



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

# Statutory Framework for Ethics in Public Office: Survey of International Bodies and Selected Jurisdictions

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# 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.

Moreover, the State also considers the effectiveness of models for governing standards in public life adopted in comparable jurisdictions. The arrangements adopted in other jurisdiction provide context and examples of best practice for Ireland to draw upon. All jurisdictions develop differently according to their political system, legal system, history and economies etc. which, in turn, shape their approaches to governing standards in public life.

The lessons Ireland might draw from international comparisons can have a number of different aspects including:

- 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. the UK, and its devolved administrations, the United States, Canada, New Zealand and Australia); and,
- The arrangements adopted by EU (and EEA) partners, with whom we increasingly share vital interests and align our approach
- Identifying innovative policy frameworks that could, with modification, be utilised in Ireland
- Identifying cross-national themes that are a concern in many jurisdictions
- Contextualising Ireland's ethics framework and noting that despite its need for reform, it continues to compare well with international peers

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## 2 International Organisations of which the State is a Member

### The Organisation for Economic Co-operation and Development (OECD)

The Organisation for Economic Cooperation and Development (OECD) works with member governments, policymakers and citizens, to establish evidence-based international standards and develop solutions to a range of social, economic and environmental challenges. Ireland was among its founding members in 1961.

The OECD Recommendation on Public Integrity,<sup>1</sup> adopted in 2017, provides policymakers with the blueprint for a public integrity strategy. The strategy puts forth a comprehensive risk-based approach that emphasises cultivating a culture of integrity across the whole of society. The strategy makes 13 recommendations based on three pillars - system, culture and accountability.

Adherents to the strategy are asked to:

- Demonstrate commitment at the highest political and management levels within the public sector to enhance public integrity and reduce corruption
- Clarify institutional responsibilities across the public sector to strengthen the effectiveness of the public integrity system
- Develop a strategic approach for the public sector based on evidence and aimed at mitigating public integrity risks
- Set high standards of conduct for public officials
- Promote a whole-of-society culture of public integrity, partnering with the private sector, civil society, and individuals
- Invest in integrity leadership to demonstrate a public sector organisation's commitment to integrity
- Promote a merit-based, professional, public sector dedicated to public service values and good governance
- Provide sufficient information, training, guidance and timely advice for public officials to apply public integrity standards in the workplace
- Support an open organisational culture within the public sector responsive to integrity concerns, in particular through
- Apply an internal control and risk management framework to safeguard integrity in public sector organisations.

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<sup>1</sup> Available at: <https://www.oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf>

The OECD's Public Integrity Handbook contains guidance on implementation, which provides a basis for political and senior management to demonstrate their commitment to public integrity through codified standards in legislative and institutional frameworks. Such standards include acting with integrity, serving the public interest, and preventing and managing conflicts of interest.

The OECD has also developed 'OECD Public Integrity Maturity Models',<sup>2</sup> to assess elements of integrity systems, and identifies standing in relation to good practice.

## United Nations Convention against Corruption (UNCAC)

The United Nations Convention against Corruption (UNCAC)<sup>3</sup> aims to promote integrity, accountability and proper management of public affairs and public property. Ireland ratified the Convention in 2011.

The convention has four main elements – preventative measures, criminalisation and law enforcement, international cooperation and asset recovery – with the articles on preventive measures (5-14) the most relevant to ethical standards. Article 8, in particular, requires the promotion 'integrity, honesty and responsibility' among public officials.

Ireland's participation in the UN's Anti-Corruption Convention involves peer review processes by which our legislative framework and procedures are assessed and recommendations for reform are 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.<sup>4</sup>

Two of the recommendations made in the evaluation are relevant to the current review:

- Consider lowering the limits in relation to gifts to public officials that are subject to mandatory declaration and refusal or remittance
- Consider requiring public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship

Parties to the convention must apply 'codes or standards of conduct for the correct, honourable and proper performance of public functions'.<sup>5</sup> They are referred to the

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<sup>2</sup> Available at: <https://www.oecd.org/governance/ethics/public-integrity-maturity-models.htm>

<sup>3</sup> Available at: [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>4</sup> Available at: [2021\\_12\\_23\\_Ireland\\_Cycle\\_II\\_Country\\_Report\\_EN.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/2021_12_23_Ireland_Cycle_II_Country_Report_EN.pdf) (unodc.org)

<sup>5</sup> Ibid.

International Code of Conduct for Public Officials (available at Annex A - the Code was reflected in the 1990 UN Secretariat publication 'Practical measures against corruption: manual'). Where consistent with domestic law, Article 8 calls for measures and systems to facilitate the reporting by public officials of acts of corruption and requiring public officials to make declarations. Such declarations may relate to outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result. In accordance with domestic laws, UNCAC requires consideration of disciplinary or other measures when violations arise.

## **Council of Europe's Group of States against Corruption (GRECO)**

Ireland is a member of the Group of States against Corruption (GRECO), established in 1999 by the Council of Europe (CoE) to monitor member states' compliance with anti-corruption standards. GRECO's objective is to improve the capacity of its members to fight corruption by monitoring their compliance with anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps identify deficiencies in national anti-corruption policies, with a view to prompting legislative, institutional and practical reforms.

While the Department of Justice has lead policy responsibility in relation to corruption, GRECO is a national evaluation process and many other public sector bodies and agencies have roles and responsibilities in this area. Each evaluation phase or 'round' managed by GRECO focuses on particular areas of public service.

The CoE has adopted a number of legal instruments to prevent and combat corruption including:<sup>6</sup>

- The Twenty Guiding Principles against Corruption (Resolution (97) 24)
- The Recommendation on Codes of Conduct for Public Officials (Recommendation No. R (2000) 10)

The Twenty Guiding Principles, adopted in 1997, notably include guidance that State Parties:

- Take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour
- Ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and

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<sup>6</sup> See generally, Council of Europe, Legal instruments and other texts adopted by the Council of Europe bodies, available: < <https://www.coe.int/en/web/greco/documents/legal-instruments-and-other-texts> >

effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct<sup>7</sup>

Compliance with GRECO's anti-corruption standards is also monitored through a dynamic process of mutual evaluation and peer pressure. Ireland 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'.<sup>8</sup> An evaluation team visited Dublin at end October 2021 as part of the Fifth Evaluation Round on Ireland, the Fifth Round Evaluation Report was adopted in June 2022 and it is expected to be published shortly.

## The European Union: The European Rule of Law Mechanism

Established in 2014, the European Rule of Law Mechanism provides a process for an annual dialogue on the rule of law between the Commission, the Council and the European Parliament together with Member States as well as national parliaments, civil society and other stakeholders.<sup>9</sup> In particular, it facilitates structured dialogue with a Member State if there are "clear indications of a systemic threat to the rule of law".<sup>10</sup> Following an assessment, the Commission, can make a recommendation on the basis that it has found "objective evidence of a systemic threat and that the authorities of that Member State are not taking appropriate action to redress it". If the Commission is dissatisfied with the response to its recommendations, it can activate Article 7 of the Treaty (TEU). This allows for "a procedure in the event of a breach of Article 2" that "can lead to sanctions" against a Member State. Article 2 provides that 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'.

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<sup>7</sup> Available at: <https://rm.coe.int/16806cc17c>

<sup>8</sup> Available at: [GRECO \(coe.int\)](https://www.greco.int/)

<sup>9</sup> Available at: [Rule of law mechanism | European Commission \(europa.eu\)](https://ec.europa.eu/ruleoflaw/)

<sup>10</sup> Available at: [Rule of law framework | European Commission \(europa.eu\)](https://ec.europa.eu/ruleoflaw/)

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 2022 Rule of Law Report include the number of judges in Ireland in comparison to the EU average, and rules on state advertising in media.<sup>11</sup>

Publication of the Rule of Law Report and the preparatory work with Member States takes place annually as part of the Mechanism, and will serve as a basis for discussions in the EU as well as to prevent problems from emerging or deepening further.

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<sup>11</sup> Available at: [20\\_1\\_194011\\_coun\\_chap\\_ireland\\_en.pdf \(europa.eu\)](#)



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## 3 Statutory Frameworks in Common Law Jurisdictions

This Chapter reviews the arrangements used in a number of common law jurisdictions similar to Ireland, including the devolved jurisdictions of the United Kingdom. The Chapter finds that Ireland's ethics framework is broadly similar to those that have developed in other common law jurisdictions. Furthermore, many of the current limitations in Ireland's framework are also apparent in these jurisdictions. This underscores the need for reform in Ireland but also provides the opportunity to identify practices and policies that might contribute to this process.

In general, approaches adopted in the UK are a frequent point of reference for Irish policymakers. In the case of Ethics provisions, the creation of devolved administrations in Scotland, Wales and Northern Ireland in the 1990s complicates this picture as each adopted their own tailored arrangements that parallel those applying to MPs in the Westminster Parliament. Notably, the provisions at Westminster and in the devolved administrations all reference 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 and they are supplemented by additional principles in the arrangements in the devolved administrations.

Similarly, the United States, Canada, Australia and New Zealand, are of interest to Irish policymakers 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 Ireland's. However, Canada is regarded in many aspects as an exemplar of good practice and is explored further in the next Chapter.

### The United Kingdom: The Westminster Parliament

The United Kingdom established its national-level ethics framework in 1994 when Prime Minister John Major established the Committee on Standards in Public Life (CSPL) in the

aftermath of the ‘Cash for Questions’ scandal. The CSPL’s first report, the Nolan Report,<sup>12</sup> made proposals for significant reform based on certain core ethical principles: ‘The Seven Principles of Public Life - commonly known as the Nolan Principles – this replaced the ‘good chaps’ model of behaviour with explicit standards.<sup>13</sup> A key recommendation called on all public bodies to establish Codes of Conduct incorporating the Seven Principles – Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.<sup>14</sup>

Both Houses of Parliament issue codes of conduct for their respective members.<sup>15</sup> The Codes contain a general obligation to observe the Nolan Principles and a request that they be taken into account when either House considers investigation and determination of any alleged breaches. In addition, Members must observe the following, which when breached may trigger investigation and sanction:

- A positive obligation to avoid conflicts of interest and prioritise public interest
- A prohibition on acting as a paid advocate in any proceeding of the House
- A prohibition on acceptance of bribes
- An obligation to register interests
- A prohibition on improper use of information gained in confidence
- An assertion of Members’ personally responsibility in relation to public resources
- A prohibition on actions resulting in reputational damage to the House
- A duty to treat staff etc. with dignity, courtesy and respect.
- A prohibition on certain behaviours including bullying, harassment and sexual misconduct

Application of the Code rests within each House. In the Commons, the Committee on Standards, in conjunction with the independent Parliamentary Commissioner for Standards, oversees standards issues. The Parliamentary Commissioner for Standards receives complaints, investigates breaches of the Code, and keeps MPs’ registers of interests. The Committee on Standards considers any report, in turn reporting its conclusions and recommendations to the House. Finally, the House has the discretion to impose a sanction on the Member ‘where it considers it necessary’.

In the Lords, the Code is overseen by the House of Lords Conduct Committee, as supported by the Registrar of Lords’ Interests. The Registrar is responsible for maintaining the Register

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<sup>12</sup> Available at: [1stInquiryReport.pdf](#) ([publishing.service.gov.uk](#))

<sup>13</sup> Available at: [Standards in Public Life need constant attention - Committee on Standards in Public Life](#) ([blog.gov.uk](#))

<sup>14</sup> Full descriptions of each are located in the Annex to the Review

<sup>15</sup> Available at: [The Code of Conduct together with the Guide to the Rules relating to the Conduct of Members](#) ([parliament.uk](#)); [Code of Conduct for Members of the House of Lords](#), [Guide to the Code of Conduct and Code of Conduct for House of Lords Members’ Staff](#) ([parliament.uk](#))

of Lords' Interests and has an advisory function. The independent House of Lords Commissioner for Standards is responsible for investigations and reporting to the Conduct Committee Reports include a recommended sanction. Pending appeal, the Conduct Committee reports to the House. For serious breaches, the final decision on sanction rests with the House.

In addition, the UK Ministerial Code applies to all Members of the Government and Parliamentary Private Secretaries.<sup>16</sup> The provisions of the code are:

- **Avoidance of Conflicts:** Ministers must ensure that no actual or perceived conflict of interest arises between public duties and private interests, 'financial or otherwise. Ministers have personal responsibility for avoiding conflicts
- **Disclosure:** On appointment, Ministers must disclose all interests 'which might be thought to give rise to a conflict' including those of their spouse or partner and close family
- **Outside Interests:** On taking office, Ministers should give up any other public appointment they may hold. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation. Ministers should take care to ensure that they do not become associated with non-public organisations whose objectives may in any degree conflict with Government policy
- **Gifts and hospitality:** The Code refers to 'the well-established and recognised rule that no Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation'
- **Sanctions:** The role of the independent adviser is a key aspect of potential sanction. The function is to independently assess and provide advice to Ministers on the arrangement of private interests; and to investigate alleged breaches of the Ministerial Code. However, while the independent advisor may make recommendations, discretion ultimately lies with the Prime Minister, an aspect that has been the subject of criticism
- **General Provisions on Post-term Employment:** The Advisory Committee on Business Appointments ('ACOPA') is the independent advisory body that considers applications on new appointments under both the Rules for Former Ministers and Rules for Civil Servants (collectively 'the rules'). ACOPA's direct review of outside appointments extends to former ministers and the most senior Crown servants while employing departments review applications of crown servants generally<sup>17</sup>

Former ministers and senior Crown servants must apply to ACOPA for advice in relation to any new (paid or unpaid) appointment outside of government within two years of leaving

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<sup>16</sup> Available at: Ministerial Code - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>17</sup> Available at: <https://www.gov.uk/government/organisations/advisory-committee-on-business-appointments> accessed 10 June 2021

their public position.<sup>18</sup> In addition, a two-year ban is imposed on former ministers and the most senior Crown servants engaging in lobbying.<sup>19</sup> According to ACOBA, this ban is rarely waived or shortened and an acknowledged weakness of ACOBA is that its functions are merely advisory.

Today, the CSPL remains 'an independent, advisory non-departmental public body, sponsored by the Cabinet Office.' It advises the Prime Minister on ethical standards across public life in England. However, it holds no investigatory function and no powers of sanction. In 2020, the CSPL began a review of the ethics regime during which it livestreamed hearings with various experts.<sup>20</sup> It also commissioned research to map the complex and variable standards landscape across institutional contexts. In November 2021, the CSPL published a review of the ethics framework in the United Kingdom and recommended a number of reforms including:

- Enshrining ethical standards, including the Ministerial Code, in primary legislation
- The Ministerial Code should detail a range of sanctions available to the Prime Minister including, but not limited to, apologies, fines and requesting a Minister's resignation
- The Independent Advisor should be granted the power to initiate investigations
- ACOBA should have the power to investigate breaches of the Business Appointment Rules
- Government Departments should publish anonymised data on applications made to ACOBA on an annual basis

The United Kingdom's ethics framework is underpinned by clearly articulated and fundamental principles that should apply in public life. These principles ensure a degree of clarity and coherence, which is useful to both those subject to ethical regulations and the public at large. Moreover, the framework creates a number of implicit norms that provide guidance for how senior public servants should conduct themselves in undertaking their duties. Finally, the Committee on Standards in Public Life has strong educational, review and public-facing processes that ensure further accountability in public life.

Increasing concerns have arisen since the mid-2010s, about the need for an overhaul of the United Kingdom's ethics framework as substantive change has not occurred since its inception. It was recently subject to review and reform appears very likely. The absence of independent investigation and enforcement mechanisms may arise for consideration in this

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<sup>18</sup> Available at: <https://www.gov.uk/guidance/new-business-appointments-for-senior-public-servants>

<sup>19</sup> Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/962428/ACOBA\\_Annual\\_Report\\_for\\_publication\\_2018-2020\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962428/ACOBA_Annual_Report_for_publication_2018-2020_final.pdf)

<sup>20</sup> Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/867642/Standards\\_Landscape\\_Final\\_Version\\_\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/867642/Standards_Landscape_Final_Version__1_.pdf)

process given that powers in this area are solely invested in the person of the Prime Minister, who possesses significant discretion in their choosing to draw upon these powers.

While the national-level ethical framework in the United Kingdom remained unchanged for the most part since the establishment of the CSPL in the 1990s, its devolved administrations developed their own ethical standards seeking to build on the Nolan Principles.

## The United Kingdom: The Devolved Administrations

### SCOTLAND

Scotland's ethics framework rests on a legislative basis contained in three statutes addressing ethical standards in public life, parliamentary interest and the oversight of standards.

The first, The Ethical Standards in Public Life etc. (Scotland) Act 2000 establishes an ethical standards framework for local councillors and members of certain public bodies.<sup>21</sup> It requires adoption of a Code of Conduct for Councillors (Councillor's Code)<sup>22</sup> and a Model Code of Conduct for Members of Devolved Public Bodies (Members' Code).<sup>23</sup> The Act also established the Standards Commission for Scotland<sup>24</sup> and sets out its relationship to the Commissioner for Ethical Standards in Public Life.<sup>25</sup>

The second, The Interests of Members of the Scottish Parliament Act 2006 governs registration of interests of MSPs.<sup>26</sup> It sets out the statutory requirements that apply to the registration and declaration of members' interests. Declarations extend to financial interests raising an apparent conflict of interest in terms of actions, speeches or votes in Parliament (and in some circumstances, interests which are in connection with political activities). The Act requires both periodic and *ad hoc* disclosure of 'registrable interests' as defined under its Schedule.<sup>27</sup> Interests covered broadly include remuneration, gifts, liabilities, overseas visits, heritable property and interest in shares.

A notable feature built into the Schedule is the facility for parliament to modify the kind of interests covered by way of parliamentary resolution. Once submitted, the register of interests is subject to publication and available for inspection. The Act also expressly prohibits paid advocacy where the definition of payment includes payment in kind.

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<sup>21</sup> Available: <https://www.legislation.gov.uk/asp/2000/7>

<sup>22</sup> The Ethical Standards in Public Life (Scotland) Act 2000, s.1

<sup>23</sup> As cited above, s.2; devolved public bodies are set out in Schedule 3 of the Act.

<sup>24</sup> See generally: <https://www.standardscommissionscotland.org.uk/>

<sup>25</sup> See generally: <https://www.ethicalstandards.org.uk/>

<sup>26</sup> Available: <https://www.legislation.gov.uk/asp/2006/12/contents>

<sup>27</sup> In Scottish legislation, periodic disclosure is referred to as 'registration' of interests while *ad hoc* disclosure is referred to as declaration of interests

Failures of compliance including failure to register or declare an interest trigger parliamentary discretion to sanction MSPs by prevention or restriction of parliamentary participation. Failure to comply with exclusion from parliamentary proceedings as well as contravention of the prohibition on paid advocacy is deemed a criminal offence. Other sanctions include withdrawal of the member's right to use the facilities and services or censure. An exclusion from proceedings may, by resolution, extend to disallowing salary and expenses.

The third statute, The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 provides for oversight of standards and the investigation of ethical breaches, which are vested in two bodies, The Commissioner for Ethical Standards in Public Life in Scotland (ESC) and The Standards Commission for Scotland.<sup>28</sup> Under this Act:

- the ESC has responsibility for investigating complaints about **Members of the Scottish Parliament, councillors of the 32 Councils of Scotland, and members of Scottish public bodies**. The Commissioner also monitors the appointment of members of specified public bodies in Scotland by the **Scottish Ministers**
- the Standards Commission is responsible for encouraging high standards of behaviour by councillors and those appointed to boards of devolved public bodies. It must consist of not fewer than three persons appointed by Parliament

The ESC is empowered to investigate complaints about ethical breaches of Codes of Conduct (adopted by councils and devolved public bodies). Depending on the outcome, possible breaches are referred to the Standards Commission for adjudication. The ESC also investigates complaints about MSPs but the Standards Commission does not adjudicate these cases. Instead, the ESC's investigation reports are furnished to the Scottish Parliament.<sup>29</sup> In this instance, the ESC is empowered to make findings of fact and conclude on the law (whether a breach arose) but may not express any view on appropriate sanction.<sup>30</sup> Parliament has discretion to diverge from the views of the ESC. As well as adjudication, the Standards Commission's role extends to administration of sanctions, the promotion of high ethical standards, and issuing guidance.

With the exception of the investigation process itself, the ESC must comply with directions of the Standards Commission. Investigations are 'so far as possible' conducted confidentially,

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<sup>28</sup> Available: <https://www.legislation.gov.uk/asp/2010/11/contents>; See generally, <https://www.ethicalstandards.org.uk/about-us>

<sup>29</sup> Scottish Parliamentary Standards Commissioner Act 2002, at s. 3

<sup>30</sup> Scottish Parliamentary Standards Commissioner Act 2002, at s. 9(2)

and may relate to former councillors or, members of devolved public bodies. Publication of reports is discretionary.

The Standards Commission has powers of sanction against councillors or members of a public body following a finding of contravention. Sanctions include censure, suspension and disqualification. Interim reports may facilitate a more immediate sanction in limited circumstances where the investigation is likely to be prejudiced or where that is in the public interest. An appeal against findings of contravention and sanction is possible on the basis of error of law, procedural impropriety, unreasonable exercise of the commission's discretion or a finding not supported in facts.

In addition to the declaration of interests' framework (referenced above), ethical standards for Members of the Scottish Parliament are regulated by the Code of Conduct for MSPs, accompanied by detailed Code of Conduct Guidance. The Code sets out rules on:

- Registration of interests
- Categories of registrable interest
- Declaration of interests
- Paid advocacy
- Lobbying and access to MSPs
- Cross-Party Groups
- General conduct of MSPs
- Engaging with constituents
- Enforcement of the rules

A distinct Ministerial Code applies to Scottish Ministers. It sets an overarching general principle that 'Scottish Ministers are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety'. This Code covers a range of issues including guidance on travel and Ministers' private interests. It also annexes the Seven Principles of Public Life (Nolan Principles). The role of independent advisors was introduced in 2008. The First Minister has the possibility to refer matters to independent advisers whose reports are published. A concise Civil Service Code sets out the standards expected of civil servants generally.

Outside remuneration is a registrable interest under the Interests of Members of the Scottish Parliament Act 2006.<sup>31</sup> In addition, the Code of Conduct for MSPs states members should not accept any paid work that involves lobbying, and, or provision of services such as

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<sup>31</sup> Schedule to the Act; available: <https://www.legislation.gov.uk/asp/2006/12/contents>

Parliamentary strategist, adviser or consultant.<sup>32</sup> The guidance of the Ministerial Code highlights that on leaving office, Ministers are subject to a cooling-off period for lobbying activities for two years and must seek advice from ACOBA on appointments or employment they wish to take up within two years.<sup>33</sup>

The Scottish Government opened a consultation process for model codes of conduct in 2020 and presented its findings in 2021.<sup>34</sup> Overall, the consultation found that there was overwhelming support for updating the code because of societal developments, including increasing diversity of public life, and changing practices in Scotland. Reforms to the Code are expected over the lifetime of the current Scottish Government.

## WALES

The National Assembly for Wales established the independent Senedd Commissioner for Standards ('Commissioner'). The Commissioner's role is to safeguard ethical standards of Members of the Senedd (parliament). The Assembly's Standards of Conduct Committee, established under Standing Order, works with the Commissioner. The Presiding Officer (speaker) of the Senedd is responsible for maintaining an online Register of Members' Interests. Ethical standards at a local government level are set out in the Local Government Act 2000. Civil servants are regulated by a Code of Conduct, based on the English model.

Broadly, the Commissioner's functions are to receive complaints, conduct investigations, report the outcome of investigations and provide compliance-related advice. They have jurisdiction to receive complaints relating to breach of the Code of Conduct for Members that applies to all Members of the Senedd. However, the Ministerial Code is not under the Commissioner's remit and the law expressly prohibits the Commissioner to express a view on its contents.

The Committee's functions include examining complaints referred to it by the Commissioner, reviewing the Code of Conduct for Members of the Senedd, and, issuing guidance on the Code and complaints procedures. The Committee, unlike the Commissioner, may recommend censure, withdrawal of rights and privileges, and/or exclusion from proceedings for a specified period.

The Ministerial code applies to the First Minister, all ministers and the Counsel General. It broadly rests on the Westminster Ministerial Code and mirrors its substance on key elements. Both the Ministerial Code and the Code of Conduct for Members adopt the Seven

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<sup>32</sup> Code of Conduct for MSPs, at para. 7

<sup>33</sup> Ministerial Code, at para. 11.25

<sup>34</sup> Ethical standards in public life - model code of conduct for board members: consultation analysis - gov.scot ([www.gov.scot](http://www.gov.scot))



Principles of Public Life (Nolan Principles). In addition, the Code of Conduct for Members includes the newly added principle of respect, which encompasses dignity at work and non-discrimination. It is set out as follows: ‘Members must not behave in ways that reduce equality of opportunity, must always respect the dignity of other persons and must not engage in discriminatory or unwanted behaviour.’ The Standards of Conduct Committee noted in its 2021 Report that the new principle was ‘nuanced’ by the right to freedom of expression guaranteed under Article 10 of the European Convention on Human Rights. The Code of Conduct for Members contains 24 rules, two of which relate to the obligation of Members and their staff to uphold the Nolan Principles. This aspect may provide flexibility of interpretation. Situations not specifically covered by rules may be captured as potential contraventions.

The Code of Conduct for Members was subject to formal review and revision in 2021. An independent review of the ethical framework for local government was published in July 2021. The review, while making recommendations, concluded that the framework was broadly fit for purpose. At the time of writing, recommendations are under consideration.

## NORTHERN IRELAND

Ministers and Members of the Legislative Assembly (‘MLAs’) are subject to the Ministerial Code of Conduct and the MLA Code of Conduct.<sup>35</sup> The MLA Code is complemented by an enforceable Guide (adopted by a Resolution of the Assembly). The Guide provides detail on the registration and declaration (ad-hoc disclosure) of interests and the ‘Advocacy Rule’ (a prohibition on paid advocacy). A Register of Members’ Interests is published online.<sup>36</sup>

The Ministerial Code of Conduct is part of broader Ministerial Code, which has a legislative basis in the Northern Ireland Act 1998. Ministers are obliged to act in accordance with its provisions.<sup>37</sup> One notable feature is that cross-community support is required for the approval of a draft code and amendments.<sup>38</sup> The Code also adopts the Seven Principles of Public Life (Nolan principles) and prescribes a set of duties.<sup>39</sup>

Part 2 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 establishes the Commissioner for Standards.<sup>40</sup> Investigations are carried out in accordance with the (recently updated) Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures)

<sup>35</sup> Available at: <https://standardsCommissionerniassembly.org/ministerial-code-of-conduct/>;  
<https://standardsCommissionerniassembly.org/mla-code-of-conduct/>

<sup>36</sup> Available at: <http://www.niassembly.gov.uk/your-mlas/register-of-interests/>

<sup>37</sup> Northern Ireland Act 1998 at s. 28A Available: <https://www.legislation.gov.uk/ukpga/1998/47/section/28A>

<sup>38</sup> Northern Ireland Act 1998 at s.28A

<sup>39</sup> Available at: <https://standardsCommissionerniassembly.org/>

<sup>40</sup> Available: <https://standardsCommissionerniassembly.org/>; <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/direction-on-general-procedures/>

Direction 2021. Working in tandem with the Commissioner is the Committee on Standards and Privileges. The Committee considers the Commissioner's investigation report and has the power to recommend a sanction to the Assembly.

At local government level, standards of conduct are set out in Part 9 of the Local Government Act (Northern Ireland) 2014.<sup>41</sup> The Office of the Northern Ireland Local Government Commissioner for Standards oversees a Code of Conduct for Councillors.<sup>42</sup> The Northern Ireland Civil Service Code of Ethics applies to civil servants.<sup>43</sup>

The Code of Conduct for MLAs applies to all members but does not apply when a member 'is acting exclusively in the capacity of a Minister'.<sup>44</sup> The Code adopts the Seven Principles of Public Life (Nolan Principles) and four additional principles as follows:

1. Public duty, which includes 'acting in the interests of the community as a whole'
2. Equality (a prohibition on discrimination)
3. Promoting good relations promoting a culture of respect for the law.
4. Respect. This principle acknowledges that 'rude and offensive behaviour may lower the public's regard for, and confidence in, Members and the Assembly itself.'  
Respect specifically denotes good working relationships between Members and between Members and Assembly staff

The rules applicable to MLAs are similar to those in the Westminster, Scottish and Welsh Parliaments. There are also additional rules that merit noting:

- A duty of confidentiality and compliance with the Data Protection Act
- An obligation to co-operate with any investigation and a prohibition on lobbying a member of the Committee on Standards and Privileges, or the Commissioner in relation to same

The Commissioner is independent and appointed (subject to fair and open competition) by the Assembly for a five-year term.<sup>45</sup> The Commissioner is responsible for investigating complaints about ethical standards of parliament and the promotion of high ethical standards in public life. Save for investigation, the Commissioner is subject to the Assembly's direction. Duties of the Commissioner include:

- Investigation (triggered by complaints/referrals or self-initiated) of breaches by Ministers and MLAs under the Ministerial Code of Conduct and the MLA Code of Conduct respectively

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<sup>41</sup> Available at: <https://www.legislation.gov.uk/nia/2014/8/contents>

<sup>42</sup> Available at: <https://nipso.org.uk/site/wp-content/uploads/2016/02/Code-of-Conduct.pdf>; <https://nipso.org.uk/nilgcs/>

<sup>43</sup> Available at: [https://www.nicsCommissioners.org/wp-content/uploads/2015/10/nics\\_code\\_of\\_ethics.pdf](https://www.nicsCommissioners.org/wp-content/uploads/2015/10/nics_code_of_ethics.pdf)

<sup>44</sup> See MLA Code of Conduct at para. 2.2

<sup>45</sup> See, Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, s.18; Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, s.19

- Reporting investigation outcomes to the Assembly. The Commissioner may not recommend a sanction and the Assembly is not bound by its findings
- Providing advice on general principles (self-initiated or by request of the Assembly)

The 'Cash for Ash' (Renewable Heat Incentive (RHI)) controversy proved a catalyst for the collapse of the power-sharing executive 2017. The RHI Inquiry shone a light on certain failures of integrity and governance. The resulting report of 2020 made 44 recommendations.<sup>46</sup> A contemporaneous briefing paper compared the legal framework governing special advisors in Northern Ireland to other jurisdictions including Ireland.

Policy commitments followed in 'New Decade, New Approach'.<sup>47</sup> Annex A of this policy sets out parties' agreement to a suite of integrity measures effecting transparency, accountability and functioning of the Executive.

The Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 came into force in March 2021.<sup>48</sup> The new Act seeks to remedy defects highlighted by the RHI Inquiry.

Changes to the ethical framework include:

- The Commissioner may now consider complaints of alleged contravention of the Ministerial Code of Conduct. This change makes Northern Ireland the first of the devolved UK jurisdictions to extend the oversight of the Commissioner to Ministers. The change is supported by a new online complaint platform.
- Ministers and Special Advisers must inform the Permanent Secretary of the Department of Finance of their registrable interests and those of their spouse, partner and close family members (as defined under the legislation) within 28 days of taking up their position
- Special Advisers are subject to the same disciplinary procedure as employees of the Northern Ireland Civil Service. Ministers are responsible for their conduct
- There must be an appropriate written record of each 'relevant meeting'. A Minister, or special adviser, who holds an official meeting with a third-party must ensure attendance of a civil servant
- Ministers or Special Advisers who are being lobbied must submit a written record to their Department

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<sup>46</sup> Available at: Volume 3; Available: [https://cain.ulster.ac.uk/issues/politics/docs/rhi/2020-03-13\\_RHI-Inquiry\\_Report-V3.pdf](https://cain.ulster.ac.uk/issues/politics/docs/rhi/2020-03-13_RHI-Inquiry_Report-V3.pdf)

<sup>47</sup> Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf)

<sup>48</sup> Available at: <https://www.legislation.gov.uk/nia/2021/3/contents/enacted>

- It is a criminal offence (punishable by up to two years' imprisonment) for Ministers and Special Advisers to communicate official information for "improper benefit"

In addition, the Code of Conduct for Members and Guide to the Rules was reviewed by the Committee on Standards and Privileges and subject to substantive changes in 2021.<sup>49</sup>

## The United States

The United States joined GRECO in 2000. The 2021 Transparency International Corruption Perception Index (CPI) ranked the United States 27<sup>th</sup> globally. Ethical standards are mature and detailed with a legislative basis in the Ethics in Government Act, 1978.<sup>50</sup> While the Federal Executive Branch Ethics Program predates the Act, the Watergate scandal prompted serious engagement with ethics in public life and 1978 is regarded as the 'pivotal year when Congress enacted sweeping post-Watergate civil service reforms'.<sup>51</sup> The Act contains three elements:

- Financial disclosure obligations of federal personal (Title I)
- Establishment of the Office of Government Ethics (OGE)
- Government-wide limitations on outside earned income and employment (Title V)

The OGE oversees the Executive Branch's ethics programme. It also works in tandem with the House and Senate Ethics Committees, which oversee ethics programmes in the United States Congress with the support of the Office of Congressional Ethics. The OGE conducts preliminary investigations for referral to the Committees. Constitutional provision, federal statutes and established norms supplement the Act. Both the House and Senate Ethics Manuals provides further standards of conduct on a variety of areas including:

- Financial disclosure
- Gifts
- Outside earned income and honoraria
- Conflicts of interest
- Foreign travel
- Use of certain resources (mailing frank, and, radio and television studios)
- Post-employment restrictions<sup>52</sup>

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<sup>49</sup> Available at: <https://standardscommissionerniassembly.org/wp-content/uploads/2021/06/2021-report-with-annex.pdf>

<sup>50</sup> S.555 - 95th Congress (1977-1978): Ethics in Government Act | Congress.gov | Library of Congress

<sup>51</sup> 2020 OGE Profile Book (Final).pdf

<sup>52</sup> [https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008\\_House\\_Ethics\\_Manual.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf); 2003 Senate Ethics Manual

More recently, Congress passed the Stop Trading on Congressional Knowledge Act, 2012, (STOCK Act).<sup>53</sup> This prohibits Members of Congress and employees of Congress from using non-public information derived from their official positions for personal benefit, and other purposes.

While ethical standards are mature and rest on a detailed legislative basis there is a concern that the current ethics framework does not guard against conflicts of interest, with financial conflicts of interest for members of Congress a growing concern, as members of Congress have displayed a reluctance to rigorously enforce these acts.<sup>54</sup> Moreover, while the OGE, through the Department of Justice, and the Office of Congressional Ethics, is empowered to initiate independent investigations of ethics violations, they cannot issue sanctions in instances of wrongdoing as this power lies in the hands of elected officials.<sup>55</sup> In its most recent evaluation of the United States, GRECO recommended that Congress strengthen its oversight and enforcement mechanism in respect of ethics.

## New Zealand

New Zealand consistently performs well in the Corruption Perception Index, holding joint first in 2021. As a direct comparator to Ireland, its value may be limited in so far as it is not part of GRECO. Ethical provisions for parliamentarians fall across multiple instruments. Parliament established a Register of Members' Pecuniary and Other Specified Interests under Standing Order. This requires registration of interests upon taking office and on an annual basis thereafter. Complaints of possible non-compliance may be made to the Registrar for investigation.<sup>56</sup> Under this Standing Order, the Auditor General can initiate investigations into suspected ethics violations or do so upon request. However, the Auditor General cannot issue sanctions with this the preserve of parliament.

Ministers are subject to the Cabinet Manual, which provides guidance on conflicts of interest and gifts.<sup>57</sup> Where guidance is potentially breached Cabinet can request that the State Services Commissioner investigate the matter. In contrast, there is a tradition of voluntary compliance for members of parliament. This position rests on the assumption that members behave honourably and in the public interest.<sup>58</sup> This led New Zealand to favour a policy where the responsibility for the appropriate behaviour of parliamentarians is primarily a matter for induction training and internal party discipline. However, there are formal ethical

<sup>53</sup> S.2038 - 112th Congress (2011-2012): STOCK Act | Congress.gov | Library of Congress

<sup>54</sup> Restoring trust: 5 steps to reduce congressional conflicts of interest (brookings.edu); Personal finances of Congress members: Uncovering conflicts of interest (businessinsider.com); Hard Lessons Learned After a Decade of the STOCK Act (bloomberglaw.com)

<sup>55</sup> EVAL IV USA (coe.int)

<sup>56</sup> Part 9: Register of Pecuniary Interests of Members of Parliament — Office of the Auditor-General New Zealand (oag.parliament.nz)

<sup>57</sup> Cabinet Manual | Department of the Prime Minister and Cabinet (DPMC)

<sup>58</sup> Chapter 4 Members' Conditions of Service - New Zealand Parliament (www.parliament.nz)

rules reflected in the prohibition of the acceptance or solicitation of a bribe as well as 'Contempts' as set out in Standing Orders.

The State Services Commission oversees ethics in the Public Service and sets standards in a code of conduct.<sup>59</sup> It provides advice and guidance to agencies on how to implement the code and on specific matters of integrity and conduct. It has also developed a range of education materials and guidelines related to specific ethical concerns on topics such as bribery and corruption, conflicts of interest etc. and it investigates individual complaints against public servants. One notable limitation is the relatively high threshold for the involvement of the Commissioner in individual matters of misconduct as chief executives are responsible for behaviour in their own organisations.

## Australia

Australia ranks 18<sup>th</sup> in the CPI. While many Australian states established frameworks to govern ethical standards, at the time of writing, the federal ethics framework is fragmented and lacks oversight. Each of the six Australian Parliaments (New South Wales, Victoria, Queensland, Tasmania, Western Australia, and the Australian Capital Territory) have separate codes for ministers and MPs. All Australian parliaments adopted registers of pecuniary interests and four (New South Wales, Queensland, Tasmania and Australian Capital Territory) have ethics or standards mechanisms in place. Most Australian parliaments have introduced lobbyist registers and codes of conduct governing the conduct of lobbyists and have codes governing the post-separation employment of ministers.

At a Federal level, the Code of Conduct for Ministers governs standards within cabinet.<sup>60</sup> The Code provides guidance on *inter alia* conflicts of interest, registering interests and post-term employment. Discretion for enforcement of the Code lies with the Prime Minister. There is no general parliamentary code of conduct. However, Members are required to register their interests, which are then made public. The requirements are set out by Resolution of the House of Representatives.

The National Integrity (Parliamentary Standards) Bill 2019 sought to establish a statutory, independently enforced code of conduct to govern the ethical standards of parliamentarians.<sup>61</sup> It also proposed establishing a commissioner to enforce the code and an integrity adviser who would assist in conducting investigations into alleged ethical breaches, although the Bill did not clarify if these investigations could be initiated independent of parliament. The Bill received the support of Transparency International Australia. However, a

<sup>59</sup> Standards of Integrity and Conduct | Te Kawa Mataaho Public Service Commission

<sup>60</sup> Code of Conduct for Ministers (pmc.gov.au)

<sup>61</sup> National Integrity (Parliamentary Standards) Bill 2019 – Parliament of Australia (aph.gov.au)

2020 parliamentary committee report recommended that it should not be passed. The committee objected to the potential overlap with existing integrity-related roles and the Independent Parliamentary Expenses Authority and was of the opinion that a better approach would be to ‘identify gaps (if any) in the existing regimes’. The committee further favoured the view that Parliamentarians were ‘...ultimately answerable to their constituents, not each other. A corollary development is a government-led drive to establish a Commonwealth Integrity Commission (CIC).<sup>62</sup> However, the CIC’s jurisdiction would apply to corruption meeting the threshold for criminality as opposed to ethical standards. In terms of statutory provision, Australia’s federal-level ethical framework is not as developed as that of the United States or New Zealand despite the recent attempt to enact significant reform. Nevertheless, a review of the current and proposed frameworks in Australia display a similar pattern to that of the United States and New Zealand of a relative absence of independent actors with the power to investigate and sanction potential breaches of ethical guidelines.

## Common Law Jurisdictions: An Assessment

The common law systems reviewed in this chapter share broad similarities despite their different institutional arrangements. While their ethics frameworks arose in differing contexts, they all seek to ensure that senior public servants, whether elected officials or career public servants, demonstrate the highest standards of integrity when exercising their roles.

Each jurisdiction puts in place measures for officials to declare their interests, provide guidance on conflicts of interest and advice on post-term employment. In addition to established codes of conduct, each jurisdiction established a body, whether a parliamentary committee, auditor general or independent standards commission/commissioner to investigate alleged ethical breaches and establish the facts of individual cases.

However, there are acknowledged limits within these systems that should be considered in light of Ireland’s framework and administrative arrangements governing standards in public life. Similar to Ireland, the ability of independent commissions/commissioners in common law systems to ensure compliance with ethical frameworks remains limited. While these bodies possess the power to investigate alleged ethical breaches and establish the facts of a case, they lack, for the most part, the power to initiate an investigation without the approval of either the executive or a parliamentary committee. As noted, the power to initiate investigations and sanction ethical breaches for the most part lies with the executive, typically in the person of a Prime Minister, or a parliamentary committee.

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<sup>62</sup> Commonwealth Integrity Commission Bill - Exposure Draft | Attorney-General's Department (ag.gov.au)

While the participation of elected representatives in upholding and investigating potential breaches of ethics frameworks is welcome and encouraged, a system relying solely on the discretion of elected representatives to initiate investigations into ethical breaches, and initiate sanctions if they occur, risks becoming a political football.

Given the disparity in their CPI scores despite similar arrangements, it is likely that other factors aside from ethics frameworks influence the conduct of senior public officials. It is worth noting that New Zealand despite having the least formalised institutional structure for managing ethics in public life scores highest on the CPI alongside Denmark and Finland. This suggests that other factors aside from ethics frameworks influence the conduct of senior public officials (see Chapter 5). Furthermore, the overall performance of other common law jurisdictions indicates that Ireland's framework, while in need of revision, performs well for the most part.

In terms of what can be learned by Ireland from the other common law jurisdictions, the policy prescriptions detailed in the UK Committee on Standards in Public Life's 2021 report, such as enshrining the ethics framework in primary legislation and granting the power to initiate investigations to the Independent Advisor, parallel many of the reforms proposed in Ireland's 2015 Public Sector Standards Bill – the point of departure for reform of Ireland's ethics framework. Moreover, simultaneous reform of ethical standards in Ireland and the United Kingdom provides Ireland with a potential benchmark and a source of potential solutions to issues that may arise in realising the reform process.



## 4 Canada: A Comprehensive Common Law Framework

Canada regularly performs well on the Corruption Perception Index (CPI), ranking 13<sup>th</sup> in 2021. An EU study conducted in 2020 chose Canada's Conflict of Interest and Ethics Commissioner as a model of best practice.<sup>63</sup> From diffuse origins, Canada created a specific conflict of interest regime in 1973 that has continued to evolve and benefits from well-developed regulation and independent watchdogs.<sup>64</sup>

### Canada's Conflict of Interest Act

Canada's Conflict of Interest Act, which came into force in 2007, applies to ministers, parliamentary secretaries and senior public office holders.<sup>65</sup> MPs are subject to The Conflict of Interest Code for Members of the House of Commons.<sup>66</sup> Ministers have dual obligations under both the Act and the Code. A separate Code (the Ethics and Conflict of Interest Code for Senators) applies to senators.<sup>67</sup>

Oversight rests with distinct, independent watchdogs: the Conflict of Interest and Ethics Commissioner, appointed for a term of seven years,<sup>68</sup> and the Senate Ethics Officer.<sup>69</sup> The related area of lobbying is administered by a separate designated Commissioner.<sup>70</sup> The Conflict of Interest Act covers conflict of interest rules, compliance measures, post-employment provisions, and, administration and enforcement. The Act's intent is to:

- Establish clear conflict of interest and post-employment rules
- Minimise the possibility of conflicts and provide for their resolution
- Provide the Commissioner's advisory and investigatory mandate
- 'Encourage experienced and competent persons to seek and accept public office' and;
- 'Facilitate interchange between the private and public sector'<sup>71</sup>

<sup>63</sup> 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)

<sup>64</sup> See concluding remarks, Maxime-Olivier Thibodeau and Alexandra Savoie, Economics, Resources and International Affairs Division, Background Paper; Conflict of Interest at the Federal Level: Legislative Framework (Revised January 2018) available < [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201092E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201092E) >

<sup>65</sup> <https://laws-lois.justice.gc.ca/eng/acts/c-36.65/>

<sup>66</sup> House of Commons, Conflict of Interest Code for Members of the House of Commons, Appendix I in Standing Orders of the House of Commons, 2021. Available < <https://www.ourcommons.ca/about/standingorders/appa1-e.htm> >

<sup>67</sup> Available: <<https://seo-cse.sencanada.ca/media/y0ufvarn/ethics-and-conflict-of-interest-code-for-senators-code-r%C3%A9gissant-l-%C3%A9thique-et-les-conflits-d-int%C3%A9r%C3%AAts-des-s%C3%A9nateurs-june-2021.pdf>>; Office of the Senate Ethics Officers, *Ethics and Conflict of Interest Code for Senators*. Available <<https://seo-cse.sencanada.ca/en/code/ethics-and-conflict-of-interest-code-for-senators/>>

<sup>68</sup> Office of the Conflict of Interest and Ethics Commissioner, Available <<https://ciec-ccie.parl.gc.ca/en/Pages/default.aspx#:~:text=OUR%20MISSION-,The%20Office%20of%20the%20Conflict%20of%20Interest%20and%20Ethics%20Commissioner,ensure%20full%20compliance%20with%20the>>

<sup>69</sup> Office of the Senate Ethics Officer, Available <<https://seo-cse.sencanada.ca/en/>>

<sup>70</sup> The Commissioner of Lobbying administers the Lobbying Act and the Lobbyists' Code of Conduct. See generally, Office of the Commissioner of Lobbying. Available < <https://lobbicanada.gc.ca/en/> >

<sup>71</sup> Conflict of Interest Act, s.3

The Act imposes an overarching ‘general duty’ on public office-holders to arrange their private affairs ‘*in a manner that will prevent a conflict of interest*’. Per the Act, conflicts of interest arise when a holder of public office ‘exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person’s private interests.’ The following express prohibitions apply:

- Decision-making where there is actual knowledge of a conflict of interest
- Preferential treatment
- The use of confidential information to further private interests
- The use of public office to exert influence in order to further private interests, or
- Allowing the exercise of official powers etc. to be influenced by ‘plans for, or offers of, outside employment’

## Graduated Obligations

Canada proscribes two categories of office holder – public office holders (POH) and reporting public officer holders (RPOH). RPOHs include a minister of the Crown, minister of state or parliamentary secretary, the Chief Electoral Officer, a member of ministerial staff who works on average 15 hours or more a week, a ministerial adviser, a Governor in Council appointee, certain ministerial appointees, the Parliamentary Budget Officer or other designated persons. All POHs are subject to general ethical rules while RPOHs are subject to additional obligations. Certain provisions, like restrictions on accepting non-commercial travel, apply only to Ministers of the Crown/State or parliamentary secretary.

The treatment of gifts involves three elements:

- A prohibition on inappropriate gifts
- A requirement to disclose accepted gifts over a threshold value
- Public disclosure requirements

Subject to limited exceptions, the Act prohibits ‘gifts and other advantages’ emphasising the appearance of, as opposed to actual, conflict of interest. The legislation provides that ‘*[n]o public office holder or member of his or her family shall accept any gift or other advantage, including from a trust that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function*’. There is a ‘normal expression of courtesy’ exception, but this gift must be forfeited if the value is \$1,000 or more.

For RPOHs, accepted gifts or other advantages (other than personal) over \$200 must be disclosed to the Commissioner and publicly declared within 30 days.<sup>72</sup> For ministers and prescribed persons, acceptance of travel on non-commercial/private aircraft is prohibited unless officially required, in exceptional circumstances or with the Commissioner's prior approval. Likewise, for ministers and others, acceptance of travel (within the permitted framework) must be publically declared within 30 days of acceptance.

## Disclosure Obligations

RPOHs must provide a confidential report to the Commissioner within 60 days of appointment.<sup>73</sup> This must include:

- Assets
- Liabilities
- Income (retrospective and prospective for 12 months)
- Outside activities including philanthropy, trusteeship, executor or similar undertaken in the two-year period before appointment
- Any other information the Commissioner considers necessary to ensure compliance

For a minister, minister of state or parliamentary secretary, these requirements extend to each member of their family and there exists a duty of notification in the event of material change. In addition to the confidential report, RPOHs must submit a 'summary statement' within 120 days of appointment containing information regarding:

- Controlled assets and those subject to divestment
- A description of recusals ordered by the Commissioner
- Any other matters subject to an order of the Commissioner

The Commissioner maintains a public registry, including public declarations, summary statements and forfeited gifts/advantages.

## Post-Employment

The Act contains distinct Post-employment rules for POHs, RPOHs and ministers of the Crown or state. Former POHs are prohibited from:

- Taking improper advantage of their previous role

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<sup>72</sup> Conflict of Interest Act, s.23

<sup>73</sup> Conflict of Interest Act, s.22

- Acting on behalf of an organisation transacting etc. with the Crown
- Dispensing advice using official information not available in the public domain

Former RPOHs are subject to stricter conditions:

- Contracting accepting appointment or employment with an entity with which they had direct and significant official dealings;
- Making representations (for remuneration or not) for third parties with which they had direct and significant official dealings;
- Making representations to a current minister of the Crown or minister of state who was a minister of the Crown or a minister of state at the same time as the former RPOH (former ministers only).

For former RPOHs, the restriction period is one year following the last day in office. For former ministers, it is two years.<sup>74</sup> Former RPOHs must generally report lobbying within the two-year period to the Commissioner.<sup>75</sup> The Commissioner may consider a waiver or reduction of limitations based on the public interest. Public interest is informed by enumerated factors<sup>76</sup> and decision of waiver or reduction along with rationale is published.

## Points of Interest

### Prohibition on Preferential Treatment

A general prohibition on preferential treatment applies to all public office holders. This is quite broad prohibiting such treatment 'based on the identity of the person or organization'.

### Divestment of Controlled Assets

The framework prohibits certain assets and requires their divestment. *Controlled assets* are defined as 'assets whose value could be directly or indirectly affected by government decisions or policy.'

The Act provides a non-exhaustive list of such assets, paraphrased below:

- Publicly traded securities of corporations and foreign governments
- Certain self-administered savings plans/funds
- Speculative commodities, futures and foreign currencies, and
- Stock options, warrants, rights and similar instruments.

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<sup>74</sup> Conflict of Interest Act, s 36

<sup>75</sup> Conflict of Interest Act, s 37

<sup>76</sup> Conflict of Interest Act, s 39(3)

In general, a RPOH must divest such assets by sale in an arm's-length transaction or placing the asset in a blind trust.

### **The Conflict of Interest Code for Members of the House of Commons<sup>77</sup>**

As mentioned above, Ministers are subject to both the Act and the Code. The Code applies to members 'when carrying out the duties and functions of their office as members of the House, including members who are ministers of the Crown or parliamentary secretaries.'<sup>78</sup> Its purpose includes maintaining and enhancing public confidence and trust in the integrity of members.<sup>79</sup> The Code articulates the following principles:

- To serve the public interest and represent constituents to the best of their abilities
- To fulfil their public duties with honesty and uphold the highest standards so as to avoid real or apparent conflicts of interests, and maintain and enhance public confidence and trust in the integrity of each member and in the House of Commons
- To perform their official duties and functions and arrange their private affairs in a manner that bears the closest public scrutiny, an obligation that may not be fully discharged by simply acting within the law
- To arrange their private affairs so that foreseeable real or apparent conflicts of interest may be prevented from arising, but if such a conflict does arise, to resolve it in a way that protects the public interest
- Not to accept any gift or benefit connected with their position that might reasonably be seen to compromise their personal judgment or integrity except in accordance with the provisions of this code<sup>80</sup>

The Code prohibits the following conduct:

- Furthering private interests or that of a family member
- Influencing a decision to further the member's private interests or those of a member of his or her family, or to improperly further another person's or entity's private interests
- Using inside information to further private interests including those of a family member

Further prohibitions include:

- Participating in debate on or vote where the member has a private interest'

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<sup>77</sup> House of Commons, Conflict of Interest Code for Members of the House of Commons, Appendix I in Standing Orders of the House of Commons, 2021. Available < <https://www.ourcommons.ca/about/standingorders/appa1-e.htm>>

<sup>78</sup> As cited above, s.4

<sup>79</sup> As cited above, s. 1(a)-(d)

<sup>80</sup> As cited above, s.2

- Acceptance of gifts/benefits 'that might reasonably be seen to have been given to influence the member in the exercise of a duty or function of his or her office.' This prohibition extends to gifts accepted by family members. Gifts or benefits related to a member's position are subject to formal disclosure within 60 days where their value is \$200 or more. While sponsored travel related to a position is permitted, travel costs exceeding \$200 are subject to disclosure (members must file a detailed statement with the commissioner) within 60 days after the end of the trip. A list of travel-related disclosures is laid before the House annually
- Being knowingly party to government contracts, including interests in a partnership or in a private corporation. This does not generally extend to ownership of securities in public corporations that contract with Government
- Evasion of the Code

### **Disclosure**

A confidential disclosure statement 'disclosing the member's private interests and the private interests of the members of the member's family' is required on taking office and annually. Interests subject to disclosure are assets or liabilities of the member and their family including source of income, trusts, benefits from/interests in private corporations, directorships or offices in a corporation, trade or professional association or trade union. In the event of a material change, a statement to that effect is required within 60 days of the change. A disclosure summary, setting out the nature of interests as opposed to their value, is made available for public inspection, both directly and on the Commissioner's website. There are significant exclusions from the published summary. Additional to periodic disclosure, the Code provides for ad hoc disclosure of private interest and in certain cases, allows the flexibility that such disclosures may be made retrospectively.

### **Advice**

Requests for opinions trigger the Commissioner's obligation to provide timely written advice, which is confidential and binding on the commissioner. Adherence to the advice is protection against a finding of breach.

### **Inquiries**

Inquiries are triggered by the request of a member with reasonable grounds or direction of the House by resolution. The Commissioners' own initiative is triggered only where the member concerned has had the opportunity to respond. Notably, inquiries are held in private. Following an inquiry, a report is presented to the House via the speaker. In this public report, the Commissioner may make one of three findings (with articulated reasons); no contravention, mitigated contravention (a triviality etc.) or contravention, where the latter includes a recommended sanction.

## General

The Code provides for educational activities of the Commissioner. Code is subject to review every five years by the Standing Committee on Procedure and House Affairs, which reports on recommended changes. The review mechanism allows for the evolution of the Code.

## The Conflict of Interest and Ethics Commissioner

The Commissioner is responsible for both public office holders and members of the House of Commons under the Act and Code respectively. The responsibilities are summarised as follows:

- Providing confidential advice to the prime minister, including at the request of the prime minister, with respect to the application of the Act to individual public office holders
- Providing confidential advice to individual public office holders with respect to their obligations under the Act
- Examining and reporting on possible contraventions of the Act by public office holders or former public office holders
- Administering the disclosure regime<sup>81</sup>

Under both the Code and the Act, the Commissioner maintains a public registry in the form of an online searchable database.<sup>82</sup>

Investigations are triggered either by the request of a member of parliament or on the Commissioner's initiative. Following investigation, the Commissioner issues a public report to the Prime Minister recommending sanction. While the Act sets out monetary penalties for certain violations, criminal sanction for violation is expressly excluded.

## Arrangements in the Senate

The Conflict of Interest Code for Senators<sup>83</sup> broadly mirrors the Conflict of Interest Code for Members of the House of Commons. A notable additional feature is the Standing Committee on Conflict of Interest for Senators, which receives confidential reports of the Senate Ethics Officer and may conduct investigations. The Senate Ethics Officer performs duties assigned by the Conflict of Interest Code for Senators. In summary, they:

- Issue advice

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<sup>81</sup> Maxime-Olivier Thibodeau and Alexandra Savoie, Economics, Resources and International Affairs Division, Background Paper; Conflict of Interest at the Federal Level: Legislative Framework (Revised January 2018) available <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201092E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201092E)>

<sup>82</sup> Available: <<https://prci-c-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/PublicRegistryHome.aspx>>

<sup>83</sup> Office of the Senate Ethics Officers, *Ethics and Conflict of Interest Code for Senators*. Available <<https://seo-cse.sencanada.ca/en/code/ethics-and-conflict-of-interest-code-for-senators/>>

- Administer the disclosure regime
- Maintain the public registry of disclosure summaries
- Inquire into possible breaches of the Code

The existence of this distinct office as opposed to a single commissioner has been a subject of debate. However, the role endures due to the Senate's independence, and its separate constitutional role and function.<sup>84</sup>

## Assessing the Canadian Model

Canada's statutory framework has many strengths including an independent Commissioner, graduated obligations according to the seniority of office, the inclusion of liabilities in disclosure obligations, prohibition on preferential treatments, divestment provisions, and provisions for review. Canada's Commission is a strong independent institution with powerful preventative problem-solving competencies regarding declarations of interest and compliance with the country's Conflict of Interest Act. The Commissioner's independence is further underscored by their seven-year term, which also includes the possibility of renewal, and because the Commission's employees are separate from Canada's federal public administration. However, there are limitations to Canada's model that must be acknowledged. While the Commission has the power to initiate investigations of suspected wrongdoing, and to refer these instances for criminal investigation if necessary, its enforcement capacities are limited. While it can issue sanctions for violations of Canada's ethics frameworks, the maximum administrative monetary policy it can issue are not high, up to the amount of CA \$500. As such, similar to the models utilised in other common law systems its enforcement and sanctions capabilities are limited. Despite these limits, the Canadian model contains a number of innovative features for Ireland to consider.

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<sup>84</sup> For more detail, see Maxime-Olivier Thibodeau and Alexandra Savoie, Economics, Resources and International Affairs Division, Background Paper; Conflict of Interest at the Federal Level: Legislative Framework (Revised January 2018) available < [https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201092E](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201092E)>



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## 5 The Statutory Framework in EU Partners

The arrangements adopted in other EU member states, as well as those of EEA partners, developed in legal and administrative systems that differ in significant ways to Ireland's common law framework. As such, these systems cannot be directly compared to Ireland. Nevertheless, it is worthwhile reviewing the arrangements our European partners utilise because they:

- Contain innovative policy frameworks that, with modification, could potentially be employed in Ireland
- Share similar ethics concerns to those raised in Ireland
- Contextualise Ireland's position within Europe's ethics frameworks

### Statutory Frameworks in EU/EEA partners

As noted above, the arrangements adopted in other EU Member states developed within different legal and administrative frameworks. The Nordic EU/EEA member-states (Denmark, Finland, Iceland, Norway and Sweden) share with New Zealand the highest rankings on the Transparency International Perceptions of Corruption Index, 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. 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 from the State budget, it has financial autonomy. It is not answerable to the executive 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

## Lessons from the Nordic countries

The Nordic countries – Denmark, Finland, Iceland, Norway and Sweden – consistently perform are often cited as exemplars of model governance. Rather than the particularities of their statutory frameworks for ethics, their reputations appears to rest primarily on high expectations of and trust in senior officials, whether elected or appointed.<sup>85</sup>

A number of reasons may explain the region's relatively high standing in this regard.<sup>86</sup> 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,<sup>87</sup> disclosures must be made upon taking office while in Denmark and Iceland members of government have thirty days in which to disclose their interests.<sup>88</sup> In Norway, the disclosure regime is mandatory and all elected officials are compliant although no timeframe for disclosure is specified.<sup>89</sup>

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

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<sup>85</sup> Iceland being a notable exception as society has become increasingly intolerant of corruption and conflicts of interest following the financial crisis of 2008

<sup>86</sup> FULLTEXT02.pdf (diva-portal.org)

<sup>87</sup> GRECO (coe.int); Fifth Round Evaluation Report on Sweden; (coe.int);

<sup>88</sup> Fifth Round Evaluation (coe.int); EVAL 5 Iceland (coe.int)

<sup>89</sup> GRECO (coe.int)

in Denmark, Finland and Sweden.<sup>90</sup> In Iceland, all members of parliament must disclose any gifts received although no value threshold is stipulated.<sup>91</sup>

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.<sup>92</sup> 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,<sup>93</sup> bodies similar to the Outside Appointments Board can assess job applications made by former ministers, state secretaries, special advisors 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 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

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<sup>90</sup> Fifth Round Evaluation (coe.int); GRECO (coe.int); Fifth Round Evaluation Report on Sweden; (coe.int)

<sup>91</sup> EVAL 5 Iceland (coe.int)

<sup>92</sup> Fifth Round Evaluation Report on Sweden; (coe.int)

<sup>93</sup> GRECO (coe.int); GRECO (coe.int)

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.

## France

In the preceding decade, France undertook significant reform of its ethic framework. In its most recent evaluation of France, GRECO noted that the following legal instruments form the basis of France's anti-corruption framework:

- The 2013 'Transparency' laws,<sup>94</sup> which established the HATVP (see below).
- The 'Sapin 2 law' established the AVA (see below).<sup>95</sup>
- The 2017 'Trust' laws<sup>96</sup> (this legislation applies to the composition of government. Among its main provisions is a prohibition on appointing family members as special advisors.<sup>97</sup>)

Moreover, an interdepartmental multi-annual anti-corruption plan underpins policy in this area.<sup>98</sup> Central to France's anti-corruption framework is the *Haute Autorité pour la transparence de la vie publique* (HATVP – High Authority for Transparency in Public Life), an independent administrative authority established under primary legislation<sup>99</sup> to oversee the integrity of the highest-ranking French public officials. The HATVP was established in January 2014. Its independence is guaranteed by the arrangements concerning:

- Its president (appointed by Presidential decree on recommendation of a standing committee of each house of Parliament)
- The composition of its collegial body (six senior magistrates and two members selected by the presidents of the National Assembly and the Senate, appointed for a non-renewable, non-revocable six-year term)
- Its administrative and financial autonomy (50 staff members and a budget of 6.4 million euros in 2019)

<sup>94</sup> Institutional Law No. 2013-906 and Law No. 2013-907 of 11 October 2013 on transparency in public life. Available: <<https://www.hatvp.fr/wordpress/wp-content/uploads/2018/01/Act-no.-2013-907-dated-11-October-2013-on-transparency-in-public-life.pdf>>

<sup>95</sup> Law No. 2016-1691 of 9 December 2016 on transparency, anticorruption measures and the modernisation of economic life. Available: <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033558528/>>

<sup>96</sup> Institutional Law No. 2017-1338 and Law No. 2017-1339 of 15 September 2017 on trust in politics Available: <<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000035567936/>>.96

<sup>97</sup> Ibid, Article 11.

<sup>98</sup> Council of Europe, Group of States Against Corruption, Fifth Evaluation Round; Preventing corruption and promoting integrity in Central governments (top executive functions) and Law enforcement agencies, Evaluation report, France (9 January, 2020) Available: <<https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16809969fc>>

<sup>99</sup> Transparency Laws, Article 19

The HATVP's official functions are:

- Receiving declarations of assets and declarations of interest of members of Government, and ensuring that they are checked, verified and, where necessary, published
- Issuing an opinion on situations that could constitute a conflict of interest, and, where necessary, ordering cessation of the conflict
- Responding to requests for opinions
- Ruling on the compatibility of an independent profession or remunerated activity
- At the request of the Prime Minister or on its own initiative, issuing recommendations for the application of primary legislation

In addition, awareness on the part of the HATVP of an ethical breach, triggers notification of relevant persons/bodies.<sup>100</sup> A recent EU study highlighted France's *Haute Autorité pour la transparence de la vie publique* (HATVP) as one of three models of best practice.<sup>101</sup>

Members of Government, persons who hold a local elective public office and persons entrusted with a public service appointment are obliged to perform their duties with 'dignity, probity and integrity and shall ensure that they prevent or immediately end any and all conflicts of interest.' Members of independent administrative authorities and independent public authorities have an obligation to act impartially.

An obligation for a public official to recuse him/herself arises in the case of a conflict of interest defined as 'any situation that causes interference between a public interest and public or private interests, which is likely to influence or appear to influence the independent, impartial and objective performance of a duty'. The HATVP can be proactive and on observing a conflict of interest by a member of Government, it may pursue an order/injunction to resolve the conflict. Pending the observations of the member, the HATVP has discretion to publish the injunction.

Within two months of taking office, Members of Government and specified senior public officials are required to declare their assets and interests to the HATVP. The HATVP maintains a centralised register of the declarations received. For members of Government, the legislation is express on the obligation to provide 'an exhaustive, accurate and sincere declaration of his/her assets' as well as a declaration of interests.

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<sup>100</sup> Ibid, Article 22

<sup>101</sup> 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)

Assets subject to declaration are:

- Developed and undeveloped real estate/property
- Securities
- Life insurance policies
- Current and savings bank accounts, savings books and other savings products
- Items of movable property with a value exceeding an amount set by regulations
- Motorised land vehicles, boats and aircraft
- Goodwill, custom, official appointments and offices
- Movable property, real property and accounts held abroad
- Other property
- Liabilities

The declaration of interests extends to non-pecuniary interests and is retrospective. It includes:

- Professional activities which give rise to remuneration or gratuities and which are performed on the date of appointment
- Professional activities which give rise to remuneration or gratuities and which were performed over the last five years
- Consulting activities that are performed on the date of appointment and over the last five years;
- Involvement in the managing bodies of a public or private organisation or of a company on the date of appointment or over the last five years
- Direct stakes in the capital of a company on the date of appointment
- Professional activities performed on the date of appointment by the spouse, civil union partner or common law spouse
- Volunteer work likely to give rise to a conflict of interest
- Elective duties and offices performed and held on the date of appointment

Within three months of information being shared with the tax authority (see below), the declarations of Members of Government are published<sup>102</sup> with the exception of certain personal details. Separate publication arrangements apply for public officials: declarations of interest are subject to publication but it is prohibited to publish declarations of assets.

Members of Government are subject to tax audit on appointment. A key feature is that declarations of assets are shared with the tax authority to assess the accuracy of the declaration. The HATVP may also work with the tax authority to request that it exercise its right of discovery. Thereafter, the HATVP actively monitors assets. A significant change

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<sup>102</sup> Ibid., Article 5. 1

must be explained (the member of Government has been given the opportunity to make an 'observation'). If an explanation is not satisfactory, the matter (including the member's observations) is published in a 'special report' in the Official Journal,<sup>103</sup> and referred to the Public Prosecutor's office.

The HATVP oversees movement between the public and private sector. It monitors both post-public employment and lobbying. Oversight has a statutory basis in two Acts, one of which relates to public officials generally and the other to senior officials.<sup>104</sup> There is direct oversight of senior officials by HATVP and otherwise, the relevant 'hierarchical authority'.

Under the transparency laws, the following must notify HATVP for a review of proposed private activities:

- Members of the government
- Members of an independent administrative authority (AAI) or of an independent public authority (API)
- Local executive presidents (mayors of a municipality with more than 20,000 inhabitants, regional council presidents, presidents of departmental councils or presidents of EPCIs with own taxation of more than 20,000 inhabitants)<sup>105</sup>

Awareness of unauthorised performance of an activity may also trigger referral.

The HATVP's opinion must be issued within two months of referral and is binding for three years following exit or resignation from public office. Opinions may find compatibility (with the duties required of public officials), compatibility with reservations (where measures to limit risks are prescribed) or incompatibility. An opinion of incompatibility rests on either substantive grounds or insufficient information. Subject to the right to privacy, opinions may be published at the discretion of the HATVP. Notably, opinions are also issued to relevant parties and can override private contracts.

Non-compliance with reservations or an opinion of incompatibility, subject to an opportunity for explanation, triggers publication by the HATVP of a special report in the Official Journal and referral of the report and documents to the French Public Prosecutor.

In addition, the HATVP manages and monitors France's public digital register of lobbying. Lobbyists are required to disclose their identity and conduct activities with 'probity and

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<sup>103</sup> Available: < <https://www.journal-officiel.gouv.fr/jo/> >

<sup>104</sup> Law n ° 83-634 of July 13, 1983 on the rights and obligations of civil servants. [https://www.legifrance.gouv.fr/loda/article\\_lc/LEGIARTI000038923244/](https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000038923244/) ; Act no. 2013-907 dated 11 October 2013 on transparency in public life; < <https://www.hatvp.fr/en/official-texts/> > accessed 16 June 2021.

<sup>105</sup> Act no. 2013-907 dated 11 October 2013 on transparency in public life; < <https://www.hatvp.fr/en/official-texts/> > ; See generally, High Authority for Transparency in Public Life; <[https://www.hatvp.fr/espacedeclarant/mobilite-public-privé/les-modalites-de-saisine/#post\\_8277](https://www.hatvp.fr/espacedeclarant/mobilite-public-privé/les-modalites-de-saisine/#post_8277)>

integrity'. When the HATVP detects a breach of ethical rules, it issues a formal notice. Further breach is punishable by imprisonment and fine.

Criminal sanctions are robust. For persons specified under the Transparency Law, failure to submit, in whole or substantial part, a declaration of assets or interests or untruthful evaluation of assets is a criminal matter punishable by a three-year prison sentence and a €45,000 fine. There is also scope for punishment of such breaches by additional penalties, by the loss of civic rights 'and consideration of nomination as a public official as null'.

If the conflict of interest meets the threshold of the criminal offence (under the Criminal Code) of 'taking an illegal advantage', it is punishable by up to a five-year prison sentence, a €500,000 fine and a disqualification for any public office for a maximum of ten years. If there is non-compliance with an injunction (as set out above under Conflicts of Interest) the public official concerned may be sentenced with up to one-year imprisonment and a €15,000 fine.

The HATVP website notes the status quo is a significant improvement on previous arrangements. 102 cases of inaccurate declaration have been referred to the prosecution service since 2014 whereas the previous administration had referred 12 cases to courts in 25 years, resulting in one conviction.<sup>106</sup>

The regulation of gifts appears diffuse and does not rest on a statutory basis. In general, apart from small or nominal gifts, a prohibitive approach is pursued.<sup>107</sup>

Apart from the HATVP, France's Anti-Corruption Agency (AFA) is a statutory body with broad responsibilities of oversight and review for the public and private sectors. Under the Sapin II Law, the AFA 'shall draft guidelines to help public and private sector entities prevent and detect bribery, influence peddling, extortion by public officials, illegal taking of interest, misappropriation of public funds and favouritism'.<sup>108</sup>

The strengths of the French model include the centralised framework for declarations and uniform, statutory rules. In addition, the HATVP is considered a 'powerful watchdog' by virtue of its ability to share information with the tax authority and the availability of robust sanctions enshrined in the criminal code spanning monetary fines to imprisonment.<sup>109</sup> The possibility of informing relevant superiors, as well as the fact that family members are frequently mentioned when referring to obligations for officials, further empowers the HATVP. However,

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<sup>106</sup> Available: <<https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/list/#what-are-the-results-rp>>

<sup>107</sup> <sup>107</sup> Council of Europe, Group of States Against Corruption, Fifth Evaluation Round; Preventing corruption and promoting integrity in Central governments (top executive functions) and Law enforcement agencies, Evaluation report, France (9 January, 2020) Available: <<https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16809969fc>> paras. 99 - 102

<sup>108</sup> Transparency, Anti-Corruption and Economic Modernisation Act 2016-1691 of 9 December 2016, Article 3.2

<sup>109</sup> 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) p. 63



the HATPV cannot be considered a court (to which cases can be referred to) and its success is also based on dialogue with 'almost all public authorities'.

However, there exist limitations to the disclosure regime. Notably, GRECO recommended the extension of disclosures to spouses, partners and dependents.<sup>110</sup> Although the legislative framework is robust, adoption of Codes of Conduct and an Ethics Charter to complement legislation was part of GRECO's recent recommendations.

An additional strength of the HATVP is its strong independence. It cannot receive orders from the government or other institutions and enjoys autonomy concerning its internal organisation and working methods. Likewise, the composition of its members can be seen as one of the strength of this authority. Furthermore, the HATVP can take up matters on its own initiative or be referred to it by the Prime Minister, the President of the National Assembly or the President of the Senate, as well as certain associations fighting corruption.

## Latvia

Latvia acceded to the Council of Europe Agreement establishing GRECO in 2000, and joined the European Union in 2004. Latvia performs relatively well in evaluations. In the GRECO fifth evaluation round, evaluators described Latvia's integrity framework as 'fairly comprehensive' and noted 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*'.<sup>111</sup> 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

The ethical framework is set out primarily in the following instruments:

- The Law on Prevention of Conflict of Interest in Activities of Public Officials (LPCOI).<sup>112</sup> This places restrictions and prohibitions on public officials, seeks to prevent conflicts of interest and sets out the framework for financial declaration and the verification of declarations

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<sup>110</sup> Ibid., para. 119

<sup>111</sup> Available at: GRECO (coe.int)

<sup>112</sup> Available at: Par interešu konflikta novēršanu valsts amatpersonu darbībā (likumi.lv)

- The Law on the Corruption Prevention and Combating Bureau (the 'KNAB'), where oversight of the LPCOI primarily rests<sup>113</sup>
- Recommendation, 'Values of State Administration and Fundamental Principles of Ethics'<sup>114</sup>

The LPCOI applies to public officials, including the President, members of parliament, the Prime Minister, Ministers, and Parliamentary Secretaries, senior advisors, the Auditor General, judges, councillors of local government and civil servants. It contains restrictions, prohibitions, and positive obligations. It also has provisions regarding the verification of declarations, and relevant sanctions. Its restrictions include:

- Combining public offices (where a public official holds more than one public office)
- Outside employment ('obtaining income' from outside sources)
- Engaging in commercial activities
- Issuing administrative acts, performance of supervision, control, inquiry or punitive functions and entering into contracts (where there is a conflict of interests)
- Accepting gifts
- Accepting donations
- Engaging in advertising

Furthermore, public officials are prohibited from:

- Influencing public functions and decisions in which they have an interest
- Engaging in lobbying; the legislation uses the terminology 'being a representative'
- Receiving payment for public functions; referred to as 'supplementary payments'
- Unlawfully disclosing information

Heads of public authorities have certain positive obligations; they are required to submit lists of public officials to revenue and to notify relevant authorities (the KNAB or Constitution Protection Bureau) of violations of the legislation. They must:

- Make financial disclosures on assuming public office
- Report other public officials' conflict of interest
- Comply with relevant behavioural (ethical) rules (in Codes of Conduct etc.)
- Submit declarations of interest
- Submit, where required, further information in verification of their declarations

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<sup>113</sup> Available at: Korupcijas novēršanas un apkarošanas biroja likums (likumi.lv)

<sup>114</sup> Available at:

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjPwqaqrY\\_6AhWMbcAKHfnQCjwQFnoECAoQAQ&url=https%3A%2F%2Fvvc.gov.lv%2Fimage%2Fcatalog%2Fdokumenti%2FCab.%2520Rec.%2520No.%25201%2520-%2520Values%2520of%2520State%2520Administration%2520and%2520Fundamental%2520Principles%2520of%2520Ethics.doc&usg=AOvVaw05n1BUAarpRNPnwOtdGZlb](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjPwqaqrY_6AhWMbcAKHfnQCjwQFnoECAoQAQ&url=https%3A%2F%2Fvvc.gov.lv%2Fimage%2Fcatalog%2Fdokumenti%2FCab.%2520Rec.%2520No.%25201%2520-%2520Values%2520of%2520State%2520Administration%2520and%2520Fundamental%2520Principles%2520of%2520Ethics.doc&usg=AOvVaw05n1BUAarpRNPnwOtdGZlb)

Recommendation No. 1 of 2018 on 'Values of the State Administration and Fundamental Principles of Ethics' sets out principles to promote 'a common understanding of the values of State administration and the fundamental principles of ethics as well as appropriate action, promoting good governance and increasing public trust'.<sup>115</sup>

These are:

- Professionalism and effectiveness
- Integrity
- Accountability
- Acting in the public interest
- Sustainability of the state and welfare of society
- Open state administration accessible to society
- Cooperation in the state administration

In addition to these principles, the LPCOI includes a general obligation to act within the behavioural (ethical) codes of the relevant profession, field or sector, as well as an obligation on public officials to refuse the performance of the duties 'where due to ethical reasons the impartiality and neutrality of his or her actions might be doubted'.

The LPCOI puts in place a comprehensive disclosure regime for elected officials and public servants. Declarations are required:

- On assuming public office
- Annually thereafter
- On cessation of office
- After the performance of the duties of office are terminated

Moreover, a wide range of interests are subject to declaration:

- Other offices
- Immovable property
- Commercial interests including share-holdings;
- Financial instruments;
- Cash or non-cash savings above certain value thresholds;
- Income obtained during the reporting period;
- Transactions above certain value thresholds and the parties to the transactions;
- Beneficial ownership;
- Debts above certain value thresholds;

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<sup>115</sup> Ibid.

- Loans given above a threshold value;
- Information regarding private pension funds or life insurance);
- Where outside employment as a lawyer, there is specific provision for the detailed declaration of certain details.

Declarations are accessible to the public but the law provides for protection of personal data, so certain sensitive elements of the declaration are inaccessible to the public. Verification is shared across different agencies including the KNAB, i.e. verifying the declaration has been submitted in the relevant time period, comparing the information indicated in the declaration with taxation information (this falls to the State Revenue Service) and examining declarations for violations.

Certain categories of public official and their spouses are permitted to accept diplomatic and other specified gifts while fulfilling official duties although diplomatic gifts vest in the State. Restrictions apply to the acceptance of gifts outside the performance of public functions, particularly where the public official has performed certain functions in relation to the donor. In this regard, provisions facilitate a type of cooling-off period for gifts; where the public official has received a gift, they are prohibited from performing public functions in relation to the donor for a period of two years.

As well as civil and/or criminal sanctions, where a public official violates the LPCOI, compensation for the State arises on the presumption that 'the public official has caused such harm to the State administrative order as is to be evaluated in financial terms.' With certain exceptions, income and financial benefits obtained in violation of the LPCOI can accrue to the State.

Outside employment is permitted provided it is in accordance with the law. Combining or holding concurrent public offices is also permitted where that does not entail a conflict of interest, contradict ethical norms or negatively affect public functions. Enhanced 'special restrictions' apply to certain specified senior public officials; under these provisions, the law restricts outside concurrent employment to certain activities and occupations according to the public office held. These restrictions continue to apply for two years after reigning or retiring from the public sector. Moreover, in the two-year post-employment period former public officials are prohibited from owning or acquiring an interest in a company or business in relation to which, s/he took a decision on public procurement, allocation of state resources, privatisation funds, or performed any supervisory, control or punitive functions.

The Corruption Prevention and Combating Bureau (KNAB) is a specialised body for prevention of corruption. Its head is appointed by parliament via open competition for five years and not more than two successive terms. GRECO has aired concerns about the independence of the Bureau, noting that it is supervised by the Cabinet with a right of the

Prime Minister to inspect the rule of law of administrative decisions. In addition to responsibilities in the area of political finance, the KNAB's functions involve the prevention and combatting of corruption. Its responsibilities include:

- Developing a corruption strategy and national programme, subject to Cabinet approval;
- Co-ordinating co-operation among institutions to ensure implementation of the programme;
- Implementation of the LPCOI other relevant laws and regulations;
- Examining the declarations of public officials within the framework of the LPCOI.
- Reviewing complaints and submissions and carrying out of 'inspections proposed by Government;
- Compilation and analysis of information (included declarations submitted, violations detected);
- Analysis of corruption prevention by State authorities and submission of recommendations;
- Development of corruption prevention strategies for State and local government institutions and the private sector;
- Undertake investigations in accordance with criminal law;
- Compilation and analysis of the experience of other countries relevant to corruption;
- Submission of proposals for legislative reform;
- Carrying out public opinion surveys and analysis;
- Educating the public in the area of the law and ethics;
- Informing the public of the corruption development trends, and how cases are resolved;
- Development and introduction of a public relations strategy.

The LPCOI sets out a system of administrative sanctions, with fines and/or disqualification from public office for a period of two years for the following violations:

- Non-submission of the declaration within the specified time period, procedural non-compliance and misleading information
- Provision of false information or non-submission of the declaration
- Non-submission or erroneous submission (on the part of the head of a public authority) of the lists of public officials
- Violation of restrictions and prohibitions and the performance of functions in a conflict
- The non-performance of the obligations relating to the prevention of a conflict of interest

While Latvia's ethics framework is robust, GRECO notes that there are gaps in regulation that require addressing including the ad hoc declaration of conflicts of interests by all persons entrusted with top executive functions, systematic in-depth scrutiny of declarations,

a system for managing advisors' conflicts of interest, and, publication of names of all participants in certain high-level meetings.<sup>116</sup>

## Statutory Frameworks in Europe: An Assessment

While Ireland's ethics frameworks developed in a different legal tradition compared to its EU peers, it is nevertheless evident that each jurisdiction reviewed in this chapter seeks to ensure that public officials, whether elected or appointed, demonstrate the highest standards of integrity when exercising their roles. However, EU Members utilise an array of different ethical frameworks to foster integrity in public life.

For example, the Nordic countries have a comparatively limited institutional framework for ethics in public office. Instead, the Nordic countries rely on high levels of societal trust and a robust independent media to ensure public officials act with integrity. In contrast, France and Latvia employ robust ethics frameworks to ensure that public officials comply with their ethical requirements.

Each country holds lessons for Ireland that merit consideration. First, while the Nordic countries employ comparatively lighter ethical frameworks their reliance on high levels of societal trust and a robust media are a reminder that maintaining ethics in public office is a matter for society as well as those in public office.

Second, France and Latvia demonstrate that a country can put in place a comprehensive regime to ensure that public officials display the highest levels of integrity in undertaking their roles. However, both countries score lower than Ireland on the CPI again underscoring the point made above that a range of societal factors (outside of Ethics policy) as much as legislative frameworks may contribute to fostering the highest standards of integrity.

Third, where gaps exist in the French and Latvian frameworks they relate to declarations of interests particularly *ad hoc* declarations, declarations on the part of special advisors and declarations related to close contacts of public officials. This underscores that many of the issues that Ireland seeks to address are prevalent in Europe and that there are opportunities for learning from the experience of European peers, as Ireland embarks on its reform process.

Fourth, there are other policy approaches in each jurisdiction that merit consideration in Ireland – France's inclusion of sanctions in the criminal code, and, Latvia's cross-reference

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<sup>116</sup> Available at: GRECO (coe.int)

of disclosures with a persons' tax statements. Indeed, some of these policy innovations can be found in a similar form in the 2015 Public Sector Standards Bill.

Nevertheless, it is important that where alternative approaches are considered that they conform to not only Irish law but also Irish political culture Ireland score is above 18 of our EU peers on the CPI, with six EU member States ranking higher (Denmark, Finland, Sweden, the Netherlands, Luxembourg, and Germany). While such perceptions are subjective, this suggests that the Irish public see the country as more transparent than the majority of their European peers see theirs, despite some in the latter group's ethical frameworks resting on firmer legislatives bases, and, in some instances, possessing a more robust sanctions regime. As such, if elements of the ethical frameworks employed in Europe are to be considered for Ireland it will be important that they reflect the context in which they will be operating.

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## 6 Conclusion: Ireland's Statutory Regime in Perspective

Although Ireland's statutory framework for ethics in public office compares well in certain respects with those in other jurisdictions, clear shortcomings identified by Tribunals of Enquiry and international peer reviews remain to be addressed, over ten years after the Tribunals reported and its recommendations were made. The current regime, in place for over twenty years, is seen as complex and in need of reform. It is notable from the review of international peers that some face similar challenges to Ireland, including in the areas of declarations, post-employment restrictions and enforcement mechanisms.

Ireland can learn much from their experience: For example, Canada's framework of graduated obligations provides an innovative template for reforming the declarations of elected and senior public officials that would take into account an individual's ability to influence the outcome of a decision-making process. In this instance, a system of graduated obligations would see officials with less influence subject to a less intrusive regime than those with greater responsibilities. Nevertheless, elected officials would still be subject to a rigorous declarations process given their direct accountability to the voting public.

France's HATVP also provides a point of departure for discussing how the Standards in Public Office Commission (SIPO) might consider its future role in Ireland's reformed ethics framework. While the particulars of reform remain undefined, it is important that SIPO consider the role it wishes to play, and, how it might play this role, in upholding integrity standards in public office.

More broadly, it is imperative that there is a realisation that the strength of any ethics framework rests on the willingness of officials – both elected and appointed – to abide by its rules. As the example of the Nordic region shows, where there are high levels of public trust and a robust media, standards can remain high with a comparatively sparse statutory framework. In contrast, recent experience in the UK shows that in a system relying solely on the discretion of elected representatives to initiate investigations into ethical breaches, and apply sanctions if they occur, risks being ineffectual. As such, while it is important that Ireland develop a robust legislative framework for ethics in public office it is also important that development of such a framework is supported by outreach and citizens engagement.



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## **ANNEX A: International Code of Conduct for Public Officials (United Nations)**

### **I. GENERAL PRINCIPLES**

1. A public office, as defined by national law, is a position of trust, implying a duty to act in the public interest. Therefore, the ultimate loyalty of public officials shall be to the public interests of their country as expressed through the democratic institutions of government.
2. Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.
3. Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.

### **II. CONFLICT OF INTEREST AND DISQUALIFICATION**

4. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.
5. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.
6. Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.
7. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.

### III. DISCLOSURE OF ASSETS

8. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.

### IV. ACCEPTANCE OF GIFTS OR OTHER FAVOURS

9. Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

### V. CONFIDENTIAL INFORMATION

10. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.

### VI. POLITICAL ACTIVITY

11. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

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## **ANNEX B: Council of Europe Model code of conduct for public officials**

Appendix to Recommendation No. R (2000) 10

### **Interpretation and application**

#### Article 1

1. This Code applies to all public officials.
2. For the purpose of this Code "public official" means a person employed by a public authority.
3. The provisions of this Code may also be applied to persons employed by private organisations performing public services.
4. The provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

#### Article 2

1. On the coming into effect of this Code, the public administration has a duty to inform public officials about its provisions.
2. This Code shall form part of the provisions governing the employment of public officials from the moment they certify that they have been informed about it.
3. Every public official has the duty to take all necessary action to comply with the provisions of this Code.

#### Article 3 – Object of the Code

The purpose of this Code is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials.

### **General principles**

#### Article 4

1. The public official should carry out his or her duties in accordance with the law, and with those lawful instructions and ethical standards which relate to his or her functions.
2. The public official should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities.

#### Article 5

1. The public official has the duty to serve loyally the lawfully constituted national, local or regional authority.
2. The public official is expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case.

3. The public official should be courteous both in his or her relations with the citizens he or she serves, as well as in his or her relations with his or her superiors, colleagues and subordinate staff.

#### Article 6

In the performance of his or her duties, the public official should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

#### Article 7

In decision making the public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.

#### Article 8

1. The public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.
2. The public official should never take undue advantage of his or her position for his or her private interest.

#### Article 9

The public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.

#### Article 10

The public official is accountable to his or her immediate hierarchical superior unless otherwise prescribed by law.

#### Article 11

Having due regard for the right of access to official information, the public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment.

#### Article 12 – Reporting

1. The public official who believes he or she is being required to act in a way which is unlawful, improper or unethical, which involves maladministration, or which is otherwise inconsistent with this Code, should report the matter in accordance with the law.
2. The public official should, in accordance with the law, report to the competent authorities if he or she becomes aware of breaches of this Code by other public officials.

3. The public official who has reported any of the above in accordance with the law and believes that the response does not meet his or her concern may report the matter in writing to the relevant head of the public service.
4. Where a matter cannot be resolved by the procedures and appeals set out in the legislation on the public service on a basis acceptable to the public official concerned, the public official should carry out the lawful instructions he or she has been given.
5. The public official should report to the competent authorities any evidence, allegation or suspicion of unlawful or criminal activity relating to the public service coming to his or her knowledge in the course of, or arising from, his or her employment. The investigation of the reported facts shall be carried out by the competent authorities.
6. The public administration should ensure that no prejudice is caused to a public official who reports any of the above on reasonable grounds and in good faith.

#### Article 13 – Conflict of interest

1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.
2. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.
3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:
  4. be alert to any actual or potential conflict of interest;
  5. take steps to avoid such conflict;
  6. disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
  7. comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.
8. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest.
9. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment.
- 10.

#### Article 14 – Declaration of interests

The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

#### Article 15 – Incompatible outside interests

1. The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from

the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior.

2. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment.
3. The public official should comply with any lawful requirement to declare membership of, or association with, organisations that could detract from his or her position or proper performance of his or her duties as a public official.

#### Article 16 – Political or public activity

1. Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally.
2. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes.
3. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.

#### Article 17 – Protection of the public official's privacy

All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

#### Article 18 – Gifts

1. The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts.
2. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.

#### Article 19 – Reaction to improper offers

If the public official is offered an undue advantage he or she should take the following steps to protect himself or herself:

1. refuse the undue advantage; there is no need to accept it for use as evidence;
2. try to identify the person who made the offer;

3. avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;
4. if the gift cannot be refused or returned to the sender, it should be preserved, but handled as little as possible;
5. obtain witnesses if possible, such as colleagues working nearby;
6. prepare as soon as possible a written record of the attempt, preferably in an official notebook;
7. report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority;
8. continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

#### Article 20 – Susceptibility to influence by others

The public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

#### Article 21 – Misuse of official position

1. The public official should not offer or give any advantage in any way connected with his or her position as a public official, unless lawfully authorised to do so.
2. The public official should not seek to influence for private purposes any person or body, including other public officials, by using his or her official position or by offering them personal advantages.

#### Article 22 – Information held by public authorities

1. Having regard to the framework provided by domestic law for access to information held by public authorities, a public official should only disclose information in accordance with the rules and requirements applying to the authority by which he or she is employed.
2. The public official should take appropriate steps to protect the security and confidentiality of information for which he or she is responsible or of which he or she becomes aware.
3. The public official should not seek access to information which it is inappropriate for him or her to have. The public official should not make improper use of information which he or she may acquire in the course of, or arising from, his or her employment.
4. Equally the public official has a duty not to withhold official information that should properly be released and a duty not to provide information which he or she knows or has reasonable ground to believe is false or misleading.

#### Article 23 – Public and official resources

In the exercise of his or her discretionary powers, the public official should ensure that on the one hand the staff, and on the other hand the public property, facilities, services and

financial resources with which he or she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.

#### Article 24 – Integrity checking

1. The public official who has responsibilities for recruitment, promotion or posting should ensure that appropriate checks on the integrity of the candidate are carried out as lawfully required.
2. If the result of any such check makes him or her uncertain as to how to proceed, he or she should seek appropriate advice.

#### Article 25 – Supervisory accountability

1. The public official who supervises or manages other public officials should do so in accordance with the policies and purposes of the public authority for which he or she works. He or she should be answerable for acts or omissions by his or her staff which are not consistent with those policies and purposes if he or she has not taken those reasonable steps required from a person in his or her position to prevent such acts or omissions.
2. The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his or her staff in relation to his or her office. These steps may include emphasising and enforcing rules and regulations, providing appropriate education or training, being alert to signs of financial or other difficulties of his or her staff, and providing by his or her personal conduct an example of propriety and integrity.

#### Article 26 – Leaving the public service

1. The public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service.
2. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment.
3. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body.
4. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so.
5. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service.



Article 27 – Dealing with former public officials

The public official should not give preferential treatment or privileged access to the public service to former public officials.

Article 28 – Observance of this Code and sanctions

1. This Code is issued under the authority of the minister or of the head of the public service. The public official has a duty to conduct himself or herself in accordance with this Code and therefore to keep himself or herself informed of its provisions and any amendments. He or she should seek advice from an appropriate source when he or she is unsure of how to proceed.
2. Subject to Article 2, paragraph 2, the provisions of this Code form part of the terms of employment of the public official. Breach of them may result in disciplinary action.
3. The public official who negotiates terms of employment should include in them a provision to the effect that this Code is to be observed and forms part of such terms.
4. The public official who supervises or manages other public officials has the responsibility to see that they observe this Code and to take or propose appropriate disciplinary action for breaches of it.
5. The public administration will regularly review the provisions of this Code.

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## **ANNEX C: The Seven Principles of Public Life (Nolan Principles)**

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example. These principles apply to all aspects of public life. The Committee has set them out here for the benefit of all who serve the public in any way.<sup>117</sup>

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<sup>117</sup> First Report of the Committee on Standards in Public Life (Volume 1, May 1995) Available: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336919/1stInquiryReport.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf)>



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