

Standards in Public Office Commission

*Ethics, Election Finance and Lobbying
Regulation in Ireland*



Standards in Public Office Commission
Coimisiún um Chaighdeán in Oifigí Poiblí

The Standards Commission supervises:

- Ethics in Public Office Acts 1995 and 2001
- Electoral Act 1997, as amended
- Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014
- Regulation of Lobbying Act 2015



Ethics Acts



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Ethics Acts provide for:

- Disclosure of Interests
 - Statements of interest, material interests, gifts
 - Made by Members of Oireachtas, office holders, AG, board members, senior employees of public service
- Codes of conduct
 - Codes for TDs, Senators, Office holders, Public servants
 - Drawn up by Committees, Government, MinPER
- Evidence of tax compliance
 - Tax clearance cert, statutory declaration
- Guidelines and advice
- Complaints and investigations



Disclosure requirements

- Disclosures include:
 - Annual statement of interests (registrable interests)
 - *Occupation, investments, directorships, land, gifts, travel, contracts, position as paid lobbyist*
 - *Additional interests for office holders (spouse/children)*
 - Statement of a material interest disclosed in relation to a function to be performed
 - *Can be disclosed by members in relation to Oireachtas proceedings*
 - Gifts – anything above €650 given by virtue of office must be surrendered



Codes of Conduct

- Set out standards of conduct and integrity in the performance of official functions
 - TDs / Senators – drawn up by Committees
 - Office Holders - drawn up by Government
 - Public Servants - drawn up by Minister for Public Expenditure and Reform
- Committees/Government/Minister must consult with the Standards Commission and others re draft codes
- Codes are published by the Standards Commission
- Person must have regard to and be guided by the Code in the performance of their functions



Evidence of Tax Compliance

- Senior office holders must provide evidence of tax compliance within statutory deadlines
- Within 30 days (either side of appointment): Signed and witnessed statutory declaration that the person is tax compliant
- Within 9 months of appointment: Tax clearance certificate from Revenue
- Compliance is a condition of employment
- Failure to meet obligations may result in investigation/public report



Guidelines and advice

- Commission may publish guidelines under Act
 - Guidelines for public servants
 - Guidelines for office holders
- Commission may also give advice
 - Informal advice often sought
 - Written advice may be provided, and is binding



Complaints and investigations

- Commission may investigate non-compliance on foot of complaint or own initiative
- Process varies depending on initiation
- Preliminary inquiry to establish prima facie case
- Investigation hearing
- Public report



Electoral Acts



Electoral Acts provide for:

- Disclosures of donations and expenditure of public funds
 - Donations to TDs, Senators, parties, candidates, third parties
 - Expenditure of exchequer funding
 - Expenditure of party leaders allowance
- Donation thresholds/prohibitions
- Disclosure of election spending
- Disclosure of political party accounts
- Registration of Third Parties and Corporate Donors
- Advice/Guidelines
- Offences



Donations for political purposes (1)

Donations include money, property, goods, free use of property/goods/services or provision of same at less than commercial value etc.

Political purposes means any of the following purposes, namely:

1. to promote or oppose, directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or
2. to present, directly or indirectly, the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party, or
3. to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party with regard to the policy or policies of another political party, political group, member of either House of the Oireachtas, representative in the European Parliament, third party or candidate at an election or referendum or otherwise, or



Donations for political purposes (2)

(Political Purposes cont'd)

4. 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;
5. to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad, Presidential or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;
6. otherwise to seek to influence the outcome of the election or a referendum or a campaign.



Rules regarding donations

- *Disclosures:*
 - Any donation above €600 must be disclosed to the Commission
- *Prohibitions:*
 - Donations above a set threshold cannot be accepted (see table)
 - Donations from individuals outside Ireland, who are not Irish citizens or companies that do not have business in Ireland cannot be accepted
- *Registration:*
 - Corporate donors: donations > €200
 - Third parties: receipt of donation > €100
 - Donors: Where donor makes donation to two or more recipients (members of same party or combination of members and party itself) valued > €1,500 combined, must submit donation form to Commission

| TYPE OF DONATION | AMOUNT |
|--|--------|
| Maximum anonymous donation | €100 |
| Maximum cash donation | €200 |
| Maximum corporate donation (if donor not registered) | €200 |
| Maximum corporate donation (if donor registered) | €1,000 |
| Maximum individual donation | €1,000 |



Public Funding of Political Parties

- Qualified political parties, party leaders and independent Members receive funding from public funds
 - Qualified parties: those who obtained at least 2% of the first preference votes at the last Dáil general election
- Must be spent on their party/parliamentary activities
- Each recipient (party/party leader/independent Member) must account to the Standards Commission for the funds received



Registration of Third Parties

- Third parties: Individuals/groups (other than registered political parties, elected members and election candidates) who accept donations for political purposes
- Must register with Commission
- Law on donations applies to third parties
- Third parties must make annual returns to Commission



Registration of Corporate Donors

- Corporate donors: Bodies corporate or unincorporated bodies that donate more than €200 in a year to a candidate, party, member of the Oireachtas or MEP
- Must register with Commission
- Maximum donation limits apply



Political Party Accounts

- Registered political parties must provide audited accounts to the Commission
- Guidelines have been issued by the Commission for the preparation of political party accounts.



Advice/Guidelines

- Guidelines published by the Commission for donations, election expenses and state funding are legally binding
- Advice issued by the Commission is also legally binding
- Commission cannot advise on Party Leaders Allowance



Offences under the Electoral Acts

- Failure to take appropriate action in relation to a prohibited donation
- Unauthorised incurring of election expenses
- Overspending by election agent or national agent
- Failure to furnish statutory returns
- Knowingly furnishing incorrect statutory documents



Powers of the Standards Commission under the Electoral Acts

Section 4(4) of the Act authorises the Standards Commission to seek whatever information it requires for the purpose of its duties

Standards Commission is empowered to refer breaches of the legislation to the DPP



Regulation of Lobbying



Regulation of Lobbying Act provides for:

- Independent lobbying registrar – Standards Commission
- Registration of lobbyists (wide ranging scope)
- Regular submission of returns (3 x/year)
- Web-based public registry (lobbyist, lobbied, subject, intended result)
- Post-employment restrictions for **some** public officials
- Investigation and enforcement provisions (compliance focus)
- Legislative review mechanism



Lobbying Act: Three Step Test

- Communication must meet the “three step test” to be considered lobbying - communication by:
 - Persons within the scope of the Act
 - With Designated Public Officials
 - On relevant matters
- Act makes no distinction regarding method, venue or formality of communication
 - Mail, telephone, in-person, electronic, social media
 - Office, social setting, casual encounter, other



Persons within scope of Act

- Persons with **more than 10 employees**
- **Representative or advocacy bodies** with at least 1 employee
- **Third parties** paid to lobby on a client's behalf
- Anyone lobbying **about development or zoning** of land

Only if the communications are with Designated Public Officials and relate to “relevant matters”



Designated Public Officials

- Ministers, Ministers of State
- Members of Oireachtas, Irish MEPs, Members of Local Authorities
- Special Advisors
- Senior Civil and Public Servants
 - Civil service: Secretaries General, Assistant Secretaries, Director grades and equivalent
 - Local authorities: CEs , Directors of Service, Heads of Finance, Head of HR (Dublin City Council)
 - Minister may expand group in future (public bodies or levels)



Relevant Matters

- The initiation, development or modification of any public policy or of any public programme;
- The preparation of an enactment; or
- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds...

Apart from matters relating only to the **implementation** of any such policy, programme, enactment or award **or of a technical nature**



Exemptions

Several types of communications are exempt from requirement to register:

- Private affairs
- Principal private residence
- Diplomatic context
- Between public officials
- Strictly factual information
- Trade union negotiations
- Threat to life or safety
- Security of the State
- Shareholder of State body
- Within proceedings of Oireachtas Committee
- Information requested and published by public body
- Groups established by Public Body where Transparency Code applies



Registrations and Returns

- Register after first communication with DPO
 - Include organisation name, business address, contact details, main business activities, person primarily responsible, CRO or charities number
- 3 Returns periods per year with mandatory deadlines
 - 1 September–31 December: returns due 21 January
 - 1 January–30 April: returns due 21 May
 - 1 May–31 August: returns due 21 September
- Nil returns are also required
- One return per subject:
 - Who was lobbied, subject matter/intended results, type and extent of activity, current/former DPOs lobbying for you, client info (if applicable)



Other functions for Commission

■ Matters for decision

- Removal of information on register (ss.10(5))
- Applications to delay publication of registration/returns (s.14)
- Applications to waive/reduce post-employment period (s.22)

■ Development of Code of Conduct (s.16)

- For persons carrying on lobbying activities “with a view to promoting high professional standards and good practice”.
- Principles by which persons carrying on lobbying activities may conduct their lobbying activities, in order to ensure that the lobbying activities are carried out transparently and ethically.



Contraventions and enforcement

- Contraventions of Act:
 - Lobbying without registering
 - Failure to submit return by deadline (including nil return)
 - Providing inaccurate/misleading information
 - Failing to comply with an investigation
 - Obstructing an investigation
- Consequences of non-compliance
 - Fixed payment notices for late returns: €200
 - Investigation and prosecution of contraventions
 - If convicted: higher fines and/or imprisonment



Thank you for your attention

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