/documents/english/Code-of-Conduct-for-Members-of-Dail-Eireann-other-than-Office-Holders.pdf>>

³¹ Available: < <https://www.sipo.ie/documents/english/Code-of-Conduct-for-Members-of-Seanad-Eireann.pdf>>

³² Available: < <https://www.sipo.ie/acts-and-codes/codes-of-conduct/civil-servants/Civil-Service-Code-of-Standards.pdf>>

³³ Available: < <https://www.sipo.ie/acts-and-codes/codes-of-conduct/local-authority-members/Code-of-conduct-for-councillors.pdf>>

³⁴ Available: < <https://www.sipo.ie/acts-and-codes/codes-of-conduct/local-authority-members/Code-of-Conduct-for-Employees.pdf>>

³⁵ Standards in Public Office Act 2001 s.10(8); Local Government Act s.169(5)(a)-(b)

3 Significant Drivers of Reform for Standards in Public Life in Ireland

3.1 Shortcomings of the current system

The current statutory framework is viewed as complex. It has a number of anomalies and a 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:

- There are separate regimes at national level and local level for disclosure of interests, sanctions, disclosure of donations and other ethics requirements that 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 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.
- The effectiveness of penalties for persons who are found (after due consideration) to have breached ethical requirements or codes is unclear. This is particularly the case for public representatives to whom normal workplace disciplinary procedures do not apply.³⁶

Annual Reports of the Standards in Public Office Commission set out in 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.

3.2 The Moriarty Tribunal

The Tribunal of Inquiry into certain Payments to Politicians and Related Matters (the Moriarty Tribunal) was established in 1997, and its Final Report issued in March, 2011. The Tribunal recommended an audited disclosure regime, described as: *'...a discretionary voluntary system, to be assumed by positive election on the part of Office Holders, within the meaning of the Ethics in Public Office Acts, 1995 and 2001, whereby they would permit their financial*

³⁶ 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

affairs to be audited by an inspector appointed by the Standards in Public Office Commission, at any time during their period of office, and for a defined period thereafter'.³⁷

3.3 The Mahon Tribunal

A further Tribunal of Inquiry into Certain Planning Matters and Payments (the 'Mahon Tribunal') 'was established in response to disquiet concerning corruption in the planning system.' The Tribunal's terms of reference were expanded to include reporting on corruption and making recommendations as to the effectiveness and improvement of existing legislation governing corruption...'.³⁸ The Tribunal's Final Report, published in 2012, emphasised the harms of corruption, which, it stated '*undermines the equality of individuals before the law, produces unfairness in public policies and distorts the allocation of resources. Corruption is also inimical to democratic government. It alienates the public from those who are supposed to represent it and instils in it the belief that the political system is there to serve vested interests rather than those of the public which it is supposed to serve. It also discourages individuals from becoming engaged in politics and, more generally, from participating in the democratic process. Moreover, by focusing attention on scandals, corruption distracts public attention from substantive public policy issues thereby weakening public debate on these issues. Where political corruption is pervasive it calls into question the very legitimacy of a country's political institutions.*'³⁹

The Report described corruption as a systemic failure most likely to occur where there is a combination of low ethical standards, incentive and opportunity. It endorsed a balanced approach, the overall objective of which 'should be to maximize the efficacy of government rather than the complete elimination of any sort of corruption, a goal which may not be achievable without seriously compromising that efficacy.'⁴⁰

The Report set out five anti-corruption principles:

- I. **Transparency:** The decisions and actions of holders of public office must be subject to public scrutiny and the public must have access to the information necessary to make that scrutiny effective
- II. **Accountability:** Holders of public office must take responsibility for their decisions, provide information about their decisions and justify the correctness of those actions
- III. **Top-Level Commitment:** Anti-corruption measures must be visibly and consistently supported from the top

³⁷ The Final Report of the Tribunal of Inquiry into Certain Planning Matters and Payments, <https://planningtribunal.ie/wp-content/uploads/2019/04/sitecontent_1257.pdf> accessed _ July 2021 62.15

³⁸ First Interim Report of the Tribunal of Inquiry into Certain Planning Matters and Payments, <<https://planningtribunal.ie/reports/first-interim-report/terms-of-reference/>>

³⁹ Ibid. para. 2.01

⁴⁰ Ibid. paras. 2.07 - 2.09

- IV. **Public Support:** The public must be fully engaged in and committed to combating corruption
- V. **Monitoring and Review:** Anti-corruption measures must be constantly monitored and reviewed so that they can be quickly adapted to meet changing corruption risks.⁴¹

The Tribunal made sixty-four recommendations in a range of areas including planning, lobbying, whistleblowing, political financing, bribery, corruption in office, money laundering and conflicts of interest. The Tribunal's twelve recommendations and commentary on conflict of interests are set out in Annex B.

In brief, the Tribunal recommended:

- Extension of periodic disclosure to connected persons
- Disclosure of a broader range of interests
- Periodic disclosure to fall due shortly upon taking office
- Ad hoc disclosure of interests that could be reasonably seen to represent a conflict
- Publication of periodic and ad hoc disclosures
- Amendment to Codes of Conduct to reflect an objective definition of conflict of interest based on 'reasonable perception'
- Prohibition on gifts (other than those of nominal value) that could reasonably be seen to be connected with performance of functions
- Regulate conflicts of interest arising from the use of inside information
- Prohibition on public officials contracting for public services
- Prohibition on dealing with land
- Enhance the regulation of post-term employment
- Enhance SIPO powers.

The subsequent Dáil debate heard that the recommendations highlighted 'the need for an extensive overhaul of the legislative framework in regard to ethics.'⁴² Although a decade has passed since the Mahon and Moriarty Tribunal recommendations issued, the Mahon Tribunal was explicit that the recommendations regarding conflicts of interests emerged from identified deficiencies in the domestic model,⁴³ and as this model has not changed materially, the recommendations remain pertinent.

⁴¹ Ibid. para. 2.13

⁴² Available at: <<https://www.oireachtas.ie/en/debates/debate/seanad/2012-04-24/11/>>

⁴³ Ibid., para 4.10

3.4 Recommendations of the Council of Europe Group of States against Corruption (GRECO)

The Council of Europe has developed a number of multifaceted legal instruments aimed at improving the capacity of member states to fight corruption domestically as well as at international level. The monitoring of compliance with these standards is entrusted to the Group of States against Corruption (GRECO) the Council's anti-corruption body, which Ireland joined in 1999.

GRECO's Fourth Evaluation Round, launched in 2012, and addressed 'Corruption prevention in respect of members of parliament, judges and prosecutors'. GRECO found Ireland's ethics framework to be excessively complex. Among its recommendations in respect of members of parliament, the following are relevant, in particular, to the statutory framework for Ethics:

- that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament - including their staff as appropriate - covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.
- that the authorities clarify the scope of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 so as to ensure that the protections and encouragement for whistleblowers contained in the Protected Disclosures Act 2014 are fully understood and implemented
- that the existing regime on asset declarations be enhanced by i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders.
- that the establishment of a consolidated independent monitoring mechanism be considered in respect of members of parliament, that it be provided with necessary means to investigate complaints as well as to sanction findings of misconduct and that all its decisions, including on the dismissal of cases are given an appropriate level of publicity.
- that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention.

In 2017 and 2018, GRECO concluded that Ireland's low level of compliance with the Fourth Round recommendations was 'globally unsatisfactory'. However, in 2020 GRECO concluded

that our level of compliance was no longer 'globally unsatisfactory', in light of progress made on some of the recommendations since 2018. In March 2022, GRECO adopted the Fourth Round Second Compliance Report for Ireland. GRECO concluded that Ireland had implemented satisfactorily or dealt with in a satisfactory manner five of the eleven recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, two have been partly implemented and four remain not implemented. Of relevance here, GRECO found that recommendations ii, iv, and v had been implemented satisfactorily or dealt with in a satisfactory manner, but recommendations i and iii remain not implemented.

GRECO's fifth evaluation round evaluated the effectiveness of the framework in place in Ireland to prevent corruption amongst persons with top executive functions (such as ministers, senior civil servants and advisers) and members of the police (An Garda Síochána).

3.5 The 2020 Hamilton Report

An independent review group, chaired by the former Director of Public Prosecutions, James Hamilton, undertook a Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption. The aim was to assess the extent to which various state bodies involved in the prevention, detection, investigation and prosecution of fraud and corruption are working effectively together, and identifying any gaps or impediments in this regard. This Group issued a broad range of recommendations in December 2020, some of which will also fall to be considered in the context of reform of the statutory framework.

The Group's report noted the Minister for Public Expenditure and Reform's intention to undertake the current review of the statutory framework and the Group recommended that the Minister expedite reform and strengthening of Ethics in Public Office legislation.

On foot of the Report, a cross-government Action Plan on implementing reforms to tackle economic crime and corruption was published by the Department of Justice in April 2021. The implementation plan for the Hamilton Review on Economic Crime and Corruption sets out 22 actions to be completed across government over 18 months.

3.6 A matter of ongoing public debate

The media plays a crucial role in public discourse by shining a light on matters of public importance pointing to potential gaps in the legislative provision for standards in public life. For example, the 2015 television documentary 'Standards in Public Life'⁴⁴ examined the

⁴⁴ See generally, Conor Ryan and Ken Fox 'RTÉ Investigates - Standards in Public Office' (Updated 1 Feb 2018 11) Available: <<https://www.rte.ie/news/investigations-unit/2015/1207/751833-rte-investigates/>>

efficacy of disclosure requirements, and the prohibition on seeking private reward for public work. Declarations of interest were cross-referenced with relevant public records by the investigations team. The report uncovered widespread and significant non-compliance with declarations requirements. In addition, actions of an undercover team led to three SIPO investigations and findings of contravention in relation to local councillors.

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. Relevant themes of public debate include:

- Post-term employment of senior public officials;
- Declarations of registerable interests
- Corollary outside employment of senior public officials;
- Improper disclosure of information to third parties;
- Remuneration level of special advisers.

Addressing the Oireachtas Joint Committee on Public Petitions in September, 2021, outgoing Ombudsman, Peter Tyndall criticised the ethics framework, describing the legislation as 'completely not fit for purpose' citing practical difficulties in achieving a quorum for hearings of the Commission, and a lack of sanctions available to SIPO. Tyndall said that the legislative framework 'needs to be replaced as quickly as possible.'

The adequacy of the Ethics regime came under the spotlight again in 2022, with media coverage focusing on themes including:

- A lack of sanctions for late or no disclosure of interests;
- The need for SIPO to be able to make and initiate an investigation without a complaint; and
- The need to declare all public contracts including housing supports received and sale of properties to local authorities.

It should be noted however that, as SIPO's broad remit includes implementing the Ethics in Public Office Acts, elements of the Electoral Act, regulation of expenditure of public funds to political parties and independents, and the Regulation of Lobbying legislation, a number of issues raised in the media, particularly relating to election expenses, do not fall within the statutory framework for Ethics.

3.7 The Public's Views

As GRECO notes in its Fifth Evaluation Round of Ireland, the overall perception is that the level of corruption is relatively low and stable. The State ranked joint 13th out of 180 countries in Transparency International's 2021 Corruption Perception Index with a score of

74 (out of a total score of 100 - where 0 corresponds to countries where there is a high level of corruption and 100 to countries with a low level of corruption).⁴⁵ This is a slight improvement compared to 2020, when Ireland ranked 20th, but matches the rankings in 2019 and 2018.

On the other hand, according to Special Eurobarometer 502 (2020),⁴⁶ Ireland has high percentages of respondents who, in response to questions related to business and corruption, such as the proximity between business and politics, agreed that corruption is a problem. On some questions this is higher percentages than the EU average, for example on the need of political connections to succeed in business: In response to the question “Do you think that the giving and taking of bribes and the abuse of power for personal gain is widespread among any of the following?”, the respondents in Ireland were 43% in mentioning politicians (slightly below the EU member states average of 49%) and 30% in citing the police (higher than the EU member states average of 26%).

The **2022 Special Eurobarometer on Corruption** shows that 59% of respondents in Ireland consider corruption widespread in their country (EU average 68%) and 16% of Irish respondents feel personally affected by corruption in their daily lives (EU average 24%).⁴⁷ As regards businesses, 28% of companies consider that corruption is widespread (EU average 63%) and 7% consider that that corruption is a problem when doing business (EU average 34%). Furthermore, 32% of respondents in Ireland find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%), while 26% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%).

The 2021 round of the OECD's ‘Trust Survey’⁴⁸ (which monitors self-reported trust in *inter alia* different institutions and levels of government) found almost six in 10 (59%) of Irish respondents believe it is Unlikely (according the OECD's recommended groupings) that a senior politician would refuse the prospect of a well-paid job in the private sector in exchange for a political favour, whereas one in four (26%) believe it to be Likely.

Overall, almost four in 10 (39%) respondents believe it is Unlikely (0-4) that a public sector employee would refuse money to speed up access to a public service, while a similar percentage (43%) believe it is Likely (6-10) the offer of money would be refused.

13.4% of respondents said they have ‘0 Not at all’ trust in political parties, while the comparable rates for lack of trust in national government and local authorities were 8.4% and 5.6% respectively. Older respondents⁴⁹ had higher trust levels in the national government, their local authority and political parties. For example, two in three (66%)

⁴⁵ Available at: 2021 Corruption Perceptions Index - Explore the... - Transparency.org. Ireland ranks joint 13th alongside Austria, Canada, Estonia and Iceland

⁴⁶ Available at: Special Eurobarometer 502: Corruption - Data Europa EU

⁴⁷ Available at: Corruption - July 2022 - - Eurobarometer survey (europa.eu)

⁴⁸ <https://www.cso.ie/en/csolatestnews/pressreleases/2022pressreleases/presstatementtrustsurveydecember2021/>

⁴⁹ In general, the ‘Trust Survey’ found that trust levels in most people increased with respondents’ age. Almost one in 10 (9%) respondents aged 18-44 Don’t trust (0-4) most people, more than double the rate (4%) for respondents aged 65 and over. More than seven in 10 (71%) respondents aged 18-44 Trust (6-10) most people. For respondents aged 65 and over this rate is 84%.

respondents aged 65 and over Trust (6-10) the national government compared to more than one in three (35%) of those aged 18-44.

An aspect of the 2021 Trust Survey that attracted wider attention is the fact that, among the 22 OECD countries surveyed, Ireland registers of the lowest levels of trust in government for the 18-29 age cohort (only Columbia registers a lower trust level in this age cohort, and Ireland's levels are lower than, for example, Mexico's).

While this should preoccupy policy-makers generally, the direct implications for the ethics framework are unclear: Perceptions of standards in public life are only one part of the explanation for this, which may relate as much to effectiveness in the delivery of public policy, and, in particular, confidence in the State's capacity to address and deliver on long-term and multidimensional challenges such as housing and climate change.

4 Policy Response on Standards in Public Life

4.1 Financial crisis and aftermath - significant policy work to address ethics in public life

In 2011, in the context of the 2008 financial crisis and its aftermath, the Department of Public Expenditure and Reform was established with an explicit mandate to drive the reform agenda, including in the area of standards in public life. In the years following, the Department committed significant resources in terms of policy development and consultation across government to determine how the statutory framework for ethics was to be reformed to make it fit-for-purpose.

This was one of element of a broader initiative of legislative reforms brought to fruition in stages after 2011, including:

- the extension of the Ombudsman's jurisdiction and powers;
- provision of a detailed legislative framework for parliamentary inquiries;
- the regulation of lobbying;
- an extensive reform and extension of the Freedom of Information Act;
- comprehensive employment protection to whistle-blowers in all sectors of the economy, including members of An Garda Síochána and the Defence Forces; and
- an overhaul of the system for appointments to state boards

4.2 The Public Sector Standards Bill

As a key plank of this legislative reform agenda, the Department of Public Expenditure and Reform published a General Legislative Scheme for a Public Sector Standards Bill in 2015. This was accompanied by a detailed policy document explaining the background and provisions of the proposed legislation.

The Bill's Explanatory Memorandum explained that the purpose was to 'significantly enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks, to achieve a shift towards a more dynamic and risk-based system of compliance and to ensure that the institutional framework for oversight, investigation and enforcement is robust and effective.'⁵⁰ The rationale underlying this legislative initiative were set out in the 2015 policy document, 'Public Sector Standards - a new and reformed legal framework'.⁵¹

⁵⁰ Available <<https://data.oireachtas.ie/ie/oireachtas/bill/2015/132/eng/memo/b13215d-memo.pdf>>

⁵¹ Government Reform Unit, Department of Public Expenditure and Reform, Policy Document, Public Sector Standards – a new and reformed legal framework, June 2015

The broad aims of the 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.

The following significant reforms to the statutory framework were envisaged:

Fundamental principles to be established in law: Over-arching integrity principles established in legislation to apply to all public officials and as a basis for the revision, updating and improvement of codes of standard and behaviour for different categories of public officials. These include a duty of public officials to maintain proper standards of integrity and concern for the public interest,⁵² and to use resources efficiently and effectively where 'concern for the public interest' included principles of 'accountability and transparency.'

- **Model Code of Conduct:** whereas responsibility for creating Codes of Conduct is diffuse under the present regime, the PSSB placed the Commissioner at the heart of the matter. It provided for a model code of conduct and prescribed that the code of a public body conform to the model code.
- **New statutory requirements & strengthening of existing obligations:** Imposition of key new statutory prohibitions on: The use of insider information; seeking or accepting benefits (including gifts and favours etc.) to further private interests; and local elected representatives dealing professionally with land in certain circumstances. Introduction of offences for breach of obligations in relation to gifts; ad hoc disclosure; use of confidential information; tax compliance and; periodic disclosure.
- **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.

⁵² Public Sector Standards Bill, 2015, ss 10(1)(a)

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

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

- **Overhaul of the oversight structures**, with new responsibility for advice and guidance and significant streamlining of declaration processes, along the following lines:
 - Replacing the six-person 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.

- a streamlined and improved complaints and investigations procedure, with the Commissioner enjoying stronger powers of sanction and enforcement in relation to a range of contraventions; as well as
 - a new emphasis on training, education, guidelines and research.
- **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. Public officials would have a duty to provide notice in writing of intention to take up certain outside appointments within 12 months of leaving office (members of Dáil Éireann or Seanad Éireann; a member of the European Parliament or members of a local authority are excluded).

RECEPTION OF THE PUBLIC SECTOR STANDARDS BILL

The PSSB had a positive reception. In its 2019 Annual Report, SIPO cited the PSSB as addressing nine of its 18 on-going recommendations for the reform of the Ethics Acts (see Annex C).⁵³ Similarly, GRECO evaluators received the PSSB positively (see Annex D).

In 2016, TASC (Think-tank for Social Action Change) found 'much to commend in this ambitious new ethics framework' and welcomed particularly the creation of a Standards Commissioner and the Bill's emphasis on training, education, guidelines and research.⁵⁴

A 2020 study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs proposing a new ethics body for the EU cited Ireland's PSSB, as well as existing arrangements in France, Canada as best practice. The Public Sector Standards Commissioner, in particular, was presented as 'an intriguing proposal' and 'source of inspiration' for the EU.⁵⁵ The authors stated: The PSSC stands out for its independence, which also applies to the Deputy and the 'investigation officer(s)'. Although the Bill has not entered into force, the PSSB is especially interesting for the strong investigation (including tax information) and enforcement competences, but also fulfils advisory functions ... Complaints can be made to the Commissioner (Section 33), but the PSSC can also request her or his staff on their own initiative to conduct a preliminary inquiry (Section 35).⁵⁶

⁵³ Available: <<https://www.sipo.ie/reports-and-publications/annual-reports/2019-SIPOC-AR-English.pdf>> at p 39

⁵⁴ TASC, TASC submission on the Public Sector Standards Bill 2015 (September 2016) Available <https://www.tasc.ie/assets/files/pdf/tasc_submission_pssbillfinal.pdf?issuusi=true>

⁵⁵ Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, Strengthening transparency and integrity via the new 'Independent Ethics Body' (IEB) (PE 661.110, October 20) para. 3.3

⁵⁶ Ibid. at para. 3.3.7

5 Ireland's statutory provisions in an international context

5.1 Introduction

The statutory framework and the administrative arrangements covering Ireland's standards in public life have developed within a wider context of the recommendations made and undertakings given to international bodies of which the State is member as well as with reference to models that have been adopted in certain comparable jurisdictions.

The lessons to be drawn for Ireland from international comparisons can have a number of different aspects, such as, for example: recommendations on best practice issued by the international bodies of which the State is a member and/or to which we are bound by treaty or convention such as the OECD, The UN's Anti-Corruption Convention (UNCAC) or the Council of Europe's anti-corruption body Group of States against Corruption (GRECO); models in jurisdictions that have similar legal, parliamentary, and administrative systems to Ireland's and shared origins in the common law system and the 'Westminster model' of parliament and public administration (i.e. UK, United States, Canada, New Zealand and Australia); and the arrangements adopted by EU partners, with whom we increasingly share vital interests and align our approach. Certain jurisdictions are also proposed as examples of best practice by academic research or by their ranking by advocacy bodies such as, for example, Transparency International's Index of Perceptions of Corruption.

5.2 International Organisations of which the State is a member

Ireland's participation in the UN's Anti-Corruption Convention and GRECO both involve peer review processes by which our legislative framework and procedures are assessed and recommendations for reform made at regular intervals. Under the UNCAC's review mechanism, each Convention State party is evaluated by two other State parties to the Convention. The most recent evaluation under UNCAC examined Ireland's implementation of Chapter II (Preventive Measures) and Chapter IV (Asset Recovery) and was published at end 2021. It recommended inter alia that Ireland 'consider lowering the limits in relation to gifts to public officials that are subject to mandatory declaration and refusal or remittance'.

Compliance with GRECO's anti-corruption standards are also monitored through a dynamic process of mutual evaluation and peer pressure. Ireland has been a member of GRECO since 1999 and was evaluated in GRECO's First (in December 2001), Second (in December 2005), Third (in December 2009) and Fourth (in March 2014) Evaluation Rounds. The Fourth Round addressed the theme of 'Corruption prevention in respect of members of

parliament, judges and prosecutors'. Eleven recommendations emerged for Ireland on issues such as replacing the existing ethics framework with a uniform and consolidated version; regular training being provided for members of parliament on issues such as ethics, corruption and conflicts of interest; and reviewing the system for the selection, recruitment, promotion and transfer of judges. GRECO assessed progress on these recommendations in 2017 and 2018 as 'globally unsatisfactory', however, following updates on implementation from Ireland, in 2020 GRECO concluded that Ireland's level of compliance was no longer to be ranked 'globally unsatisfactory'. GRECO's Fifth Evaluation Round of Ireland was adopted at the GRECO plenary meeting in June 2022. It contains nine recommendations for Ireland regarding top executive functions in central government including integrity checks ahead of appointment of senior office holders and public servants, risk assessments to inform corruption prevention policies, the adoption and dissemination of codes of conduct for persons with top executive functions covering all relevant integrity matters, training on integrity standards to take place regularly, and strengthening disclosure obligations and post term employment restrictions.

5.3 The European Union

As the cornerstone of the European Rule of Law Mechanism, the European Commission's annual Rule of Law Report monitors and offers views on significant developments relating to the rule of law in the Member States. This involves four pillars: the justice system, the anti-corruption framework, media pluralism, and other institutional issues related to checks and balances. Examples of areas that the Commission considers to be of concern in Ireland and outlined in the 2021 Rule of Law Report include the number of judges in Ireland in comparison to the EU average⁵⁷, and rules on state advertising in media. The 2022 Rule of Law Report recommends that Ireland strengthen the existing ethics framework, including on codes of conduct, asset declarations, revolving doors and lobbying, and in particular as regards the monitoring and enforcement capacity of the Standards in Public Office Commission.

5.4 Comparable legal/administrative jurisdictions

A theme that recurs in a survey of other State jurisdictions is that significant reform in this area are more often than not a consequence of major public controversies and political scandal (for example: in the US, the Watergate scandal of the 1970s in the UK the 'Cash for Questions' in the 1990s; the Cahuzac affair in France in the early 2010's).

⁵⁷ This concern should be caveated by the fact Ireland uses a common law system and is not directly comparative to civil law systems used throughout EU in regards to judicial numbers. We are closer in number of judges per capita of the UK, another common law system. The Department of Justice has established a working group to review the number and type of judicial resources in Ireland. This group is due to report to the Minister for Justice shortly.

In general, approaches adopted in the UK are a frequent a point of reference for Irish policy makers. In the case of Ethics provisions, the picture is complicated by creation of the devolved administrations in Scotland, Wales and Northern Ireland in the 1990s, which have instituted their own tailored arrangements, parallel to those that apply to MPs in the Westminster Parliament. A notable characteristic is that the provisions at Westminster and in the devolved administrations all refer to the set of seven core principles for Public Life (the Nolan Principles) established in the 1990s to underpin the significant reform undertaken by the UK Government at that time. The advantage of the Nolan Principles is that they provide a clear basis for what is expected from those participating in the UK's public life; they are supplemented by additional principles in the arrangements in the devolved administrations.

For similar reasons, the United States Canada, Australia and New Zealand, are of interest to Irish policy makers for comparison purposes. In the United States, the increasing partisan nature of politics at the federal level, and the erosion of the consensus that underpins the proper operation of the institutional framework of democracy, suggest that the systems for ethics in public life are under stress, raising questions as to the extent to which they continue to be fit-for-purpose. Australia and New Zealand enjoy relatively good reputations as to conduct in public life, but this may be as much a result of broader societal factors rather than particular attributes of their statutory and administrative provisions, which do not appear to be markedly more extensive than those in place in Ireland. Canada is seen in many aspects as an exemplar of good practice.

5.5 Statutory Frameworks in EU/EEA partners

The arrangements adopted in other EU Member states have developed within legal and administrative systems that differ in significant ways to Ireland's common law framework, and to this extent cannot be directly mapped onto an Irish context for convenient comparison purposes. The Nordic EU/EEA member-states (Denmark, Norway, Sweden, Finland and Iceland) share with New Zealand the highest rankings on the Transparency International Perceptions of Corruption Index, which is often referenced as global indicator of the relative extent of public sector corruption. However, like New Zealand, this may be more to attitudes that permeate the whole of society there rather than to any noteworthy aspects of the statutory or administrative frameworks that are in place (see below). On the other hand, other EU partners have undertaken significant reforms in recent years to the extent that their regimes are highlighted by the European Commission as examples of good practice in the EU context, such as, for example, France's *Haute Autorité pour la transparence de la vie publique (HATVP)*.

This collegiate body with thirteen members is an "independent administrative authority" under French public law: it cannot be instructed to take specific actions by the Government. Although funded by the State budget, it has financial autonomy. It is not answerable to the executive power and is solely subject to audit by the Supreme Court of auditors and

Parliament (e.g. hearings, parliamentary investigation committees) and control of administrative and judicial courts.

Among the newer Member States, Latvia performs relatively well in international evaluations: In GRECO's fifth evaluation round, Latvia's integrity framework is described as 'fairly comprehensive' and evaluators note that 'in the past twenty years, significant resources have been injected to curb corruption, strengthen accountability and augment public trust'. A 2020 compliance report noted that 'wide-ranging reforms have been launched ... with many promising initiatives underway'. Noteworthy recent developments include:

- A risk analysis of the integrity of political officials;
- Drafting of guidelines for cooperation between political and professional officials;
- The publication of information relating to advisory employees;
- An ethical infrastructure adopted by the State Police and State Border Guard.

5.6 Lessons from the Nordic countries

The Nordic countries - Denmark, Finland, Iceland, Norway and Sweden – consistently perform well in corruption perception indices and are frequently cited as a byword for good governance. Rather than any particularities of their statutory frameworks for ethics, this reputation appears to rest primarily on high expectations of and trust in senior officials, whether elected or appointed. (Iceland being a notable exception as society has become increasingly intolerant of corruption and conflicts of interest following the financial crisis of 2008 and significant legislation has followed).

A number of reasons may explain the region's relatively high standing in this regard.⁵⁸ Firstly, oversight of the executive and transparency in the law-making process are highly developed: the public can freely access official records (with certain exceptions concerning foreign affairs and national security) and the law-making process is very transparent, with draft bills issued for public consultation in advance of their being debated in parliament. Second, robust media scrutiny of government's claims and decisions ensure that public officials are held to a high standard.

Across the region, members of government and parliament, as well as senior public servants, are required to disclose any financial or other interests that might give rise to potential conflicts of interest. While the time for registering interests for members of government varies among the Nordic countries, it is generally shorter than in Ireland. In Finland and Sweden,⁵⁹ disclosures must be made upon taking office while in Denmark and Iceland members of government have thirty days in which to disclose their interests.⁶⁰ In

⁵⁸ FULLTEXT02.pdf (diva-portal.org)

⁵⁹ GRECO (coe.int); Fifth Round Evaluation Report on Sweden; (coe.int);

⁶⁰ Fifth Round Evaluation (coe.int); EVAL 5 Iceland (coe.int)

Norway, the disclosure regime is mandatory and all elected officials are compliant although no timeframe for disclosure is specified.⁶¹

Ministers and senior officials are subject to guidelines and manuals, some of which are sector specific (foreign affairs, police etc.), providing guidance on conflicts of interest and gifts. However, members of parliament are not required to make disclosures regarding gifts in Denmark, Finland and Sweden.⁶² In Iceland, all members of parliament must disclose any gifts received although no value threshold is stipulated.⁶³

Certain gaps in the region's approaches to ethics in public office are worth noting. Similar to Ireland's current statutory framework, a number of acts and formal guidelines govern different areas of public life and their application varies across different elements of the public sector. As such, there are no comprehensive acts with an overall definition of what constitutes a 'conflict of interest'. Moreover, ethics frameworks across the region are ambiguous on the question of whether or not a senior official's 'material interest' in a matter involving a spouse or family member constitutes a conflict of interest, as the right to personal privacy overrides other public interest considerations. The most recent GRECO review for each country recommended that disclosure regimes be strengthened in this regard.

Second, while disclosure regimes are in place for senior public officials, as in Ireland there is no mandate for officials to quantitatively value their disclosures. Disclosure requirements vary across the region meaning that in some countries officials are obliged to provide more information in comparison to their peers. GRECO's recommendations for a strengthened disclosure regime in the region also advocate strengthening in this area.

Third, no formal provisions cover engagement between public officials and lobbyists, including the disclosure of meetings and the topics under discussion. As Nordic countries typically evidence high level of trust between social groups this is understandable, however this has also given rise to the accusation that 'old boy's networks' continue to influence decision-making, particularly in Sweden.⁶⁴ Recent GRECO evaluations for all five countries recommended that they reform their lobbying guidelines to promote transparency over when meetings take place and the topics discussed.

Fourth, a phenomenon of 'revolving doors' between the public and private sector appears entrenched across the region. In Finland and Norway,⁶⁵ bodies similar to the Outside Appointments Board can assess job applications made by former ministers, state secretaries, special advisers and senior public officials within six months of them resigning or retiring from office. In Denmark, Iceland and Sweden there is no cooling off period and public officials are free to take up roles in the private sector immediately upon exiting public service

⁶¹ GRECO (coe.int)

⁶² Fifth Round Evaluation (coe.int); GRECO (coe.int); Fifth Round Evaluation Report on Sweden; (coe.int)

⁶³ EVAL 5 Iceland (coe.int)

⁶⁴ Fifth Round Evaluation Report on Sweden; (coe.int)

⁶⁵ GRECO (coe.int); GRECO (coe.int)

if they so wish. The recent GRECO evaluations for all five countries recommended a review of this practice.

Overall, while Nordic societies are committed to public engagement and willing to hold decision-makers to high ethical standards, maintenance of high standards in public office appears to rest on societal trust and an active media as much as it does on the relevant legislative frameworks. A cursory survey of the relevant statutory provision shows them to be not as detailed or far-reaching as those in certain other high-ranking jurisdictions.

The **Review of Selected International Bodies and Jurisdictions** that accompanies this Review Report provides further detail on the International agreements and the regimes of reference jurisdictions referred to in the Chapter.

6 Recent Developments

6.1 Policy Developments

The following policy and legal developments are significant in the context of the evolution of the statutory framework.

2020 PROGRAMME FOR GOVERNMENT

The 2020 Programme for Government, under the umbrella of reforming and reimagining public life, set out the Government intention to 'strive to re-shape our institutions from the town hall to the corridors of government to ensure it is fit for purpose for the next hundred years of our state.' Accordingly, the Government committed to reform and consolidate the Ethics in Public Office legislation.⁶⁶

REVIEW OF STRUCTURES AND STRATEGIES TO PREVENT, INVESTIGATE AND PENALISE ECONOMIC CRIME AND CORRUPTION (HAMILTON REVIEW) 2020

As part of the Government's package of White Collar Crime measures announced in 2017, a multi-agency review of Ireland's Anti-Fraud and Anti-Corruption Structures took place under the independent chairmanship of Mr. James Hamilton, former Director of Public Prosecutions. The subsequent Report of the Hamilton Review Group (2020)⁶⁷ made four recommendations relevant to ethics:

- Expedite the reform and strengthening of Ethics in Public Office legislation. The Group welcomed government commitments but noted '... any delay in implementing the proposed reforms will not only pose a set-back to the progress made in the context of Ireland's evaluations by the relevant international monitoring bodies, but will also have adverse implications for the State's anticorruption regime.'
- Enhance the independence and capacity of SIPO by ensuring ring-fenced funding. The Group elaborated that 'improving resourcing to SIPO will enable it fulfil its mandate. At present, current staffing levels at SIPO mean that an analysis of submitted returns is not possible. SIPO should be a strong, effective and independent body and this requires adequate autonomy and resourcing. Costs can be reduced by sharing services such as HR, accommodation and ICT with other organisations.'
- Consider further strengthening the criminal law in the area of public sector ethics, 'including the possibility of amending the Ethics Acts to create offences in such areas as nepotism in the hiring or contracting of elected and appointed public officials, preferential treatment based on a person's identity, and the improper use of influence.'

⁶⁶ Programme for Government; Our Shared Future at p. 120; <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/> DEF

⁶⁷ Available: <http://www.justice.ie/en/jelr/hamilton_review_group_report.pdf/files/hamilton_review_group_report.pdf>

- Expressly address the lacuna in the Ethics Acts regarding possible contraventions by ex-members of the Oireachtas who were not office holders at the time of the alleged contravention.

On foot of the Hamilton Report, a cross-government Action Plan on implementing reforms to tackle economic crime and corruption was published by the Department of Justice in April 2021. The plan sets out 22 actions to be completed across government over 18 months.

6.2 Legal Developments

TREATMENT OF BULLYING & HARASSMENT

A 2019 survey drew attention to the issue of bullying and harassment in the Houses of the Oireachtas.⁶⁸ While the Codes of Conduct of the Houses allude broadly to behavioural standards, the most relevant guidance is the Dignity and Respect Statement of Principles and Policy approved by the Houses of the Oireachtas Commission in 2018. The Statement of Principles 'sets the standards of respect, dignity, safety and equality that apply to everyone in the Parliamentary Community... in the Parliamentary Workplace.'⁶⁹ Both 'Parliamentary Community' and 'Parliamentary Workplace' are broadly defined.

The Ethics Acts have as their primary focus the avoidance and control of conflicts of interest arising for elected or appointed holders of public office and they do not target problematic behaviour covered inter alia in the 2019 survey. The range of behaviours covered in the Local Government Act may be wider than those covered by the Ethics Acts, and that this should be taken account of in the review.

ELECTORAL REFORM

Political donations are expressly excluded from the existing regime.⁷⁰ Expenses and political donations received by public representatives (TDs, Senators and Local Councillors) and political parties are governed by the Local Elections (Disclosure of Donations and Expenditure) Act 1999 and the Electoral Act 1997.

At the time of writing, this area is in flux. The Electoral Reform Act 2022 provides for the establishment of an independent Electoral Commission.⁷¹ Following a review of existing provisions by the Electoral Commission, a transfer of Functions from SIPO to the Commission will require further primary legislation. The timescale for this is unclear and interim measures may be required in any new legislative reform proposals for the Ethics Acts.

⁶⁸ Available: <https://data.oireachtas.ie/ie/oireachtas/corporate/reports/2019/2019-10-22_houses-of-the-oireachtas-parliamentary-workplace-survey-results_en.pdf>

⁶⁹ Houses of the Oireachtas Commission Dignity and Respect Statement of Principles and Policy at p. 4

⁷⁰ Ethics in Public Office Act, 1995, s15(2)(i)

⁷¹ Available: <https://www.irishstatutebook.ie/eli/2022/act/30/enacted/en/html>

THE JUDICIAL COUNCIL ACT

The Judicial Council was established in December 2019 under the Judicial Council Act 2019. The Council is responsible for promoting and maintaining 'high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts.'⁷² Other functions are to promote and maintain excellence in the exercise of judicial functions, the effective and efficient use of resources, continuing education of judges, respect for the independence of the judiciary, and public confidence in the judiciary and the administration of justice.

An independent Judicial Conduct Committee ('JCC') was established on the 30th of June, 2020 with a view to maintaining high standards of judicial conduct. Its powers, derived from the legislation, include:

- preparing guidelines for judicial conduct for adoption by the Council;
- considering complaints and undertaking investigations, taking necessary actions to safeguard the administration of justice arising from complaints or investigations;
- publishing guidelines for the resolution by informal means of admissible complaints; and
- providing advice and recommendations on judicial conduct.

The Judicial Council adopted guidelines on judicial conduct and ethics in February 2022. Once the necessary administrative arrangements were in place to allow the guidelines to become operational, the Minister for Justice made an order⁷³ to bring into effect the remaining sections of the Judicial Council Act concerning judicial conduct and ethics. With effect from 3 October 2022, complaints about judicial conduct⁷⁴ will fall to be addressed under the new procedures.

Notably, the judiciary is also subject to the Criminal Justice (Corruption Offences) Act, 2018.⁷⁵ However, the judiciary does not fall within the remit of the Ethics Acts or the PSSB. The question arises as to whether the judiciary should be subject to the ethics framework's disclosure of interest regime and whether the Judicial Council, in light of its independence, is better placed to administer this.

DATA SHARING AND GOVERNANCE ACT 2019

The Data Sharing and Governance Act, 2019 was enacted in March 2019. It allows for data sharing between public bodies subject to satisfaction of legislative criteria, 'Data Sharing Agreements' and the oversight of the Data Governance Board. Where legislative

⁷² Judicial Council Act, 2019, ss 7(1)(b)

⁷³ S.I. No. 489 of 2022 - the Judicial Council Act 2019 (Commencement) Order 2022

⁷⁴ i.e. complaints in respect of judicial conduct arising on and after that date, but not before. Information about the Judicial Conduct Committee can be found here

⁷⁵ Judges are considered officials, see Criminal Justice (Corruption Offences) Act 2018, s 2

requirements are satisfied, data sharing may proceed between public bodies without a legislative provision specifically allowing for it.

The Act may have implications for creating the infrastructure to crosscheck declarations of interest as recommended by the Moriarty Tribunal and in line with international standards.

ZALEWSKI V. AN ADJUDICATION OFFICER AND OTHERS

In April 2021, the Supreme Court decision in *Zalewski v. An Adjudication Officer and Others*⁷⁶ held that Adjudication Officers of the Workplace Relations Commission (WRC) were administering justice within the meaning of Article 34 of the Constitution. However, by a slim majority of 4:3, the constitutionality of the WRC was upheld by virtue of Article 37, a 'saver' provision', which provides for 'the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law...'. The decision is notable as it referred to the high standards of integrity required of decision-makers and has implications for quasi-judicial procedures (which may extend to investigations under the ethics regime.)

Despite upholding its constitutionality, the Supreme Court removed the WRC's prohibition on public hearings clarifying that 'proceedings may, but not must, be heard in public.' It also declared that the absence of provision for the administration of an oath, or any possibility of punishment for giving false evidence, was inconsistent with the Constitution. The decision has led to procedural ramifications for the WRC⁷⁷ and other bodies such as An Bord Pleanála, the RTB and Appeal Boards under section 29 of the Education Act, 1998.⁷⁸

The decision of *Zalewski* may also be significant in relation to the ethics review, the decision raises the following concerns for consideration:

- Decision-makers are distinct from judges yet should be held to comparable standards of integrity. At present, WRC Adjudicators are identified by Statutory Instrument as falling under the ethics disclosure regime. The status of other decision makers who may be self-employed is unclear.
- Is SIPO (or a prospective commissioner) administering justice and are there procedural ramifications.

⁷⁶ [2019] IESC 17, available <[https://www.bailii.org/cgi-bin/format.cgi?doc=/ie/cases/IESC/2021/2021IESC29.html&query=\(zalewski\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ie/cases/IESC/2021/2021IESC29.html&query=(zalewski))>

⁷⁷ Workplace Relations Commission, Supreme Court judgment: Impact on WRC Adjudications, the Workplace Relations Act 2015 and related statutes, available <https://www.workplacerelations.ie/en/news-media/workplace_relations_notices/supreme-court-judgment-impact-on-wrc-adjudications-the-workplace-relations-act-2015-and-related-statutes.html> accessed 5 August 2021

⁷⁸ Law Reform Commission, 'Webinar: Quasi Judicial Decision-Making Post *Zalewski*', May 12, 2021, available <<https://www.youtube.com/watch?v=IXUSik5S4t0>> accessed 26 July 2021

7 The Review's public consultation and engagement with key stakeholders - outcomes

The elements of the review as agreed by Government included a public consultation process and direct engagement with the significant stakeholders.

7.1 Public Consultation

A public consultation exercise (based on a detailed policy approach set out in a Consultation Paper) was launched by the Minister in November 2021 and closed in mid-January 2022. Eleven submissions were received: these include a limited number on behalf of individual citizens, as well as submissions from opposition political parties. Submissions were also received from Transparency International.

Themes emerging from the submissions include:

- The urgency of reform in this area, support for the 2015 Public Sector Standards Bill (PSSB) approach and regret that that Bill did not complete the legislative process;
- Calls for the reinforcement of the obligation of public officials, as well as the investigative and enforcement powers of SIPO, and its resources;
- Suggestions for generalised 'cooling off' periods, while acknowledging that a balance is to be achieved between personal freedom and obligations placed on public officials to safeguard the integrity of public life;
- Concerns flagged regarding increased administrative burden and the potential for a chilling effect on those considering entering the public sector, in particular the commercial State sector; and
- Proposals for reform in policy areas that are, in fact, covered by other legislation such as lobbying, protected disclosures, freedom of information, electoral funding; anti-corruption; professional ethics etc.

7.2 Engagement with certain key stakeholders

As part of the review process, the Department has also engaged directly with a range of the most significant stakeholders, including: the Committee on Members Interests of the Seanad; the Department of Housing, Local Government and Heritage; the Department of Justice; the Department of Health; the Office of the Attorney General and the Secretariat of the Standards in Public Office Commission. Submissions have been received from the Association of Irish Local Government and the County and City Management Association.

A selection of views are set out below.

DÁIL AND SEANAD COMMITTEES ON MEMBERS' INTERESTS

In its correspondence with the review, the Dáil Committee on Members' Interests highlighted concerns around the privacy of third parties resulting from the declaration of certain contractual arrangements that some public representatives may have with the State (e.g. tenants availing of the Housing Assistance and Rental Accommodation Scheme). The Committee also suggested that the declaration process move online rather than paper-based.

Officials from the Department made a presentation about the review to an informal meeting of the Seanad Committee on Members Interests in June 2022. The Committee then followed-up with a submission to the review.

In its submission, the Seanad Committee is broadly supportive of aims to consolidate the Ethics Acts and supports improving accountability and transparency in public life. However, it raised some concerns along the following lines:

- There will be excessive infringement on the privacy of Politically Exposed Persons (PEPs) and their families (the term Politically Exposed Person⁷⁹ arises in international financial regulation covering anti-money laundering and relates, broadly, to a person that is entrusted with a prominent public function - see Chapter 2).
- The recommended measures might act as a deterrent to those wishing to enter public life - disclosing non-Seanad earnings would raise privacy concerns and also place the business interests of PEPs and their families/business partners at risk.
- The Public Sector Standards Bill approach adopts a pyramid structure of corruption, with higher-ranking officials assumed to be more susceptible to corruption. The Committee does not share this conception of the incentives leading to corrupt actions.

Overall, the Committee wished to see a balanced legislative proposal that considers both the prevention of corruption and the experiences of PEPs and their families.

THE STANDARDS IN PUBLIC OFFICE COMMISSION

SIPO's Annual Reports dating back to 2004 contain recommendations for changes to ethics and electoral legislation - together with updates on progress. This includes, notably, eighteen recommendations relating to the statutory framework for Ethics. In previous reports, SIPO has indicated that nine of these recommendations would have been addressed by the enactment of the 2015 Public Sector Standards Bill.

⁷⁹ The Financial Action Task Force (FATF), the global watchdog that issues binding standards on money laundering and terrorist financing, uses the term Politically Exposed Person (PEP) to denote an individual who is or has been entrusted with a prominent function, some of which can be open to abuse for the purpose of laundering illicit funds or other predicate offences such as corruption or bribery. Section 37 of Ireland's Criminal Justice (Money Laundering and Terrorist Financing Act) 2010 broadly supports this definition with additional refinement based on a person's role with family members falling under the term 'close associate'.

The Minister wrote to the Chair of SIPO in February 2022 seeking the Commission's input to the Ethics Review.

The Chair noted in his reply that:

- The Commission broadly welcomes the review and the public consultation undertaken as part of it.
- It has previously set out its views on ethics reform in its annual reports and in a submission on the draft general scheme of the Public Sector Standards Bill.
- The Commission noted the proposal that Department's officials would engage with their correspondents in the Commission Secretariat to take the review forward at that level and the Commission has decided that its views will be brought to the Department through the Secretariat.

The Minister wrote also to each member of the Commission seeking their individual experience and perspectives as part of the review.

8 Significant themes emerging from the Review - Recommendations

The engagement described in Chapter 7 revisited a number of the themes central to the debate following the Mahon and Moriarty Tribunal Reports and in the subsequent development of the Public Sector Standards Bill (PSSB). It also brought to light a number of other issues arising from the on-going operation the current statutory framework, which has been in place for over twenty years.

A number of these themes are explored further below.

UNIFORM ETHICS OBLIGATIONS AT NATIONAL AND LOCAL GOVERNMENT LEVELS

Separate integrity regimes at national and local level lead to uncertainty on the exact requirements that should apply to officials and public representatives in different bodies and at different levels of government. Since the 2000s, SIPO has registered its concerns about a proliferation of statutory provisions on disclosure of interests in legislation relating to individual public bodies that are also subject to the provisions of the Ethics Acts. Successive SIPO annual reports have recommended that a comprehensive act is developed to consolidate the Ethics Acts and all other legislation providing for disclosure of interests and related provisions for public officials. GRECO's Fourth Round Evaluation Report on Ireland - published in November 2014 - recommended 'that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework..'. Subsequent GRECO evaluations have repeated the recommendation.

The Statement of Government Priorities 2014-2016 committed to: "...publish legislation to consolidate local and national ethics requirements and give effect to the recommendations of the tribunals." The 2015 Public Sector Standards Bill carried this forward provided for the consolidation of the statutory framework for ethics at both national and local government levels.

Consolidation of all statutory requirements has therefore been central to the policy approach since 2014, and the review considers that the policy rationale underlying this remains for the most part valid.

Reform of the statutory framework in this way would cover national and local government, the Ethics requirements for which are, as described in Chapter 2 above, set out in Part 15 of the Local Government Act 2001 (The LGA).

The current Code of Conduct for Local Councilors, issued pursuant to the LGA (among other statutes), covers a wide range of matters such as disorderly conduct, treating fellow Councilors and staff with courtesy, respect and dignity, as well as social media and use of council equipment. Given that the Ethics framework has as its primary focus the avoidance

and control of conflicts of interest, the review suggests that these wider issues arising in the Local Government sector continue to be addressed in the LGA or other relevant statute.

Recommendation

Consistent with the established recommended policy approach, the review agrees that legislative reform should provide a unified and consolidated regime for standards in public life covering both national and local government levels.

As part of this, relevant provisions of Part 15 of the Local Government Act 2001 be carried over into a consolidated and uniform statutory framework that applies to public representatives and officials at both national and local government levels.

PURSUING A PRINCIPLES-BASED APPROACH

As mentioned in Chapter 4, the policy approach underlying the Public Sector Standards Bill would have seen over-arching principles of integrity for public life set out in the legislative framework for the first time. These relate to the duty of public officials to maintain proper standards of integrity and concern for the public interest, and to use resources efficiently and effectively (in this context 'concern for the public interest' includes the principles of 'accountability and transparency'). The intention being that these principles would apply to all public officials and underpin the development and improvement of codes of standards and behaviour for different categories of public officials.

Statutory frameworks of other jurisdictions such as those established in the UK from the 1990s for the Westminster Parliament, the devolved administrations and local government include detailed principles for guidance. At the UK national level, these are the seven principles of public life stated in the 1995. First Report of the Committee on Standards in Public Life (the Nolan Report). These include principles of integrity, objectivity, accountability, openness, honesty, leadership, and respect. GRECO's 2014 fourth round evaluation of Ireland, (focusing on the theme of 'Corruption prevention in respect of members of parliament, judges and prosecutors'), recommended *inter alia* that the existing framework be replaced with a '*uniform and consolidated values-based normative framework.*'

The Review's public consultation exercise sought views on whether certain basic principles should be set out in statute. The majority of the responses received endorsed a principles-based approach. Some did this without going into further detail of what the principles should be, a number of others cite the Nolan Principles as an obvious benchmark, while others proposed well-developed sets of tailored principles, including those of transparency and timeliness.

Adopting a principles-based approach provides a foundation for sectoral bodies to vary or augment this code according to the specificities of their sectors. Moreover, decentralising codes of conduct ensures that public sector bodies are invested in maintaining the highest ethics standards. Given that public sector bodies already devise and implement their own codes of conduct.

Acting on this recommendation would bring Ireland into line with international good practice and address the GRECO recommendation.

Recommendation

The review proposes that the statutory framework provides for a model code of conduct to inform the development of sectoral codes.

The statutory basis for the model code should refer to high-level principles and values to underpin ethical conduct in public life. Sectoral codes can vary and/or augment these values to meet the circumstances of the sectors concerned.

NEW STATUTORY PROHIBITIONS

In line with proposals in the 2015 Public Sector Standards Bill, it is envisaged that new statutory prohibitions would be introduced on the –

- use of insider information,
- seeking by public officials of benefits to further their own interests, and
- locally elected representatives from dealing with land.

The first two above address outstanding recommendations from the Mahon Tribunal, as well as recommendations made in the 2020 Hamilton Report, and bring Ireland into line with international good practice. The third provision is carried over from the Local Government Act, to ensure that a consolidated regime maintains the prohibition already provided for the Local Government sector.

Recommendation

The review recommends that the statutory prohibitions listed above form part of new proposals for legislative reform.

PROMOTING TRANSPARENCY: OVERHAULING AND EXTENDING THE DISCLOSURE ARRANGEMENTS

The principle of transparency on the part of significant actors in our public life - ministers, legislators and senior public servants - in order that possible conflicts of interests can be judged and taken into account of as part of their overall accountability, is the main arm of the current statutory framework. As with all such principles carried into legislation, it must be balanced with other important policy considerations such as the right to privacy, and applied only to the extent necessary to ensure effective overall accountability.

The Public Sector Standards Bill strengthened the legal obligation on public officials to disclose as a matter of routine actual and potential conflicts of interest arising in the performance of their duties. Based on the view (taken *inter alia* by the Mahon Tribunal), that the more senior the public official the more significant the potential for conflicts of interest and opportunity for corruption, the approach divided them into three broad categories so that the more senior the official the more extensive the disclosure requirements. Declarations of interests by politicians and senior officials would be published (as is currently the case for politicians); in a new departure, certain private declarable interests (such as liabilities over certain thresholds) would also be disclosed by public representatives (and the most senior officials) **but this would be on a confidential basis and these would not be published** (see Chapter 4).

In its submission to the Review, the Seanad Committee on Members Interests took the view that, in the case of higher ranking political figures the risk of engaging in corrupt practices would out-weigh any benefits, particularly for elected officials. The Committee considered that actual opportunities for corruption may be greater in lower ranks of the public service, for example officials working in certain areas such as planning and immigration. This appears at odds with the rationale underlying the recommendations in the Mahon Report and the basis on which the category approach was adopted in the PSSB.

For civil servants, accountability can be ensured directly, in the first instance, in the reporting structure of their employment (i.e. officials are accountable to their manager and ultimately to the head of their Department/Office (the Secretary General). The hierarchical nature of the decision-making process involving a number of layers of scrutiny is intended to ensure that decisions are *inter alia* well founded and made on an objective basis. Internal audit processes also operate to identify irregularities. On the other hand, Government ministers and elected representatives are accountable to the Oireachtas in the first instance and ultimately to the electorate. This justifies wider public access to their declarations of interests so that citizens can be in a position to make an informed choice in democratic elections.

New legislation must seek in particular to take account of the outstanding relevant recommendations of the Moriarty and Mahon Tribunals. In practical terms, this must involve reinforcing the disclosures arrangements. While the categorisation approach may require further refinement, the underlying policy rationale remains valid. Strengthening the

disclosures regime along these lines would also address issues raised in the EU Rule of Law Report and implement relevant recommendations made by SIPO in its annual reports.

Recommendation

It is recommended that the extent of disclosure obligations vary according to the seniority and autonomy of the public official concerned. For this purpose and administrative efficiency, a limited number of broad categories can be created. Details of the categories can be finalised in consultation of the Office of the Attorney General, as part of the development of a general scheme for legislation.

Rather than on a fixed annual basis. Disclosures of interests should occur upon taking up a position and then updated as required.

Revised disclosure arrangements can be underpinned by electronic rather than paper based reporting.

A lack of clarity on the extent to which contracts (such as those with Local Authorities under the Rental Accommodation Scheme) should be declared under the current statutory framework was brought to light during 2022. In its correspondence with the review, the Dáil Committee on Members' Interests flagged concerns around the privacy of third parties (i.e. tenants availing of the Housing Assistance Payment and Rental Accommodation Scheme schemes) resulting from the declaration of these contractual arrangements. This issue should be resolved in legislation in order to ensure that there is maximum transparency in line with the spirit and intention of the original Ethics Acts balanced with individuals' right to privacy.

CALIBRATING DISCLOSURE REQUIREMENTS – CONFIDENTIAL REGISTER OF INTERESTS AND GRADUATED OBLIGATIONS

Transparency via disclosure of interest obligations will remain the main instrument of Government policy for protecting and reinforcing standards in public life. In this context, a significant aim of reform must be to increase transparency further in line with international best practice and public expectation.

One gap in the existing provisions pointed out by international observers is its silence on the declaration of significant liabilities. The Public Sector Standards Bill (PSSB) policy approach addressed this by providing for, in addition to the current public register of interests, a second confidential register for consultation by Commission officers only and containing finer grain detail concerning income, assets, gifts and particularly, liabilities over €50,000 (apart from a mortgage on a private home).

More broadly, the PSSB's graduated approach to disclosures, involving obligations increasing commensurate with the power and autonomy of the decision-maker, sought to take into account the significant influence of senior elected and appointed officials, while balancing other policy considerations such as their (and their spouse and family's), right to privacy. The issues of which official fell into which category raised some concerns during the Dáil debates on the PSSB. The review considers, nevertheless, that a graduated approach for disclosure obligations is valid and, suitably refined, should be part of new legislative proposals for reform.

Empowered in the Constitution and enjoying the ultimate right of decision across the spectrum of legislative acts, members of the Government sit at the apex of decision-making on the State's most far-reaching public policy choices and in the allocation of public resources. As their decisions influence every part of national economic and social life, the policy rationale is that they should demonstrate the greatest level transparency to underpin public confidence in their decisions. They form a natural core of officials from whom the most transparency is required. The Attorney General, and Ministers of State in certain circumstances, also participate in cabinet in discussions that justifies their inclusion in this category. Secretaries General are the accounting officers for their respective departments and enjoy considerable delegated authority and de facto autonomy in matters of policy and expenditure. Chairs of Oireachtas Committees, who hold considerable sway over the legislative agenda and the investigate functions of their respective committees, should also fall into this category.

National and locally elected representatives (TDs, Senators and members of local authorities) as well as members of the European Parliament, who do not have executive decision-making powers but exercise significant influence by virtue of their role as legislators suggest a separate category. For purposes of relative equivalence, members of the judiciary, officials at Assistant-Secretary level or equivalent in the civil/public service, members of State Boards may also be included.

A third category would include Principal Officer level in the civil service and equivalents in public bodies, as well as members of State boards, and local government.

All other civil and public servants and local Government staff would make a final category (see table).

CATEGORY OF PUBLIC OFFICIAL	Periodic Disclosure Requirement	Ad Hoc Disclosure Requirements	Additional disclosure Requirements (confidential)
Ministers, Ministers of State, Chairs of Oireachtas Committees, Ministerial Advisers, Secretaries General	Yes (Statement of Registrable Interests included on Register of Interests to published)	Yes	Yes (Additional Interests relates to 'registrable interests' of a spouse, civil partner or child that could materially influence public functions') Liabilities over €50,000
Members of the Oireachtas, MEPs Members of the judiciary and Local Authorities, Ast Secretaries or equivalent level	Yes (Statement of Registrable Interests; Register of Interests published)	Yes (Member or connected person that has a material interest in subject matter of proceedings or of functions or decisions)	Yes (Spouse, civil partner or child that has a material interest in the subject matter of functions or decisions)
Designated positions in both the civil and public services (PO level and certain positions below) and local authority prescribed employees	Yes (Statement of Declarable Interests)	Yes (employee or connected person that has a material interest in the subject matter of a function or decision)	Yes (Spouse, civil partner or child; interests that could materially influence public functions)
Civil/Public servants Local Government staff (Non Designated Positions)	No	No (Aside from general prohibition on conflicts of interest)	No

GENERALISING 'COOLING OFF' PERIODS

The issue of elected officials and senior public servants moving from the public service to roles in the private sector where they may engage almost immediately with ministers or the Government Departments or public bodies where they previously worked has raised certain public concerns. Significant measures have already been adopted that address this (see

text-box) but a number of high-profile cases have kept the issue in the spotlight since the Dáil last discussed the Public Sector Standards Bill in 2017.

The review's public consultation paper suggests generalised 'cooling off' periods to address conflict of interest issues as part of reform of statutory framework while noting that a balance has to be achieved between personal freedom and obligations placed on public officials to safeguard integrity in public life. Statutory provision for 'cooling off' periods are a common part of the regimes in the other jurisdictions examined as part of the review (Finland, for example, being less restrictive with a maximum of six months compared with up to three years in certain scenarios in France).

GRECO's Fifth Round Evaluation of Ireland (adopted in June 2022) recommends inter alia that post-employment restrictions be strengthened, ...' by making rules on taking employment after leaving office enforceable for all persons with top executive functions (PTEF)' (i.e. Ministers, the Attorney General, special advisers, Senior civil servants).

Overlaps between the Lobbying and the Ethics frameworks

Any restrictions contemplated of the freedom to earn a living must be limited as much as possible to meet a clearly defined policy goal and shown to be proportionate to the risk and objectively justified. The 2015 Regulation of Lobbying Act already provides that former public representatives and office holders, including Ministers and Ministers of State, are subject to a one-year "cooling-off" period, during which they cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances.

In light of this, a question arises of what further protections re to be achieved through broader cooling-off periods for elected and/or appointed public officials. This may relate to discrete (but nevertheless significant) issues such as use of insider information or abusing relationships with people still employed in the public service and may be addressed .by other means. In any case, as the public policy rationale for any restrictions would be closely related to those underlying provisions in the Lobbying Act, it can be expected that broader cooling-off periods are closely aligned with those provisions (12 months).

Recommendation

Any 'cooling-off' periods contemplated must be carefully targeted to address specific concerns not already covered by the framework for the regulation of lobbying and should align closely with the provisions of that legislation.

Further consideration should be given as to whether this should be through the model Code of Conduct or given a statutory underpinning.

'COOLING OFF' PERIODS - CURRENT OBLIGATIONS

Obligations on Senior Civil Servants

The Civil Service Code of Standards and Behaviour (issued in 2004 by the Minister for Finance pursuant to the Standards in Public Office Act 2001) provides that:

“Any civil servant intending to be engaged in or connected with (i) any outside business with which he or she had official dealings or (ii) any outside business that might gain an unfair advantage over its competitors by employing him or her, must inform the appropriate authority of such an intention.”

For civil servants at Principal Officer level and below, the appropriate authority is the Secretary General of their Department. For civil servants at Assistant Secretary Level and above, the appropriate authority is the Outside Appointments Board (OAB), which was established for that purpose under Code.

This is an administrative, non-statutory Board, with a non-Civil Service Chair. Its purpose is to provide independent scrutiny of employments that civil servants at Assistant Secretary level and above, including Special Advisers at that level, propose to take up within one year of leaving the civil service. It is empowered to decide on applications where the nature of the appointment could lead to a conflict of interest.

Equivalent provisions apply to senior local authority officials

Obligations concerning lobbying

The 2015 Regulation of Lobbying Act seeks to support transparency around communication between the political systems, public service and all sectors of society,

Section 22 of the Act provides that “relevant Designated Public Officials (DPOs)” (Ministers and Ministers of State, Special Advisers and Senior Public Servants) are subject to a one-year cooling-off period. During this period relevant DPOs cannot engage in lobbying activities in specific circumstances, or be employed by, or provide services to, a person carrying on lobbying activities in specific circumstances, namely.

The making of communications comprising the carrying on of lobbying activities (as defined in section 5 of the Act) which:

- 1. Involves any public service body with which the relevant DPO was connected, that is, employed or held an office or other position in the year prior to their leaving, or*
- 2. Is to a person who was also a DPO who was employed or held an office or other position with that public service body in the year prior to the person's leaving.*

A person subject to the one-year cooling-off period may apply to the Standards in Public Office Commission for consent to undertake such activities or be employed by a person who is undertaking such activities. The Commission may decide to give consent unconditionally or to give consent with conditions attached. The Standards Commission may also decide to refuse the application for all or part of the one-year "cooling off" period.

EXTENT OF THE STATUTORY FRAMEWORK: ROLES IN THE COMMERCIAL STATE SECTOR; JUDICIARY

Although Office holders, elected representatives and senior civil and public servants are the principal focus of the statutory framework, some less central roles are also captured while other significant actors in public life are not currently covered.

Because in the Ethics Acts salary levels are linked to civil service grades (i.e. everyone at P.O. level and above as well certain prescribed roles at grades below that) set the thresholds for declaration obligations, layers of management in certain commercial State companies below the top executive level (which is normally intended to be covered by the statutory framework) may nevertheless find that they have obligations to declare under the Acts. The ESB has drawn attention to this issue during the review's public consultation. However, it should be noted in this regard that a significant number of civil and public servants at grades below top executive level also find themselves in roles that also attract these obligations.

On the other hand, while certain constitutional roles (such as members of the judiciary) are covered in only a very limited way by the tax clearance requirements of the current framework, they are not covered by the statutory requirements on declarations of interest. Also, while their State pensions are set at a level understood to be sufficient to ensure that recipients should not need to resume professional activities on retirement, there is a trend for retired members of the judiciary to remain professionally active in closely associated fields such as commercial mediation or as members of international commercial tribunals. Attorneys General have also taken up senior positions in the private sector on leaving office and, as noted above, GRECO has recommended that, as a PTEF, the Attorney General should also be covered by post-public sector employment controls. The question of whether cooling-off periods should apply for these roles therefore also arises.

Recommendation

The development of proposals for legislative reform for Government approval, should examine in consultation with the Attorney General and the Department of Justice whether any constitutional or deontological obstacles prevent the inclusion of the judiciary in a consolidated and unified statutory regime.

In the event that a regime of 'cooling off' periods is put in place for elected office holders, extension of the arrangement to cover the role of Attorney General and the judiciary should also be examined.

REINFORCING POWERS OF INVESTIGATION, SANCTIONS AND ENFORCEMENT

The European Commission's Rule of Law Report 2022 chapter on Ireland recommends that Ireland '*Strengthen the existing ethics framework [...] in particular as regards the monitoring and enforcement capacity of the Standards in Public Office Commission.*'

The statutory framework created in the 1990s emphasises transparency as the principle arm in minimising and mitigating the conflicts of interest that can foster corrupt practices. However, this approach has limits if it is not complemented by effective sanctions: A risk arises that the dissuasive effect of the regime decreases over time if it appears that no effective consequences arise from clear breaches of the law. Over twenty years' experience of operation of the current arrangements show some basis for this view. It can also be seen as a waste of resources in terms of the specialist expertise required to bring investigations (often taking a number of years) to a sufficient level of proof to support clear findings only for them to have little or no consequences.

While effective sanctions for serious transgressions may be essential to prevent erosion of the regime's effectiveness, at the same time, to maintain confidence in the system, such sanctions must be proportionate.

The inquisitorial approach developed by SIPO under the current statutory framework seeks to establish findings of fact through investigations and hearings as a basis for determining whether or not a breach of the statute has occurred. While rigorous in allowing for right of reply and natural justice, it has proven lengthy and cumbersome in dispatching relative clear-cut cases of breach of statutory duty. To address this, it might usefully be complemented a range of fixed sanctions that ensures that certain clear-cut breaches can be addressed promptly and proportionately.

The Central Bank's Administrative Sanctions Procedures - covering prescribed contravention(s) by regulated financial service providers and persons currently or formerly concerned in their management – present a possible model. These procedures provide for a detailed decision-making process that allows for sanctions to be applied in proportion to the contravention committed, but also take account of mitigating factors such as cooperation with the Bank. On the other hand, administrative sanctions such as these would see the commission operating a quasi-judicial function that risks presenting drawbacks similar to

Recommendation

In preparing proposals for legislative reform for Government approval, it is recommended that a range of appropriate sanctions is developed with fixed fines for breaches of disclosure obligations combined with the benefits of the existing inquisitorial model.

those of the status quo. In this context, a system of Fixed Penalty Notices appealable through the courts may prove a more straight-forward and effective remedy.

REFORMING THE COMMISSION'S STRUCTURE: ROLE OF THE DEPUTY COMMISSIONER

Over two decades of experience under the current statutory framework allows for assessment of the strengths and weakness of the institutional structure of the Standards in Public Office Commission and its effectiveness in fulfilling its statutory role.

Under the current configuration, the Commission includes a serving or former judge, the C&AG, the Ombudsman, the Clerk of the Dáil, and the Clerk of the Seanad, as well as a former member of one of the Houses of the Oireachtas. This brings a range of valuable perspectives of constitutional and legal requirements as well as administrative best-practice and awareness of the practical realities of the day-to-day of political representation. On the other hand, this structure can be unwieldy: members by virtue of their office are very busy with their primary roles and it has proved challenging to schedule statutory meetings requiring the presence of all members. Procedures required under the statutory framework are prone to becoming drawn-out and can be difficult to bring to completion.

The Public Sector Standards Bill 2015 envisaged a stand-alone Public Sector Standards Commissioner to replace the six-member Commission and lead the organisation (supported by a Deputy Commissioner and the secretariat).

It was foreseen that this could be undertaken as part of the Ombudsman's portfolio (e.g. the Ombudsman is also currently the Information commissioner, etc.), which aligns with the governance arrangements in the Ombudsman's Office. This is the model used for the Information Commissioner and will be used for the new Protected Disclosures Commissioner. However, when this aspect was debated in the Dáil, concerns were raised as to how the risk of having a lot of power housed in one individual was to be managed.

The structures favored for statutory regulatory bodies have evolved since the Ethics Acts reached the statute book. Since the 2000s, a three-commissioner model has emerged for utility regulation (COMREG for telecommunications, the Commission of Regulation of Utilities for energy and water). However, given the specificities of the matters treated by the Commission, these appear to be of limited value as models for a reformed commission.

Given that the matters to be addressed by the Commission raise sensitive parliamentary, political and constitutional questions, it is worthwhile to carry-over the range of perspectives available in current commission structure, while at the same time making it more flexible and responsive. To this end, the single-Commissioner model of the PSSB policy approach might be augmented by a board-structure, whereby an Executive Commissioner – in the person of the Ombudsman - would oversee SIPO's day-to-day operations supported by the secretariat, who would also lead investigations. The Commissioner would be supported by a

representative Board in making determinations on foot of certain statutory procedures and investigations and setting sanction according to statutory framework.

Potential statutory role of Deputy Commissioner

The PSSB provided for a new statutorily independent role of a Deputy Commissioner to manage investigations. It was intended that the Deputy Commissioner would appoint investigating officers (also statutorily independent) and submit investigation reports to the Commissioner to adjudicate on, while the Commissioner would have the power to (re)hear oral evidence in respect of any contested evidence. This allowed for a clear separation of powers so that the Commissioner cannot be perceived as acting as “judge and jury” in a particular case. Reform of the Commission structures along the lines suggested above may go some way to address these concerns such that a distinct role for the deputy commissioner to be carved out in statute may no longer be warranted.

Scrutiny of outside appointments of departing senior officials

An overhauled and restructured Commission might also assume the functions of the current, non-statutory Outside Appointments Board, established under the 2004 Civil Service Code of Standards and Behaviour to scrutinise of post-employment appointments that civil servants propose to take up (and the equivalent Outside Appointments Board for the Local Government sector).

Recommendation

The review recommends that a restructured Commission is led by an executive Commissioner supported by a board with equivalent institutional representation to that of the current Commission.

The restructured Commission can assume the function of the current non-statutory Outside Appointments Board established under the 2004 Civil Service Code of Standards and Behaviour and the equivalent Board for the Local Government sector.

ANNEX A - Codes of Conduct

Codes of Conduct at National Level

THE CODE OF CONDUCT FOR MEMBERS OF DÁIL ÉIREANN

Further to Article 15.10 of the Constitution⁸⁰ and the Ethics Acts, members of the Oireachtas adopt a model of self-regulation in which the electorate is considered 'the final arbiter' of Members' conduct.'

The Code's preamble contains the following principles:

- Members 'recognise that it is in their individual and collective interest to foster and sustain public confidence and trust in their integrity as individuals and in Dáil Éireann as an institution.'
- Members 'should at all times be guided by the public good and ensure that their actions and decisions are taken in the best interests of the public.'

The Code's substantive provisions are broadly as follows:

- Members must act: in good faith to advance the public interest.
- Members must act in accordance with the spirit of the Code and not bring the integrity of their office or Dáil into serious disrepute.
- Members must act in a manner consistent with public representation.
- Preventing and resolving conflicts of interest is a matter of individual responsibility.
- A conflict of interest arises where a Member '...participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person's private financial interest directly or indirectly.' A benefit due to class membership is excluded.
- Benefit or profit in exchange for influence in (voting etc.) is prohibited.
- Members must 'fulfil conscientiously' duties regarding the registration and declaration of interests and familiarise themselves with guidance.
- Gifts: 'incidental gifts and customary hospitality' are permitted. However, acceptance of gifts 'that may pose a conflict of interest' or potentially interfere with honesty and impartiality is prohibited.
- Members must prudently apply public resources prudently for the purposes intended.
- Members must not use of official/confidential information for personal gain.
- Members must co-operate Tribunals of Inquiry and other bodies.

⁸⁰ Constitution of Ireland, Article 15.10: *Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.*

THE CODE OF CONDUCT FOR MEMBERS OF SEANAD ÉIREANN⁸¹

The substance of this Code closely mirrors the Code of Conduct for Members of Dáil Éireann above, save that the electorate is not advanced as the final arbiter of conduct.

THE CODE OF CONDUCT FOR OFFICE HOLDERS

The significant elements of Code of Conduct for Office Holders⁸² include:

- **The purpose of the Code of Conduct** (as set out in the Ethics Acts) is restated.
- **Clarification of persons to whom the Code of Conduct applies.**
- **The requirement to observe the Code of Conduct is emphasised.**
- **Principles of Ethical Conduct:** the Code contains expressions of principle in that office-holders have a personal responsibility/duty to 'keep faith with public trust.' To that end, there is a duty to promote the common good, act fairly and impartially, to conscientiously and prudently apply the resources of their office in furtherance of the public interest and to observe the highest ethical standards in the performance of their duties.' The Code cites SIPO on 'the general principle that the public interest should always take precedence over the interests of the individual and, perhaps more importantly, over the interests of a political party whether in power or in opposition.'
- **The highest ethical standards are advanced:**
'Office holders should at all times observe the highest standards of behaviour and act in good faith with transparency, fairness and impartiality to promote the common good in the performance of their official functions. Office holders in particular should act only by reference to and dedicate the resources of their offices in furtherance of the public interest, make decisions and encourage and support the making of decisions on merit and without discrimination, not be influenced in their official duties by personal considerations, be accountable for their decisions, protect the integrity of the offices they hold, respect confidences entrusted to them in the course of their official duties, respect at all times the role of the Accounting Officers of their Departments and the obligations of staff under the Civil Service Code of Conduct.'
- **Chairs of Committees:** the Code refers to the 'increasing role and importance of Committees in the Houses of the Oireachtas' so that Chairs should '...be mindful of this increased responsibility in the conduct of their business.'
- **Statutory obligations relating to conduct in public life:** the Code highlights duties under the Ethics Acts and related legislation including the Prevention of Corruption Acts.

⁸¹ Code of Conduct for Members of Seanad Éireann (Adopted by Seanad Éireann on 18 April, 2002, SIPO) available <<https://www.sipo.ie/documents/english/Code-of-Conduct-for-Members-of-Seanad-Eireann.pdf>>

⁸² Government of Ireland, The Code of Conduct for Office Holders, (July 2003, SIPO), available: <<https://www.sipo.ie/documents/english/Code-of-Conduct-for-Office-Holders-.pdf>>

- **Additional Guidance for Office Holders** includes cooperation with Tribunals of Inquiry, accountability to the Houses of the Oireachtas and the proper use of public resources.
- **Business and other interests:** the general position that office holders '...should not engage in any activities that could reasonably be regarded as interfering or being incompatible with the full and proper discharge by them of the duties of their office' is stated. In addition, there is distinct prohibition on company directorships, professional practice, decision-making or management of the affairs of a company or practice and financial interests that are potentially a real or apparent conflict. Lastly, as regards post-employment, the Code prescribes that real or apparent conflicts should be avoided. No time period is set, but guidance that 'particular care should be taken in the first few months following departure from office.'
- **Lobbyists:** the Code provides that lobbying should not 'give rise to a conflict between public duty and private interest.'
- **Records of Official Meetings:** note-taking is endorsed in the office-holder's own interest.
- **Appointments:** it is emphasised that appointments should be merit-based.
- **Gifts:** there is cross reference to the Government Guidelines for Office Holders. There is additional guidance on travel and accommodation; 'office holders should not accept offers to meet the costs of travel facilities and/or commercial accommodation in connection with official activities (including of a spouse/partner if so accompanied), where such offers are made by private citizens or private enterprises.'
- **Constituency Matters:** it clarifies that Ministers are free to make representations on behalf of constituents, including to other Ministers.
- **Guidelines:** to facilitate compliance, SIPO-issued guidelines are attached to the Code. The Guidelines refer to disclosure requirements for office holders both as members and as office holders, as well as special advisers and general guidance.

THE CIVIL SERVICE CODE OF STANDARDS AND BEHAVIOUR

The Civil Service Code of Standards and Behaviour was promulgated by the Minister for Finance under the Ethics Acts in September 2004. It is broader in both substance and application than the Ethics Acts, encompassing general conduct rules and applying to 'all staff' including civil servants whose remuneration/seniority is too low to lead to obligations under primary legislation. The Code is not mere guidance; it is part of the terms of employment of all civil servants. Breaches are therefore contractual and may result in disciplinary action.

The Code sets out standards under three headings; service delivery, behaviour at work, and standards of integrity. Behaviour relates to attendance and performance, regard for state resources and relations with colleagues. Sections 13 to 21 deal with standards of integrity

and coincides most clearly with ethics. Rules relate to improper influence, conflicts of interest, disclosure of conflicts of interest, gifts, hospitality, payment for work on behalf of outside bodies, contracts with, purchases from or sales to Government Departments/Offices, acceptance of outside appointments and of consultancy engagement following resignation or retirement and the Outside Appointments Board.

Key points of interest are:

- **Principle-based Mission:** The Code is based on an overarching mission; *'... the achievement of an excellent service for Government and the other institutions of State as well as for the public as citizens and users of public services, based on principles of integrity, impartiality, effectiveness, equity and accountability.'*

The Code expands on the elements impartiality and of integrity but does not directly define the latter principles.

- **Impartiality:** impartiality is regarded as part of the standards underpinning service delivery and extends to a prohibition on displays of partiality.
- **Prohibition on Improper influence:** the Code prohibits officials using positions to benefit themselves or others with whom they have personal, family, business or other ties;
- **Prohibition on Conflicts of Interest:** the term conflict of interest is not defined but there is broad prohibition of engagement or connection with 'any outside business or activity which would in any way conflict with the interests of the Departments/Offices or tend to impair their ability to carry out their duties as civil servants.' The Code imposes an obligation on civil servants to inform human resources management before such engagement.
- **Prohibition on Gifts:** the Code is express that its provisions are 'more stringent' than the Ethics Acts and therefore additional to the disclosure obligations of those senior civil servants who occupy designated positions. The Code covers apparent conflicts by prohibiting acceptance of gifts that 'might reasonably be seen to compromise... personal judgement or integrity.' The Code suggests that modest gifts (it provides the examples of pens or diaries) may be retained whereas gifts of more substantial value should be refused, or forfeited to the Department or Office. The Code stresses the application of offences under anti-corruption legislation. The Standards Commission provides additional guidance on gifts beyond the Code, by an information note.
- **Hospitality:** the Code accedes to the impossibility of definite rules covering the acceptance of hospitality in all circumstances. However, it stresses the 'overriding concern' that '...all actions of civil servants in carrying out their official duties be above suspicion and not give rise to any actual or potential conflict of interest, and that their dealings with commercial and other interests should bear the closest possible scrutiny.' There is an obligation to report offers of hospitality from commercial interests 'which

have or might have contractual relations with the Department/Office of the civil servant'. The Code defines permissible 'routine hospitality' while prohibiting hospitality that falls outside this definition.

- **Payment for outside work:** Managerial oversight applies to payment for outside work and there is a prohibition on seeking or retaining payment where work for an outside body arises '...because of his or her official position.'
- **Public contracts:** civil servants contracting privately with Government Departments or Offices for the supply of goods or services is prohibited. There is an obligation to disclose involvement in outside undertakings and a prohibition on acceptance of directorships (except as a nominee of a Minister) in any company holding a Government contract or in a company which may reasonably be expected to hold such a contract in future.
- **Outside Appointments:** provisions aim to '...foster a culture in which civil servants are fully aware of the potential for conflict of interest in accepting positions outside the Civil Service.' Accordingly, there is a duty to inform the relevant authority of outside appointments while civil servants who hold "designated positions" are subject to a twelve-month moratorium whereby appointments that could constitute a conflict must be approved by a non-statutory Outside Appointments Board (OAB).

For civil servants holding designated positions, guidelines of the Standards Commission provides information on ethical compliance.⁸³

Codes of Conduct at Local Government Level

CODE OF CONDUCT FOR COUNCILLORS⁸⁴

At local government level, two Codes for local councillors and local authority employees) complement primary legislation, and 'form an integral part of the ethical framework'. The Code of Conduct for Councillors has the following stated objectives derived from the LGA;

- To set out principles and standards of conduct, respect, dignity, equality and integrity for councillors, in performing their functions and in their relationship with each other, Council employees and with the public.
- Inform the public of the conduct it is entitled to expect from its elected representatives.
- Uphold public confidence in local government.

⁸³ 'Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 And 2001; Public Servants' (SIPO, 10 Edn, November 2003) available: < <https://www.sipo.ie/acts-and-codes/guidelines/public-servants/7.21-PS-Guidelines-10th-edition-English-updated-July-2021.pdf>>

⁸⁴ Department of Housing, Planning and Local Government, Code of Conduct for Councillors; Local Government Act 2001 Ethical Framework for the Local Government Service, available: < <https://www.gov.ie/en/publication/48675-code-of-conduct-for-councillors/>>

Key features are:

- **Declaration of Understanding:** as part of their annual declaration under section 171 of the 2001 Act, Councillors must declare that they have read and understood the Code.
- **Principles:** the introduction contains articulation of 'core principles underlying democratic local government'; 'acting in good faith and with fairness and impartiality for the common good and to promote the public interest.'
- **Interpretive Guidance:** The Code is express that interpretation should be broad and purposive based on the principles which express the spirit of the Code. Literal interpretation to the exclusion of the principled spirit is discouraged.
- **Standards of Behaviour:** In accordance with the public trust placed in them, Councillors are held to 'the highest ethical standards'. The Code prescribes they should:
 - Act with integrity to uphold public service values;
 - Act in a way that enhances public trust and confidence;
 - Serve their local authority and its citizens honestly, conscientiously and impartially;
 - Prevent conflicts of interest arising and never seek to use improper influence;
 - Promote equality and avoid bias;
 - Treat their colleagues and local authority employees with courtesy, respect and dignity;
 - Courtesy and respect should also be observed when using social media channels, messaging applications and written communications.
- **Meetings:** behaviour at meetings should ultimately stand to public scrutiny. Councillors are reminded of the local authorities' statutory obligations 'to prevent any improper conduct or behaviour in the workplace that is likely to put the safety, health and welfare of others at risk, including bullying behaviour and harassment.' Councillors should familiarise themselves with their local authority's Dignity at Work policy (or equivalent policy promoting respect, dignity, safety and equality in the workplace) and seek to conduct themselves in accordance with the principles of that policy.
- **Conflicts of Interest:** the Act restates requirements under the LGA. In addition to disclosure of pecuniary and beneficial interests under the statutory regime, the Code advocates transparency and disclosure of personal interests, for example, family, close friends or business associates, as well as those arising from a position of responsibility in a club, society or other organisation. Cognisance of actual and perceived impropriety is recommended. The Code propounds a positive 'special onus' on councillors to 'clearly demonstrate the separation between personal business interests and their role'. There is a general prohibition on the use of official position for

improper benefit extending to connected persons as well as a prohibition on the use of confidential information.

- **Planning:** the Code emphasises transparency, due process and application of statute in planning decisions. The special relevance of conflict of personal and public interest and compliance with relevant legal requirements in planning is advanced.
- **Lobbying:** statutory requirements are restated and Councillors are referred to further resources (lobbying.ie and Standards Commission document, 'Guidance for Local Authority Members.'
- **Gifts:** the legislative prohibition under the LGA of gifts connected with the performance of function is restated. The 'overriding concern' is that councillors' actions are 'above suspicion and not give rise to any conflict of interest and that their dealings with business and other interests should bear the closest possible scrutiny and avoid any risk of damage to public confidence in local government.'
- **Hospitality:** save for normal protocol and courtesies, acceptance of hospitality does not influence them, and could not reasonably be seen to influence them, in discharging their official functions.
- **Social Media & Use of Equipment:** Social Media activity relates to the use of any Council equipment or personal devices, e.g. mobile phones, desktop computers, laptops or tablets, supplied to councillors or their own devices used for the purposes of communication to others including fellow councillors, employees or members of the public. Councillors shall comply with a local authority's Computer and I.T. Resources Acceptable Use Policy and shall abide by the Terms and Conditions as outlined by the local authority on taking up of office. The Code provides a list of examples of unacceptable use/misuse of social media.
- **GDPR:** statutory requirements are highlighted.
- **Personal Dealings with the Local Authority:** seeking preferential treatment is prohibited.
- **Regard for Council Resources:** reasonable care for local authority property, resources and funds and not use them, or permit their use, for unauthorised or non-official purposes.
- **Contraventions:** legal regulations are restated and the Code provides guidance that complaints should be addressed to the Ethics Registrar in the first instance, if needed thereafter, the Standards Commission.
- **General:** among its general provisions is guidance that councillors should aim to deal with specific challenges not envisaged by the Code in accordance with the Code's principles and intent.

THE CODE OF CONDUCT FOR LOCAL AUTHORITY EMPLOYEES⁸⁵

This Code applies to all employees whether full-time or employed on an atypical basis. Breaches may constitute a breach of employment terms and may result in disciplinary action. The language and substance mirrors that for Councillors. Key features include:

- **Principles/Standards:** honesty, integrity, impartiality and performance of the local government service are mentioned as 'core values'. Local authority employees must:
 1. *Maintain the highest standards of integrity by:-*
 - avoiding conflicts of interest and never seeking to use improper influence;
 - acting in a way which enhances public trust and confidence;
 - not using their official position or resources of the local authority for personal gain;
 - ensuring that their conduct does not bring the integrity of their position or of local government into disrepute.
 2. *Maintain public confidence in performing their work by:-*
 - serving their local authority conscientiously, honestly and impartially;
 - performing their duties with diligence, efficiency and courtesy;
 - making impartial decisions based on examination of the facts, merits and law relating to each case and not taking account of their personal considerations.
 3. *Observe appropriate behaviour at work by:-*
 - treating their colleagues and councillors with courtesy and respect;
 - dealing with the public courteously, fairly and promptly;
 - promoting equality and avoiding bias in their dealings with the public.
- **Conflict of personal and public interest:** private or personal interests must not be allowed to conflict with public duty. Employees must 'avoid and/or resolve '...any conflict or incompatibility between their private or personal interests and the impartial performance of their duties.' Both actual and apparent impropriety are covered; a litmus test of public perception applies to conflicts generally as well as 'gifts/ hospitality, outside employment and other matters covered by this Code.' Statutory disclosure obligations are restated and instructive examples of scenarios triggering disclosure obligations are provided.

⁸⁵ Department of the Environment, Heritage and Local Government, Local Government Act 2001, Code of Conduct for Local Authority Employees (January 2007), available <<https://www.sipo.ie/acts-and-codes/codes-of-conduct/local-authority-members/Code-of-Conduct-for-Employees.pdf>

- **Planning:** the Code endorses transparency, the application of due process and application of the statutory planning framework to planning matters. The Code flags the particular relevance of conflict of interest and outside employment to planning.
- **Gifts:** the Code restates relevant statute and again stresses the test of public perception and confidence in local government. The Code allows for official gifts but provides that 'no other gifts other than infrequent items such as diaries, calendars, pens or other infrequent tokens of modest intrinsic value, should be accepted.' Instructive scenario-based guidance is included.
- **Hospitality:** the principle underlying acceptance of hospitality is that it must not influence them, and could not reasonably be seen to influence them, in discharging their functions. Save for routine or customary hospitality (a business lunch; or attendance at an event) all offers of hospitality from commercial interests with actual or potential contractual relations with the local authority, must be reported for direction. Hospitality that is not routine must be both in the interests of the local authority and approved by management.
- **Employees' business dealings with local authority:** as an overriding principle, the Code states no special favours should be shown to businesses with financial, family or other connections to employees and provides guidance in this regard.
- **Personal dealings with local authority:** there is a prohibition on seeking preferential treatment.
- **Regard for council resources:** employees must show all reasonable care for resources, obtain proper authorisation for liabilities and fully observe rules on claims etc.
- **Attendance and outside employment:** on attendance, statutory rules are restated (s.159 of the LGA). The Code warns against allowing the prospect of employment to create a real or perceived conflict of interest. Accordingly, offers of outside employment should be immediately disclosed to management. Employees intending to accept an appointment that could give rise to a conflict of interest 'should' inform the appropriate authority. There is additional oversight of employees to whom Part 15 of the Local Government Act, 2001 (Ethical Framework for the Local Government Service) applies. That class of employee is prohibited from (within twelve months of resigning or retiring) accepting an appointment, or consultancy, where 'the question of a conflict of interest could arise' without obtaining the approval of the appropriate authority.
- **Satisfactory working relationships:** in interactions with the public, colleagues and councillors, employees should observe the principles of 'respect for others, equality and a duty to uphold and abide by the law and a responsibility to ensure a courteous, efficient and impartial service.' The Code advises treating the public equitably, courteously, without bias/impartially. 'The Ombudsman's Guide to Standards of Best Practice for Public Servants' is cross-referenced. That guidance prescribes good public service should be proper, fair, open and impartial. The Code is express on respect between Councillors and employees.

- Criminal convictions: there is an obligation to report charges/convictions and revocation of relevant licences.
- General: employees are guided to apply the principles to situations unforeseen by the Code and to err on the side of caution in doubt by consulting a supervisor.

ANNEX B - Report of the Tribunal of Inquiry into Certain Planning Matters & Payments

Relevant Recommendations

1.16 Conflicts of interest are a root cause of corruption. A conflict of interest arises where an elected or appointed public official has a private interest which is likely to be affected by the exercise of his or her public powers. Logically, a public official is less likely to exercise those powers in the public interest when he or she is in a position to use them for his or her own personal benefit. Moreover even where a public official does not use his or her public powers to further his or her own interests, the mere appearance that he or she has done so is in itself problematic. In particular, apparent conflicts of interest weaken the public's faith in democratic institutions and distract its attention from substantive policy issues focusing it instead on scandals. Several of the inquiries conducted by this Tribunal involved such apparent conflicts of interest.

1.17 Controlling conflicts of interest is therefore a central element in an effective anti-corruption strategy and plays an essential role in promoting transparency and accountability in public life. Generally measures aimed at controlling conflicts of interests seek to ensure that those interests likely to give rise to such conflicts are identified and, if necessary, subject to further regulation.

1.18 Currently, conflicts of interest at national level are regulated by the Ethics Acts 1995 and 2001 (the "Ethics Acts") and their related codes of conduct, while those at local level are regulated by Part 15 of the Local Government Act 2001 (the "LGA") and its related codes of conduct (collectively, "the conflict of interests measures"). These acts and codes essentially require the disclosure of interests likely to give rise to a conflict of interest as well as the supplementary regulation of certain types of conflicts. Enforcement of the conflict of interest measures is in the hands of the Standards in Public Office Commission (SIPO), the Dáil and Seanad Select Committees on Members Interests and Local Authorities.

1.19 The Tribunal is concerned that the existing conflicts of interests measures do not sufficiently identify or otherwise regulate certain types of conflicts of interests. Consequently, it is making a number of recommendations which are designed to ensure the full disclosure of all interests likely to give rise to an actual or apparent conflict of interest. It is also recommending that certain types of interests which pose particular risks of corruption be subject to increased regulation. Other recommendations seek to make the enforcement of the conflict of interest measures more effective, mainly through increasing the role of SIPO. In this respect, the Tribunal believes that there are significant problems with the existing enforcement provisions which greatly weaken the ability of the conflict of interest measures to control corruption in politics. This is also true of sanctions for breaches of the Ethics Acts which are also the subject of a recommendation.

1.20 The conflict of interests measures provide for two types of disclosure, periodic and ad hoc. Under the periodic disclosure provisions, public officials must make an annual disclosure of certain categories of interests to a register of interests. This helps both the public official him or herself and others to determine in advance whether a particular interest is likely to give rise to a conflict of interest. It can also be used by the criminal investigating authorities for the purpose of investigating corruption offences. In contrast, ad hoc disclosure is made if and when a conflict of interest arises. Typically, it covers a far broader range of interests than periodic disclosure.

1.21 One of the problems with the current disclosure requirements is that they predominantly apply to interests held by the public official him or herself. Specifically, in the case of periodic disclosure, only certain public officials are required to disclose interests held by family members and/or dependent persons and only to a very limited extent. Moreover, they are not required to disclose interests held by corporate entities or other legal arrangements, even those entities/arrangements in which they have a controlling interest. While the ad hoc disclosure requirements have a broader personal scope, they do not, for example, cover interests held by friends, employers, electoral donors, business associates or certain legal arrangements. In the course of its inquiries, the Tribunal inquired into several conflicts arising from interests held by such persons and arrangements. For the disclosure requirements to be effective, it is therefore imperative that these interests be covered. Consequently, the Tribunal is making a number of recommendations aimed at extending the personal scope of the periodic and ad hoc disclosure requirements.

1.22 The Tribunal is further concerned that the material scope of both the periodic and the ad hoc disclosure requirements is too narrow and that a number of types of interests capable of giving rise to conflicts of interests are not covered by those requirements. Consequently, in so far as periodic disclosure is concerned, the Tribunal is recommending the removal of several exceptions and limitations contained in the existing requirements. It is also recommending that those requirements be extended to cover a number of interests which they do not currently cover, including liabilities and assets as well as any non-pecuniary interest capable of being reasonably perceived to give rise to a conflict of interests.

1.23 With regard to ad hoc disclosure, the Tribunal is recommending that the disclosure requirements be extended to cover those interests which could reasonably be seen to be capable of influencing a public official in the performance of his or her public functions. In certain instances, this will mean that public officials will be under a new obligation to disclose the following interests: apparent conflicts of interests; non-material interests; electoral donations; interests enjoyed by a public official as part of a class of persons; as well as those interests already disclosed in the context of a periodic disclosure.

1.24 The Tribunal's recommendations also affect the timing of periodic disclosure. Currently, public officials are required to make a periodic disclosure of interests on an annual basis. Consequently, in some instances, a significant period may elapse between the time a person becomes a public official and his or her first disclosure of interests. Moreover, where there is

a material change in those interests in the course of a year, a public official is not required to disclose this change until the following year. The Tribunal is concerned that both of these issues may seriously and adversely affect the accuracy of the register. It is consequently recommending that public officials be required to make a periodic disclosure of interests within 30 days of entering public office and to update any interest contained in such disclosure within 30 days of a significant change in that interest, or after the acquisition of a new interest.

1.25 Other recommendations focus on extending the disclosure requirements to interests in the form of gifts or income which either pre-date or post-date the public official's time in public office. Gifts or income which pre-date that time may be as likely to give rise to conflicts of interest as those received while in public office. Moreover, the disclosure of gifts or income received after the public official has retired from public office can be important for the purpose of uncovering undeclared conflicts of interest while in office, or even actual corruption.

1.26 As part of the purpose of disclosing interests likely to give rise to a conflict of interest is to promote transparency in public decision-making, the Tribunal is also recommending that both periodic and ad hoc disclosures of interest be more widely published and disseminated. This should have the added benefit of increasing the likelihood of non-compliance with those requirements being drawn to the attention of the relevant authorities.

1.27 Certain types of interests pose particular risks from an anti-corruption perspective including in particular: gifts; access to inside information; and ancillary and post-term employment. The Tribunal considers that merely requiring the identification of these interests is not sufficient to control the risks of corruption which they present. Consequently, several of its recommendations seek to further regulate such interests. In this respect, the Tribunal is recommending that public officials be prohibited from accepting any gift in excess of a stipulated amount where that gift could reasonably be considered to be connected with their public office. In addition, it is recommending that the Officeholders' Code of Conduct further regulate conflicts of interests arising from the use of insider information.

1.28 With regard to ancillary employment, the Tribunal is recommending that each public official who falls within the scope of the Ethics Acts be prohibited from entering into a contract for the provision of goods or services to a public body while a public official and for a period of one year thereafter. Similarly, at local level, it is recommending that public officials falling within the scope of the LGA be prohibited from entering into such contracts with the local authority of which he or she is a member/employee. It is also recommending that an elected member who is engaged in ancillary professional activities involving the sale and/or development of land should be prohibited from dealing with any land which has been the subject of a decision changing its planning or rezoning status during that Member's term of office and for two years thereafter, unless he or she has recused him or herself from voting on that decision. Furthermore, public officeholders should be required to obtain permission before accepting employment or a consultancy position after leaving public office

where the nature or terms of that employment or position could be reasonably perceived to give rise to a conflict of interest.

Enforcement

1.29 Successful enforcement of the conflict of interest provisions is clearly a key element in ensuring their effectiveness. Currently, SIPO is largely responsible for enforcing those provisions in respect of public officials who are officeholders. The provisions covering Oireachtas Members are enforced by the members themselves. Similarly, local authority members have a role in enforcing the conflict of interest measures applicable to them, in conjunction with local authority management

1.30 The Tribunal is of the view that there are a number of problems with the existing enforcement mechanisms. In this regard, the Tribunal believes that the self-regulatory approach to enforcement of the conflict of interest provisions is a matter for concern. In particular, it is questionable whether either Oireachtas Members or Local Authorities enjoy the requisite independence or resources to carry out effective investigations. More generally, the public tends to view self-regulation as a soft option and to lack credibility. Consequently, the Tribunal is recommending that SIPO be given an increased role in the enforcement of the conflict of interest measures in so far as both Oireachtas Members and local councillors are concerned. It is also making a number of other recommendations designed to improve SIPO's effectiveness. Specifically, it is recommending the introduction of simplified complaint procedures, that anonymous complaints be permitted, and that SIPO be given increased powers of investigation. At local level, the Tribunal is recommending that the LGA be amended so as to provide for a formal complaint procedure regarding possible non-compliance with the conflict of interests provisions, make provision for whistle-blower protection and require local authorities to provide information regarding the enforcement of the conflicts of interests measures in their annual reports.

1.31 It is also recommending that increased emphasis be placed on the prevention of conflicts of interest, at both national and local level, through training, education and research.

Sanctions

1.32 The Oireachtas may either suspend or fine an Oireachtas Member who has breached the conflict of interest provisions. In contrast, a local councillor who breaches the conflict of interest provisions at local level may be the subject of a criminal prosecution. The Tribunal considers that in some instances at least, a breach of the Ethics Acts by an Oireachtas Member should be a criminal offence and it is consequently making a recommendation to this effect.

Conflict of Interests⁸⁶

1) Each person falling within the scope of the Ethics in Public Office Acts 1995 and 2001 (the “Ethics Acts”) or Part 15 of the Local Government Act 2001 (the “LGA”), (collectively “public officials”) should be required to disclose periodically his or her own specified interests as well as those held by:

- his or her family members, or any other person who is wholly or substantially dependent on that public official or whose affairs are so closely connected with that official’s affairs that a benefit derived by the person, or a substantial part of it, could pass to the public official (a “related person”)
- corporate entities and/or other legal arrangements in which the public official or one of the above mentioned persons has a controlling legal or beneficial interest as well as any other entities or arrangements in which the former entities/arrangements have a controlling interest

2) In addition, to the interests which currently require disclosure, each public official should be required to disclose periodically the following categories of interests:

- Assets
- Liabilities
- Sources and amounts of income
- Any company in which the person has a legal or beneficial interest
- All company offices held by the person and all company management positions
- The person’s legal and beneficial interests in land including the family home
- All gifts and benefits of more than a specified amount received by the person in the relevant period which reasonably appear to be unconnected with that person’s public office
- Non-pecuniary interests in so far as those interests are capable of being reasonably perceived to give rise to a conflict of interests

3) Each public official should be required to:

- Make a periodic disclosure of interests within 30 days of entering public office and update any interest disclosed in the context of a periodic disclosure within 30 days of a significant change in that interest
- disclose the source of any income in excess of €1,000 and gifts/benefits in excess of €250 received either within the twelve months prior to assuming public office or subsequent to leaving it

⁸⁶ Tribunal of Inquiry into Certain Planning Matters, *Final Report*, (2012) at pp. 2566 - 2570

- 4) Each public official should be required to disclose on an ad hoc basis any interest which could be reasonably seen to be capable of influencing him or her in the performance of his or her public functions ("ad hoc disclosure")
- 5) Both periodic and ad hoc disclosures should be made more widely available. In particular:
 - Periodic disclosures made under the LGA should be published on the relevant local authority's website as should minutes of local authority meetings and documents debated in the course of those meetings
 - Ad hoc disclosures made by both elected and senior non-elected public officials should be published, including those made at cabinet meetings
- 6) Both the Members' and Officeholders' codes of conduct should be amended so as to define a conflict of interest to include all interests which could be reasonably considered to influence a Member's or Officeholder's performance of his or her public functions
- 7) Each Public official should be prohibited from receiving any gift or benefit which could be reasonably perceived to be connected with the performance of his or her public functions other than gifts of a nominal value provided in the course of the performance of those functions
- 8) Further measures should be introduced to regulate conflicts of interest arising out of the use of inside information by Officeholders
- 9) Each public official falling within the scope of the Ethics Acts ("national public official") should be prohibited from entering into a contract for the provision of goods or services to a public body both while a public official and for a period of one year following the end of his or her term in office. Equivalent restrictions should be placed on a public official falling within the scope of the LGA ("local public official") from entering into such contracts with the local authority of which he or she is a member/employee
- 10) Each local elected representative should be prohibited from dealing with land both during his or her term of office and for a period of two years thereafter where the Local Authority of which that representative is a member has made a decision changing the planning or zoning status of that land during that representative's term of office, where he or she has voted on that decision and where he or she is engaged in an outside activity which primarily involves the sale and/or development of land
- 11) Conflicts of Interest on the part of Officeholders arising from post-term employment should be subject to increased and more effective regulation
- 12) The enforcement provisions applicable to conflicts of interests at national level should be modified so as to:
 - Give the Standards in Public Office Commission (SIPO) a supervisory role over the Select Committees

- Permit SIPO to: (i) accept an anonymous or oral complaint (ii) sit with a quorum of three members; (iii) appoint an inquiry officer when carrying out its own investigations; and (iv) seize documents
- Place increased emphasis on the prevention of conflicts of interests through training, education and research.

11) The system for enforcing the conflict of interests provisions in the LGA should be modified so as to:

- Give SIPO a supervisory role over enforcement at local level
- Provide for a formal complaint procedure
- Provide for whistle-blower protection for complainants
- Require each local authority to include information on the application and enforcement of the conflict of interests' measures in its annual report
- Place increased emphasis on the prevention of conflicts of interests through training, education and research

ANNEX C - SIPO Recommendations Regarding the Ethics Acts 2019/2020 and Progress

No.	2019	2020
1	<p>OWN INITIATIVE INQUIRIES</p> <p>The Commission should be granted the power to appoint an Inquiry Officer to conduct a preliminary inquiry into a matter in the absence of a complaint under the Ethics Acts.</p> <p>(Chapter 1, 'Own initiative inquiries', Annual Report 2004) The Public Sector Standards Bill 2015 would meet this recommendation.</p>	<p>REPEATED</p> <p>The Commission should be granted the power to appoint an inquiry officer to conduct a preliminary inquiry into a matter in the absence of a complaint under the Ethics Acts.</p> <p>(Chapter 1, 'Own initiative inquiries', Annual Report 2004)</p> <p>Progress: None.</p>
2	<p>QUORUM</p> <p>Provision should be made for a quorum of not less than three members (including in all cases, the Chairperson) for the hearing of an investigation under the Ethics Acts.</p> <p>(Chapter 4, 'Proposed amendments to the Ethics Acts', Annual Report 2008) The Public Sector Standards Bill 2015 would establish a Public Sector Standards Commissioner in place of the Commission.</p>	<p>REPEATED</p> <p>Provision should be made for a quorum of not less than three members (including in all cases, the Chairperson) for the hearing of an investigation under the Ethics Acts.</p> <p>(Chapter 4, 'Proposed amendments to the Ethics Acts', Annual Report 2008)</p> <p>Progress: None.</p>
3	<p>DIRECT LAYING OF REPORT</p> <p>The Commission should directly lay its annual report before each House of the Oireachtas rather than furnishing it to the Minister for Public Expenditure and Reform who then lays it. (Introduction, Annual Report 2010) The Public Sector Standards Bill 2015 would meet this recommendation.</p>	<p>REPEATED</p> <p>The Commission should directly lay its annual report before each House of the Oireachtas rather than furnishing it to the Minister for Public Expenditure and Reform who then lays it.</p> <p>(Introduction, Annual Report 2010)</p> <p>Progress: None.</p>

<p>4</p>	<p>FORMER PUBLIC OFFICIALS</p> <p>Legislation should be introduced to ensure accountability of all former public officials, including those not currently covered by the Ethics Acts.</p> <p>(Chapter One, Ethics, Annual Report 2019)</p>	<p>REPEATED</p> <p>Legislation should be introduced to ensure accountability of all former public officials, including those not currently covered by the</p> <p>Ethics Acts. (Chapter One, Ethics, Annual Report 2019)</p> <p>Progress: None.</p>
<p>5</p>	<p>TIME LIMITS</p> <p>There should be amendments to the time limits within which Statutory Declarations, Tax Clearance Certificates and Application Statements are to be made or issued and furnished to the Commission by elected members and by appointees to senior positions and directorships in the public service.</p> <p>(Chapter 1, 'Tax Clearance Provisions - observations to the Minister for Finance, Annual Report 2003)</p> <p>The Civil Law (Miscellaneous Provisions) Act 2008 amended the deadline for the making of a statutory declaration by a person recommended for appointment to judicial office from one month to three; a similar provision for elected members and senior public servants would be required in order to meet the recommendation.</p> <p>The Public Sector Standards Bill 2015 would meet this recommendation and would provide for annual compliance.</p>	<p>REPEATED</p> <p>There should be amendments to the time limits within which statutory declarations, tax clearance certificates and application statements are to be made or issued and furnished to the Commission by elected members and by appointees to senior positions and directorships in the public service.</p> <p>(Chapter 1, 'Tax Clearance Provisions - observations to the Minister for Finance, Annual Report 2003)</p> <p>Progress: None.</p>

<p>6</p>	<p>CODE OF CONDUCT</p> <p>A code of conduct should be adopted for public servants and members of state boards in the wider public service.</p> <p>(Chapter 1, 'Codes of Conduct for Public Servants', Annual Report 2003)</p> <p>The Public Sector Standards Bill 2015 would introduce a model code of conduct applicable to all public officials and provide for individual codes in each public body. The Commission recommends provision be made for sectoral codes. An amendment passed at Committee Stage in Dáil Éireann in April 2017 would provide for sectoral codes for civil servants and special advisers and for members and employees of local authorities.</p>	<p>REPEATED</p> <p>A code of conduct should be adopted for public servants and members of state boards in the wider public service.</p> <p>(Chapter 1, 'Codes of Conduct for Public Servants', Annual Report 2003)</p> <p>Progress: None.</p>
<p>7</p>	<p>DESIGNATED CHAIRPERSON AS OFFICE HOLDER</p> <p>Motions should be initiated in the Houses of the Oireachtas to designate the Chairpersons of Oireachtas Committees as office holders for the purposes of the Ethics Acts.</p> <p>(Chapter 1, 'Ethics Acts', Annual Report 2005)</p> <p>The Public Sector Standards Bill 2015 would remove the distinction between office holders and other Oireachtas members.</p>	<p>REPEATED</p> <p>Motions should be initiated in the Houses of the Oireachtas to designate the chairpersons of Oireachtas committees as office holders for the purposes of the Ethics Acts. (Chapter 1, 'Ethics Acts', Annual Report 2005)</p> <p>Progress: None.</p>
<p>8</p>	<p>CONSOLIDATION</p> <p>There should be a comprehensive act consolidating the Ethics Acts and all other legislation providing for disclosure of interests and related provisions for public officials.</p> <p>(Chapter 2, 'Overlapping Ethics Frameworks', Annual Report 2009) The Public Sector Standards Bill 2015 would meet this recommendation.</p>	<p>REPEATED</p> <p>There should be a comprehensive act consolidating the Ethics Acts and all other legislation providing for disclosure of interests and related provisions for public officials.</p> <p>(Chapter 2, 'Overlapping Ethics Frameworks', Annual Report 2009)</p> <p>Progress: None.</p>

<p>9</p>	<p>ETHICAL PRINCIPLES</p> <p>There should be an amendment of the provisions for complaints about a 'specified act' to allow reference to a high level statement of the ethical principles to be followed by public servants and public representatives.</p> <p>(Chapter 2, 'High Level Statement of Ethical Principles', Annual Report 2009)</p> <p>Nothing to report.</p>	<p>REPEATED</p> <p>There should be an amendment of the provisions for complaints about a 'specified act' to allow reference to a high-level statement of the ethical principles to be followed by public servants and public representatives.</p> <p>(Chapter 2, 'High Level Statement of Ethical Principles', Annual Report 2009)</p> <p>Progress: None.</p>
<p>10</p>	<p>BROADEN SCOPE OF CONNECTED PERSON</p> <p>There should be an amendment of the definition of 'connected person' (see definition in Appendix 3) to provide that a person is a "connected person" to a company (see definition in Appendix 3) of which he or she is a director and that the other directors of that company are also "connected persons" to that person.</p> <p>(Chapter 2, 'Connected Persons', Annual Report 2009)</p> <p>The Public Sector Standards Bill 2015 would meet this recommendation.</p>	<p>REPEATED</p> <p>There should be an amendment of the definition of 'connected person' (see definition in Appendix 3) to provide that a person is a "connected person" to a company (see definition in Appendix 3) of which he or she is a director and that the other directors of that company are also "connected persons" to that person.</p> <p>(Chapter 2, 'Connected Persons', Annual Report 2009)</p> <p>Progress: None.</p>
<p>11</p>	<p>LIABILITIES AS DISCLOSURES</p> <p>There should be a requirement that liabilities be disclosed as 'registrable interests'.</p> <p>(Chapter 2, 'Disclosure of Liabilities', Annual Report 2009)</p> <p>The Public Sector Standards Bill 2015 would meet this recommendation.</p>	<p>REPEATED</p> <p>There should be a requirement that liabilities be disclosed as 'registrable interests'.</p> <p>(Chapter 2, 'Disclosure of Liabilities', Annual Report 2009)</p> <p>Progress: None.</p>

12	<p>WHOLE SERVICE APPROACH TO EXPENSES</p> <p>A whole of public service approach to preventing and detecting double claiming of travelling and subsistence expenses should be adopted.</p> <p>(Chapter 2, Complaints, Annual Report 2014)</p> <p>The Department for Public Expenditure and Reform issued guidance on this in October 2015.</p> <p>The Department provided procedures to follow in the event an employee of a public service body travels for official business and has the potential to claim for the refund of travel and subsistence costs from more than one body.</p>	NOT REPEATED
12	<p>COMPLAINTS-FORMER MEMBERS</p> <p>Explicit provision should be made to allow complaints against members of the Oireachtas in circumstances where the matter comes to light after the member has left office.</p> <p>(Chapter 1, Ethics, Annual Report 2017)</p> <p>Nothing to report.</p>	<p>REPEATED</p> <p>Explicit provision should be made to allow complaints against members of the Oireachtas in circumstances where the matter comes to light after the member has left office.</p> <p>(Chapter 1, Ethics, Annual Report 2017)</p> <p>Progress: None.</p>
13	<p>NOTIFICATION RE NEW APPOINTMENTS</p> <p>The Act should be amended to require that public bodies notify the Commission of new appointments to senior office, to facilitate the effective implementation of tax compliance requirements.</p> <p>(Chapter 1, Ethics, Annual Report 2017)</p> <p>Nothing to report.</p>	<p>REPEATED</p> <p>The Act should be amended to require that public bodies notify the Commission of new appointments to senior office, to facilitate the effective implementation of tax compliance requirements.</p> <p>(Chapter 1, Ethics, Annual Report 2017)</p> <p>Progress: None.</p>

<p>14</p>	<p>DATE OF EFFECT</p> <p>That future regulations prescribing designated positions of employment be made effective on 1 January of the year following their promulgation.</p> <p>(Chapter 1, Ethics, Annual Report 2018)</p> <p>Minister has agreed with recommendation; no new regulations since recommendation made.</p>	<p>REPEATED</p> <p>That future regulations prescribing designated positions of employment be made effective on 1 January of the year following their promulgation.</p> <p>(Chapter 1, Ethics, Annual Report 2018)</p> <p>Minister has agreed with recommendation; no new regulations since recommendation made.</p>
<p>15</p>	<p>UPDATE DESIGNATED POSITIONS</p> <p>That regulations prescribing designated positions of employment be updated regularly and that the prescription of new positions in a body to be established (whether entirely new or bodies being merged) be considered as part of the process of establishment. In addition, the Commission should be informed of the creation/ merger/ dissolution of such bodies.</p> <p>(Chapter 1, Ethics, Annual Report 2018)</p> <p>Nothing to report.</p>	<p>REPEATED</p> <p>That regulations prescribing designated positions of employment be updated regularly and that the prescription of new positions in a body to be established (whether entirely new or bodies being merged) be considered as part of the process of establishment. In addition, the Commission should be informed of the creation/ merger/ dissolution of such bodies.</p> <p>(Chapter 1, Ethics, Annual Report 2018)</p> <p>Progress: None.</p>
<p>16</p>	<p>STREAMLINE POST EMPLOYMENT MEASURES</p> <p>Various pieces of legislation that address ethics for elected officials and civil and public servants, including post-employment provisions, should be streamlined with a view to ensuring consistency and efficiency.</p> <p>(Chapter 1, Ethics, Annual Report 2019)</p> <p>New.</p>	<p>REPEATED</p> <p>Various pieces of legislation that address ethics for elected officials and civil and public servants, including post-employment provisions, should be streamlined with a view to ensuring consistency and efficiency.</p> <p>(Chapter 1, Ethics, Annual Report 2019)</p> <p>Progress: None.</p>

<p>17</p>	<p>URGENTLY REVISE ETHICS</p> <p>The incoming government should give urgent consideration to passage of revised ethics legislation at an early stage.</p> <p>(Chapter 1, Ethics, Annual Report 2019)</p> <p>New.</p>	<p>REPEATED</p> <p>The incoming government should give urgent consideration to passage of revised ethics legislation at an early stage.</p> <p>(Chapter 1, Ethics, Annual Report 2019)</p> <p>Progress: The Programme for Government in 2020 announced a review of the current ethics framework.</p>
<p>18</p>	<p>LOCAL AUTHORITY RECOMMENDATION – ROTATE ETHICS REGISTRAR</p> <p>The role of ethics registrar in local authorities should be rotated less frequently than the current two years, to allow for capacity-building and the development of knowledge and expertise, and should be at a senior level within the organisation.</p> <p>(Chapter 1, Ethics, Annual Report 2019)</p> <p>New.</p>	<p>REPEATED UNDER ETHICS HEAD</p> <p>The role of ethics registrar in local authorities should be rotated less frequently than the current two years, to allow for capacity-building and the development of knowledge and expertise, and should be at a senior level within the organisation.</p> <p>(Chapter 1, Ethics, Annual Report 2019)</p> <p>Progress: None.</p>

ANNEX D - Summary GRECO Evaluations

The following table shows the progression of Ireland's compliance status to 'partly implemented' with the introduction of the PSSB followed by a finding of failure to implement two recommendations due to the lapse of the PSSB and/or omission to reform the Ethics Acts.

**'GRECO trusts that [training provision] will be further improved upon following the enactment of the new ethics legislation in the future.'*

GRECO concluded:

GRECO RECOMMENDATION	2014	2017	2018	2020	2022
Consolidated Framework	Recommendation (I) Issued (Based on Ethics Acts)	Partly Implemented (PSSB)	Partly Implemented (PSSB)	Not Implemented (PSSB Lapsed)	Not Implemented (PSSB Lapsed)
Improved Asset Declaration Regime	Recommendation (II) Issued (Based on Ethics Acts)	Partly Implemented (PSSB)	Partly Implemented (PSSB)	Not Implemented (PSSB Lapsed)	Not Implemented (PSSB Lapsed)
Consolidated Independent Monitoring Mechanism	Recommendation (IV) Issued (Based On Ethics Acts)	Satisfactorily Implemented (Based on SIPO And PSSB Proposals)	Satisfactorily Implemented (Based on SIPO And PSSB Proposals)		
Training Provision	Recommendation (V) Issued (Based on Ethics Acts)	Partly Implemented	Partly Implemented	Satisfactorily Implemented* <i>*(SIPO Included Ethics In Its Training On The Electoral Act 1997, To Oireachtas Members And Staff.)</i>	Satisfactorily Implemented*

'The implementation of the two other pending recommendations on the establishment of a uniform and consolidated legal framework for ethical conduct of members of parliament ... (recommendation i) and improvements of the asset declaration regime (recommendation iii) has however taken a step back, due to the lapsing of the Public Sector Standards Bill 2015.'⁸⁷

⁸⁷ GRECO, Fourth Evaluation Round Corruption Prevention In Respect Of Members of Parliament, Judges and Prosecutors; Second Interim Compliance Report Ireland (18 November 2020) at p. 9 <<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a06655>> accessed 11 June 2020.

ANNEX E - Contributors to the Public Consultation

The review's public consultation exercise was held between November 2021 and mid-January 2022. In total, eleven responses were received: As well as submissions from four members of the public, responses to the consultation were received from the following groups/organisations:

- The Association of Irish Local Government
- The Civil Engagement Group (Senators Alice-Mary Higgins, Lynn Ruane, Frances Black, and Eileen Flynn)
- The ESB
- The Labour Party
- Sinn Féin
- The Social Democrats
- Transparency International Ireland



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