

# **Guidelines on compliance with the provisions of the Ethics in Public Office Acts 1995 and 2001**

**Office Holders**

(Fifth Edition)



**Coimisiún um Chaighdeán in Oifigí Poiblí**  
**Standards in Public Office Commission**

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## **Introduction**

These guidelines for office holders, which are published by the Standards in Public Office Commission (Standards Commission), replace and revoke the fourth edition of the guidelines which were published in November 2011.

The guidelines are intended to assist understanding by office holders of the steps required to be taken by them in order to comply with the requirements of the Ethics in Public Office Act 1995 (the 1995 Act) and the Standards in Public Office Act 2001 (the 2001 Act). These Acts are cited together as the Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts). The guidelines also take account of amendments to the Ethics Acts made by subsequent legislation.

The guidelines are published under section 25 of the 1995 Act. As is required, the Committees on Members' Interests of the Dáil and of the Seanad have been consulted prior to publication.

In the Ethics Acts and in these guidelines, the term "office holder" means:

- An Taoiseach
- An Tánaiste
- A Minister of the Government
- A Minister of State
- An Attorney General who is a member of Dáil or Seanad Éireann
- A Chairman or Deputy Chairman of Dáil or Seanad Éireann
- A Chairman of a Committee of either House of the Oireachtas, where that office stands so designated by resolution of that House, or
- A Chairman of a Joint Committee of both Houses, where that office stands so designated by resolution of each House.

A number of other important terms used in these guidelines and in the legislation are defined in Appendix 1 of these guidelines. Office holders are entitled, pursuant to section 25 of the 1995 Act, to request advice from the Standards Commission on any provision of the Ethics Acts or on the application of any provision in any particular circumstance. This includes the code of conduct for office holders which was drawn up by the Government and published in July 2003 by the Standards Commission. The 1995 Act provides that, where requested, such advice must be provided by the Standards Commission within 21 days or, alternatively, the Standards Commission may decline to give advice. Ideally, to eliminate any risk of misunderstanding, requests for advice should be made in writing (including by e mail). Normally, the Standards Commission will provide, or confirm, all advice of a substantive nature, in writing.

When a request for advice is made to the Standards Commission in relation to a particular case, the provision concerned of the Ethics Acts will not, as respects the person who made

the request, apply in relation to that case during the period from the making of the request to the time when the advice is given or the Standards Commission declines to give advice.

Office holders are required to act in accordance with these guidelines and with any advice given under the Ethics Acts by the Standards Commission unless, by so doing, they would be contravening another provision of the Ethics Acts.

Office holders will note that these guidelines are admissible in any proceedings before a court, or other tribunal, or a Committee on Members' Interests, or the Standards Commission. Any provision of these guidelines that appears to any of the aforementioned bodies to be relevant to a question in the proceedings may be taken into account in determining the question.

An Irish language version of these guidelines is published on [www.sipo.ie](http://www.sipo.ie).

## **Ethics in Public Office Acts - General Background**

### **Ethics in Public Office Act 1995 (the 1995 Act)**

1. The 1995 Act provided for the establishment of the Public Offices Commission and Committees on Members' Interests of Dáil and Seanad Éireann. It provided for the disclosure of interests by office holders, other members of the Houses of the Oireachtas, the Attorney General, Ministerial special advisers and holders of designated directorships and occupiers of designated positions in a wide range of public bodies, including the civil service. The 1995 Act also dealt with the investigation of contraventions and the publication of guidelines and giving of advice to ensure compliance with its provisions. It described, in detail, the powers of the Public Offices Commission, the circumstances in which complaints can be made and the process by which a decision to commence an investigation would be taken. The 1995 Act also prohibited the retention of valuable gifts by office holders and amended the Prevention of Corruption Acts 1889 to 1916.

### **Standards in Public Office Act 2001 (the 2001 Act)**

2. The 2001 Act provides for the establishment of the Standards Commission and confers on it the functions of its predecessor, the Public Offices Commission.
3. The principal functions of the Standards Commission, as inherited from the Public Offices Commission, are to publish guidelines, to provide advice on request to assist compliance with the Ethics Acts and to investigate and report in relation to possible contraventions. Generally, these functions relate to office holders, special advisers and designated directors and employees of specified public bodies.
4. A Tax Clearance Certificate must be provided to the Standards Commission by office holders and will issue, on application, from the Collector General where an office holder is in compliance with the obligations imposed by the Tax Acts, the Capital Gains Acquisitions Tax Acts and the Value-Added Tax Acts, as amended, in relation to the payment or remittance of any taxes, interest or penalties due and the delivery of any returns required. The Tax Clearance Certificate must have issued to the office holder from the Collector General not more than nine months before and not more than nine months after his or her election or nomination.

A Statutory Declaration, being a declaration made in accordance with the Statutory Declarations Act 1938, as amended, must also be provided to the Standards Commission by office holders confirming that, at the time of its making, the office holder is, to the best of his or her knowledge and belief, in compliance with the obligations imposed on him or her by the Acts referred to above and that there is no impediment to the issue of a Tax Clearance Certificate. This Statutory Declaration must be made by the office holder not more than one month before and not more than one month after his or her election or nomination.

Both the Tax Clearance Certificate and Statutory Declaration must be provided to the Standards Commission by the Office Holder not more than nine months after the date upon which he or she was elected or nominated.

5. Contravention of the above requirements relating to Tax Clearance Certificates and Statutory Declarations may lead to investigation by the Standards Commission and the drawing up of a written report of the result of the investigation. The report will be provided to the relevant Committee on Members' Interests who will cause it to be laid before the House.
6. As compared to the 1995 Act, the 2001 Act provides for a wider range of circumstances in which a complaint can be made to the Standards Commission. These include, for example, complaints in respect of the Acts or omissions of "a specified person" (who is defined in the 2001 Act and which includes an office holder) which may be inconsistent with the proper performance by "the specified person" of the functions of his or her office or position. The 2001 Act also provides for immunity for complainants and establishes a basis whereby the Standards Commission can appoint Inquiry Officers to carry out preliminary inquiries into complaints.
7. The 2001 Act requires the drawing up of codes of conduct for office holders, other members of the Houses and for the public service. These codes of conduct are published by the Standards Commission and indicate standards of conduct and integrity for the persons to whom they relate in the performance of their functions and connected matters. The codes will be admissible in any proceedings before a court or other tribunal or a Committee on Members' Interests of either House of the Oireachtas or the Standards Commission and any provision of any such code that appears to any of the aforementioned bodies to be relevant to a question in the proceedings may be taken into account in determining the question.
8. The 2001 Act also provides for complaints about an alleged 'specified act' (i.e. an act or omission referred to in section 4(1)(a) of the 2001 Act) by, inter alia, an office holder.

## Disclosure Requirements for Office Holders as Members

### **A. Annual Statement of Registrable Interests**

9. A person, including an office holder, who is a member of Dáil or Seanad Éireann on 31 December (i.e. the registration date) in any year is required to furnish a statement of registrable interests to the Standards Commission by the following 31 January. The statement should cover any period(s) when the person was a member of either House during the preceding year.

*In practice this means that the annual statement of registrable interests would cover the calendar year from 1 January to 31 December and would be provided to the Standards Commission by the following 31 January. If the Dáil stands dissolved on 31 December in any year for the purpose of holding a general election, the registration date for that year only would change - see definition of "registration date" in Appendix 1 of these guidelines.*

*In any year in which there is a Dáil general election, the annual statement of registrable interests would cover the period(s) during that year when the person was a member of either House and would be furnished to the Standards Commission by the following 31 January, or such later date as set out in the definition of "registration date" in Appendix 1. In the case of members of a Dáil who are elected to the immediately succeeding Dáil, the period from the day following the dissolution of the Dáil up to the day before the general election need not be covered in the annual statement of registrable interests.*

10. If the office holder had no registrable interests during the registration period, he/she must, within the same timescale, furnish a statement to this effect to the Clerk of Dáil Éireann or the Clerk of Seanad Éireann as appropriate.
11. The form for the registration of interests is provided in Irish and English to members of both Houses by the Standards Commission in January each year.
12. Interests held by members under the following general headings are registrable on this form:
- (1) Occupation other than that as office holder or member
  - (2) Shares, etc.
  - (3) Directorships
  - (4) Land and buildings
  - (5) Gifts
  - (6) Supplies of property or services
  - (7) Travel facilities, etc.
  - (8) Remunerated position as a lobbyist, etc.
  - (9) Contracts with the State
13. A fuller description of each registrable interest is given in Appendix 2 of these guidelines.

14. It is not necessary to specify the amount or monetary value of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement.
15. The annual statements of registrable interests of members are forwarded by the Standards Commission to the Clerk of Dáil or Seanad Éireann, as appropriate. Each Clerk will establish a Register of Members' Interests which will be laid before Dáil or Seanad Éireann, as the case may be, and published in *Iris Oifigiúil*. A copy of the Register will be furnished by the Clerk to the Standards Commission. The Clerks may also correct errors or otherwise amend the Register as provided for in the 1995 Act.



## **B. Disclosure of a Material Interest in Proceedings of the Houses**

16. If a member, including an office holder, who proposes to speak or vote in proceedings in either House, in a Committee of either House or in a Joint Committee of both Houses, has actual knowledge that he or she, or a connected person, has a material interest in the subject matter of the proceedings, then:
  - (i) if that member proposes to speak in the proceedings, he or she must make a declaration of the fact in the proceedings before or during the course of the speech, and
  - (ii) if that member proposes to vote, but does not speak, in the proceedings, he or she must make a declaration of the fact in writing and, before voting, furnish it to the Clerk of the House or Committee concerned, as appropriate.
17. For the purpose of the requirements in paragraph 14 above, a member, or a connected person, has a material interest in the subject matter of proceedings if the consequence or effect of any decision by the House, or the Committee or Joint Committee concerned, or by the Government or an office holder, concerning that matter may be to confer on, or withhold from, the member, or a connected person, a significant benefit or impose on the member, or a connected person, a significant loss, liability, penalty, forfeiture, punishment or other disadvantage without also conferring it on, withholding it from or imposing it on persons in general, or a class of persons which is of significant size having regard to all the circumstances and to which the member, or a connected person, belongs.
18. Disclosure of a material interest in proceedings is not required where that interest has already been disclosed in an annual statement of registrable interests of the member which, or a copy of which, has been laid before the House. It should be noted that this exemption, by its nature, does not apply to any material interest on the part of a connected person.

## **Additional Disclosure Requirements as Office Holders**

### **A. Statement of Additional Interests**

19. In addition to the annual statement of registrable interests described in paragraphs 8 to 13 above, an office holder is required to furnish a statement of additional interests to the appropriate Clerk within the same timescale. A statement of additional interests means a statement of any interests, of which the office holder has actual knowledge, of a spouse, a civil partner, a child or a child of a spouse or civil partner of the office holder, which could materially influence the office holder in the performance of the functions of his or her office by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the office holder or the spouse, civil partner or child, a substantial benefit.
20. A statement of additional interests is required for any period of time served as an office holder. Normally it would cover a calendar year. However, if a person became an office holder during a registration year, the statement would cover the period from the date of appointment up to the following 31 December. If a person ceased to be an office holder during a registration year, the statement would cover the period from 1 January that year or the date of appointment as an office holder, if later, up to the date on which the appointment ended. In all cases, the statement of additional interests should be furnished by the office holder to the appropriate Clerk not later than 31 January of the following year.
21. You will note from paragraph 17 above that a statement of additional interests is required only where an office holder has actual knowledge of an interest, of a spouse, civil partner or child, or child of a spouse or civil partner, which could materially influence the office holder in the performance of the functions of his or her office. Notwithstanding the statutory position in this regard, the Standards Commission recommends that a "nil" statement, as opposed to no statement, would be furnished where there are no additional interests to be disclosed.
22. It is not necessary to specify the amount or monetary value of any interest included in a statement of additional interests.
23. A copy of each statement of additional interests of an office holder will be furnished by the appropriate Clerk to the Standards Commission. Copies of the statements of additional interests of Ministers and Ministers of State will also be furnished by the Clerk to the Taoiseach.

#### **Notes:**

- i. *Statement of Additional Interests forms are provided by the Minister for Public Expenditure, NDP Delivery and Reform, and are also available on [www.sipo.ie](http://www.sipo.ie)*
- ii. *Statements of Additional Interests are not published in the normal course.*

## **B. Statement of a Material Interest in a Function to be Performed**

24. In circumstances where an office holder (the first office holder) proposes to perform a function of his or her office, and he or she has actual knowledge of a material interest\*, on his or her own part, or on the part of a connected person, or on the part of another office holder, or a person connected to another office holder, in a matter to which the function relates, the first office holder is required to furnish a statement in writing of the facts and the nature of the interest concerned. The statement should be furnished before performance of the function or, if this is not possible, as soon as may be afterwards.
25. If, in relation to paragraph 22 above, the office holder who is proposing to perform the function is the Taoiseach, he or she will furnish any such statement to the Chairman of the Standards Commission. If the office holder concerned is a Minister or Minister of State, he or she will furnish any such statement to the Taoiseach and the Standards Commission. Any other office holder will furnish any such statement to the Standards Commission.
26. If an office holder (the first office holder), or a person acting on his or her behalf, proposes to make a request to a second office holder in relation to the performance of a function by that second office holder, and the first office holder has actual knowledge that he or she, or a connected person, has a material interest\* in a matter to which the function relates, the first office holder must furnish a statement in writing of the facts and the nature of the interest to the second office holder. The statement should be furnished before, or at the time of, the making of the request. The statement furnished to the second office holder must be provided by that second office holder to the Taoiseach and/or the Standards Commission in accordance with the procedure outlined in paragraph 23 above.
27. Where the knowledge or belief of an office holder (the first office holder) that another office holder, who is a member of the Government or a connected person to that other office holder, has a material interest\* in a matter to which a function of the Government relates, derives solely from information in a statement made by that other office holder at, or for the purpose of, a meeting of the Government, it will not be necessary for the first office holder to furnish a statement in relation to that other office holder. In such circumstances, the Taoiseach will furnish a statement to the Standards Commission before the performance of the function or, if this is not possible, as soon as may be afterwards.

\*For the purposes of paragraphs 22 to 25 above, the definition of "material interest" differs from that used in paragraph 15 above in relation to disclosure in proceedings of the Houses - see Appendix 1 of these guidelines for the definition as it applies to paragraphs 22 to 25.

## **C. Gifts**

28. In addition to the following paragraphs dealing with gifts, office holders should familiarise themselves with the guidelines published by the Government, in August 1996 under section 15(4) of the 1995 Act, on the steps to be taken if an office holder, or a spouse or a child, is offered or supplied with property or services at below the commercial price, or with a loan of property free or below the commercial price, or a service free. The Government guidelines are reproduced in Appendix 3 of these guidelines.
29. An office holder is required to surrender any gift with a value in excess of €650 which, by virtue of his or her office, is given to the office holder, or to a spouse, a civil partner, a child or a child of a spouse or civil partner of the office holder. Any such gift will be deemed to be a gift given to the State and will vest in the Minister for Public Expenditure, NDP Delivery and Reform. An office holder will, as soon as possible following receipt of such a gift, inform the Secretary General to the Government and retain custody of the property concerned on behalf of the State until such time as the instructions of the Secretary General regarding its disposal are received. The Secretary General will, in accordance with the general directions of the Government, arrange for custody of the property by, or on behalf of, the State or for its disposal by sale or gift. In the event of a sale the proceeds may be paid to the Exchequer or be donated to charity. The office holder is obliged to comply with the instructions of the Secretary General in this regard when so directed by him or her.
30. The surrender requirement will not apply to a gift given as a contribution for political purposes (in which case it may be disclosable under the Electoral Act 1997, as amended). Neither will it apply to a gift given by a friend or relative or civil partner for personal reasons or by virtue of another office or position held (other than office holder) or because of a status enjoyed in another capacity.
31. In the event of doubt, the Secretary General to the Government will determine the value of any gift and the question of whether any gift has been given by virtue of the office held.

### ***Exemptions***

32. Certain academic and diplomatic awards are not regarded as gifts for the purposes of the Ethics Acts - Appendix 4 of these guidelines contains some examples and also deals with the aggregation of values in the context of disclosing and surrendering gifts.

## **D. Property and Services**

33. If an office holder, or his or her spouse or civil partner or child or a child of a spouse, is offered or supplied with property or a service at a discount on the commercial price, or a loan of property free of charge or for less than the commercial value for the loan, or a service free of charge, the guidelines drawn up by the Government under section 15(4) of the 1995 Act will apply. These are reproduced in Appendix 3 of these guidelines.
34. The Government guidelines referred to in the previous paragraph do not apply to property, a loan of property or a service offered or supplied:
- (i) as a political donation,
  - (ii) by a friend or relative of the recipient and for personal reasons only,
  - (iii) by virtue of an office (other than that of office holder) or position held or status in another capacity of the recipient, or
  - (iv) if the offer or supply is not intended or calculated to, and does not, confer a benefit, directly or indirectly, on the office holder concerned.

### ***Medical and Legal Services***

35. If disclosure of legal or medical services (including psychiatric or psychological services) is required, it will be sufficient merely to state that the services were supplied. No further details are required.

## **Special Advisers**

36. Appendix 5 of these guidelines outlines the responsibilities of an office holder in relation to special advisers. Generally speaking, any special adviser whose salary exceeds the second long service increment (standard scale) of a higher executive officer in the civil service or who is appointed pursuant to the Public Service Management Act 1997 (i.e. a senior special adviser) will be required, not later than 31 January each year, to provide a statement of interests and a statement of additional interests (i.e. of a spouse or children) to the employing office holder and the Standards Commission. The office holder will lay a copy of the statement of the senior special adviser's own interests (not spouse and children) before each House of the Oireachtas. Additionally, where a senior special adviser has a material interest in a function falling to be performed, he or she will provide the employing office holder, and the Standards Commission, with a statement of the facts of the interest. The senior special adviser will not perform the function in question unless reasons exist which compel the performance of the function by him or her. In such circumstances, a statement of the compelling reasons must be provided by the senior special adviser to the office holder and the Standards Commission. An office holder will also, in the case of a senior special adviser, lay, before each House, a statement of the qualifications of the person which are relevant to the position. For all special advisers, including those whose salary does not exceed the second long service increment (standard scale) of a higher executive officer in the civil service, an office holder is required to lay two other documents before the Houses, (1) a copy of the contract of service and (2) a statement as to whether the person is a relative of the office holder.

## **General Guidance**

37. If an office holder has an interest which is not a registrable interest as outlined in paragraph 10, and described in detail in Appendix 2 of these guidelines, or if the office holder has actual knowledge that a spouse, a civil partner, a child or a child of a spouse has such an interest, the office holder may, at any time, prepare a statement of the interest and furnish it to the appropriate Clerk. Where such a statement is furnished, the legislation will apply and have effect as if the interest disclosed was a specified registrable interest.
38. An office holder may provide a statement in writing to the appropriate Clerk, at any time, notifying any change in registrable interests as a member, or in additional interests as an office holder.
39. Where, following a request, advice is received from the Standards Commission under section 25 of the 1995 Act that an interest is a registrable interest or an additional interest, or where such appears to be the case from guidelines published by the Standards Commission, a statement of that interest must be provided to the appropriate Clerk as soon as possible.
40. A person who becomes an office holder after a registration date may, at any time before the next registration date, furnish a statement of registrable interests and additional interests to the relevant Clerk.

## Specified acts

41. A specified act is an act or omission referred to in section 4(1)(a) of the 2001 Act. To be a specified act the act or omission in question must, or the circumstances of the act or omission must:

1. be inconsistent with the proper performance of the functions of office or position,

or

or

be inconsistent with the maintenance of confidence in such performance by the general public,

and

2. be of significant public importance.

42. A complaint may be made to the Commission about an alleged specified act by a specified person.

43. The definition of a specified person includes a person who:

- is or, at the time to which the complaint concerned relates, was an office holder.

44. A specified person must bear in mind that there may be acts and omissions on their part which, though not illegal, could be regarded as being inconsistent in themselves or in their context with the proper performance as such a person of their functions or duties, or with the proper exercise of their functions or duties as an office holder or member, or with the maintenance by the general public of confidence in that performance or exercise.

45. When considering whether a matter is of significant public importance, specified persons should note that the guidance contained in section 4(5)(b) of the 2001 Act serves to identify the conditions which necessitate a finding that a matter is, where the Commission considers it appropriate to do so, of significant public importance, i.e. that the benefit alleged to have been received by a specified person or a connected person, in the opinion of the Commission, is or might have been or expected to be not less than €12,697. However, this section should not be construed as meaning that matters, the value of which are below €12,697 could not be deemed to be of significant public importance. The Commission must have regard to "all the circumstances" which considering whether a matter is of significant public importance and in this regard the monetary limit of €12,697 is indicative and not decisive as to whether the matter is of significant public importance.



## **Appendix 1**

### **Definitions**

The list below contains a selection of the definitions provided in section 2 of the 1995 Act as amended by the 2001 Act and other acts. Office holders may wish to refer to that section for a more comprehensive list of definitions. The definition of "shadow directorship" is provided in the Second Schedule to the 1995 Act.

**"actual knowledge"** means actual, direct and personal knowledge as distinct from constructive, implied or imputed knowledge and includes, in relation to a fact, belief in its existence the grounds for which are such that a reasonable person who is aware of them could not doubt or disbelieve that the fact exists;

**"benefit"** includes-

- a) a right, privilege, office or dignity and any forbearance to demand money or money's worth or a valuable thing,
- b) any aid, vote, consent or influence or pretended aid, vote, consent or influence,
- c) any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of, any gift, loan, fee, reward or other thing aforesaid, or other advantage and the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;

**"civil partner"** in relation to a person, means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 but does not include a civil partner who is living separately and apart from the person"; "For the purposes of this Act a civil partner is either of two persons of the same sex who are (a) parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity, or (b) parties to a legal relationship of a class that is the subject of an order made under section 5 that has not been dissolved or the subject of a decree of nullity" (Section 3, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010)

**"Clerk"** means, in relation to members of Dáil Éireann, the Clerk of Dáil Éireann and, in relation to members of Seanad Éireann, the Clerk of Seanad Éireann;

**"commercial price"**, in relation to the supply of property, whether real or personal, or the supply of a service, and **"commercial consideration"**, in relation to the lending of property, means –

- a) where the person by whom the property is supplied or lent or the service is supplied carries on a business consisting wholly or partly of the supply or lending of property or the supply of a service, the lowest price or consideration charged by him or her for the supply or lending in the normal course of business of an equivalent amount of property of the same kind or for the supply of a service of the same kind and to the same extent (allowance being made for any discount which is normally given by him or her in respect of the supply or lending of property of the same kind or the

supply of a service of the same kind) at or about the time of the first-mentioned supply or lending of property or the first-mentioned supply of a service, and

- b) where the person by whom the property is supplied or lent or the service is supplied does not carry on a business consisting wholly or partly of the supply or lending of property or the supply of a service of the same kind, the lowest price or consideration for which an equivalent amount of property of the same kind may be purchased or taken on loan or a service of the same kind and to the same extent may be procured in the normal course of business (allowance being made for any discount which is normally given in respect of the supply or lending of property of the same kind or the supply of a service of the same kind) at or about the time of the first-mentioned supply or lending of property or the first-mentioned supply of a service from a person who carries on such a business;

**"the Commission"**, for the period from 22 July 1995 to 9 December 2001, meant the Public Offices Commission. With effect from 10 December 2001, it means the Standards in Public Office Commission;

**"the Committee"**, in relation to Dáil Éireann or members of Dáil Éireann, means the Committee on Members' Interests of Dáil Éireann appointed under Section 8 of the 1995 Act. In relation to Seanad Éireann, or members of Seanad Éireann, it means the Committee on Members' Interests of Seanad Éireann appointed under Section 8 of the 1995 Act and "a Committee" means, as the context may require, each or either of these committees;

**"company"** means any body corporate;

**"connected person"**, any question whether a person is connected with another shall be determined in accordance with the following provisions (any provision that one person is connected with another person being taken to mean also that that other person is connected with the first-mentioned person):

- (i) a person is connected with an individual if that person is a relative of the individual,
- (ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,
- (iii) a person is connected with any person with whom he or she is in partnership,
- (iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,
- (v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company;

For the purposes of determining matters concerning ethics and conflicts of interests under any rule of law or enactment—

- a) with respect to a person, a reference to a “connected person” or a “connected relative” of that person shall be construed as including the person’s civil partner and the child of the person’s civil partner who is ordinarily resident with the person and the civil partner, and
- b) a declaration that must be made in relation to a spouse of a person shall also be made in relation to a civil partner of a person.

**"control"** has the meaning assigned to it by Section 157 of the Corporation Tax Act 1976, and any cognate words shall be construed accordingly;

**"functions"** includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties, and in relation to an office holder, includes functions conferred on him or her by the Government or in pursuance of a decision of the Government and functions of the office holder as a member of the Government;

**"gift"** means a gift of money or other property, excluding a donation (within the meaning of the Electoral Act 1997);

**"House"** means House of the Oireachtas and, in relation to a person who is an office holder or member, means the House of the Oireachtas of which he or she is a member, and any cognate words shall be construed accordingly;

**"lend"** includes lease or let and any cognate words shall be construed accordingly;

**"material interest"**, a person or a connected person has a material interest in a matter if the consequence or effect

- a) of the performance by the person of a function of his or her office, or
- b) of any decision made in relation to or in the course or as a result of the performance of such a function by the person,

concerning that matter may be to confer on or withhold from the person or the connected person a significant benefit or impose on the person a significant loss, liability, penalty, forfeiture, punishment or other disadvantage without also conferring it on, withholding it from or imposing it on persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person or the connected person is a member;

**"the Minister"** means the Minister for Public Expenditure, NDP Delivery and Reform;

**"prescribed"** means prescribed by regulations made by the Minister;

**"property"** means real or personal property. A person shall be deemed to have an interest in property if the person would be regarded as having, for the purposes of the Capital Acquisitions Tax Consolidation Act 2003, the power to make a disposition of that interest;

**"registration date"** means-

- a) in relation to Dáil Éireann and its members and Clerk –

- (i) 31 December 2001, or, if on that date Dáil Éireann stands dissolved, the date that is 30 days after the date of the first meeting of Dáil Éireann after the first-mentioned date, and
  - (ii) the date of each anniversary of the first registration date or, if on any such date, Dáil Éireann stands dissolved, the date that is 30 days after the date of the first meeting of Dáil Éireann after the first-mentioned date, and
- b) in relation to Seanad Éireann and its members and Clerk –
- (i) 31 December 2001, or, if on that date Dáil Éireann stands dissolved, the date that is 30 days after the date of the first meeting of Seanad Éireann after the first general election for members of Seanad Éireann after that dissolution, and
  - (ii) (ii) the date of each anniversary of the first registration date or, if on any such date, Dáil Éireann stands dissolved, the date that is 30 days after the date of the first meeting of Seanad Éireann after the first general election for members of Seanad Éireann after that dissolution;

**"relative"**, in relation to a person means a brother, sister, parent or spouse of the person or a child of the person or of the spouse;

**"shadow directorship"** means the position held by a person who is a shadow director within the meaning of the Companies Acts 1963 to 1990, or, in the case of a public body that is not a company (within the meaning of the Companies Act 1963) and is specified in subparagraph (8), (9), (10), (11) or (12), or stands prescribed for the purposes of subparagraph (13), of paragraph 1 of the First Schedule, the position held by a person in accordance with whose instructions or directions the members of the body or the members of the board or other body that controls, manages or administers that body are accustomed to act;

**"special adviser"** has the meaning assigned to it by section 19 (1) of the 1995 Act, namely a person who –

- a) occupies or occupied a position to which section 7(1)(e) of the Public Service Management (Recruitment and Appointments) Act 2004 relates, having been selected for appointment to that position by an office holder personally otherwise than by means of a competitive procedure,
- or
- b) is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive procedure, and whose function or principal function as such a person is or was to provide advice or other assistance to or for the office holder;

(A special adviser also includes a person appointed, by order of the Government, pursuant to section 11 of the Public Service Management Act 1997.)

**"specified act"** means an act or omission referred to in section 4(1)(a) of the 2001 Act. A specified act by a member means an act or omission by them, the circumstances of which are inconsistent with the proper performance by them of the functions of the office or position they hold, or with the maintenance of confidence in such performance by the general public;

and the matter is one of significant public importance. A specified act by an office holder also includes an act or omission referred to in section 4(1)(a) of the 2001 Act of a person who is, pursuant to the Act, deemed to be a connected person of the office holder.

However, the above mentioned will not be a specified act if it—

- (a) relates to a private matter and is unrelated to the functions of the office or position by reference to which the specified person is such a person, or
- (b) results from incompetence or inefficiency in the performance of, or from failure to perform, such a function, on the part of the specified person. (per s.4(2) of the 2001 Act).

**"spouse"**, in relation to a person, does not include a spouse who is living separately and apart from the person;

**"value"**, in relation to a gift, means the price which the property the subject of the gift would fetch if it were sold on the open market on the date on which the gift was given in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property, and any cognate words shall be construed accordingly.

## **Appendix 2**

### **Registrable Interests**

*(The reference to "appropriate period" in this Appendix means the period covered by the statement which will usually be from 1 January to 31 December)*

1. The following are registrable interests under the Ethics Acts:

(a) Occupations etc.

A remunerated trade, profession, employment, vocation or other occupation (other than that of office holder or member) of an office holder at any time during the appropriate period where the remuneration to the office holder, e.g. pay, pension, benefits-in-kind, rental income, etc., during the period exceeded €2,600.

The threshold figure of €2,600 is the gross figure. Remuneration/ payment/income etc. from the same trade, profession, employment etc. is cumulative over the registration period.

Where income arises from land/property (including any house/apartment) held jointly with another it is for the office holder to determine whether or not his/her share of that income exceeded €2,600 during the registration period concerned.

If you receive an income through rental of a "private home" as explained under the heading "Land" below, the occupation of Landlord or Lessor should be declared if this income exceeds €2,600 during the registration period. So, for example, if the office holder rents out a holiday home, the holiday home, if it is a "private home" within the meaning of the 1995 Act, (see further the section on Land below) is not registrable but any rental income is registrable under this heading once the amount exceeds the threshold. In a similar vein, if the office holder has a second property which is occupied in part by his/her child, and in part rented out, the property may still be classified as a 'private home' for the purposes of the legislation but the occupation of landlord or lessor becomes registrable once the income exceeds the threshold. Note that, in the case of a private home, an office holder is not required to provide the full address of this property.

Normal pension entitlements which accrued and which were not payable during the registration period are not reckonable for the purposes of the calculation of remuneration.

An income exceeding €2,600 in the registration period concerned makes the trade, profession, employment, vocation or other occupation registrable even if the office holder does not himself/herself actually carry on the business to which that interest relates.

Please note that in no case is the office holder required to specify the amount of income/remuneration received. The key requirement is to register the occupation.

(b) Shares, etc.

A holding by an office holder of shares, bonds, debentures, or other like investments in any particular company or other enterprise or undertaking, with an aggregate nominal or market value in excess of €13,000 at any time during the appropriate period. Holding does not include

money in a current, deposit or other similar account with a financial institution but does include a holding in unit trusts or managed funds.

In relation to the value of a shareholding in a private limited company, the relevant figure is the net value of the company. The net value of the company can be calculated by subtracting the net liabilities of the company from the net assets of the company. If at any point during the registration period, the office holder's share (i.e. percentage of the shareholding) of the net value of the company exceeded €13,000 the interest must be registered. If the office holder is unsure whether the shareholding must be registered, he/she should seek the advice of the Standards Commission. If any issue arises in respect of whether a shareholding was registrable, the Standards Commission may, inter alia, rely on figures submitted by the company to any state agency (e.g. the Companies Registration Office or the Revenue Commissioners), where such figures are available.

In relation to a Public Limited Company, the relevant figure is the market value of the shares during the registration period.

In respect of a holding in a unit trust or managed fund, if, during the registration period, the value of the overall aggregate investment at any time exceeds €13,000, the existence of the holding must be disclosed. A break-down between individual investments within the holding in the unit trust or managed fund is not required.

Shares, bonds (including government bonds), debentures or other similar investments, whether domestic or foreign, held by the office holder solely in the capacity as an executor to a Will are not registrable. If, however, in addition to being an executor, the office holder is also a beneficiary of the shares, bonds (including government bonds), debentures or other similar investments, this interest is registrable if its value exceeds €13,000 at any time during the registration period concerned and the shares have been transferred to the office holder or he/she has, as executor, the right to transfer ownership of such shares to himself/herself.

An investment exceeding the value of €13,000 held in a company which is the subject of a Business Expansion Scheme is a registrable interest. The value of an interest of this kind should be judged against the size of the original investment rather than against its periodically fluctuating value.

A pension fund for which the office holder is paying which will mature only on retirement and in respect of which no dividends are payable is not required to be disclosed.

(c) Directorships

A directorship or shadow directorship of any company held by an office holder at any time during the appropriate period.

For the avoidance of doubt –

- ANY directorship held by you, while a member of either House of the Oireachtas, at any time between 1 January and 31 December, both dates inclusive, should be included in your statement of registrable interests.
- This includes any directorship resigned during the course of the registration period.

- The terms “*directorship*”, “*de facto directorship*” and “*shadow directorship*” should be interpreted widely. In this regard, reference should be made to the definitions of “*director*”, “*de facto directorship*” and “*shadow director*” included in these Guidelines.
- A “*Company*” is defined by the legislation as meaning a “*body corporate*” and should be interpreted in the widest possible sense, i.e. a registered or unregistered company, a local authority, a public body, a body established by charter or any other body having an existence, rights and duties distinct from the individual persons forming the group, whether that body corporate is domestic or foreign. This may include for example, the board of a sports club, or a school board of management.
- Assets owned by a Company are not registrable.

(d) Land (including premises)

Any interest in land of an office holder, including land in the State and land in any other jurisdiction, being an interest that exceeded in value €13,000 at any time during the appropriate period. This includes the interest of an office holder in any contract for the purchase of land, whether or not a deposit or part payment has been made under the contract. It also includes an interest of the office holder in any option held by him or her to purchase land, whether or not any consideration has been paid in respect thereof, or land in respect of which such an option has been exercised but which has not been conveyed to the office holder.

The full address of any land or property in which the office holder has a registrable interest or his/her spouse, civil partner, child, child of a spouse or civil partner, an additional interest must be disclosed.

An office holder is not required under this heading to disclose information regarding his or her private home or that of a spouse or civil partner. A private home is a building or part of a building that is occupied by the office holder or his or her spouse or child of the person or his or her spouse as a separate dwelling. It also includes any garden or other land usually occupied with the dwelling, being land that is subsidiary or ancillary land to such home, is required for its amenity or convenience and is not being used or developed primarily for commercial purposes.

Also excluded is a holiday home and any other private home occupied by an office holder or his or her spouse, civil partner or a child of the office holder or his/her spouse. Any land ancillary to a private home (including a qualifying holiday home), similarly, does not need to be registered. Where, however, land ancillary to a private home is being used for commercial purposes, such land becomes registrable. Further, any income from the property, makes the occupation registrable where such income exceeds a gross threshold of €2,600. Office holders should note, therefore, that while private homes, holidays homes, second properties etc., which are occupied (as provided for above), are not registrable under the heading “Land”, any occupational rental income from a property which exceeds €2,600 gross, cumulatively, for an individual property over the registration period, makes the occupation of Landlord or Lessor registrable under Occupations etc.



Accordingly, where land attached to the private home or holiday home is rented out, this land must be registered where its use is primarily commercial.

In addition, if the rental income exceeds €2,600, that rental occupation (i.e. of Landlord or Lessor) is registrable under Occupations etc.

If the office holder owns more than one home, he/she should register any home which is not occupied by the office holder, his/her spouse, civil partner or a child of his/hers or his/her spouse.

Land or property held by the office holder solely in the capacity as an executor to a Will is not a registrable interest. If, however, in addition to being an executor, the office holder is also a beneficiary of the land or property this interest is registrable if its value exceeds €13,000 at any time during the registration period concerned and the land or property has been transferred to him/her or he/she has, as executor, the right to transfer ownership of such land or property to himself/herself.

(e) Gifts

A gift, or gifts from the same person, given to an office holder during the appropriate period where the value, or the aggregate value, exceeded €650.

*Excluded from this requirement is a gift given to an office holder, for purely personal reasons, by a relative or civil partner or friend of the office holder or of his or her spouse or civil partner or child or of the spouse's child (child being a son or daughter of any age), unless acceptance of the gift could have materially influenced the office holder in the performance of his or her functions as a member or office holder.*

*Also excluded from this requirement is a donation as defined by the Electoral Act 1997, as amended. For further information on what constitutes a donation, office holders should refer to the "Guidelines for TDs, Senators and MEPs" on donations and prohibited donations issued by the Standards Commission. Members should also refer to the Electoral Acts 1992 to 2016 which govern donations and the separate disclosure obligations which arise under that legislation. A member may also seek guidance from the Standards Commission on the issue of donations. The issues of travel facilities, donations and the acceptance of free travel is considered further at paragraph 7 of these guidelines.*

(f) Property and Services

Property supplied or lent or a service supplied to an office holder, once or more than once by the same person, during the appropriate period, where the consideration or price was less than the commercial consideration or price by more than €650. Also included is property lent or a service supplied free of charge where the commercial consideration or price would have been more than €650.

*Excluded is property supplied or lent or a service supplied to an office holder, as a gift for purely personal reasons, by a relative or civil partner or friend of the office holder or of his or her*

*spouse or civil partner or child or of the spouse's child, unless acceptance could have materially influenced the office holder in the performance of his or her functions as a member or office holder.*

*If services disclosed relate to legal or medical services (including psychiatric or psychological services) it will be sufficient to state that the services were supplied. No further details will be required.*

*A property or service supplied or lent for political purposes may constitute a donation within the meaning of the Electoral Act 1997 (as amended). Such a property or service, if declared as a donation, does not need to be declared again under the Ethics Acts. Office Holders should also refer to the Electoral Act 1997 which governs donations and the separate disclosure obligations which arise under that legislation. For further information on what constitutes a donation, office holders should also refer to the "Guidelines for TDs, Senators and MEPs" on donations and prohibited donations issued by the Standards Commission. A member may also seek guidance from the Standards Commission on the issue of donations.*

(g) Travel facilities, etc.

Travel facilities, living accommodation, meals or entertainment supplied to an office holder during the appropriate period free of charge or at less than the commercial price must be disclosed.

*Excluded are:*

*travel facilities, living accommodation, meals or entertainment supplied, by the same person, once or more than once, free of charge during the appropriate period where the commercial price or the aggregate of the commercial prices was less than €650, or supplied where the price paid was less than the commercial price by not more than €650;*

*travel facilities, living accommodation, meals or entertainment provided:*

- (i) within the State,*
- (ii) in the course and for the purpose of performing the functions of an office holder as a member or office holder*
- (iii) in the course and for the purpose of any trade, profession, employment or other occupation of an office holder (other than member or office holder)*
- (iv) as a member, in the course of Conferences of the Inter Parliamentary Union, Conferences and Parliamentary Assemblies of the Council of Europe and its Committees, Parliamentary Assemblies of the Organisation for Security and Co-operation in Europe, Parliamentary Assemblies of the Western European Union, bilateral visits pursuant to invitations from the speakers of other parliaments and such other conferences and visits as may arise from time to time,*
- (v) as a member, by any other organisation of states or governments of which this State or the Government is a member or a body of or associated with;*

*travel facilities, living accommodation, meals or entertainment supplied as a gift for personal reasons by a relative or civil partner or friend of an office holder or of his or her spouse or civil partner or child or of the spouse's child, unless the acceptance of*

*such might reasonably be seen to have been capable of influencing the office holder in the performance of his or her functions as a member or office holder.*

Separate from the requirement to prepare statements and declaration of registrable interests pursuant to sections 5 & 7 of the Ethics Acts, the acceptance of free or sponsored travel may also give rise to reporting obligations as set out in the Electoral Act 1997, as amended (the 1997 Act). Section 22(2)(a) of the 1997 Act, defines a donation as any contribution given for political purposes. Section 22(2)(aa)(i)(IV) defines political purposes as, *inter alia* –

*to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority;*

The donation of free/sponsored travel and accommodation may fall within the definition of a donation and such a donation is subject to the normal aggregation and reporting thresholds and donation limits. The maximum donation that may be accepted by an office holder from an individual or a registered corporate donor in any calendar year is now €1,000 and all donations exceeding €600 in aggregate must be disclosed on the office holder's annual Donation Statement. It is an offence to supply a false or misleading donation statement; it is also an offence to fail to take the appropriate action in relation to a donation which is in excess of the prescribed limit.

The Standards Commission considers that office holders should take care to ensure that they do not breach the provisions of the Electoral Acts on the acceptance of donations. Any queries on this matter should be directed to the Standards Commission.

Office holders are also reminded that the Code of Conduct for Office Holders provides at paragraph 2.2.8 that they should not accept offers to meet the costs of travel facilities and/or commercial accommodation in connection with official activities (including of a spouse/partner if so accompanied), where such offers are made by private citizens or private enterprises.

(h) Remunerated Position

A remunerated position held by an office holder as a political or public affairs lobbyist, consultant or adviser during the appropriate period.

(i) Contracts

Any contract, or contracts, for the supply of goods or services to a Minister of the Government or a public body during the appropriate period, to which an office holder was a party or in which he or she was in any other way, directly or indirectly, interested, if the aggregate value of the goods or services supplied to a Minister of the Government or a public body during the appropriate period exceeded €6,500.

Note that the key test is whether the value of the goods and/or services actually supplied by way of one (or more) contract(s) in the registration period exceeded €6,500 in value.

## Appendix 3

### **Government Guidelines (section 15(4) of 1995 Act)**

The text that follows (*in italics*) is a reproduction of the guidelines published by the Government on 14 August 1996 pursuant to section 15(4) of the 1995 Act. Please note that (1) all references to the Public Offices Commission should be read as references to the Standards in Public Office Commission; (2) all references to the Secretary to the Government should be read as references to the Secretary General to the Government; (3) where reference is made to a spouse, the guidelines should also be taken to refer to a civil partner and (4) in paragraph 6, the reference to disclosures in relation to gifts and related property/services to the Clerk of the Dáil or Seanad should be taken to refer to disclosures to the Standards Commission.

#### **1. General**

*All office holders are expected to adhere to the fundamental principle that an offer of gifts, hospitality or services should not be accepted where it would, or might appear to, place him or her under an obligation.*

*The Public Offices Commission has issued guidelines to office holders on compliance with the Ethics in Public Office Act 1995. These address, inter alia, the requirements on office holders to disclose certain gifts (in their capacity as Members of either House of the Oireachtas) and to surrender valuable gifts to the State where these are given by virtue of office.*

*However, certain supplies of property and services which are in the nature of gifts cannot be readily surrendered to the State, e.g. below cost loans, free services etc. Recognising this, Section 15(4) of the Act, 1995 provides that the Government will issue guidelines to office holders regarding the steps to be taken if an office holder, his/her spouse or a child, is offered or supplied with property or services, (e.g. travel), at below the commercial price, or with a loan of property free or below the commercial price, or a service free.*

*These guidelines provide accordingly. **It should be noted that office holders must comply with these guidelines which are applicable to such property and services provided either within the State, or abroad.***

#### **2. Who is covered by the guidelines?**

An office holder. Under the Act, this means Ministers (including Taoiseach, Tánaiste and an AG who is a Member), Ministers of State, the Chairman and Deputy Chairman of each House of the Oireachtas. (A Chairperson of an Oireachtas committee may also be designated by resolution of the House(s) as an office holder)

The spouse of an office holder

The child of an office holder or of his or her spouse

*Different reporting arrangements apply as between Ministers / Ministers of State on the one hand, and office holders attached to either House of the Oireachtas on the other, in relation to matters under section 15(4). Where such differences arise, these are reflected in the guidelines.*

**3. What is covered?**

*The following come within the guidelines: -*

*property or a service at below commercial price*

*a loan of property free of charge, or for less than the commercial value of the loan*

*a service free of charge*

*offered or supplied to an office holder, a spouse or child, by virtue of his/her office, where the net benefit of the lower price, free or cheaper loan or free service exceeds €650. A sample list of possible property and services is set out in the attached Appendix.*

**4. What does not come within the guidelines?**

*These guidelines do not apply where the benefit of the lower price, loan, or free service is less than €650. In addition, the guidelines do not apply to any offer or supply of property/service made:-*

*as a donation for political purposes;*

*for personal reasons only by a friend or relative;*

*available also to members of the public, either generally (e.g. property arising from super-club points) or in particular circumstances (e.g. travel arrangements following family bereavement, missing a flight etc.);*

*by virtue of a position other than that as office holder (i.e. by virtue of being a Member of the Houses of the Oireachtas, officer of a local club or by being the holder of another position);*

*in the course of and for the purpose of performance of duties of office holder, (e.g. hotel facilities for attendance at EU Council meetings), including representational role by spouse where this is in accordance with established practice, and*

*where there is no intention to and it does not confer any benefit, directly or indirectly on the office holder.*

**5. Steps to be taken...**

*Where an office holder, his/her spouse or child is offered or supplied with property or services at below the commercial price, or a loan of property free of charge, or for less than the commercial price, or is offered or supplied with a service free of charge, and, the net benefit of the lower price, free or cheaper loan or free service exceeds €650.*

**5.1 If offered**

*Where an office holder, or his/her spouse or child, is offered such property/services by virtue of his/her office, the offer must be refused.*

**5.2 If supplied**

- (a)(i) *Where such property/services are supplied to a Minister\* /Minister of State by virtue of ministerial office, or s/he becomes aware that such are supplied to a spouse or child, s/he must notify the Secretary to the Government in writing, and s/he must make an appropriate refund to the person supplying the benefit. The Secretary to the Government will in turn inform the Taoiseach, Tánaiste and such other Minister as may be specified by Government, on the matter.*
- (a)(ii) *In the event of a refund to the donor not being practicable, the Taoiseach, Tánaiste and specified Minister shall determine alternative appropriate action, such as donation of an equivalent amount to a particular voluntary body or charity. A Minister\*\* /Minister of State must act in accordance with such a determination.*
- (a)(iii) *In all cases where such property/services are supplied, the Secretary to the Government will notify the Public Offices Commission on the matter and on the action taken. Ministers / Ministers of State must provide any information required by the Secretary to the Government so as to enable him/her to discharge this function.*
- (b) *An office holder who is not a Minister / Minister of State must notify the Public Offices Commission on the matter, and make a refund, or if this is not practicable, a donation, to be determined by the Commission, on the basis of (ii) above.*

*\* Reference to Minister includes Taoiseach, Tánaiste and an AG who is a Member.*

*\*\* In the event of the Taoiseach, Tánaiste or specified Minister being the Minister by whom such property/services are received, s/he shall not participate in a determination under (ii) in relation to that particular matter.*

### **5.3 If unsure**

- (a) *If an office holder is unsure as to whether the net benefit involved exceeds €650, or whether or not the offer or supply of property or service comes within these guidelines, s/he should consult with the Secretary to the Government, who will make a determination on the matter.*
- (b)(i) *The Secretary to the Government will make such a determination in accordance with these guidelines and the general directions of Government relating to Section 15(3) of the Act.*
- (b)(ii) *Subsequently the Secretary to the Government will advise the office holder, and the Taoiseach, Tánaiste and specified Minister, or the Public Offices Commission, as appropriate, on the matter. Where it is found that the matter comes within these guidelines, the office holder must act in accordance with 5.1 or 5.2 above.*

### **6. General**

*All office holders are reminded, that under the Second Schedule to the Ethics Act, they must also make appropriate disclosures in relation to gifts and related property/services to the Clerk of the Dáil or Seanad in their annual statements. This information will be entered in the Register of Members' Interests and laid before the appropriate House.*

***Examples of property and services which could be offered, or supplied below cost, on loan or free***

## **Property**

*Examples would include:*

- *land*
- *offices or other buildings*
- *living or other accommodation, fixtures, fittings or furnishings*
- *machinery and equipment, including computers and photographic equipment*
- *modes of transport, including motor vehicles, boats, aircraft etc.*
- *bonds, shares, options or other similar instruments*
- *intellectual property such as computer software, patents, licences etc.*
- *artwork and precious objects*
- *livestock or other animals*

## **Services**

*Examples would include:*

- *Travel facilities e.g. free or subsidised*
  - *use of a car or other modes of transport,*
  - *chauffeur service,*
  - *aircraft flights or aircraft flights upgrades*
- *Hospitality or entertainment e.g. free or subsidised*
  - *hotel or other accommodation*
  - *meals, drinks*
  - *use of accommodation, conference, function or other facilities, membership of clubs, societies or other such memberships*
- *Secretarial and related services*
- *Financial or other professional advice/agency services e.g. free or subsidised investment, banking, insurance or other business brokerage.*

## **Appendix 4**

### **Gifts**

1. As already stated, a gift given to an office holder, or a spouse or civil partner or child, by virtue of his or her office, which exceeds €650 in value, must be surrendered. There is also a requirement that such a gift will be disclosed in the office holder's annual statement of registrable interests.
2. Because of the office held, some office holders are more likely than others to attract gifts which would fall to be surrendered. Examples might include the Taoiseach and the Minister for Foreign Affairs who would be prominently engaged in State visits and representation abroad and in hosting State visits and foreign dignitaries to this country. The Standards Commission recognises that the protocol of such occasions often involves an exchange of gifts and the traditions and culture of some nations can result in the giving of quite valuable gifts. The following general advice on gifts may be helpful in this regard. Office holders should bear in mind that the Secretary General to the Government is empowered by the 1995 Act to make determinations both on the value of any gift and the question of whether a gift was given by virtue of office.

### **Aggregation of Values**

3. In so far as the disclosure requirement is concerned, the Second Schedule to the 1995 Act makes it clear that gifts received from the same person in the course of a single registration period should be aggregated for the purpose of determining whether or not their total value exceeds €650. If the aggregate value of such gifts during any one registration period exceeds the threshold, each individual gift should be declared, even when the individual value does not exceed the €650 threshold. Where a gift comprises of more than one item, being presented together on the same occasion by the same person, the total value of the gift will be used for disclosure purposes. Likewise, any gifts which are intrinsically linked to one another, even if presented separately during the same registration period, must have their values aggregated for disclosure purposes. Gifts which are intrinsically related to one another but presented in different registration periods, where each item individually has a value of less than €650 but where the aggregate value exceeds €650, need not, strictly speaking, be disclosed as the threshold would not be exceeded in any single registration period. However, the staggering of related gifts between registration periods could be seen as seeking to circumvent the spirit, if not the letter, of the legislation.
4. The requirement to surrender gifts is of course a different one to that of disclosure. Section 15 of the 1995 Act provides that where a gift valued in excess of €650 is given to an office holder by virtue of his or her office, that gift shall be deemed to be a gift given to the State and shall be vested in the Minister for Public Expenditure, NDP Delivery and Reform. Section 15 omits any reference to the notion of the cumulative value of gifts within any one registration period; "gift" is referred to in the singular throughout that section. The Standards Commission is, therefore, of the view that the 1995 Act does not require the surrender of gifts received from one source, but presented on separate occasions during any one registration period, where the cumulative value exceeds €650 but where the value of each gift is



individually less than the €650 threshold. The Commission is also of the view that, for the purpose of surrender, gifts presented together on a single occasion should be treated separately. In other words, each separate gift must exceed the €650 threshold before being required to be surrendered. This would not, of course, apply to gifts which are intrinsically linked to each other (e.g. decanter and glasses), received in any one registration period, whose values should be aggregated for this purpose.

5. Gifts which are intrinsically related to one another, but presented separately in different registration periods, could give rise to difficulties. If, for example, such gifts comprise part of a set, the total value of which exceeds the sum of the individual parts, it is certainly arguable, although not strictly required under the 1995 Act, that the gift should be viewed in its entirety and, provided that value exceeds €650, it should be surrendered.
6. The following examples may be useful:

Example A: A gift given to an office holder, exceeding the value threshold of €650, should be both surrendered and disclosed. A gift given to the office holder's spouse, even if deemed to be one given by virtue of the office holder's office under section 15, which does not exceed the value threshold can be retained. The smaller gift should, however, be included in the office holder's disclosure of interests as being part of a gift from a single source with an aggregate value in excess of €650.

Example B: Gifts having a combined value below €650 can be retained, while a single gift with a value in excess of €650 should be surrendered. The value of gifts should be aggregated for the purpose of establishing the requirement to disclose them. If the combined value exceeds €650, all gifts must be disclosed.

Example C: Where the aggregate value of gifts, each valued at less than €650, from a single source in a registration period exceeds the threshold of €650, each gift should be disclosed individually. Surrender of such gifts is not required.

### **Exemptions from 'Gift' Classification**

7. The following would not be classified as gifts for the purposes of section 15 of the Act:
  - (a) Awards made to an office holder in recognition of certain specified achievements of a public nature following a process of nomination and selection from a number of qualified persons (e.g. European of the Year, Nobel Prize). Such awards may involve the giving of tokens as an intrinsic element of the award.
  - (b) Awards conferred on an office holder in recognition of certain specified achievements of a public nature where the award is made by a recognised and properly constituted academic institution and/or a civil, religious or sporting body (e.g. Honorary Degrees, Freedom of a City). Generally speaking, such awards do not have any direct monetary value. They may, however, involve the giving of tokens or regalia as an intrinsic element of the award.

- (c) Subject to the prior approval of the Government in accordance with Article 40.2.20 of the Constitution, awards conferred by a foreign Government or a foreign Head of State in accordance with established and recognised procedures of general applicability (e.g. Papal Honours, Legion of Honour). These awards may involve the giving of tokens or regalia as an intrinsic element of the award.

## **Appendix 5**

### **Obligations in relation to Special Advisers**

Circular 4/2002: Standards in Public Office Act 2001, issued by the Department of Finance on 14 January 2002, provides that every newly appointed office holder should be informed of his or her obligations under the Ethics Acts in relation to their personal appointees by way of a minute from the Head of their Department or by the Runáí Aire.

1. A "special adviser" means a person who
  - (a) occupies or occupied an excluded position (within the meaning of the Civil Service Commissioners Act 1956) having been selected for appointment to that position by an office holder personally otherwise than by means of a competitive procedure, or
  - (b) is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive procedure, and whose function, or principal function, is, or was, to provide an office holder with advice or other assistance. This could include, inter alia, Personal Advisers, Personal Assistants, Personal Secretaries, Press Officers, certain drivers, etc. Such an appointment or employment ends not later than the date on which the office holder for whom the person is acting as a special adviser ceases to hold the office to which the appointment or employment referred. This will be deemed to be a condition of the special adviser's appointment or employment.

A "special adviser" also includes a person appointed by order of the Government, on the request of a Minister of the Government, pursuant to section 11 of the Public Service Management Act 1997. In such case the appointment, if it is to a Minister, ends on the date on which the Minister ceases to hold the office by reference to which he or she is an office holder. If the appointment is to a Minister of State, it ends on the expiration of the assignment of the Minister of State to his or her original Department or Office, i.e. the appointment would expire if the Minister of State's appointment ended or if the Minister of State was reassigned to another Department or Office.

2. The provisions of the Ethics Acts outlined in paragraphs 3 to 7 below apply to persons in the special adviser category whose remuneration exceeds the second long service increment salary (standard scale) of a higher executive officer in the Civil Service. They also apply to special advisers appointed pursuant to section 11 of the Public Service Management Act 1997.
3. A special adviser will, each year not later than 31 January, furnish to the office holder and the Standards Commission a statement of interests (as described in Appendix 2 of these guidelines) covering the period from 1 January (or the date of commencement, if later) up to 31 December of the preceding year. The statement should contain information, of which the special adviser has actual knowledge, relating to his or her own interests and those of his or her spouse or child or child of a spouse, which could materially influence the special adviser in, or in relation to, the performance of the functions of the special advisership.

4. Where a person, for whatever reason, ceases to be a special adviser, the person will provide both the office holder and the Standards Commission with a statement of interests (including the interests of a spouse or child) within twenty eight days of the date of cessation. Such statement would cover the period from 1 January, or the date of commencement, if later, in the year in question up to the date of cessation.
5. A special adviser is also required to provide a statement of the facts to the office holder and the Standards Commission if a specific function falls to be performed by the special adviser and he or she, or a connected person, has a material interest in a matter to which the function relates. The statement should be furnished as soon as possible. In such circumstances, the special adviser will not perform the function unless there are compelling reasons to do so. If the special adviser does propose to perform the function, he or she will, before, or if that is not reasonably possible, as soon as may be afterwards, provide a statement in writing of the compelling reasons to the office holder and the Standards Commission.
6. A special adviser will undertake that he or she will not engage in any trade, profession, vocation or other occupation which might reasonably be seen to be capable of interfering, or being incompatible, with the role of special adviser.
7. It is deemed to be a condition of the appointment or employment of a special adviser that the person will comply with the requirements set out in paragraphs 3 to 6 above.

#### **Laying of Documents before the Houses of the Oireachtas**

8. The following documents relating to a special adviser referred to in paragraph 2 above must be laid by the office holder before each House of the Oireachtas:
  - (i) a statement of the qualifications of the person relevant to the appointment as special adviser,
  - (ii) a copy of any statement of his or her own interests furnished by the special adviser to the office holder *it should be noted that, in order to facilitate the laying of the special adviser's own interests statement only, special advisers may furnish separate forms containing statements of their own interests and those of a spouse or civil partner or child. The statements relating to spouses, civil partners or children are not required to be laid before either House of the Oireachtas.*
9. The following documents are laid before each House for all special advisers, regardless of remuneration,
  - (i) a copy of the contract or a statement in writing of the terms and conditions under which the person acts, or has acted, as special adviser,
  - (ii) a statement as to whether the person is a relative of the office holder.

**Note:** *The requirements at paragraph 8(i) and paragraph 9 above are once-off rather than annual requirements. The documents would not require to be laid more than once unless there*

*was a significant change in the information to be provided. General round pay increases may be ignored for this purpose.*

10. The documentation described in paragraphs 8(i) and 9 above must be laid by the office holder before each House of the Oireachtas not more than 60 days after the person was appointed or employed to act as a special adviser.
11. Any annual statement of a special adviser's own interests, as described in paragraph 3 above, which has been furnished to an office holder must be laid by the office holder before both Houses not later than 60 days after 31 January, i.e. generally not later than 1 April (or 2 April in a leap year).
12. Any statement of interests furnished by a special adviser on leaving the position, as described in paragraph 4 above, must be laid by the office holder before each House within sixty days of its receipt.
13. Where a person ceases to be an office holder, he or she must, within 60 days from the date of its receipt, lay before each House any statement of a special adviser's own interests which was furnished to the office holder by a special adviser whose appointment was terminated as a consequence, as well as any annual, or other, statement of a special adviser's own interests which, up to the date of leaving office, had not already been laid.
14. The requirement at paragraph 13 above also applies to documents, not already laid, relating to the appointment or employment of a special adviser, the qualifications of a special adviser and whether the special adviser is a relative of the office holder.
15. Where an office holder dies or becomes incapacitated, the laying of documents pertaining to his or her special advisers becomes a matter for the Taoiseach.
16. The procedure for laying documents before the Houses of the Oireachtas is set out on the Oireachtas website - <https://www.oireachtas.ie/en/publications/docs-laid/>
17. The annual statement of a special adviser's own interests may be the only document which needs to be laid each year if the documents relating to qualifications, terms of appointment or employment and whether the person is a relative were laid in a previous year and the information contained therein has not changed significantly.