

THE ETHICS STUDY MISSION
TO
IRELAND & THE UNITED KINGDOM
A REPORT
OF THE PARLIAMENTARY DELEGATION

Presented To

The Joint Subcommittee on Ethics
The Parliament of the Republic of South Africa

23 January 1996

The Ethics Study Mission was organized By
The National Democratic Institute for International Affairs
(NDI)

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**THE ETHICS STUDY MISSION
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INTRODUCTION

During the week of November 26 through December 3, 1995, the National Democratic Institute for International Affairs (NDI) sponsored an Ethics Study Mission to Dublin, Ireland and London, England. In 1995, the parliaments of Ireland and the United Kingdom have passed comprehensive reforms to regulate potential conflicts of interest in government. The Joint Subcommittee on Ethics, in conjunction with the Speaker's office in the National Assembly, accepted NDI's offer to organise the study mission with the hope that the experiences of Ireland and the United Kingdom would inform South Africa's debate on developing a code of conduct.

Considering the impact of ethics rules on the culture and respectability of parliament, both NDI and the Subcommittee felt that it was important to have a delegation which was representative of all the political parties in parliament. Each of the seven political parties was therefore asked to choose a member serving on the subcommittee to participate in the study mission. Two other delegates were nominated from the Gauteng Provincial Assembly which has also begun a review of ethics issues. Finally, a member of Namibia's National Assembly joined the delegation. The names of the delegates appear on the opening page of this report, and short biographies are included as Appendix I.

In Dublin and London, the delegation was able to examine a range of issues including the public demand for ethics reforms, the development of legislative proposals addressing ethics issues, the political dynamics involved in creating a consensus for such proposals, and the enforcement mechanisms established to implement the new codes of conduct. To discuss these issues, the delegation met with a wide range of parliamentary leaders, political party representatives, journalists and other political analysts. This report is presented by the delegation as a record of the observations and findings of the study mission. It also includes materials on ethics rules and procedures which were gathered in Ireland and the United Kingdom. The itinerary for the study mission is included as Appendix II.

The ethics reforms in Ireland and the United Kingdom share an important principle: effective government transparency is essential for maintaining the legitimacy of democratic institutions. The experiences of these two countries also highlight the complex nature of creating a code of conduct which is effective in promoting government transparency, while at the same time sensitive to the privacy which should be afforded to public officials.

The ethics debate in South Africa is prompted by a desire to establish concrete benchmarks for the application of transparency and accountability in a democratic government. To achieve this goal, political parties are faced with the task of reconciling different opinions of how to define a new code of conduct. The members of the Ethics Study Mission believe this report should provide a foundation for bridging those differences of opinion. The delegation also strongly believes that this report can help facilitate a consensus on a new code of conduct which assures the people of South Africa that their elected officials and civil servants are acting in the public interest free from the burden of inappropriate influence.

In organising the study mission, NDI collaborated with Institute for Public Management in Dublin, and the Westminster Foundation in London. Both organisations were instrumental in putting together the comprehensive itinerary. The mission was funded through grants from the National Endowment for Democracy and the British High Commission. The delegation expresses its appreciation to all of the organisations involved in the study mission.

EXECUTIVE SUMMARY

In both Ireland and the United Kingdom, public concerns about government corruption intensified after a series of allegations of misconduct. These "scandals" served to reinforce existing public perceptions that government institutions are unduly influenced by private interests and personal gain. The reforms passed by the parliaments of Ireland and the United Kingdom were therefore aimed at restoring the legitimacy of government institutions, and providing guidelines on ethical conduct in public life.

In Ireland, the ethics debate resulted from rising public concern over allegations that public officials were profiting from a series of property deals involving public companies, as well as an export insurance scheme which granted a large award to a prominent beef company. These concerns contributed to the fall of one government coalition, and created pressure for legislation addressing government ethics, electoral reform, and freedom of information. In 1995, parliament passed the Ethics in Public Office bill establishing a new code of conduct for members of parliament, ministers, senior public and civil servants, senior special advisors and board members, and senior executives of state bodies. Legislation addressing electoral reform and freedom of information are expected in 1996.

As a result of Ireland's Ethics in Public Office Act, public officials must declare a wide range of financial interests including nonresidential property, any paid position as a political or public affairs advisor, outside employment, shareholdings, pensions, company directorships or shadow directorships, gifts or services received, and sponsored travel. The act establishes an independent commission to maintain a Register of Interests, and to investigate any accusations of conflict of interest or corruption. This commission will report to a parliamentary Committee on Members' Interests which is ultimately responsible for making decisions on the implementation of the ethics rules, and the commission's recommendations. The act goes into effect on 1 January 1996. Public

officials will make their first declarations in March of 1996, commencing the first annual audit of financial interests.

In the United Kingdom, the parliamentary debate over ethics reforms began in October 1994. Public pressures for reform reached a pinnacle after a series of controversial stories concerning members of parliament, particularly those serving in the ruling Conservative Party who had accepted an offer of money for asking questions on the floor of the House of Commons. Responding to these pressures, Prime Minister John Major announced to the House of Commons the creation of a Committee on Public Standards in Public Life. The committee was to be chaired by the Rt. Hon. Lord Nolan and was given the mission to:

“examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.”

The Nolan Report, presented to the Prime Minister in May 1995, stated that “changes which have occurred over the years in the roles and working environment of politicians and other public servants have led to confusion over what is and what is not acceptable behaviour.” The report also issued a comprehensive set of recommendations designed “to maintain, and where necessary restore, the standards of conduct in public life which the public are entitled to expect, and to promote a policy of openness which will enable the public to see that their expectations are being met.”

The Nolan Report reaffirmed the principle of government transparency, and recommended that parliament should establish a code of conduct to clarify the role of a member of parliament. The report also called for a Parliamentary Commissioner for Standards and a Subcommittee on Privileges to monitor the implementation of the new

ethics guidelines. Addressing the particular "sleazy conduct" that had raised the public's concern, the Nolan Report recommended an absolute bar on members of parliament from entering into contracts "which in any way restrict their freedom to act and speak as they wish, or which require them to act in parliament as representatives of outside bodies." While the report upholds the right of members of parliament to hold unrelated outside employment, the overall aim of the report is to limit the influence of outside contracts on parliamentary decisions, and to establish clear requirements for members to disclose outside contracts and agreements. In November 1995, the House of Commons passed a series of motions implementing the recommendations of the Nolan Committee.

In any political situation, ethics issues are difficult to address. First, an ethics debate often arrives in the political arena as a result of public concerns over real or perceived cases of government corruption. Second, members of parliament find themselves in a position where they must create rules to govern their own conduct. The delegation believes that the parliaments of Ireland and the United Kingdom have responded well to these challenges, and that their experiences should assist the Parliament of South Africa in creating a new code of conduct to regulate potential conflicts of interest.

It is important to recognise that a code of conduct is necessary to provide a framework for those serving in public office not because public officials are unethical, but rather because the ethical demands of public life differ from those of private life. The pressures of competing interest groups, an investigative media, and political parties in need of campaign donations often create confusing ethical situations for a public official. A code of conduct for public officials is also necessary to assure the public that private interests are not inappropriately influencing public decisions. To maintain the legitimacy of government institutions, a code of conduct must not only maintain high ethical standards, but also the appearance of high ethical standards.

The delegation believes that South Africa's Joint Subcommittee on Ethics and the political parties in parliament would benefit from a review of the ethics rules passed in Ireland and the United Kingdom. It is also beneficial for those contemplating a code of conduct for South Africa's public officials to examine the political dynamics which led to the passage of these ethics rules. The delegation has therefore compiled a series of findings which are based on our discussions with a wide range of leaders in the ethics debates.

A SUMMARY OF THE DELEGATION'S FINDINGS

The parliaments of Ireland and the United Kingdom have determined that it is desirable for the public to have information about the private interests of their elected officials and civil servants. Unless parliament creates a framework to guard against inappropriate influences, the potential conflict between private interests and public decision-making is certain to arouse suspicion. This suspicion is pernicious for any democracy, and is likely to undermine the standing and respectability of government institutions. The reforms passed in Ireland and the United Kingdom require public officials to declare their private interests in the hope that transparency will reduce the influence of particular interests, and will assure the public that their elected officials and civil servants are accountable and acting in good faith.

While the reforms in Ireland and the United Kingdom recognise the importance of transparency, they also make clear that public officials are entitled to a sphere of privacy. In both countries, a test of "reasonableness" is applied to each ethics provision in order to ensure that the rules are consistent with constitutional protections for privacy. The rules emphasise that it is in fact unreasonable to require information relating to the personal wealth of public officials and the exact value of their financial interests, as it is unreasonable to require the divulgence of personal details such as club memberships and private residences.

The delegation was impressed by how the reforms in Ireland and the United Kingdom attempt to resolve a potential conflict between two compelling principles-- the principle of government transparency and the principle of personal privacy. In both countries, the rules make clear that it is necessary for the public to know about possible influences on the government's decision-making process, and it is therefore reasonable to require information about a public official's financial interests. However, the rules also recognise that it is important for public officials to maintain private interests, to continue their involvement in the life of their communities, and to be afforded a measure of privacy. The balance between these two principles-- transparency and privacy-- is difficult to achieve, but necessary for creating an effective code of conduct which will enjoy consistent political support and public confidence.

During the Ethics Study Mission the delegation was primarily focused on issues concerning financial disclosure. There are seven categories of findings, which are: 1) the purpose, 2) the aim, 3) the scope, 4) the application, 5) the form, 6) the implementation, and 7) the rule-making process. The findings are based on the delegation's observations about the provisions passed in Ireland and the United Kingdom. Each of the findings has the consensus of the delegation, and is recommended for the purpose of informing deliberations about an ethics code in South Africa. The findings do not represent agreements concerning the provisions to be included in a code of ethics for South Africa. While the delegation hopes this report informs the ethics debate in South Africa, agreement on a final code of ethics must be reached through consultation and negotiation within and between the political parties in parliament.

There is a consistency to the approaches taken by the parliaments of Ireland and the United Kingdom. Both parliaments conducted thorough reviews of ethics issues, and passed comprehensive reforms with similar content. Both sets of rules are aimed at disclosing the financial interests of public officials, and are not generally concerned with

ascertaining the exact values of those financial interests. The delegation's findings therefore apply to the ethics provisions passed in both Ireland and the United Kingdom, unless otherwise specified. The following is an outline of the delegation's findings.

Purpose

- 1) To instill confidence in public representatives and government institutions by preventing corruption and any appearance of corruption.
- 2) To ensure that public decisions are being made in the public interest, and are not inappropriately influenced by private interests.
- 3) To create a framework to guide public officials in their work, helping them to avoid corruption or any appearance of corruption.

Aim

- 1) To identify private interests which may affect public decisions.
- 2) Not to identify the value of interests. (Except for cabinet ministers and senior civil servants)

Scope

- 1) The rules cover a broad scope of interests to encourage greater transparency and to avoid any confusion concerning what interests should be declared.

Application

- 1) The application of financial disclosure rules is broad, and extends to members of parliament, cabinet ministers, civil servants, and the directors of state companies.
- 2) The amount and nature of the information which is required to be disclosed differs depending on the position of a particular official. Those involved in executive positions are required to disclose more information.
- 3) The public's access to financial disclosure information differs depending on the category of the official involved. Information directly related to elected officials is fully available to the public. Information concerning lower level civil servants and spouses may be confidentially disclosed with mechanisms for public access when necessary.
- 4) Cabinet ministers and senior civil servants must disclose those financial interests, of which they are aware, of their spouse and their immediate family members. Those officials who are not in senior executive positions are not required to disclose the financial interests of their family members unless they pose a conflict of interest for the official.

Form

- 1) A formalised process of making an annual declaration of interests in a Register.
- 2) Ad-hoc disclosures in the Register are made to declare interests which may influence a particular decision.

Implementation

- 1) An independent body to administer the register, provide guidance to public officials, and investigate particular cases.
- 2) A parliamentary committee with final authority to accept or reject recommendations from the independent body.

Rule-Making Process

- 1) Ireland: Ethics provisions were passed as legislation in order to coherently cover a wide range of public officials in a single legislative bill, to have sanctions which may go beyond traditional parliamentary punishments such as censure, and to assure the public of the seriousness with which parliament views ethics issues. Parliamentary rules will be made to implement the legislation.
- 2) United Kingdom: Ethics provisions were passed as parliamentary rules to reinforce a tradition of self-governance in the House of Commons.

THE REPORT OF THE DELEGATION

IRELAND

Background to the Ethics Debate

According to Fintan O'Toole, a journalist for the Irish Times, public concerns about government corruption began to intensify in the 1960s when a new generation of politicians entered public life, and the level of private donations to the political parties increased dramatically. The new generation of politicians, unlike their predecessors, had not begun their political lives in the revolutionary struggles of the 1920s. Rather, they entered political life for a variety of interests, and while they were mostly motivated by noble social causes they were viewed by the public as having a self-interest in promoting their own political careers.

The emergence of a new generation of politicians coincided with an increase in private financial donations made to political parties. In the 1960s, the cost of running in an election began to escalate dramatically. As is typical in a modern democracy, political parties began to solicit larger financial donations from a broad range of private interests. Those private interests, seeing the value of having relationships and friendships with key political leaders, were happy to reciprocate. According to O'Toole, this "cosy relationship" between a new generation of career politicians and a growing business class intent on securing government contacts created growing suspicion in the eyes of the public.

Public suspicions reached a pinnacle in the early 1990s when a series of alleged scandals occupied the front pages of Ireland's major newspapers. Much confusion surrounded a series of deals which transferred properties between public companies. Through these property deals, it appeared that certain public officials personally profited from the transactions. In one case, the state company Irish Telecom purchased a property site for 9.5 million pounds. Media sources later discovered that the site was worth only 6 million pounds. Meanwhile, the chairman of Telecom was also an original shareholder of

the company which was selling the property for the inflated price. His interest was only 10% of the company's value, and he maintained that he was ignorant of having this share. Nevertheless, questions about the values of the property involved, and the appearance of private gain on the part of the chairman of Irish Telecom reinforced the public view that government corruption is widespread.

At the same time, there were concerns about another government programme. Like many countries, Ireland maintained an Export Credit Insurance programme which protected companies who exported to unstable countries. Under the scheme, if a company was not paid for its exports, it would be reimbursed for its losses by the insurance. Concerns arose in 1987 when a company called Goodman International was exporting beef to Iraq which was considered an unstable market. When the Iraqi war with Kuwait started, Iraq refused to pay for the beef it had purchased from Goodman. To cover its losses, Goodman International was paid 180 million pounds under the Export Credit Insurance programme.

Concerns about the large payment initially centered on the desirability of having an export insurance programme; however, stories soon emerged that the decisions about the insurance payment were made as a result of meetings held between a minister and the company manager, and that the decision to make the payment went against recommendations from the civil servants in charge of the programme. Public outrage climaxed when it was discovered that the beef which was exported to Iraq was not Irish, but was brought from Europe. The 180 million pounds of Irish taxpayer money was therefore paid to insure a company that was favouring European farmers at the expense of Irish beef production.

It is important to note that throughout the series of alleged scandals there was no direct evidence of illegal corruption, and there were no indictments. Nevertheless, there was an overwhelming appearance of corruption, and the result of the scandals was a drop in public confidence in Ireland's democratic institutions. The public's concern over the

scandals highlighted the need for legislation which would clarify the relationship between politicians and outside interests, and reform the public's access to government information. The alleged "scandals" were fueled by continued secrecy about the private financial interests of public officials and the overall decision-making process. This secrecy led the public to believe the worst. An organised declaration of interests and greater freedom of information are therefore seen as important elements to the ethics reforms in Ireland.

The Political Dynamics of Ethics Reforms

Charlie McCreevy, a member of parliament for the Fianna Fail party, described Irish politics best. "It is a country where government coalitions are made up of strange bedfellows." There are two major political parties in Ireland which differ little in terms of ideology or policy platform. Perhaps the most significant difference between the Fianna Fail and Fine Gael parties is that the founders of Fianna Fail strongly opposed the peace treaty of 1927 which divided this small island into the Republic of Ireland and the province of Northern Ireland which has remained a part of the United Kingdom. While there is little difference between these two parties, they have never entered into a coalition government with each other. The governing coalitions of Ireland have therefore been composed of partnerships between either Fianna Fail or Fine Gael and a host of smaller parties including the Labour Party, the Progressive Democrats, the Democratic Left, the Green Party, and the Workers' Party.

In this context of shifting coalitions to obtain narrow parliamentary majorities, the Labour Party succeeded in using its leverage as a small party to make ethics reforms a priority for two successive governments. In January 1993, Labour formed a coalition with Fianna Fail on the condition that political reform be a priority on the government's agenda. At this time, work on the ethics bill began. However, tensions were rising between Labour and Fianna Fail, and the property deal scandals contributed to a souring relationship. Finally, the Fianna Fail-led government of Albert Reynolds collapsed in

November 1994. In an attempt to avoid a costly new election, the President asked the other major party, Fine Gael, to form a coalition. Again, the Labour Party made ethics reform the price for its cooperation in government. By now the politics of ethics reform had gathered momentum and minor disagreements had given way to overall support for reform. On 15 December 1994, Fine Gael accepted Labour's conditions, and the process of drafting an ethics bill proceeded.

In Government, the Labour Party has continued to take the lead on the political reform process. Eithne Fitzgerald, a Minister of State, has been in charge of the legislative process which has produced the Ethics in Public Office Act. The process of passing the ethics legislation has been arduous. The measure went through cabinet an unprecedented six times, and consultations were conducted with the Attorney General, ministerial subcommittees, members of parliament, and civil servants. Concerns were raised over numerous issues including the privacy of religious association, residential property, financial standing concerning loans, and procedures for registering ethics complaints. Some officials questioned the fundamental requirements for disclosure included in the proposal. In the end, many compromises were made on issues which did not affect the underpinning principles of the legislation. Although there were many concerns raised in parliament including a one-day debate over the title of the bill, the momentum for reform resulted in a unanimous vote in favour of the measure.

Nation-Building and Ethics Reforms

Former Prime Minister Dr. Garret Fitzgerald describes the current process of political reform in the context of Irish nation-building. According to Dr. Fitzgerald, governments must continually re-examine their foundations, and maintain themselves as legitimate forums for representative democracy. Dr. Fitzgerald places the current ethics reforms in an Irish historical context.

At the conception of the modern Irish state in 1927, the new government faced a series of challenges concerning the dispensation of civil service positions. The British system of civil service appointments had been cleaned up by the time of Irish independence. The leaders of the new government, which would form the Fine Gael Party, were intent on preserving a clean civil service. A Civil Service Commission was established from the start, and appointments were made on a merit basis. The civil service procedures were implemented despite strong opposition from the lower ranks of the Fine Gael organisation who were keen to secure jobs from the government.

While Fine Gael was in government, those who opposed the treaty with Great Britain began a civil war. The leaders of this opposition formed the Fianna Fail Party, and succeeded in winning the election of 1932. The civil war ended as the army accepted the new government in part because of the appointment of a Fine Gael leader as the army minister. Important for the success of government ethics, Fianna Fail did not dismiss any civil servants, and continued the process of appointments based on merit. In these early years of nation-building, the foundations of accountability in government were established.

The influence of money on the political system has created a new set of challenges for maintaining the legitimacy of democratic institutions. According to Dr. Fitzgerald, public officials must not be motivated, or perceived to be motivated, by financial gain. The perceived motivation of public officials is vital to the respectability of representative institutions. Dr. Fitzgerald notes that the issue of government salaries is important to the ethics debate. Salaries must be balanced. They must be sufficient to provide for an adequate living, and to support the independence of a public official. If salaries are too low, then outside financial interests have a better opportunity to influence public officials. If salaries are too high then public officials appear to have the wrong motivation for seeking office.

The process of political reform in Ireland, including the passage of the Ethics in Public Office Act, is an important element in the overall development of democracy. It is

a process which must restore the standing of public institutions, and re-establish the trust of the Irish public in their government.

The Ethics in Public Office Act

The 1995 Irish Ethics in Public Office Act compels all members of parliament, office holders including ministers, senior public and civil servants, senior special advisors and board members and senior executives of state bodies to declare annually in writing a wide range of interests. The Act establishes an independent commission which will maintain the Register of Interests and investigate accusations of conflicts of interest or corruption. Such accusations can be made by other public officials or citizens.

During the debate on the legislation, objections to the bill arose over the potential damage of false accusations, particularly as anyone may submit a complaint. In response to the latter, the final bill sets up a two-tiered screening process in which the Clerk of the Commission must first review complaints to determine their merits before they are submitted to the Commission. The Commission is made up of the Comptroller, Auditor General, Ombudsman, the Chairman of the Dail Eireann (the lower house of parliament) and the Clerk of the Seanad Eireann (the Senate). The Minister of Finance has oversight of the Commission and can replace any member temporarily if he or she has any connection to the matter being considered.

The Commission has the power to compel witnesses and documents. After carrying out an investigation, the Commission prepares a written report to be laid before the Committee on Members' Interests. The Committee may then move a motion in the House for censure or suspension for up to 30 days. This report is also submitted to the Director of Public Prosecutions who must signal whether or not it will pursue criminal proceedings for an offense. The Commission may also publicly exonerate an official under investigation.

The legislation sets out broad outlines compelling the annual declaration of any interest which may pose a potential conflict. The bill also requires that any official speaking or voting on proceedings to which he or she might have an undeclared interest or connection must make an ad-hoc disclosure by informing the clerk of the committee or of the house of that interest before participating. Members of Parliament and most civil servants are not required, however, to disclose the values of their interests including their level of income or the worth of their investments. Ministers and senior civil servants are required to disclose the values of their interests. The following categories of disclosure are included in the Act:

Shareholdings

Shares or similar investments totaling more than 10,000 Irish pounds (60,000 Rand) at any time must be registered. Specifics concerning the nature of the shares must be listed. Values need not be declared, unless the official is a cabinet minister or senior civil servant.

Outside Employment

Any source of remuneration which yields more than 2,000 Irish pounds (12,000 Rand) must be declared. Values need not be declared, unless the official is a cabinet minister or senior civil servant.

Directorships

Any directorship or shadow directorship must be declared.

Consultancies

Any paid position as a political lobbyist, consultant or advisor must be declared.

Sponsorships

Any property or services worth more than 500 Irish pounds (3,000 Rand) must be declared.

Gifts, Benefits, Hospitality

Any gifts totaling over 500 Irish pounds (3,000 Rand) must be declared.

Overseas Visits

Foreign travel, meals and entertainment worth over 500 pounds (3,000 Rand) must be declared. Personal travel on personal expense does not have to be declared.

Overseas Gifts and Benefits

See above for gifts.

Land and Property

Any interest in land over 10,000 Irish pounds (60,000 Rand) must be declared excluding private homes (vacation homes do not have to be declared). Farm property would be recorded as a source of remuneration and not as property.

Pensions

Any investments worth over 10,000 Irish pounds (60,000 Rand) at any time must be declared.

Spouses

Cabinet ministers, senior civil servants and the directors of state companies must disclose the financial interests, of which they are aware, of their spouses and immediate family members. These declarations may be made confidentially. Members of parliament and lower level civil servants are not required to disclose the financial interests of family members unless they present a conflict of interest for the official. Officials are prohibited from transferring assets to a spouse or family member for the purposes of avoiding disclosure requirements.

The Ethics in Public Office Act came into force on the first day of January 1996, and it marks a dramatic transformation of the rules governing the conduct of public officials in Ireland. The Act strikes a valuable balance between the need to have greater transparency concerning government decisions and the need to maintain a reasonable scope of privacy for public officials. There are some remaining issues which need to be resolved including the composition of a Committee on Members' Interests and the mechanisms for implementing the disclosure requirements. Nevertheless, parliament stands ready to usher in a new era of openness and government transparency in an effort to restore public confidence in Ireland's democratic institutions.

UNITED KINGDOM

Background to the Ethics Debate

In October 1994, a reporter for The Times newspaper, pretending to represent a private company, offered approximately thirty members of parliament 1000 pounds (approximately 6000 Rand) to ask a question on the floor of the House of Commons. Two members of the Conservative Party accepted the offer, and became the catalysts for the latest in a series of scandals involving the financial impropriety of members of parliament. In the 1990s, scandals have included members of parliament taking money from clients to perform parliamentary actions on their behalf, private firms hiring public officials following working relationships which were cultivated while the officials were in government, possible links between political donations and public appointments, fraud, and other allegations of misconduct.

The "money for questions" scandal, however, cemented the public's perception of "sleaze in parliament", and galvanised the political parties to take action. In October 1994, Prime Minister John Major established a Committee on Public Standards in Public Life to be chaired by the Rt. Hon. Lord Nolan. In May 1995, the Nolan Committee issued a report which calls for a dramatic revision of parliament's rules covering the conduct of members of the House of Commons, and the creation of an independent Parliamentary Commissioner for Standards and a new Committee on Members' Privileges.

Most importantly, the Nolan Committee's report called for a re-examination of the conduct of members of parliament, and the formation of an official Code of Conduct. This recommendation marks a dramatic break with past traditions. Although there have been numerous occasions when incidents have moved the House to issue statements about parliamentary ethics, members of parliament had consistently resisted a formal code of conduct.

Rather than defining an overall code of conduct, the House of Commons has traditionally been concerned with a narrow range of ethics issues, principally bribery and the influence of contracts which could limit a member's freedom. As far back as 1695, when Speaker Sir John Trevor was expelled for accepting a bribe, the House issued a resolution prohibiting "the offer of money, or any other advantage, to any member of parliament for the promoting of any matter." The most detailed statement of these prohibitions was made in 1947 in response to a trade union's attempts to influence a member.

In 1974, the House of Commons introduced a Register of Interests following a series of scandals involving a private architect, John Poulson, who used his contacts with civil servants and members of parliament to secure government contracts. The informal declaration of interests was by then a long-standing convention, but members of parliament were now required to make written declarations of "any pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have, or may be expecting to have."

One interesting conclusion of the Nolan Committee is that the past rules and traditions of the House of Commons created a false sense of security. In fact, without a corresponding code of conduct, the Nolan Committee concluded that the Register of Interests "created a false impression that any interest is acceptable once it has been registered." And while the previous rules focused on protecting the freedom of members of parliament, the Nolan Committee found that the rules were "much less explicit as regards the freedom of members to place themselves in situations where they are liable to be improperly influenced."

In reviewing the work of his committee, Lord Nolan concluded that two elements of the report are most important. The first is the need for a code of conduct. In Lord Nolan's own words: "A code of conduct is essential for a modern parliament. It is essential for the respect of the institution, and it is important for the protection of the

members themselves.” The second element is the need for an independent arbitor in the ethics process. According to Lord Nolan, only an independent officer will assure both the public and the members of different political parties that this sensitive process is conducted fairly. Sir Gordon Downey, the newly appointed Parliamentary Commissioner for Standards, commented that his position is controversial, and stated that the only precedence for independent monitor is the Auditor General. Nevertheless, Downey agrees that the introduction of an independent arbitor may provide the House of Commons with an appropriate check on the conduct of its members.

The Political Dynamics of Ethics Reforms

Following the submission of the Nolan Report, the House of Commons nominated a Select Committee, chaired by Tony Newton who is Conservative Party member and Leader of the House, to review the document. According to Newton, this committee met more often and worked more hours than any other committee in the history of the House of Commons.

There were some serious disagreements voiced during the initial parliamentary debate on the Nolan Report in May 1995, particularly concerning the controversial proposal to introduce an independent Parliamentary Commissioner for Standards. Nevertheless, the bipartisan select committee proceeded to review each recommendation of the report. Subsequently, the select committee produced two reports supporting the recommendations of the Nolan Report, and in some instances recommending more stringent requirements to avoid any loopholes.

In the end, the ethics reforms were supported by a general consensus of each political party in parliament, except for one issue. The divisive issue concerned a Labour Party proposal to require the declaration of any contract involving a member of parliament providing advice to an outside group. The Nolan Report’s recommendations which had been accepted by the House had already prohibited members from advocating a cause in

the House in return for money or other advantages, but they did not prohibit members from providing advice to outside groups on how to advocate a cause in the house. For this later category, the Labour Party, led by their Shadow Leader of the House Ann Taylor, wanted to require the disclosure of the exact reimbursements any member received for providing such advice. The measure was carried by a rare coalition led by the Labour Party, and including the Liberal Democrats, other smaller parties, and approximately twenty Conservative Party backbenchers.

According to both Newton and Taylor, the final ethics reforms enjoy broad political support in the House. Both parties recognised the need for comprehensive reforms, and while there may have been numerous concerns about the requirement for an independent commissioner, the disclosure of consulting contracts and other details, the momentum for reform was overwhelming. That said, Taylor raised one concern about the enforcement mechanisms required to implement the new rules. Because the ethics provisions are contained in parliamentary rules of the House of Commons, the sanctions which may be applied to offenses are limited to actions in the House such as censure and dismissal. Taylor advised that should these sanctions prove too weak to sufficiently enforce the ethics rules, the Labour Party would advocate the passage of legislation with stricter enforcement mechanisms.

The Nolan Reforms and Existing Disclosure Requirements

It is difficult to summarise the ethics guidelines in the United Kingdom because they have been created through various parliamentary rules and cabinet regulations, and the process of developing a code of conduct is not yet completed. The Select Committee has recommended that the Clerk of the House prepare a draft Code of Conduct which would be reviewed by the committee. For the purposes of this report, the following is a summary of the basic requirements for the financial disclosure:

Shareholdings

Members must declare any shares or similar investments which have a nominal value of (a) greater than 25,000 Pounds (150,000 Rand), or (b) less than 25,000 Pounds but greater than 1% of the issued share capital of the company. Nominal value means the face value not the market value. Values need not be declared, unless the official is a cabinet minister or senior civil servant.

Outside Employment

Members must declare any outside employment interests. Incomes or levels of remuneration need not be declared, unless the official is a cabinet minister or senior civil servant.

Directorships

Members must register any remunerated directorships and shadow directorships. For this purpose "remuneration" includes any receipt of taxable expenses, allowances or benefits, such as the provision of a company car.

Consultancies

Members must declare the exact income and remuneration involved in any consultancies or retainers pertaining to a member's work in parliament. For consultancies not related to a member's work in parliament, members must declare the consultancies and retainers, but not the remuneration involved.

Gifts and Benefits

Members must declare tangible gifts of 125 Pounds (750 Rand) or more, and must declare hospitality, such as tickets to the theatre or a sporting event, exceeding 0.5% of the parliamentary salary or about 160 Pounds (960 Rand). Gifts must be registered not only if they are provided free of charge, but also if they are given at a subsidised rate. Gifts not relating to a member's work need not be declared.

Foreign Travel

Members must declare any foreign travel related to their work in parliament if the costs of the trip were not entirely paid by the member or by public funds. The declaration must include the name of the paying organisation.

Overseas Gifts

Same as section on gifts.

Sponsorships

Members must register the source of any contribution to his or her election expenses in excess of 25% of the total of such expenses. It is necessary to register the provision of free or subsidised accommodation and the provision of services of a research assistant. Any regular donation in excess of 500 Pounds (3,000 Rand) per year made by an organisation to a member's constituency party if the donation is linked directly to the member's candidacy in the constituency or the member acted as an intermediary between the donor and the constituency party.

Real Estate and Property

Members must declare any property which provides a source of income. Residential and vacation homes need not be declared unless they are used for commercial purposes. Values need not be declared.

Pensions

Members must declare pensions, both public and private. Values need not be declared, unless the official is a cabinet minister or senior civil servant.

Spouse

Members must declare family property, but a spouse's interests need not be declared. The rules prohibit members from using a spouse to divert interests. Cabinet ministers and senior civil servants must declare the interests of a spouse.

Through its various rule-making processes parliament has established a system of financial disclosure similar to that passed in Ireland. Again, the rules strike an important balance between the need for government transparency and the disclosure of interests, and the need to maintain the privacy of public officials. While parliament has long been concerned about the influence of financial interests, rules have now been passed to ensure that there is a clear set of requirements for financial disclosure and an effective system for implementing those requirements. The vagueness of the past guidelines has been replaced with a firm commitment for improving government transparency.

THE DELEGATION'S FINDINGS

Background to the Delegation's Findings

There is a consistency to the approaches taken by the parliaments of Ireland and the United Kingdom. Both parliaments conducted thorough reviews of ethics issues, and passed comprehensive reforms resulting in similar requirements for financial disclosure. The delegation believes that the experiences of the parliaments of Ireland and the United Kingdom hold valuable lessons for the parliament of South Africa. For the delegation, the most striking lesson of the ethics reforms in both countries is their attempt to resolve a potential conflict between two compelling principles-- the principle of government transparency and the principle of personal privacy.

In both countries, the rules make clear that it is necessary for the public to know about possible influences on the government's decision-making process, and it is therefore reasonable to require information about a public official's financial interests. However, the rules also recognise that it is important for public officials to maintain private interests, to continue their involvement in the life of their communities, and to be afforded a measure of privacy. The attempt to reconcile the principles of transparency and appropriate privacy can be seen throughout the report on the delegation's findings.

The reforms in both Ireland and the United Kingdom establish new codes of conduct for public officials. While a code of conduct may contain provisions relating to a host of ethics issues including sexual harassment and fair hiring practices, the reforms in Ireland and the United Kingdom are principally directed at issues concerning financial disclosure. The delegation's report therefore focuses on financial disclosure requirements.

The delegation has defined seven categories of findings concerning financial disclosure.. They are: 1) the purpose, 2) the aim, 3) the scope, 4) the application, 5) the form, 6) the implementation, and 7) the rule-making process. Each of the findings has the

consensus of the delegation, and is recommended for the purpose of informing deliberations about an ethics code in South Africa. The findings apply to the ethics provisions in both Ireland and the United Kingdom, unless otherwise specified.

The Purpose of Financial Disclosure

There are three purposes for the financial disclosure rules passed in Ireland and the United Kingdom. First, the rules are intended to instill confidence in public representatives and government institutions by preventing corruption and any appearance of corruption. Second, the rules are meant to ensure that public decisions are being made in the public interest, and are not unduly influenced by private interests. Third, the rules are designed to create a framework to guide public officials in their work, helping them to avoid corruption and the appearance of corruption.

In both Ireland and the United Kingdom, the delegation heard from numerous sources how allegations of improper conduct undermined the legitimacy of either the government of the day or the parliament as a whole. From the experiences of Ireland and the United Kingdom, it is apparent that without clear guidelines the public is likely to assume that corruption in government exists.

It is apparent that in order for parliament to maintain its legitimacy in the eyes of the public, it is important to establish guidelines that ensure that the improper actions of a small number of public officials do not taint all government institutions. Peter Riddell, the political reporter for The Times newspaper in London, explained that the "scandals" which precipitated the ethics reforms in the United Kingdom reinforced and hardened an existing public perception that government corruption is widespread. His personal view, although he played a major role in covering ethical improprieties in parliament, is that the vast majority of public officials are well-intentioned and ethical. Nevertheless, Riddell believes that the financial pressures on public officials, the vigilance of a press corps which is focused on finding stories about corruption, and the likelihood that some public officials

will falter has created a situation whereby a parliament should maintain a code of conduct "to rise above the fray, and maintain its legitimacy in the modern world."

Riddell added that adequate salaries for elected officials and civil servants are necessary for maintaining the quality and legitimacy of government institutions. He suggested that South Africa would want to avoid the situation in the United Kingdom where the salaries of members of parliament are too low. When salaries are inadequate, Riddell stated that members of parliament seek consultancy positions to supplement their income. These consultancy positions can potentially result in conflicts of interests or the appearance of conflicts of interest which undermine the standing of the legislative institution.

Without an agreed upon code of conduct containing clear rules for financial disclosure, it is also apparent that ethics issues are likely to be politicised to the extent that government will be distracted from its everyday business. This is an unfortunate situation in that public officials, who have been elected to serve the people of their country, become embroiled in issues concerning their own conduct. It is a tribute to the parliaments of Ireland and the United Kingdom that they have succeeded, at least for the time being, in removing issues concerning improper conduct from the political arena.

Minister Fitzgerald, who was responsible for the ethics legislation passed in Ireland, best summarised its purpose when she said: "Ethics rules are not meant to accuse individuals, but rather to provide an ethical framework for a democratic society." In this instance, the minister was attempting to dispel the notion that public officials need ethics rules because they are unethical. On the contrary, ethics rules are required because the ethical demands of public office are different from the ethical demands of private life, and because the pressures of public office often create confusing ethical situations. An important purpose of ethics rules is to protect public officials from inappropriate pressures, and to provide them with guidance on how to manage decision-making processes. A code of conduct is therefore necessary to provide mechanisms for public

officials to avoid situations which might lead to unethical conduct, and through their ethical behaviour to strengthen the legitimacy of the democratic institutions in which they serve.

The Aim of Financial Disclosure

The Shadow Leader in the House of Commons, Ann Taylor, emphasised that the aim of financial disclosure is “to identify private interests which may influence public decisions.” It is not enough for officials to declare when they feel they have a “conflict of interest”, because the aim of financial disclosure is to provide information about a full range of interests which may or may not conflict with any public decisions. It is for an independent arbitor, and in the final analysis the public, to decide which private interests create a conflict with the public’s interest. According to Taylor, it is therefore necessary for the public to be given a wide range of information, so ethics rules should favour openess.

The delegation was interested in the testimonies of members of parliament and party leaders who described how a public official must maintain a sometimes precarious balance between public and private life. Taylor explained how in a democracy public officials must accept a certain amount of intrusion into their private affairs in order to be accountable to their constituents. She also stated that while each individual serving in public office must accept these principles of accountability, parliaments and constituents must also recognise that public officials are entitled to their privacy and their private family life.

While the experiences of Ireland and the United Kingdom favour providing a broad range of information about the private interests of public officials, it is important to note that in both cases the aim of financial disclosure is not to ascertain an individual’s wealth or the value of their particular interests. While it is recognised that the value of a particular financial interest may affect the level or intensity of that interest, the parliaments of both

Ireland and the United Kingdom concluded that the added utility of recording the value of interests did not warrant the intrusions on personal privacy, and would not be consistent with their constitutional foundations.

In other words, the parliaments of both Ireland and the United Kingdom determined that a code of conduct should not go too far in requiring personal information such as income levels and the values of particular financial interests. In the case of individuals holding executive positions (cabinet ministers and senior civil servants) it was found that the public's need to have more specific information about income levels and the values of financial interests is warranted because these officials are directly involved in executive decisions. In the case of members of parliament and lower level civil servants, it was concluded that the public's need for this personal information does not warrant the intrusion of privacy of these officials because they are not directly involved in executive decisions.

In order for a code of conduct to require the disclosure of personal information such as income levels and values of particular interests, there must be an overriding public interest. The parliaments of Ireland and the United Kingdom succeeded in determining an appropriate balance between the public's interest and the need for privacy in the context of their own political situations. Finding this appropriate balance is an exercise which the parliament of South Africa must take seriously.

The Scope of Financial Disclosure

In a representative democracy elected officials and civil servants come from a wide variety of backgrounds, and bring with them a broad range of private financial interests. To create greater transparency for government, it is therefore necessary for the scope of financial disclosure rules to be quite broad.

A wide range of financial interests could potentially affect a public official's decisions, and so the rules in Ireland and the United Kingdom require the disclosure of a wide range of interests. Once the principle of financial disclosure is accepted, it seems that the scope of the rules should be as broad as possible to avoid any confusion about what interests must be registered.

Both Minister Fitzgerald and Taylor defined registerable interests in terms of "the private gain" it may bring to a public official. This definition again refers to the important distinction of what information must be made public and what information may remain private. In both Ireland and the United Kingdom, a financial investment in residential property need not be declared because the investment is not primarily a profit-making venture. However, investments in property used for commercial purposes, including rental property, would be declared.

In Ireland, the issue of loans was problematic. An early draft of the ethics bill required the disclosure of loans. The cabinet, however, objected to the inclusion of loans on the grounds that this requirement would extend into the protected category of private residential property. It was also argued that one could be "conflicted" if one was the debtor or the holder of the loan. Given the supremacy of private property in the Constitution of Ireland, it was agreed that the issue of loans would be removed from the Act.

Gerry Kearney, the civil servant responsible for drafting Ireland's Ethics in Public Office Act, stated that ethics rules should only require the disclosure of significant interests, and should not be bothered with a multitude of insignificant interests. For the purpose of weeding out insignificant interests, both the Irish and English rules create threshold values above which an interest is deemed to be registerable.

Those engaged in the process of creating ethics rules must be mindful of the constraints inherent in implementing any system of recording information. It is important

to create rules which focus on information that is relevant to the purpose of the bill. By providing some reasonable limits on the information required for disclosure, the rules will provide for a system which is manageable, and one which may be implemented effectively.

Finally, in Ireland the issue of memberships in private organisations is particularly sensitive. Initially, there was support for including a requirement for disclosing memberships in clubs and secret organisations. However, it was determined that it would be extremely difficult to define an appropriate boundary for what memberships would be required to be disclosed. If the disclosure of memberships had been required, public officials would have been forced to declare their church affiliation and other associations which are felt to be essentially private matters. In the end, it was widely agreed that memberships should not be required for disclosure.

The Application of Financial Disclosure

To the public, government is not conceived as a collection of separate branches and ministries, but rather it is taken as a collective whole. Each public official in government therefore shares a collective responsibility for upholding the ethical standing and respectability of government institutions. A cabinet minister is affected by the ethical standards followed by a civil servant in the ministry. Members of parliament are affected by the conduct of cabinet ministers and vice versa.

Because public officials are collectively responsible for the ethical standing of government institutions, it is appropriate for ethics laws to be applied to a wide range of government officials. The parliaments of Ireland and the United Kingdom agreed that the application of financial disclosure rules should be broad, and should extend to members of parliament, cabinet ministers, civil servants, and the directors of state companies.

While the ethics rules in Ireland and the United Kingdom are applied to a broad range of officials, the amount and nature of the information which is required to be

disclosed differs depending on the position of a particular official. Those officials who have executive functions and are directly involved in the spending of public resources are required to publicly disclose more detailed information about their financial interests, including the value of their interests. These officials include cabinet ministers, senior civil servants, and state company managers.

The public's access to financial disclosure information also differs depending on the category of the official involved. Minister Fitzgerald stated a guiding principle for the application of financial disclosure: "Those who are in public life make public disclosures. Those who are not in public life make confidential disclosures." In Ireland, parliament defines "those who are in public life" to mean those individuals who have been elected by the people, or have been directly appointed by an individual elected by the people. Parliament defines public officials "not in public life" to mean civil servants and family members.

The application of the rules to spouses and family members of public officials has proven to be perhaps the most sensitive issue. There is a logical argument for requiring the disclosure of those interests belonging to family members in order to prevent a public official from transferring assets. However, in a constitutional democracy there are concerns that the rationale for financial disclosure might not be legally extended to family members who are not in the position to make public decisions in government. In both Ireland and the United Kingdom, the requirement for disclosing family interests applies only to those in executive positions such as ministers and directors of state companies. In these cases, because family members are not deemed to be involved in "public life", the disclosures are made confidentially. For the other categories of public officials including members of parliament, disclosure requirements do not include the interests of family members. There is, however, a prohibition on transferring assets to avoid financial disclosure.

The parliament of Ireland identified committee chairs as one other category of public official which may warrant more stringent financial disclosure requirements in the future. The role of committees is evolving in Ireland, and committees appear to be assuming greater powers. Should this trend continue, it is likely that committee chairs will be treated in a similar manner as cabinet ministers in the future.

The Form of Financial Disclosure

In Ireland, the ethics rules require two forms of disclosure: annual and ad-hoc. Each year, public officials will make an annual disclosure in a Register of Interests. This annual disclosure may be updated during the year should an individual's financial interests change. The second form of disclosure is ad-hoc which requires public officials to disclose a particular financial interest when considering a decision that may affect that personal interest. These disclosures are also made in the Register of Interests.

In the United Kingdom, the Nolan Committee has recommended that the registration of interests should be formalised and clarified. The suggestion is that the emphasis on registration should shift away from ad-hoc disclosure to a more regularised disclosure similar to what has been proposed in Ireland. The implementation of these recommendations will depend upon the procedures established by the Parliamentary Commissioner for Standards.

Concerning what information is recorded, Kearney stated that the registration of an interest should be specific in order to provide an accurate picture of the nature of the interest. For example, a member of parliament who is required to disclose shares in a particular company, should list the particulars about the company and the shareholdings, although the exact value need not be disclosed as was discussed elsewhere in this report.

Because of the importance of ethics laws in terms of their effect on constitutional office holders, the legal advisors to the parliament in Ireland insisted that the laws be as

specific as possible in terms of what information is required to be disclosed. The legal advisors were concerned that vague requirements would create loopholes and added confusion, hence the Irish law has favoured specificity.

The Implementation of Financial Disclosure

The parliaments of Ireland and the United Kingdom concluded that the implementation and oversight of ethics rules should be conducted on a nonpartisan basis. The legislation passed in Ireland calls for an independent commission including the Ombudsman, the Auditor General, the clerks of parliament, and the Speaker. The rules passed in the United Kingdom provide for a Parliamentary Commissioner for Standards who must be a person of independent standing. These independent bodies have the authority to maintain the Register of Interests, provide guidance of public officials, and investigate specific cases. The existence of these independent bodies provides public officials with a nonpartisan source of guidance on ethics issues, and assures the public that any investigation of ethics questions will be handled impartially by individuals independent of the political parties.

The concept of an independent commission or commissioner had to be reconciled with the constitutional principle of separation of powers and the constitutional independence of branches of government. The powers of the independent bodies were therefore balanced by parliamentary committees that would be responsible for making final decisions on any recommendations put forth by the independent bodies. The parliamentary committees were given final authority to approve or deny any recommendation made by the independent bodies. In both cases, it was felt that it would be difficult for a parliamentary committee to override the recommendations of an independent authority given the nature of the office and the impact of public scrutiny, but nevertheless it would be important to include a safeguard for protecting the independence of the legislative institutions.

The debate concerning the handling of allegations was also sensitive. In both countries concerns were raised in parliament that allegations would be made during elections for political purposes. Some suggested including harsh penalties aimed at preventing the introduction of false claims. At one stage of the Irish debate, a group of members recommended a 20,000 pound (120,000 Rand) penalty for false claims. The amount of the fine was later reduced for constitutional reasons, but nonetheless a person bringing a claim "where there are no reasonable grounds" may be fined up to 1,500 Pounds (9000 Rand). While each parliament considered the inclusion of penalties to prevent false charges, both concluded that the investigative process would have to be trusted to dismiss and disqualify false claims.

Finally, the rules make clear that they are meant to support the democratic process and not hinder it. Therefore, members of parliament are only prohibited from voting when they have a direct and specific financial interest in a particular decision. Likewise, constitutional office holders such as cabinet ministers cannot be precluded from performing their duties. Civil servants who are also required to make disclosures must perform their duties unless they have a direct and specific interest in a decision where by they must abstain from the decision.

Again, both Minister Fitzgerald and Taylor defined an "interest" as relating to the "specific or particular gain" of a public official. An interest does not relate to general gain. For example, a member of parliament who is a farmer should not be prevented from voting on general farming legislation. However, if that farmer is involved with legislation or any other government decision which will directly impact his farm, then the member should abstain. The definitions of an "interest" and "particular gain" are important for the implementation of any ethics rules.

The Rule-Making Process

The parliaments of Ireland and the United Kingdom followed different rule-making processes. In Ireland, the ethics provisions were passed in the form of legislation. Minister Fitzgerald stated that there are several advantages to legislation. First, rules aimed at covering a wide range of public officials may be included in a single legislative act, and therefore may be produced in a more coherent manner. Second, sanctions may extend beyond traditional parliamentary punishments such as censure, and would therefore have greater weight. Third, legislation carries greater authority in the eyes of the public. Kearney stated that parliamentary rules had been considered, but given the desire to assure the public about the seriousness with which parliament viewed the ethics issues it was decided the legislation would be required.

In the United Kingdom, the ethics provisions were passed as parliamentary rules governing the House of Commons. In this case, the rules did not create an entirely new framework. A register of interests has been in place in the House of Commons since 1974, but it was felt that the rules had become unclear for present circumstances. Furthermore, the rules do not apply to members of the House of Lords or cabinet ministers. Existing ethics provisions covering cabinet ministers were considered to be effective, and were not altered by the recent reforms. The Labour Party, which has been a driving force behind the reforms, believes that parliamentary rules are sufficient for now, but should ethics problems continue, Taylor stated that the Labour Party would consider legislative proposals. Sir Gordon Downey, the new Parliamentary Commissioner for Standards, stated that "parliament has a strong tradition of internal self-governance, and it was thought that parliamentary rules would reinforce that tradition." He added that parliamentary rules would probably suffice in the United Kingdom given the history of the legislative institution, but that one may wish to consider legislation in other situations.

Other Considerations

While the study mission was primarily focused on issues concerning financial disclosure, the delegation also noted that the ethics legislation in Ireland is part of an overall series of proposals aimed at improving their democratic process. In Ireland, the ethics bill will be followed by legislation regulating the funding of political parties. Particular financial interests can have a great influence on the democratic process. Furthermore, the influence of financial interests during an election period can also impact the decisions taken by elected officials once in office. It is therefore important for parliament to consider ethics legislation in conjunction with other issues concerning the funding of political parties and the influence of financial interests on the democratic process as a whole.

CONCLUSION

The process of developing ethics rules for a parliament will affect the fundamental character and traditions of the institution. It is therefore a very sensitive process. The parliaments of Ireland and the United Kingdom handled this challenge in an exemplary manner by conducting an effective and thorough review of ethics issues. Members belonging to different political parties in parliament felt as though they were fully included in the ethics deliberations. As a result of having an inclusive legislative process, the legislation subsequently benefited from having a stronger consensus which should also facilitate an easier implementation of the rules.

By learning from the experiences documented in this report, it is possible for the Parliament of South Africa to build upon what has been accomplished in Ireland and the United Kingdom. That said, all of those concerned in South Africa's ethics debate should remember that the resolution of these issues will affect the fundamental character of our democratic institutions. It is necessary for South Africans to consider these issues in our own context. The Parliament of South Africa may develop similar solutions to what has been passed abroad (as Ireland and the United Kingdom have developed similar measures), but they must be South African solutions nonetheless. The Parliament of South Africa must develop its own consensus.

The delegation hopes that the report on the Ethics Study Mission contributes to the success of South Africa's deliberations on ethics. The decision to include a representative from each political party in parliament on the study mission is a positive step in promoting an inclusive review process. During the study mission, members of the delegation were able to move beyond political differences and examine ethics issues with fresh perspectives. By working together the delegation has seen that it is possible to bridge the different positions which have been put forth by our political parties, and to develop a code of conduct which improves the transparency of our government and the standing of South Africa's democratic institutions.

APPENDIX I

Biographies of the The Delegation Members

The Ethics Study Mission

Biographies of the Delegation Members

Patricia De Lille

Mrs. de Lille was elected to the National Assembly as a member of the Pan African Congress (PAC) in 1994. She serves on the party's National Executive Committee, and in parliament she is the Chairperson of the Committee on Transport, and is a member of the Joint Subcommittee on Ethics. She is a Trustee of the President Manila Children Fund, the National Children Rights Committee, and the Re-integration and Development Trust. Mrs. de Lille became active in politics in 1963 when she joined the South African Chemical Workers' Union. In 1985 she was elected to the National Executive Committee of the union. In 1988, Mrs. de Lille was elected the National Vice President of NACHO. She was the only women to lead a party delegation at the all party negotiations at Kempton Park. She is married with one child.

Jacobus Rosier De Ville

Mr. De Ville was first elected to parliament in 1987 as a member of the Conservative Party. He was re-elected in 1989 and 1992. In the 1994 elections, Mr. De Ville was elected to the Senate as a member of the Freedom Front. He is currently the Chief Whip of the Freedom Front and a member of numerous committees including the Joint Subcommittee on Ethics. Mr. De Ville has a long history in the legal professions. He received his BA in law at the University of Potchefstroom in 1957, and his L.L.B. in 1960. He was admitted as an Advocate in 1961, and joined the staff of the Attorney General as State Advocate. In 1988, he was re-admitted as an Advocate of the Supreme Court. Mr. De Ville is married with two children. He farms in the district of Sanderton and continues to practice as a part-time advocate.

Michael James Ellis

Mr. Ellis was first elected to Parliament in 1987 as a member of the Progressive Federal Party (PFP). He was re-elected as a member of the Democratic Party in 1989. He has continued his service as a Whip for the DP in the National Assembly. He serves on committees covering education, population development and welfare, sport and recreation, housing, and ethics. Before coming to parliament, Mr. Ellis was a teacher and a school principal. He has also served two terms as President of the Natal Teachers Society. Mr. Ellis received his BA and his B Ed at the University of Natal in Durban.

Louis Michael Green

Mr. Green was elected to the National Assembly as a member of the African Christian Democratic Party (ACDP) in the 1994 elections. As one of two members representing the ACDP, Mr. Green serves on a wide range of committees. Before coming to elected office, he was a high school teacher and was a founder and full-time organizer for the Western Cape Teachers' Union which was banned in 1990. He subsequently worked for the South African Democratic Teachers Union until the end of 1991. In 1993, Mr. Green founded the Marginalized and Unemployed People's Project. Mr. Green was born in District Six of Cape Town on 12 October 1951. He is married with two children.

Piet Arnoldus Matthee

In 1980, Mr. Matthee founded a branch of the National Party (NP) and became Chairman of the Constituency Council in the Umbilo constituency. In 1981 he was admitted as an Attorney of the Supreme Court of South Africa. He was first elected to parliament in 1987 representing the constituency. He was defeated by a Democratic Party candidate in 1989, but returned to parliament in 1990 representing the Umlazi constituency. Mr. Matthee is currently a member of the National Assembly, and serves on the Joint Committee on Justice and the Committee for Provincial Affairs, and the Joint Subcommittee on Ethics. He is married with three children.

Vusumuzi Goodman Moses Mavuso

Mr. Mavuso was elected to the Provincial Assembly for the Gauteng Province as a member of the African National Congress (ANC) in 1994. He is the chairperson of the Committee of the Provincial Service Commission, and serves on committees covering Economic Affairs, Finance, as well as Sports, Recreation, Arts and Culture. Before his election, Mr. Mavuso worked with the Kagiso Trust establishing development programs. From 1985 to 1991, Mr. Mavuso was a Branch Organizer and Secretary for the Chemical Workers Industrial Union. He is married with two children.

Mabedle Lawrence Mushwana

Mr. Mushwana was elected to the National Senate as a senior member of the African National Congress (ANC) in the 1994 elections. Before achieving elected office he was a practicing attorney specializing in human rights cases, in particular those cases involving liberation movements and their armed cadres. After receiving his legal training at the University of Zululand, Mr. Mushwana served as a magistrate in the former Gazankulu Homeland, is experienced in commercial law, and remains active as an attorney. He is active in his community serving on the board of trustees for the NETHWORC educational project. Mr. Mushwana was born on 3 March 1948, and is currently married with five children.

Sybil Anne Seaton

Mrs. Seaton was first elected to public office in 1984 when served as a Councilor on the Port Shepstone Town Council. She resigned from the council when she was elected to the National Assembly as a member of the Inkatha Freedom Party (IFP) in 1994. She serves on several portfolio committees including the Joint Subcommittee on Ethics. Mrs. Seaton began her professional career in real estate in 1971, and founded Sybil Seaton Estate Agents in 1979. She served as an Executive Member in the Institute of Estate Agents. She is married with three adult children and three grandchildren.

Daryl Wade Swanepool

Mr. Swanepool was elected to the Provincial Assembly for the Gauteng Province as a member of the National Party (NP) in 1994. He serves on the Rules Committee as well as committees covering Finance and Economic Affairs, Public Participation, and Public Safety and Security. He is the NP media liaison officer and spokesperson for the Gauteng province. Before his election, Mr. Swanepool was involved in commercial banking. He is a graduate of the Read Company Administration at the Technikon of the Witwatersrand. Mr. Swanepool is married with one child.

Usiel Brave Tjizera

Mr. Tjizera was elected to the National Assembly of Namibia in March 1995. In parliament his primary interests are security, regional and local authority, as well as gender related issues, labour laws and land reform. Before being elected to national office, Mr. Tjizera was a Regional Councillor for the Gobabis Constituency and the regional coordinator of the SWAPO party in the Omaheke region. Mr. Tjizera joined the SWAPO party in 1974, and served as a regional commander in the People's Liberation Army from 1978 to 1989.

APPENDIX II

The Itinerary for The Ethics Study Mission

The Ethics Study Mission

Itinerary

Saturday, 25 November

- 17:00 Meet NDI staff for Airport Check-In
CNA Bookstore Near International Departures
- 17:30 Delegation Briefing on Ireland
Johannesburg International Airport
Airport Conference Room
- Ambassador Aamon O'Toole
Embassy of Ireland
Pretoria
- 20:15 British Airways 56 departs from Johannesburg

Sunday, 26 November

- 5:25 British Airway 56 arrives in London
- 9:00 British Midlands 123 departs London
- 10:15 British Midlands 123 arrives in Dublin
- 11:30 Check into Buswells Hotel
- 4:00 Briefing on the Ethics Study Mission
Buswells Hotel

An overview is provided on the purpose of the trip. Each day of the study mission's visit will have a theme to be explored, and these themes will be reviewed. Members of the delegation are advised to consider beforehand the particular issues they would like to explore in their meetings, and to raise any questions concerning the study mission.

Roger Berry
NDI

Monday, 27 November

Ethics Legislation: The Public Demand and the Political Response

The purpose of the day's activities is to examine the political background to the ethics debate in Ireland, and to gain a broader understanding of the political context of parliament's work.

8:30 Depart Buswells Hotel

9:00 Introduction and Overview
Offices of the Institute of Public Administration (IPA)

The Director General and other representatives of the IPA will introduce their organization, and provide a brief background on their work in Ireland and abroad.

John Gallagher
Director General
IPA

9:45 Ethics and Politics
IPA Offices

Public concerns about government corruption led to the collapse of a Government and created pressure for Ireland's political parties to pass comprehensive ethics reforms. A political journalist experienced in providing coverage of parliament will discuss the role of public opinion in shaping the political context for ethics reforms.

Fintan O'Toole
Political Journalist

11:30 The Ethics in Public Office Bill
Room 308, Government Buildings
Merrion Street, Dublin 2 phone 678 9911

As a representative of the Labour Party in Government, Minister Fitzgerald was a driving force behind the passage of The Ethics in Public Office Bill. The Labour Party was responsible for elevating the passage of ethics legislation on the Government's Agenda. Minister Fitzgerald will review the political developments underpinning the ethics bill, and will explain the political process which culminated in the bill's passage.

Eithne Fitzgerald, MP
Minister of State at the Office of the Tanaiste

13:00 Lunch
Jury's Hotel, Ballsbridge, Dublin 4

Host: John Gallagher
Director General
IPA

15:00 The Political Context in Ireland
Depart from IPA Offices

The delegation will be taken on a tour of Dublin and the nearby town of Wicklow to gain a better understanding of the political context for parliament's work. The special relationship between church and state, the impact of the negotiations with Great Britain over Northern Ireland, and the public views on a range of issues will be discussed.

Host: Senator Dan Nevill
Fine Gael Party

19:00 Ambassador's Reception
Ambassador's Residence
Phoenix Park

Host: Ambassador Jean Kennedy-Smith
United States Ambassador to Ireland

Contact: Richard Norland
United States Embassy
3531 668 8054

Tuesday, 28 November
Ethics and Politics

The purpose of the day's meetings will be to explore the relationship between political parties in Ireland, the context for the political negotiations which have produced the recent coalition governments, and the impact of these arrangements on the development of ethics legislation and on its substance.

8:45 Depart Buswells Hotel

9:30 Government & Politics of Ireland
IPA Offices

A respected analyst of Irish politics will outline Ireland's political dynamics of and the relationship between the political parties. The presentation will examine the collapse of the Government of Prime Minister Albert Reynolds, and the political coalitions which formed the current Government of Prime Minister John Bruton.

Sean Dooney
IPA Lecturer

11:15 Lessons from Ireland
IPA Offices

The challenges facing the political systems of Ireland and South Africa have some similarities, in particular the structuring of government coalitions. Mr. Manning will discuss his views on the lessons which may be gained from the Irish experience.

Maurice Manning, MP
Senator
Fine Gael

11:45 Ethics and Oversight: The Governance of Commercial State Companies
IPA Offices

Public concerns about corruption extend beyond elected officials, and the governance of commercial state companies is important from the ethics perspective. In this session, a presentation will be made on Ireland's experience with commercial state companies.

Tom Ferris
Department of Transport, Energy & Communication

13:00 Lunch
Mount Herbert Hotel
Ballsbridge, Dublin 4, phone 668 4321

14:15 Nation Building and the Development of Democratic Institutions
IPA Offices

The development of democracy faces many challenges including the urgent demand for economic development and the need for political reconciliation. As a former Prime Minister, Dr. Fitzgerald will present his thoughts on the impact of larger political issues on the development of democratic institutions. Issues to be discussed include the negotiations with Great Britain relative to the constitutional status of Ireland.

Dr. Garret Fitzgerald
Former Taoiseach (Prime Minister)

15:30 Meeting with a Representative of Fianna Fail
Buswell's Hotel

Fianna Fail is the strongest political party in Ireland and also the party most directly impacted by allegations of corruption and conflict of interest. A representative of the Fianna Fail party will discuss the role of the government ethics in the political debate. The substance of the ethics bill, and the role of the party in supporting ethics reforms will also be discussed.

Charlie McCreevy, TD
Fianna Fail

20:00 Irish Night at Kitty O'Shea's
Lr. Grand Canal Street, Dublin 2

Wednesday, 29 November

Reforming Parliament: The Implications of Ethics Legislation

The purpose is to explore the implications of the Ethics in Public Office bill on the work and culture of parliament through meetings with the Prime Minister's office and key committee's in parliament.

9:00 Depart Buswells Hotel

10:00 Implications of the Ethics Bill
Room 301, 2nd Floor, Government Buildings
Merrion Street, Dublin 2, phone 678 9911

The Ethics in Public Office Bill will come into effect on the 1st of January. Mr. Kearney, who is a Principal in the Prime Minister's office and also works with Minister Eithne Fitzgerald, will present his views of the impact of the legislation on the work and culture of parliament.

Gerry Kearney
Principal
Office of Taoiseach (Prime Minister)

11:00 Tour of Government Buildings

Host: Dan Nevill, MP
Senator

12:30 Lunch
Iveagh House
St. Steven's Green, Dublin 2

Host: Joan Burton, MP
Minister of State at the Department of Foreign Affairs
Responsibility for Overseas Development and Justice

15:00 Political Party Roundtable: The Finance and General Affairs Committee
Government Buildings
Merrion Street, Dublin 2

As representatives of a parliamentary committee with responsibility for oversight of cabinet ministries, members of the committee will discuss their and their party's views of the impact of the ethics bill on the work of parliament and the relationship between parliamentary committees and cabinet ministries.

Chair: Jim Mitchell, MP	Fine Gael
Paul Connaughton, MP	Fine Gael
John Connor, MP	Fine Gael
Michael Creed, MP	Fine Gael
Padraic McCormack, MP	Fine Gael
Ted Nealon, MP	Fine Gael
Michael Ahern, MP	Fianna Fail
Neal Ahern, MP	Fianna Fail
Martin Cullen, MP	Fianna Fail
Liam Lawlor, MP	Fianna Fail
Charlie McCreevy, MP	Fianna Fail
Rory O'Hanlon, MP	Fianna Fail
John O'Leary, MP	Fianna Fail
Dan Wallace, MP	Fianna Fail
Tommy Broughan, MP	Labour Party
Sean Kenny, MP	Labour Party
Derek McDowell, MP	Labour Party
William Penrose, MP	Labour Party
John Ryan, MP	Labour Party
Michael McDowell, MP	Progressive Democrats
Trevor Sargent, MP	Green Party

16:15

Political Party Roundtable: The Public Accounts Committee

Kildare House

Kildare Street, Dublin2

Members of the Committee will provide their views on the impact of the ethics legislation on their financial oversight of the cabinet ministries and commercial state companies.

Chair: Denis Foley, MP	Fianna Fail
Sean Doherty, MP	Fianna Fail
John Ellis, MP	Fianna Fail
Batt O'Keeffe, MP	Fianna Fail
Ned O'Keeffe, MP	Fianna Fail
Michael Finucane, MP	Fine Gael
Phil Hogan, MP	Fine Gael
Padraic McCormack, MP	Fine Gael
Tommy Broughan, MP	Labour Party
Pat Upton, MP	Labour Party
Desmond O'Malley, MP	Progressive Democrats
Eric Byrne, MP	Democratic Left

20:00 Informal Dinner
 Taoiseach's Dining Room

Host: Ruairi Quinn, MP
 Minister of Finance

Guest: Eithne Fitzgerald, MP
 Minister

Thursday, 30 November

Ethics Reforms in Britain: The Public Demand the Political Response

The purpose is to examine the substance of the ethics reforms recently passed in the House of Commons, and to explore the political dynamics which lead to a rare coalition of support led by the Labour Party, but with the backing of back-benchers from the Conservative Party.

6:50 British Midlands 120 departs Dublin

8:05 British Midlands 120 arrives in London

9:00 Check into Royal Horseguards Hotel

Royal Horseguards Hotel
Whitehall Court, London
phone 44 171 839 3400
fax 44 171 925 2263

9:40 Leave Royal Horseguards Hotel

10:15 Building a Political Coalition for Ethics Reforms
 W4 Westminster Hall
 House of Commons

As the Labour Party's leader in the ethics debate, Ann Taylor will discuss her party's role in the passage of ethics reforms in parliament. She will also comment on the role of outside public opinion in shaping the debate.

Ann Taylor, MP
Shadow Leader of the House
Labour Party

11:15 Implementing a New Code of Conduct
Westminster

Recently appointed to a post newly created by parliament, Sir Gordon Downey will provide his outlook on the implementation of ethics reforms and their impact on the work and culture of parliament.

Sir Gordon Downey
Parliamentary Commissioner for Standards

12:00 Ethics in Parliament: The Conservative Party View
Office of the Leader of the House
Ministerial Corridor
House of Commons

As the chair of the Select Committee established to review the Nolan Committee's recommendations and the leader of the Conservative Party in the floor debate on the proposed ethics reforms, Mr. Newton will explain the perspective of the Conservative Party leadership on a code of conduct for Members of Parliament.

Tony Newton, MP
Leader of the House
Conservative Party

1:00 Lunch
Churchill Room
House of Commons

Hosts: Sir James Spicer, MP
Committee on Members' Interests
Chairman of the Westminster Foundation

Jeff Rooker, MP
Liberal Democrat

2:30

An Overview of the Nolan Committee

Nolan Offices

Horseguards Road, Westminster

The Nolan Committee was a driving force behind the passage of ethics reforms. Two members of the committee will provide an overview.

Sir Clifford Bolton GCB
Nolan Committee

Lord Thompson
Nolan Committee

3:00

The Work of the Nolan Committee

Nolan Offices

Horseguards Road, Westminster

The Secretary of the committee will discuss the committee's public meetings and production of the Nolan Report.

Alan Riddell
Secretary to the Nolan Committee

4:45

The Nolan Report: Reforming Parliamentary Ethics

House of Lords Tea Room

Lord Nolan
Chair of the Nolan Committee

5:30

Return to Royal Horseguards Hotel

Friday, 1 December
Ethics and Politics

8:45 Depart from Royal Horseguards Hotel

9:15 The Political Dynamics Behind Ethics Reforms
10 Storeys Gate
Westminster

Public concerns over government corruption provided a sharp political context to the debate in parliament. A respected political journalist covering parliamentary politics will discuss the role of public opinion and pressure in the passage of the reforms.

Peter Riddell
Political Journalist for The Times

10:30 Implementing Ethics Reforms: The Way Forward
29 Tavistock Square
London WC1H 9EZ

The work of the Nolan Committee continues, and a representative of the committee will discuss its future. She will also highlight how the recent reforms have responded to the Nolan Committee's work and the public's concerns, and whether there is need for further revisions in the Code of Conduct.

Diana Warwick
Nolan Committee Member

12:00 Lunch

2:00 Tour of Westminster

Saturday, 2 December

18:00 Depart Royal Horseguards Hotel

21:00 British Airways 55 departs London

Sunday, 3 December

9:55 British Airways 55 arrives in Johannesburg

APPENDIX III

The Ethics in Public Office Act (Ireland)



AN BILLE UM EITIC IN OIFIGÍ POIBLÍ, 1994
ETHICS IN PUBLIC OFFICE BILL, 1994

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title, commencement, partial cesser and collective citations.
2. Interpretation.
3. Regulations.
4. Expenses.

PART II

MEMBERS

5. Statements of members' registrable interests for Clerks.
6. The Register.
7. Declarations of interest by members in Oireachtas proceedings.
8. Appointment of, and complaints to, Committees.
9. Investigations by Committees.
10. Reports by Committees.
11. Award of costs by Committees.
12. Guidelines and advice from Committees.

PART III
OFFICE HOLDERS

Section

13. Statements of office holders' additional interests for Clerks.
14. Statements of interest by office holders in relation to the performance of certain functions.
15. Gifts to office holders.
16. Statements by Attorney General.

PART IV
THE PUBLIC SERVICE

17. Designated directorships.
18. Designated positions of employment.
19. Special advisers.
20. Provisions relating to statements under *sections 17 to 19*.

PART V
THE COMMISSION

21. Establishment, membership and functions of Commission.
22. Complaints to Commission.
23. Investigations by Commission.
24. Reports by Commission.
25. Guidelines and advice from Commission.
26. Award of costs by Commission.
27. Annual and special reports by Commission.

PART VI
MISCELLANEOUS

28. Action by Houses where reports laid before them.
29. Statements of interests outside periods specified in *sections 5, 13 and 20*.
30. Voluntary statements.
31. Discontinuance of investigations.
32. Powers of Committees and Commission.
33. Independence of Commission.

Section

34. Retention of statements and matters concerning legal or medical services.
35. Prohibition of disclosure of information.
36. Obligation to comply with determinations of Committees and Commission.
37. Provisions in relation to offences.
38. Amendment of Prevention of Corruption Acts, 1889 to 1916.

FIRST SCHEDULE

PUBLIC BODIES

SECOND SCHEDULE

REGISTRABLE INTERESTS

ACTS REFERRED TO

Capital Acquisitions Tax Act, 1976	1976, No. 7
Civil Service Commissioners Act, 1956	1956, No. 45
Civil Service Regulation Acts, 1956 and 1958	
Companies Acts, 1963 to 1990	
Companies Act, 1963	1963, No. 33
Corporation Tax Act, 1976	1976, No. 7
Electoral Act, 1992	1992, No. 23
Local Government Act, 1941	1941, No. 23
Oireachtas (Allowances to Members) Act, 1938	1938, No. 34
Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992	1992, No. 3
Public Bodies Corrupt Practices Act, 1889	1889, c. 69
Prevention of Corruption Act, 1906	1906, c. 34
Prevention of Corruption Act, 1916	1916, c. 64
Prevention of Corruption Acts, 1889 to 1916	
State Property Act, 1954	1954, No. 25



AN BILLE UM EITIC IN OIFIGÍ POIBLÍ, 1994
ETHICS IN PUBLIC OFFICE BILL, 1994

BILL

entitled

5 AN ACT TO PROVIDE FOR THE DISCLOSURE OF
INTERESTS OF HOLDERS OF CERTAIN PUBLIC
OFFICES (INCLUDING MEMBERS OF THE HOUSES OF
THE OIREACHTAS) AND DESIGNATED DIRECTORS
10 TIONS IN CERTAIN PUBLIC BODIES, FOR THE
APPOINTMENT BY EACH SUCH HOUSE OF A COMMIT-
TEE, AND FOR THE ESTABLISHMENT OF A COM-
MISSION, TO INVESTIGATE CONTRAVENTIONS OF
15 THIS ACT AND TO ESTABLISH GUIDELINES TO
ENSURE COMPLIANCE THEREWITH, TO PROHIBIT
THE RETENTION OF VALUABLE GIFTS BY HOLDERS
OF CERTAIN PUBLIC OFFICES, TO AMEND THE PRE-
VENTION OF CORRUPTION ACTS, 1889 TO 1916, AND
TO PROVIDE FOR RELATED MATTERS.

20 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Ethics in Public Office Act, 1995.

Short title,
commencement,
partial cesser and
collective citations.

25 (2) (a) (i) Subject to *subparagraph (ii)*, this Act shall come into
operation on such day as the Government appoint
by order.

(ii) *Subparagraph (i)* does not apply to—

(I) *Part II*,

30 (II) *Part III* in so far as it relates to the Chairman
and Deputy Chairman of each House, or

(III) *Parts V* and *VI* in so far as they relate to
members.

(b) (i) If either House by resolution so declares—

(I) *Part II* in so far as it relates to that House and its members and Clerk and its committees and their members and clerks,

(II) *Part III* in so far as it relates to the Chairman and Deputy Chairman of that House, and 5

(III) *Parts V and VI* in so far as they relate to members of that House,

shall come into operation on such day as may be specified in the resolution.

(ii) If each House by resolution so declares, *Part II* shall 10
come into operation on such day as may be specified in the resolution in so far as it relates to joint committees of both Houses and their members and clerks.

(c) (i) If either House by resolution so declares— 15

(I) *Part II* in so far as it relates to that House and its members and Clerk and its committees and their members and clerks,

(II) *Part III* in so far as it relates to the Chairman and Deputy Chairman of that House, and 20

(III) *Parts V and VI* in so far as they relate to members of that House,

shall cease to be in operation as on and from such day as may be specified in the resolution.

(ii) If either House by resolution so declares, *Part II* shall 25
cease to be in operation as on and from such day as may be specified in the resolution in so far as it relates to joint committees of both Houses and their members and clerks.

(3) The Prevention of Corruption Acts, 1889 to 1916, and *section* 30
38 may be cited together as the Prevention of Corruption Acts, 1889 to 1995.

Interpretation.

2.—(1) In this Act, save where the context otherwise requires—

“act” includes omission or failure to act and a reference to the doing of an act includes a reference to the making of an omission, and any 35
cognate words shall be construed accordingly;

“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 40
not doubt or disbelieve that the fact exists;

“additional interests” has the meaning assigned to it by *section 13*;

“benefit” includes—

(a) a right, privilege, office or dignity and any forbearance to demand money or money’s worth or a valuable thing, 45

(b) any aid, vote, consent or influence or pretended aid, vote, consent or influence,

5 (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;

10 "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—

15 (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
20 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
25 or about the time of the first-mentioned supply or lending of property or the first-mentioned supply of a service, and

30 (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
35 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
40 business;

"the Commission" means the commission established by *section 21*;

45 "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* and, in relation to Seanad Éireann or members of Seanad Éireann, means the Committee on Members' Interests of Seanad Éireann appointed under *section 8* and "a Committee" means, as the context may require, each of those committees or either of them;

50 "committee" and "joint committee" include a sub-committee of a committee or, as the case may be, joint committee;

"company" means any body corporate;

“connected person”, in relation to a person, shall be construed in accordance with *subsection (2)*;

“designated directorship”, in relation to a public body, means a prescribed directorship of that body;

“designated position”, in relation to a public body, means a prescribed position of employment in that body; 5

“director” means a director within the meaning of the Companies Acts, 1963 to 1990, but includes, 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*, a person who is a member of it or a member of any board or other body that controls, manages or administers it, and any cognate words shall be construed accordingly; 10

“election” means a presidential election, a European election, a Dáil election, a local election (within the meaning, in each case, of the Electoral Act, 1992), or an election of a member or members to serve in Seanad Éireann, and any cognate words shall be construed accordingly; 15

“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; 20 25

“gift” means a gift of money or other property;

“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; 30

“interest” means an interest specified in the *Second Schedule*;

“lend” includes lease or let and any cognate words shall be construed accordingly;

“member” means a member of Dáil Éireann or a member of Seanad Éireann; 35

“the Minister” means the Minister for Finance;

“office holder” means—

(a) a person who is a Minister of the Government or a Minister of State, 40

(b) a member who holds the office of Attorney General,

(c) a person who is Chairman or Deputy Chairman of Dáil Éireann or Chairman or Deputy Chairman of Seanad Éireann, and

(d) a person who holds—

- (i) the office of chairman of a committee of either House, being an office that stands designated for the time being by resolution of that House, or
- 5 (ii) the office of chairman of a joint committee of both Houses, being an office that stands designated for the time being by resolution of each House;

“prescribed” means prescribed by regulations made by the Minister;

“property” means real or personal property;

10 “public body” shall be construed in accordance with the *First Schedule*;

“registrable interest” shall be construed in accordance with the *Second Schedule*;

“registration date” means—

15 (a) in relation to Dáil Éireann and its members and Clerk—

(i) the date that is 30 days after the commencement of *Part II* in so far as it relates to Dáil Éireann and its members and Clerk and its committees and their members and clerks 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

20
25 (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—

30 (i) the date that is 30 days after the commencement of *Part II* in so far as it relates to Seanad Éireann and its members and Clerk and its committees and their members and clerks 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

35
40 (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;

45 “relevant authority” has the meaning assigned to it by *section 18*;

“special adviser” has the meaning assigned to it by *section 19*;

“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. 5

(2) (a) Any question whether a person is connected with another shall be determined in accordance with the following provisions of this paragraph (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): 10

(i) a person is connected with an individual if that person is a relative of the individual, 15

(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, 20

(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, 25

(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. 30

(b) In *paragraph (a)* “control” has the meaning assigned to it by section 157 of the Corporation Tax Act, 1976, and any cognate words shall be construed accordingly. 35

(3) For the purposes of this Act, 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, directorship, designated position, or position as a special adviser, as the case may be, or 40

(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 without also conferring it on or withholding it from 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. 45

(4) For the purposes of this Act, 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 Act, 1976, the power to make a disposition of that interest.

5 (5) In this Act—

(a) a reference to a Part, section or Schedule is a reference to a Part or section of, or a Schedule to, this Act unless it is indicated that reference to some other provision is intended, and

10 (b) a reference to a subsection, paragraph, subparagraph, clause or subclause is a reference to a subsection, paragraph, subparagraph, clause or subclause of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

15 (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

3.—(1) Subject to subsection (3), the Minister may—

Regulations.

20 (a) by regulations provide for any matter referred to in this Act as prescribed or to be prescribed, and

25 (b) make regulations generally for the purpose of giving effect to this Act and, if in any respect any difficulty arises during the period of two years after the commencement of this section in bringing into operation this Act, by regulations do anything which appears to be necessary or expedient for bringing this Act into operation.

(2) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

30 (3) The Minister may prescribe—

(a) for the purposes of the definition of “designated directorship” in section 2, a directorship of a public body, or

(b) for the purposes of the definition of “designated position” in section 2, a position of employment in a public body,

35 if, but only if, he or she considers that it is necessary in the public interest to do so in order to ensure, in a case in which, in the opinion of the Minister, a conflict could arise between an interest referred to in section 17 or, as the case may be, section 18 and the public interest in the performance of a function of such a directorship or position,
40 that the function will not be performed without the disclosure of the first-mentioned interest.

(4) Before making regulations in relation to a matter referred to in subsection (3), the Minister shall consult with such other Ministers of the Government (if any) as he or she considers appropriate.

45 (5) (a) The Minister may, by regulations under this section, vary, having regard to any change in the value of money occurring after the passing of this Act, any monetary amount specified in this Act (other than sections 37 and 38).

(b) If, on any amendment of the law relating to elections, it appears to the Minister to be expedient—

(i) to amend *section 2 (1)* for the purpose of assimilating “commercial price” to any definition of “commercial price” in that law, or 5

(ii) to amend *section 15 (7)* for the purpose of assimilating the definition of “donation” to any definition of “donation” in that law,

the Minister may for those purposes by regulations amend the definition mentioned first in *subparagraph (i)* 10 or, as may be appropriate, the definition mentioned first in *subparagraph (ii)*.

(c) Where regulations under this subsection are proposed to be made, a draft of the regulations shall be laid before each House and the regulations shall not be made until a resolution approving of the draft has been passed by each House. 15

(6) Every regulation under this Act (other than *subsection (5)*) shall be laid before each House as soon as may be after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 20

Expenses.

4.—Any expenses incurred by the Minister in the administration of this Act and, to such extent as may be sanctioned by the Minister, any other expenses incurred in the administration of this Act shall be paid out of moneys provided by the Oireachtas. 25

PART II

MEMBERS 30

Statements of members' registrable interests for Clerks.

5.—(1) Subject to *subsection (3)*, a person who is a member on a registration date shall, not later than 30 days after that date, prepare and furnish to the Clerk a statement in writing, in such form as may be determined by the Clerk after consultation with the Committee and the Commission or in a form to the like effect, of his or her registrable interests and containing appropriate information in relation to such matters (if any) respecting those interests as may be specified in the first-mentioned form, being registrable interests of the member— 35

(a) if the person is a member on the first registration date, at any time during the period from the passing of this Act to that date, and 40

(b) if the person is a member on a subsequent registration date, at any time when he or she was a member during the period between that registration date and the last previous registration date. 45

(2) Where a person who is a member on a registration date did not have a registrable interest at any time during the appropriate

period specified in *subsection (1)*, he or she shall, not later than 30 days after that date, prepare and furnish to the Clerk a statement in writing of that fact.

5 (3) It shall not be necessary to specify in a statement under this section the amount or monetary value of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement.

10 6.—(1) As soon as may be after a registration date, each Clerk shall, as respects that date, establish a register (which shall be known as the Register of Interests of Members of Dáil Éireann or the Register of Interests of Members of Seanad Éireann, as may be appropriate, followed, in each case, by a reference to the year in which the registration date concerned occurs). The Register.

15 (2) When a statement is furnished to a Clerk under *subsection (1)* or (2) of *section 5*—

- (a) he or she shall, within 60 days after the registration date to which it relates or as soon as may be thereafter, enter it or a copy of it in the register established as respects that date by that Clerk under *subsection (1)*, and
- 20 (b) if the statement is that of a Minister of the Government or a Minister of State, furnish a copy of it to the Taoiseach, as soon as may be.

25 (3) Each Clerk shall, within 60 days after each registration date or as soon as may be thereafter, furnish to the Commission and cause to be laid before Dáil Éireann or Seanad Éireann, as may be appropriate, and published in *Iris Oifigiúil* a copy of the register established by him or her under *subsection (1)* in relation to that registration date.

30 (4) (a) Each Clerk may correct errors in the register established by that Clerk or amend such a register to take account of statements furnished to him or her under *section 29 (1)* in so far as they relate to registrable interests.

35 (b) A Clerk shall, as soon as may be after the correction of an error under *paragraph (a)* or the receipt by him or her of a statement referred to in *paragraph (a)*—

- (i) cause a statement of the correction or a copy of the statement referred to in *paragraph (a)*, as the case may be, to be laid before the House and published in *Iris Oifigiúil*, and
- 40 (ii) if either of those statements relates to a Minister or Minister of State, furnish a copy of it to the Taoiseach.

7.—(1) This section applies to proceedings in each House, a committee of either House or a joint committee of both Houses.

45 (2) A member who proposes to speak or vote in proceedings to which this section applies and who has actual knowledge that he or she or a connected person has a material interest in the subject matter of the proceedings shall—

Declarations of interest by members in Oireachtas proceedings.

- (a) if he or she proposes to speak in the proceedings, make a declaration of the fact aforesaid in the proceedings before or during his or her speech, and
- (b) if he or she proposes to vote, but does not speak, in the proceedings, make the declaration aforesaid in writing and furnish it before voting to the Clerk, or the clerk to the committee, concerned, as may be appropriate.

(3) For the purposes of *subsection (2)*, a person (being 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 person a significant benefit without also conferring it on or withholding it from persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person is a member.

(4) *Subsection (2)* does not apply to an interest of a member that is included in a statement which or a copy of which has been laid before the House under *section 6*.

(5) A declaration under *subsection (2)* shall— 20

- (a) in case an official report of the proceedings concerned is published, be included in the report, and
- (b) in case such a report is not published, be published in such manner as the Clerk, or the clerk to the committee, concerned may direct. 25

Appointment of, and complaints to, Committees.

8.—(1) Each House shall as soon as may be after the commencement of this section and, thereafter, as soon as may be after the first meeting of that House subsequent to a general election for members of that House appoint a select committee which shall be known—

- (a) in the case of the committee appointed by Dáil Éireann as the Committee on Members' Interests of Dáil Éireann, and 30
- (b) in the case of the committee appointed by Seanad Éireann, as the Committee on Members' Interests of Seanad Éireann, 35

to perform the functions conferred on it by this Act.

(2) A person (other than a member) who considers that a member (other than a member who is or, at the relevant time, was an office holder) may have contravened *section 5* or *7* may make a complaint in writing in relation to the matter to the Clerk and, subject to *subsection (3)*, the Clerk shall refer the matter to the Committee and shall furnish a copy of the complaint to the Committee. 40

(3) The Clerk concerned shall consider a complaint under *subsection (2)* and, if the Clerk is of opinion that it is frivolous or vexatious, he or she— 45

- (a) shall not refer it to the Committee, and
- (b) shall prepare a statement in writing of the reasons for his or her opinion and furnish a copy of it to—

(i) the person who made the complaint,

(ii) the member concerned, and

(iii) the Committee.

5 (4) A member who considers that a member (other than a member who is or, at the relevant time, was an office holder) may have contravened *section 5* or *7* may make a complaint in writing in relation to the matter to the Committee of that House.

(5) A complaint may not be made under this section in respect of a person who has ceased to be a member.

10 9.—(1) Where a complaint is referred or made to a Committee under *section 8*, or a Committee considers it appropriate to do so in the case of a member (other than a member who is or, at the relevant time, was an office holder), it shall carry out an investigation to determine whether the member concerned has contravened *section*
15 5 or 7, as the case may be. Investigations by
Committees.

(2) Where a Committee, either during or at the conclusion of an investigation under this section, becomes of opinion that the member the subject of the investigation has not contravened the section of this Act to which the investigation relates, being either *section 5* or
20 7, but may have contravened the other of those sections, it may carry out an investigation under this section to determine whether the person has contravened that other section.

(3) Where—

25 (a) a complaint is referred or made to a Committee under *section 8*, or the Committee is carrying out an investigation under this section whether following such a complaint or otherwise, and

30 (b) at any time before the Committee has complied with *section 10* in relation thereto, the person the subject of the complaint or investigation ceases to be a member,

then—

35 (i) the Committee shall take no steps or no further steps in relation to the matter unless the person requests the Committee in writing to carry out an investigation of the matter under *subsection (1)* or, as the case may be, complete such an investigation, and

(ii) if the Committee is so requested as aforesaid, it shall, subject to *section 31*, comply with the request.

40 (4) Subject to *subsection (3)*, a Committee shall not carry out an investigation under this section in relation to—

(a) a person who has ceased to be a member, or

(b) a person who is or, at the relevant time, was an office holder.

(5) Where—

- (a) in relation to a person who is a member but is not an office holder, a complaint had been, or been deemed to be, referred or made to a Committee, or a matter that a Committee had considered it appropriate to investigate had been, or been deemed to be, otherwise before it, 5
- (b) following a dissolution of Dáil Éireann, the Committee has ceased to exist, and
- (c) the Committee had neither—
 - (i) complied with *section 10* in relation to the complaint or matter, nor 10
 - (ii) discontinued the investigation of the complaint pursuant to *section 31*,

the complaint or matter shall be deemed, for the purposes of this section, to have been referred or made under *section 8* to, or, as the case may be, to be before, the Committee of the House of which the person is a member, and this section shall apply and have effect accordingly in relation to the complaint or matter. 15

Reports by Committees.

10.—(1) Subject to *section 31*, where a Committee carries out an investigation under *section 9*, it shall prepare a report in writing of the results of the investigation, and— 20

- (a) shall furnish a copy of the report to the member concerned and, if the investigation followed a complaint under *section 8*, the person who made the complaint, and
- (b) if it determines that the member has contravened *section 5* or *7*, it shall cause a copy of the report to be laid before the House. 25

(2) A report under *subsection (1)* shall set out the findings of the Committee concerned together with its determination in relation to the following matters, namely— 30

- (a) whether there has been a contravention of *section 5* or *7* by the member concerned and whether the contravention is continuing,
- (b) in case the determination is that there has not been a contravention of *section 5* or *7* by the member, whether the Committee is of opinion that the complaint was frivolous or vexatious or that there were no reasonable grounds for it, and 35
- (c) in case the determination is that there has been a contravention of *section 5* or *7* by the member— 40
 - (i) if the determination is that the contravention is continuing, the steps required to be taken by him or her to secure compliance by him or her with *section 5* or *7*, as the case may be, and the period of time within which such steps should be taken, 45

- (ii) whether the contravention was committed inadvertently, negligently, recklessly or intentionally,
- (iii) whether the contravention was, in all the circumstances, a serious or a minor contravention, and
- 5 (iv) whether the member acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing by a Committee under *section 12*,

and may refer to such other matters, if any, as the Committee considers appropriate.

(3) Where a Committee adjourns or postpones proceedings in relation to an investigation under *section 9*, it may, if it considers it appropriate to do so, prepare an interim report in writing in relation to the investigation and furnish a copy thereof to the persons specified in *subsection (1) (a)*.

11.—(1) (a) Where, following an investigation by a Committee under *section 9* of a complaint referred or made to it under *section 8*, the Committee determines that the complaint was frivolous or vexatious or that there has not been a contravention of *section 5* or *7* and that there were no reasonable grounds for the complaint, it may order that such amount (not exceeding £1,500) as it considers appropriate, having regard to all the circumstances, in respect of the reasonable costs and expenses incurred by any person before it (including costs and expenses in respect of legal representation) in relation to the investigation shall be paid to that person by the person who made the complaint.

Award of costs by Committees.

(b) Where, in relation to an investigation under *section 9*, amounts are ordered to be paid under *paragraph (a)* to more than one person, the aggregate of those amounts shall not exceed £1,500.

(2) For the purposes of *subsection (1)*, a Committee may measure the costs and expenses aforesaid.

(3) Any costs or expenses ordered by a Committee under *subsection (1)* to be paid by a person may be recovered from that person by the person to whom they are ordered to be paid as a simple contract debt in any court of competent jurisdiction.

12.—(1) A Committee—

Guidelines and advice from Committees.

(a) shall, after consultation with the Commission and the other Committee, from time to time draw up and publish to members guidelines concerning the steps to be taken by members to ensure compliance by them with this Act generally and, in particular, with *sections 5* and *7*, and

(b) may, at the request of a member, give advice to the member in relation to any provision of this Act or as to the application, in relation to any particular case, of *section 5* or *7*.

(2) When a request is made under *subsection (1) (b)* in relation to a particular case, the section concerned of this Act shall not, as respects the member who made the request, apply in relation to that case during the period from the making of the request to the time when advice is given by a Committee in relation to the case or it declines to give such advice. 5

(3) A Committee shall, within 21 days of the receipt by it of a request for advice under *subsection (1) (b)*, furnish the advice to the member concerned or notify him or her of its decision to decline to do so. 10

(4) A person shall act in accordance with guidelines and advice published or given to the person under this section unless, by so doing, the act concerned would constitute a contravention of another provision of this Act.

(5) In this section “member” does not include a member who is an office holder. 15

PART III

OFFICE HOLDERS

Statements of office holders' additional interests for Clerks.

13.—(1) A person who is an office holder on a registration date shall prepare a statement in writing, in such form as may be determined by the Minister or in a form to the like effect, of his or her additional interests (if any) and containing appropriate information in relation to such matters (if any) respecting those interests as may be specified in the first-mentioned form, being additional interests of the person— 20
25

(a) if the person is an office holder on the first registration date, at any time during the period from the passing of this Act to that date, and

(b) if the person is an office holder on a subsequent registration date, at any time when he was an office holder during the period between that registration date and the last previous registration date. 30

(2) It shall not be necessary to specify in a statement under *subsection (1)* the amount or monetary value of any additional interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement. 35

(3) The Clerk shall, as soon as may be after the receipt by him or her of a statement under *subsection (1)*, furnish a copy thereof to the Commission and (if it is a statement of a Minister of the Government or a Minister of State) the Taoiseach. 40

(4) A statement under this section of a person who is an office holder on any registration date shall be furnished by the person to the Clerk not later than 30 days after that date.

(5) In this section “additional interest”, in relation to an office holder, means any interest specified in the *Second Schedule* of which the office holder has actual knowledge of— 45

(a) the spouse of the office holder, or

(b) a child of the office holder or of his or her spouse,

5 which could materially influence the office holder in or in relation to 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 or child a substantial benefit.

14.—(1) An office holder who proposes to perform a function of his or her office and who has actual knowledge that—

Statements of interest by office holders in relation to the performance of certain functions.

(a) he or she or a connected person or another office holder, or

10 (b) a person who is specified in a statement under *subsection (2)* furnished to the office holder by another office holder and who is, in relation to that other office holder, a connected person,

15 has a material interest in a matter to which the function relates shall, before or, if that is not reasonably practicable, as soon as may be after such performance, prepare and furnish—

(i) in the case of the Taoiseach, to the chairman of the Commission,

20 (ii) in the case of any other Minister of the Government or a Minister of State, to the Taoiseach and the Commission, and

(iii) in the case of any other office holder, to the Commission,

a statement in writing of those facts and of the nature of the interest.

25 (2) Where an office holder or a person acting on behalf of an office holder proposes to make a request to another office holder (“the second holder”) in relation to the performance of a function by the second holder and the office holder by or on whose behalf the request is made (“the first 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 holder shall, before or at the time of the making of the request, furnish to the second holder a statement in writing of those facts and of the nature of the interest.

(3) Where the knowledge or belief of an office holder that—

35 (a) another office holder who is a member of the Government, or

(b) a person who in relation to that other officer is a connected person,

40 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 purposes of a meeting of the Government, *subsection (1)* shall not, as respects that interest, apply to the first-mentioned office holder, but the Taoiseach shall, before or as soon as may be after the performance of the function, cause a statement in writing in relation to that interest to be prepared and
45 furnished to the Commission.

(4) References in this section to the performance of a function of the office of an office holder are references to the performance of

the function by the office holder personally or by another person in pursuance of a direction given to the person, in relation to the particular matter concerned, by the office holder personally or a person acting on behalf of and with the personal knowledge of the office holder.

5

Gifts to office holders.

15.—(1) Subject to the provisions of this section, where a gift the value of which exceeds £500 is given to an office holder by virtue of his or her office—

(a) the property the subject of the gift shall be deemed to be a gift given to the State and shall vest in the Minister, 10

(b) the office holder shall, as soon as may be, inform the Secretary to the Government of the gift and shall retain custody of the property on behalf of the State until arrangements are made in relation thereto under *paragraph (c)* and the office holder shall dispose of the property in accordance with those arrangements when so directed by the Secretary to the Government, and 15

(c) the Secretary to the Government shall arrange, in accordance with the general directions of the Government, for— 20

(i) custody of the property by or on behalf of the State (including the giving of it on loan to a person), or

(ii) its disposal, whether by sale or gift,

and shall dispose, in accordance with those general directions, of any proceeds of such a loan or sale (including by their payment into the Exchequer or disposal for charitable purposes). 25

(2) For the purposes of *subsection (1)*, a gift given to—

(a) an office holder,

(b) the spouse of an office holder, or 30

(c) a child of an office holder or of his or her spouse,

is given to the office holder by virtue of his or her office unless the gift is given—

(i) as a donation, or

(ii) by a friend or relative of the recipient and for personal reasons only, or 35

(iii) by virtue of an office (other than that by reference to which a person is an office holder) or position held or the status enjoyed by the recipient.

(3) The Secretary to the Government shall, in accordance with the general directions of the Government— 40

(a) determine, for the purposes of *subsection (1)*, the value of property the subject of a gift given to an office holder by virtue of his or her office, and

(b) determine, for the purposes of *subsections (1) and (2)*, the question whether a gift is given to an office holder by virtue of his or her office,

5 if there is a doubt in relation to the value aforesaid or, as the case may be, the question aforesaid.

(4) (a) Subject to *paragraphs (b) and (c)*, the Government shall draw up and publish to office holders guidelines concerning the steps to be taken by an office holder if—

(i) he or she, or

10 (ii) the spouse of the office holder, or

(iii) a child of the office holder or of his or her spouse,

is offered or supplied with—

15 (I) property or a service at a price that is less than the commercial price of the property or service, as the case may be,

(II) a loan of property free of charge or for a consideration that is less than the commercial consideration for the loan, or

(III) a service free of charge.

20 (b) *Paragraph (a)* does not apply to property, a loan of property or a service—

(i) offered or supplied—

(I) as a donation,

25 (II) by a friend or relative of the person to whom the offer or supply is made and for personal reasons only,

30 (III) by virtue of an office (other than one by reference to which a person is an office holder) or position held or status enjoyed by the person to whom it is offered or supplied,

or

(ii) the offer or supply of which is not intended or calculated to confer, and does not confer, directly or indirectly, a benefit on the office holder concerned.

35 (c) The Government shall cause a draft of any proposed guidelines under *paragraph (a)* to be given to the Commission and shall, before drawing up the guidelines, consider any submissions made to them by the Commission in relation to the draft.

40 (d) Office holders shall act in accordance with guidelines published to them under this subsection.

(5) Where, for any reason, the Secretary to the Government is unable to perform his or her functions under this section or the position of Secretary to the Government is vacant, those functions may be performed by such other person as the Taoiseach may determine.

(6) Section 19 (2) of the State Property Act, 1954, shall not apply to a gift to which this section applies but where land vests in the Minister by virtue of *subsection (1)*, the land shall become and be State land for the purposes of that Act and may be dealt with accordingly. 5

(7) In this section, "donation" means a contribution for political purposes. 10

Statements by
Attorney General.

16.—(1) A person who holds or held the office of Attorney General—

(a) shall, subject to *section 20 (3)*, in each year during any part of which he holds or held that office prepare and furnish to the Taoiseach and the Commission a statement in writing of— 15

(i) the interests of the person, and

(ii) the interests of which he or she has actual knowledge of his or her spouse or a child of the person or of his or her spouse, 20

during the appropriate period specified in *section 20 (1)* which could materially influence the person in or in relation to the performance of the functions of that office by reason of the fact that such performance could so affect those interests as to confer on or withhold from the person or the spouse or child a substantial benefit, and 25

(b) in any case where such a function falls to be performed and he or she has actual knowledge that he or she or a connected person has a material interest in a matter to which the function relates shall, before or as soon as may be after such performance, prepare and furnish to the Taoiseach and the Commission a statement in writing of those facts and of the nature of the interest. 30

(2) (a) *Section 20* shall apply to a statement under *subsection (1) (a)* as if the references in that section to *sections 17 (1) (a)*, *18 (2) (a)* and *19 (3) (a) (i)* included references to *subsection (1) (a)* and with any other necessary adaptations. 35

(b) *Subsection (2)* of *section 29* shall apply to the interests specified in *subsection (1) (a)* and to a person who holds the office of Attorney General as if the references in that subsection to *sections 17 (1) (a)*, *18 (2) (a)* and *19 (3) (a) (i)* included references to *subsection (1) (a)* and with any other necessary adaptations. 40
45

(3) References in this section to the performance of a function of the office of Attorney General are references to the performance of the function by the holder of that office personally or by another person in pursuance of a direction given to the person, in relation to.

the particular matter concerned, by such holder personally or a person acting on behalf of and with the personal knowledge of such holder.

5 (4) Where a person who holds the office of Attorney General is a member—

(a) *paragraph (a) of subsection (1)* shall not apply to the person as respects the interests, during the period of the person's membership, of the persons specified in that paragraph, and

10 (b) *paragraph (b) of that subsection* shall not apply to the person during the period of the person's membership.

PART IV

THE PUBLIC SERVICE

15 17.—(1) A person who holds or held a designated directorship of a public body specified in *subparagraphs (8) to (12)*, or standing prescribed under *subparagraph (13)*, of *paragraph 1 of the First Schedule*— Designated directorships.

20 (a) shall, subject to *section 20 (3)*, in each year during any part of which he or she holds or held the directorship, prepare and furnish to the Commission and to such officer of the body as may be determined by the Minister a statement in writing of—

(i) the interests of the person, and

25 (ii) the interests of which he or she has actual knowledge of his or her spouse or a child of the person or of his or her spouse,

30 during the appropriate period specified in *section 20 (1)* which could materially influence the person in or in relation to the performance of the functions of the directorship by reason of the fact that such performance could so affect those interests as to confer on or withhold from the person or the spouse or child a substantial benefit, and

35 (b) in any case where such a function, or a function of any other office or position held by the person in that public body, falls to be performed and he or she has actual knowledge that he or she or a connected person has a material interest in a matter to which the function relates—

40 (i) shall, as soon as may be, prepare and furnish to the other directors of the body a statement in writing of those facts,

(ii) shall not perform the function unless there are compelling reasons requiring him or her to do so, and

45 (iii) shall, if he or she proposes to perform the function, prepare and furnish to the other directors of the body and to the Commission, before or, if that is not

reasonably practicable, as soon as may be after such performance, a statement in writing of the compelling reasons aforesaid.

(2) There shall be deemed to be included in the terms on which a person holds a designated directorship referred to in *subsection (1)* a term that the person shall comply with that subsection. 5

Designated positions of employment.

18.—(1) In this section “relevant authority”, in relation to a person who occupies or occupied a designated position in a public body, means such person or persons as may stand determined for the time being by the Minister in relation to the position. 10

(2) A person who occupies or occupied a designated position in a public body—

(a) shall, subject to *section 20 (3)*, in each year during any part of which he or she occupies or occupied the position, prepare and furnish to the relevant authority for the position a statement in writing of— 15

(i) the interests of the person, and

(ii) the interests of which he or she has actual knowledge of his or her spouse or a child of the person or of his or her spouse, 20

during the appropriate period specified in *section 20 (1)* which could materially influence the person in or in relation to the performance of the functions of the position by reason of the fact that such performance could so affect those interests as to confer on or withhold from the person or the spouse or child a substantial benefit, and 25

(b) in any case where such a function falls to be performed and he or she has actual knowledge that he or she or a connected person has a material interest in a matter to which the function relates— 30

(i) shall, as soon as may be, prepare and furnish to the relevant authority a statement in writing of those facts,

(ii) shall not perform the function unless there are compelling reasons requiring him or her to do so, and 35

(iii) shall, if he or she proposes to perform the function, prepare and furnish to the relevant authority, before or, if that is not reasonably practicable, as soon as may be after such performance, a statement in writing of the compelling reasons aforesaid. 40

(3) (a) A person who, during any period, holds or held or occupies or occupied an office or position specified in *paragraph (b)* shall be deemed for the purposes of this Act to be a person who, during that period, occupies or occupied a designated position in a public body. 45

(b) The offices and positions referred to in *paragraph (a)* are—

(i) the office of Comptroller and Auditor General,

- (ii) the office of Ombudsman,
- (iii) the office of Data Protection Commissioner,
- (iv) the office of Director of Consumer Affairs, and
- (v) such other (if any) offices or positions (other than the office of judge of any court) established by or under statute as may (if, but only if, the Minister considers it necessary in the public interest to do so) be prescribed.

5

- (c) *Subsection (4)* shall not apply to a person who holds or held an office specified in *subparagraphs (i) to (iv) of paragraph (b)*.

10

(4) There shall be deemed to be included in the terms of the employment of a person in a designated position referred to in *subsection (2)* a term that the person shall comply with that subsection.

15 19.—(1) In this section “special adviser” means a person who— Special advisers.

- (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

20

- (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,

25 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.

(2) The period for which a person acting as a special adviser occupies the excluded position concerned or is employed under the contract for services concerned shall end not later than the date on which the office holder to whom he or she is acting as a special adviser ceases to hold the office by reference to which he or she is an office holder.

30

(3) (a) If the remuneration of a person as a special adviser exceeds a prescribed amount, then—

- (i) subject to *section 20 (3)*, in each year during any part of which the person is a special adviser, he or she shall prepare and furnish to the office holder concerned and the Commission a statement in writing of—

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- (I) the interests of the person, and
- (II) the interests of which he or she has actual knowledge of his or her spouse or a child of the person or of his or her spouse,

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during the appropriate period specified in *section 20 (1)* which could materially influence the person in or in relation to the performance of his or her functions as a special adviser by reason of the fact that such

performance could so affect those interests as to confer on or withhold from the person or the spouse or child a substantial benefit,

(ii) in any case where such a function falls to be performed and he or she has knowledge that he or she or a connected person has a material interest in a matter to which the function relates, he or she— 5

(I) shall, as soon as may be, prepare and furnish to the office holder and to the Commission a statement in writing of those facts, 10

(II) shall not perform the function unless there are compelling reasons requiring him or her to do so, and

(III) shall, if he or she proposes to perform the function, prepare and furnish to the office holder and the Commission, before or, if that is not reasonably possible, as soon as may be after such performance, a statement in writing of the compelling reasons aforesaid, 15

and 20

(iii) the person shall undertake not to engage in any trade, profession, vocation or other occupation, whether remunerated or otherwise, which might reasonably be seen to be capable of interfering or being incompatible with the performance by the person of his or her functions as a special adviser. 25

(b) Different amounts may be prescribed under *paragraph (a)* in relation to different categories of special adviser.

(4) An office holder shall, in respect of a person who acts or acted as a special adviser to him or her, lay the following documents before each House of the Oireachtas, that is to say— 30

(a) a copy of the contract, or a statement in writing of the terms and conditions, under which the person acts or acted as a special adviser,

(b) a copy of any statement under *subsection (3) (a) (i)* of the interests of the person furnished to the office holder, 35

(c) a statement as to whether the person is a relative of the office holder, and

(d) if *subsection (3)* applies to the person, a statement of the qualifications of the person relevant to his or her functions as a special adviser. 40

(5) Section 13 (3) of the Civil Service Commissioners Act, 1956, does not apply to the appointment to an established position (within the meaning of that Act) of a person who acts or has acted as special adviser. 45

(6) There shall be deemed to be included in the terms on which a person who is acting as a special adviser to an office holder occupies the excluded position concerned or is employed under the contract for services concerned—

- 5 (a) a term that the period for which the person occupies the excluded position or is employed under the contract for services shall end not later than the date on which the office holder ceases to hold the office by reference to which he or she is an office holder, and
- (b) if subsection (3) applies to the person, a term that he or she shall comply with that subsection.

20.—(1) A statement (“the current statement”) furnished by a person under section 17 (1) (a), 18 (2) (a) or 19 (3) (a) (i) shall—

Provisions relating to statements under sections 17 to 19.

- 10 (a) in case, as may be appropriate, the person was appointed to the directorship, position or special advisership concerned before the date of the passing of this Act and the statement is the first such statement so furnished by the person since that date, be in respect of the period from that date to the date of the statement,
- 15 (b) in case the person was so appointed on or after the date of such passing and the statement is the first such statement so furnished by the person since such appointment, be in respect of the period from the date of such appointment to the date of the statement, and
- 20 (c) in any other case, be in respect of the period from the date of the last previous such statement so furnished by the person to—
- (i) the date of the current statement, or
- 25 (ii) the date on which the appointment concerned ended, whichever is the earlier.

30 (2) A statement under section 17 (1) (a), 18 (2) (a), 19 (3) (a) (i) or 29 (2) shall be made in such form as, subject to the provisions of this Act, may be determined by the Minister or a form to the like effect and shall contain appropriate information in relation to such matters (if any) respecting the interests declared in the statement as may be specified in the first-mentioned form.

35 (3) The first statement of a person under section 17 (1) (a), 18 (2) (a) or 19 (3) (a) (i) after his or her appointment to the directorship, position or special advisership concerned shall be furnished by the person to the person or persons concerned not later than—

- (a) such time in the year concerned, or
- 40 (b) if the appointment is made after the commencement of the provision aforesaid and after the 1st day of October in any year, such time in the next following year,

as the Minister may determine and any subsequent such statement of the person shall be so furnished by the person not later than 30 days after the anniversary of the day on which the last previous such statement was so furnished by him or her.

45 (4) It shall not be necessary to specify in a statement under section 17 (1) (a), 18 (2) (a), 19 (3) (a) (i) or 29 (2) the amount or monetary value of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement.

PART V

THE COMMISSION

Establishment,
membership and
functions of
Commission.

21.—(1) On the commencement of this section, there shall stand established a commission (which shall be known as the Public Offices Commission and is referred to in this Act as “the Commission”) to perform the functions conferred on it by this Act. 5

(2) The Commission shall consist of the following members:

- (a) the Comptroller and Auditor General,
- (b) the Ombudsman,
- (c) the Chairman of Dáil Éireann, 10
- (d) the Clerk of Dáil Éireann,
- (e) the Clerk of Seanad Éireann.

(3) (a) Subject to *paragraph (b)*, where a member of the Commission notifies the Minister that he or she is for any reason (other than the operation of *subsection (4)*) temporarily unable to act as such member or any of the offices aforesaid is vacant, the Minister shall appoint— 15

(i) in the case of the Comptroller and Auditor General, the Secretary and Director of Audit of the Office of the Comptroller and Auditor General, 20

(ii) in the case of the Ombudsman, the Director of the Office of the Ombudsman,

(iii) in the case of the Chairman of Dáil Éireann, the Deputy Chairman of Dáil Éireann,

(iv) in the case of the Clerk of Dáil Éireann, the Clerk Assistant of Dáil Éireann, and 25

(v) in the case of the Clerk of Seanad Éireann, the Clerk Assistant of Seanad Éireann,

to be a member of the Commission for the duration of such inability or vacancy. 30

(b) If a person falling, pursuant to *paragraph (a)*, to be appointed to be a member of the Commission cannot be so appointed or the Commission consider that it would not be appropriate so to appoint that person, the Minister shall appoint such other person as the Commission may nominate for the purpose to be such a member for the duration of the inability or vacancy concerned. 35

(c) Upon the appointment of a person pursuant to *paragraph (a)* or *(b)* to be a member of the Commission for the duration of an inability, the member of the Commission who is temporarily unable to act as such member shall be deemed for such duration not to be a member of the Commission. 40

- (d) If a member of the Commission ceases to hold the office by virtue of which he or she became a member of the Commission, he or she shall thereupon cease to be a member of the Commission.
- 5 (4) (a) The Comptroller and Auditor General and the Secretary and Director of Audit of the Office of the Comptroller and Auditor General shall not take part in any proceedings of the Commission relating to the Comptroller and Auditor General or a member of the staff of the Office of the Comptroller and Auditor General.
- 10 (b) The Ombudsman and the Director of the Office of the Ombudsman shall not take part in any proceedings of the Commission relating to the Ombudsman or a member of the staff of the Office of the Ombudsman.
- 15 (c) The Chairman of Dáil Éireann, the Deputy Chairman of Dáil Éireann, the Clerk of Dáil Éireann, the Clerk Assistant of Dáil Éireann, the Clerk of Seanad Éireann and the Clerk Assistant of Seanad Éireann shall not take part in any proceedings of the Commission relating to the Chairman or Deputy Chairman of either House or to a member of the staff of the Houses.
- 20 (d) Where a member of the Commission is, by virtue of *paragraph (a), (b) or (c)* unable to take part in proceedings of the Commission, *subsection (3)* shall not apply in relation to such inability, and the Minister shall appoint such person as he or she may determine to be a member of the Commission for the purpose of taking part in those proceedings but for no other purpose and the first-mentioned member shall be deemed, in relation to those proceedings, not to be a member of the Commission.
- 25 (5) The quorum for a meeting of the Commission shall be three or such other number (being not less than three) as may be determined from time to time by the Commission.
- 30 (6) (a) The Commission shall appoint one of its members to be chairman of the Commission and the member so appointed shall hold the office of chairman for such period as may be determined by the Commission.
- 35 (b) If the chairman of the Commission ceases during his or her term of office as such chairman to be a member of the Commission, he or she shall also cease to be the chairman of the Commission.
- 40 (7) At a meeting of the Commission—
- (a) the chairman of the Commission shall, if present, be chairman of the meeting,
- 45 (b) if and for so long as the chairman of the Commission is not present or if the office of chairman is vacant, the members of the Commission who are present shall choose one of their number to be chairman of the meeting.
- 50 (8) A decision at a meeting of the Commission (other than a meeting held for the purposes of an investigation under *section 23*) may

be that of a majority of the members present and voting on the question and, in the case of an equal division of votes, the chairman of the meeting shall have a second or casting vote.

(9) The Commission may act (otherwise than in relation to an investigation under *section 23*) notwithstanding one or more vacancies among its members. 5

(10) Such functions of the Commission (other than functions under *section 23*) as may be specified by it may be performed, under the supervision and subject to the general direction of the Commission, by members of the staff of the Commission duly authorised in that behalf by the Commission. 10

(11) Subject to the provisions of this Act, the Commission shall determine, by standing orders or otherwise, the procedure and business of the Commission.

(12) The Minister shall make available to the Commission such reasonable facilities and services (including clerical, secretarial and executive services) as the Minister, after consultation with the Commission, may determine. 15

(13) Subject to such conditions as the Minister may determine, there shall be paid to the Commission out of moneys provided by the Oireachtas such amounts as the Minister may, after consultation with the Commission, determine in respect of the reasonable expenses of the Commission and its members. 20

Complaints to
Commission.

22.—(1) A person (other than a member) who considers that—

(a) a person may have contravened *Part II, III or IV* at a time when he or she was an office holder, or 25

(b) that a person who is an office holder may have contravened *Part II* before becoming an office holder,

may make a complaint in writing in relation to the matter to the Clerk and, subject to *subsection (2)*, the Clerk shall refer the matter to the Commission and shall furnish a copy of the complaint to the Commission. 30

(2) The Clerk shall consider a complaint under *subsection (1)* and, if the Clerk is of opinion that it is frivolous or vexatious, he or she—

(a) shall not refer it to the Commission, and 35

(b) shall prepare a statement in writing of the reasons for his or her opinion and furnish it to—

(i) the person who made the complaint,

(ii) the person concerned, and

(iii) the Commission. 40

(3) A member who considers that—

(a) a person may have contravened *Part IV*,

(b) a person may have contravened *Part II, III or IV* at a time when he or she was an office holder, or

(c) that a person who is an office holder may have contravened *Part II* before becoming an office holder,

may make a complaint in writing in relation to the matter to the Commission.

5 (4) (a) Where the Minister considers that a person, other than an office holder, may have contravened *Part IV*, he or she may make a complaint in writing in relation to the matter to the Commission.

10 (b) (i) Where a Minister of the Government considers that a person to whom this subparagraph applies may have contravened *Part IV*, he or she may, with the consent of the Minister, make a complaint in writing in relation to the matter to the Commission.

(ii) *Subparagraph (i)* applies to the following persons:

15 (I) a person who occupies or occupied a designated position in a Department of State or office of which the Minister of the Government by whom the complaint concerned is made has charge,

20 (II) a person who holds or held a designated directorship of, or occupies or occupied a designated position in, a public body specified in *subparagraphs (8) to (12) of paragraph 1 of the First Schedule* or standing prescribed for the time being under *subparagraph (13) of the said paragraph 1* in relation to which functions stand conferred on the Minister of the Government by whom the complaint concerned is made, and

25 (III) a person who is or was a special adviser assigned to the Minister of the Government by whom the complaint concerned is made or to a Minister of State at the Department of State administered by that Minister of the Government.

30 (c) Where a public body specified in *subparagraphs (8) to (12) of the said paragraph 1* or standing prescribed for the time being under *subparagraph (13) of the said paragraph 1* considers that a person who—

35 (i) holds or held a designated directorship of the body, or

40 (ii) occupies or occupied a designated position in the body,

may have contravened *Part IV*, it may make a complaint in writing in relation to the matter to the Commission.

45 (d) Where the appropriate authority (within the meaning of the Civil Service Regulation Act, 1956, but excluding a Minister of the Government) in relation to a civil servant (within the meaning aforesaid) considers that the civil servant may have contravened *Part IV*, the authority may make a complaint in writing in relation to the matter to the Commission.

23.—(1) Subject to *subsection (2)*, where—

(a) a complaint is referred or made to the Commission under *section 22*, or

(b) the Commission considers in the case of—

(i) a person who may have contravened *Part II, III or IV* 5
at a time when he or she was an office holder,

(ii) a person who is an office holder and who may have
contravened *Part II* before becoming an office
holder, or

(iii) a person to whom *section 22 (4) (b) (i)* applies and 10
who may have contravened *Part IV*—

that it is appropriate to do so, it shall carry out an investi-
gation to determine, whether, as may be appropriate—

(I) the person referred to in *subparagraph (i)* con- 15
travened *Part II, III or IV* at a time when he or
she was an office holder,

(II) the person referred to in *subparagraph (ii)* con-
travened *Part II* before becoming an office
holder, or

(III) the person referred to in *subparagraph (iii)* con- 20
travened *Part IV*.

(2) Before the Commission decides whether to carry out under
subsection (1) an investigation of a matter that—

(a) relates to a person who holds or held a designated direc- 25
torship of, or occupies or occupied a designated position
in, a public body, and

(b) was not the subject of a complaint referred or made to it
under *section 22*,

the Commission shall—

(i) consult with any Minister of the Government on 30
whom a function in relation to the body stands con-
ferred, and

(ii) give to any such Minister of the Government as afore-
said and to the body a statement in writing of the
reasons why it considers it appropriate that the 35
investigation should be carried out,

and it shall decide not to carry out the investigation unless, having
considered any representations made to it by that Minister of the
Government or the body, it is satisfied that it is appropriate to carry 40
it out and that an adequate investigation cannot or will not be carried
out by or on behalf of that Minister of the Government or the body
or any other authority.

(3) Where the Commission, either during or at the conclusion of
an investigation under this section, becomes of opinion that the per-
son the subject of the investigation has not contravened the provision 45

of this Act to which the investigation relates but may have contravened another provision of *Part II, III or IV*, it may carry out an investigation under this section to determine whether the person has contravened that other provision, but *subsection (2)* shall not apply in relation to the investigation.

24.—(1) Subject to *subsection (2)* and *section 31*, where the Commission carries out an investigation under *section 23*, it shall prepare a report in writing of the result of the investigation and shall furnish a copy of the report to—

Reports by
Commission.

10 (a) the person the subject of the investigation,

(b) if the investigation followed a complaint under *section 22*, the person who made the complaint, and

15 (c) (i) in case the person the subject of the investigation is or was an office holder and the Commission has determined that he or she has contravened *Part II, III or IV*, the Committee, and

(ii) in any other case—

(I) the Minister, or

20 (II) if, at the time of the alleged contravention concerned, the person occupied a position in a Department of State or office administered by a Minister of the Government other than the Minister, that Minister of the Government.

25 (2) Where the Commission, either during or at the conclusion of an investigation under *section 23*, is of opinion that the person the subject of the investigation may have committed an offence relating to the performance of his or her functions as an office holder, a holder of a designated directorship of, or occupier of a designated position in, a public body or special adviser, as the case may be or
30 that the person may have contravened *Part II* before becoming an office holder—

35 (a) it shall prepare a report in writing in relation to the matter and furnish it together with any relevant document or other thing in its possession to the Director of Public Prosecutions who shall notify the Commission as to whether he or she has taken proceedings for an offence in respect of any matter mentioned in the report or has decided not to take any such proceedings and of the final outcome of any such proceedings (including any appeal,
40 whether by way of case stated or otherwise, rehearing or retrial), and

(b) it shall add to its report under *subsection (1)* a copy of its report under *paragraph (a)* and a statement of the notification or notifications aforesaid.

45 (3) A report under *subsection (1)* shall set out the findings of the Commission together with its determinations in relation to the following matters, namely—

50 (a) whether there has been a contravention of *Part II, III or IV* by the person concerned and whether the contravention is continuing,

(b) in case the determination is that there has not been a contravention of *Part II, III or IV*, by the person, whether the Commission is of opinion that the complaint was frivolous or vexatious or that there were no reasonable grounds for it, and 5

(c) in case the determination is that there has been a contravention of *Part II, III or IV* by the person—

(i) if the determination is that the contravention is continuing, the steps required to be taken by him or her to secure compliance by him or her with *Part II, III or IV*, as the case may be, and the period of time within which such steps should be taken, 10

(ii) whether the contravention was committed inadvertently, negligently, recklessly or intentionally,

(iii) whether the contravention was, in all the circumstances, a serious or a minor matter, and 15

(iv) whether the person acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing by a Committee under *section 12* or the Commission under *section 25*, 20

and may refer to such other matters (if any) as the Commission considers appropriate.

(4) Where at any time a report under *subsection (1)* is furnished to a Committee, the Committee shall cause a copy of the report to be laid before the House concerned. 25

(5) Where a report under *subsection (1)* is furnished to a Minister of the Government and the report includes determinations that there has been a contravention of *Part IV* and that the contravention was a serious matter, he or she shall cause a copy of the report to be laid before each House. 30

(6) Where the Commission—

(a) adjourns or postpones proceedings in relation to an investigation under *section 23*, or

(b) during such an investigation, furnishes a report to the Director of Public Prosecutions under *subsection (2) (a)* and the Director of Public Prosecutions notifies the Commission under *subsection (2) (a)* that he or she has taken proceedings for an offence in respect of a matter mentioned in the report, 35
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the Commission may, if it considers it appropriate to do so, prepare an interim report in writing in relation to the investigation and furnish copies thereof to such of the persons specified in *subsection (1)* as it thinks fit.

Guidelines and
advice from
Commission.

25.—(1) The Commission— 45

(a) shall, after consultation with the Committees, from time to time draw up and publish to persons (other than members who are not office holders) to whom a provision

of *Part II, III or IV* applies guidelines concerning the steps to be taken by such persons to ensure compliance by them with this Act generally and, in particular, with the provisions of those Parts, and

5 (b) may, at the request of a person (other than a member who is not an office holder) to whom a provision of *Part II, III or IV* applies, give advice to the person in relation to any provision of this Act or as to the application, in any particular case, of any such provision.

10 (2) When a request is made under *subsection (1) (b)* in relation to a particular case, the provision concerned of *Part II, III or IV* shall 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 advice is given by the Commission in relation to the case
15 or it declines to give such advice.

(3) The Commission shall, within 21 days of the receipt by it of a request for advice under *subsection (1) (b)*, furnish the advice to the person concerned or notify him or her of its decision to decline to do so.

20 (4) A person shall act in accordance with guidelines or advice published or given to the person under this section unless, by so doing, the act concerned would constitute a contravention of another provision of this Act.

25 26.—(1) (a) Where, following an investigation by the Commission under *section 23* of a complaint referred or made to it under *section 22* (other than *subsection (4)*), the Commission determines that the complaint was frivolous or vexatious or that there has not been a contravention of *Part II, III or IV* and that there were no reasonable grounds for the complaint, it may order that such amounts (not exceeding £1,500) as it considers appropriate, having regard to all the circumstances, in respect of the reasonable costs and expenses incurred by any person before it (including costs and expenses incurred by such a person in respect of legal representation) in relation to the investigation shall be paid to that person by the person who made the complaint. Award of costs by Commission.

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40 (b) Where, in relation to an investigation under *section 23*, amounts are ordered to be paid under *paragraph (a)* to more than one person, the aggregate of those amounts shall not exceed £1,500.

(2) For the purposes of *subsection (1)*, the Commission may measure the costs and expenses aforesaid.

45 (3) Any costs or expenses ordered by the Commission under *subsection (1)* to be paid by a person may be recovered from that person by the person to whom they are ordered to be paid as a simple contract debt in any court of competent jurisdiction.

27.—(1) The Commission—

50 (a) shall, not later than 6 months after the end of each year, prepare a report on its activities in that year, and

Annual and special reports by Commission.

(b) may prepare such other reports for the Minister as it considers appropriate.

(2) (a) The Commission shall furnish a copy of a report under subsection (1) (a) to the Minister not later than 6 months after the end of the year to which it relates and the Minister shall, not later than two months after the receipt of the report, cause a copy thereof to be laid before each House. 5

(b) The Minister may, if he or she considers it appropriate to do so, cause a copy of a report under subsection (1) (b) to be laid before each House. 10

(3) In this section "report" does not include a report under section 24.

PART VI

MISCELLANEOUS

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Action by Houses where reports laid before them.

28.—(1) Where a copy of a report of a Committee or a copy of a report of the Commission furnished to a Committee is laid before either House, the Committee may, if it considers it appropriate, having regard to all the circumstances of the case, to do so, cause a motion to be moved in that House for a resolution that such action or actions specified in subsection (2) as may be specified in the resolution and is or are reasonable in all the circumstances be taken by that House in relation to the matter. 20

(2) The actions referred to in subsection (1) are—

(a) the taking note by the House concerned of the report of the Committee, or the report of the Commission, concerned, 25

(b) the censuring of the office holder or other member concerned by the House,

(c) the suspension of the office holder or other member concerned from the service of the House— 30

(i) for such period not exceeding 30 days on which the House shall have sat as may be specified in the resolution concerned, and

(ii) in addition, if the report aforesaid includes a determination that the office holder or other member is continuing to contravene this Act and the Committee is satisfied that the contravention has continued up to the date of the motion for the resolution concerned under subsection (1), until such time (if any) after the expiration of the period specified pursuant to subparagraph (i) in the resolution as he or she takes the steps specified in the resolution (being the steps specified in the report) to secure compliance by him or her with this Act, and 35 40

5 (3) Where a report referred to in *subsection (1)*, a copy of which has been laid before either House, includes a determination that the office holder or other member concerned acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing under *section 12* or, as the case may be, *section 25*, a Committee shall not recommend that the action specified in *paragraph (b), (c) or (d) of subsection (2)* be taken by the House.

10 (4) The action referred to in *subsection (2) (c)* shall not affect either the amount of or the payment of any allowance or annual or other sum to which the office holder or other member concerned would, but for such action, be entitled under the Oireachtas (Allowances to Members) Act, 1938, Part III of the Ministerial and Parliamentary Offices Act, 1938, or section 3 of the Oireachtas
15 (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992.

20 29.—(1) (a) Where the registrable interests or the additional interests of a person change, the person may at any time furnish a statement in writing of the changes to the Clerk.

Statements of interests outside periods specified in sections 5, 13 and 20.

(b) Where a person fails to comply with *section 5* or *13*, the person may at any time furnish to the Clerk a statement in writing of the registrable interest or additional interest concerned.

25 (c) Where a person is advised under *section 12* or *25* or it appears from guidelines published under either of those sections that an interest of the person is a registrable interest or an additional interest, the person shall, as soon as may be after the receipt of the
30 advice or, as the case may be, the publication of the guidelines, prepare and furnish to the Clerk a statement in writing of the additional interest or registrable interest.

35 (d) Where a person becomes a member or an office holder after a registration date, he may, at any time before the next registration date, furnish to the Clerk a statement in writing of his or her registrable interests and, (in the case of an office holder) his or her additional interests.

40 (e) When the Clerk receives a statement under *paragraph (a), (b), (c) or (e)*, he or she shall if it relates to an additional interest, furnish a copy of it to the Commission and (if it is a statement of a Minister of the Government or a Minister of State) the Taoiseach.

45 (2) (a) Where the interests specified in *section 17 (1) (a), 18 (2) (a) or 19 (3) (a) (i)* of a person to whom that section applies or of the spouse of such a person or of a child either of such a person or of the spouse of such a person change the person may at any time furnish a statement

in writing of the change to the person or persons to whom statements under that provision are required to be furnished.

(b) Where a person fails to comply with *section 17 (1) (a)*, *18 (2) (a)* or *19 (3) (a) (i)*, the person may at any time furnish a statement in writing of the interests concerned to the person or persons to whom statements under that provision are required to be furnished. 5

(c) Where a person to whom *section 17 (1) (a)*, *18 (2) (a)* or *19 (3) (a) (i)* applies is advised under *section 25* or it appears from guidelines published under *section 25* that an interest of the person or an interest of his or her spouse or a child of the person or of his or her spouse is an interest to which *section 17 (1) (a)*, *18 (2) (a)* or *19 (3) (a) (i)*, as the case may be, applies, the person shall, as soon as may be after the receipt of the advice or, as the case may be, the publication of the guidelines, prepare and furnish to the person or persons to whom statements under that provision are required to be furnished a statement of the interest. 10
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(3) A statement under this section (other than a statement indicating the cesser or disposal of an interest) shall be in a form determined under *section 5 (1)*, *13 (1)* or *20 (2)*, as may be appropriate, or in a form to the like effect and shall contain appropriate information in relation to such matters (if any) respecting the interest concerned as may be specified in the appropriate form determined as aforesaid. 25

(4) *Section 6 (4) (b)* and *subsection (3)* shall apply to a statement of a registrable interest furnished to a Clerk in pursuance of a determination of a Committee or the Commission under *section 10 (2) (c)* or *24 (3) (c)* and *subsection (1) (e)* and *subsection (3)* shall apply to a statement of an additional interest furnished to a Clerk in pursuance of a determination of the Commission under *section 24 (3) (c)*. 30

Voluntary statements.

30.—Where a person to whom *section 5*, *13*, *16*, *17*, *18* or *19* applies has an interest that is not specified in the *Second Schedule* or a person to whom *section 13*, *16*, *17*, *18* or *19* applies has actual knowledge that his or her spouse or a child of the person or of his or her spouse has such an interest, the person may at any time prepare a statement under that section of the interest and furnish it to the person or persons to whom such a statement is required by the section to be furnished and, where such a statement is so furnished, this Act shall apply and have effect as if the interest was an interest specified in that Schedule. 35
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Discontinuance of investigations.

31.—(1) A Committee may at any time discontinue an investigation under *section 9* of a complaint referred or made to it under *section 8* if it becomes of opinion that the complaint concerned is frivolous or vexatious. 45

(2) The Commission may at any time discontinue an investigation under *section 23* of a complaint referred or made to it under *section 22* (other than *subsection (4)* thereof) if it becomes of opinion that the complaint concerned is frivolous or vexatious. 50

(3) If a Committee decides to discontinue an investigation under *section 9*, or the Commission decides to discontinue an investigation under *section 23*, it shall prepare and furnish to—

- (a) the person who made the complaint concerned, and
- 5 (b) the person to whom it related,

a statement in writing of the reasons for its decision and, in the case of such a decision by a Committee, it shall, in addition, prepare and furnish such a statement to the Clerk.

- 10 (4) *Section 11* shall apply with any necessary modifications in relation to a case where an investigation is discontinued under *subsection (1)* and *section 26* shall apply with any necessary modifications in relation to a case where an investigation is discontinued under *subsection (2)*.

15 32.—(1) A Committee and the Commission shall hold sittings for the purpose of an investigation by it under this Act and at the sittings may receive submissions and such evidence as it thinks fit. Powers of Committees and Commission.

(2) The chairman of a Committee may for the purposes of the functions of the Committee and the chairman of the Commission may for the purposes of the functions of the Commission—

- 20 (a) direct in writing the person the subject of the investigation concerned to attend before the Committee or the Commission, as the case may be, on a date and at a time and place specified in the direction,
- 25 (b) direct in writing any other person whose evidence is required by the Committee or the Commission, as the case may be, to attend before the Committee or the Commission, as the case may be, on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or power specified in the direction,
- 30 (c) direct any person (other than a person referred to in *paragraph (a)*) in attendance before the Committee or the Commission, as the case may be, to produce to the Commission or the Committee, as the case may be, any document or thing in his or her possession or power specified in the direction,
- 35 (d) direct in writing any person (other than a person referred to in *paragraph (a)*) to send to the Committee or the Commission, as the case may be, any document or thing in his or her possession or power specified in the direction, and
- 40 (e) give any other directions for the purpose of the proceedings concerned that appear to him or her to be reasonable and just.

- 45 (3) The reasonable expenses of witnesses directed under *subsection (2) (b)* to attend before a Committee or the Commission shall, subject to *sections 11* and *26*, be paid out of moneys provided by the Oireachtas.

(4) A person who—

- (a) having been directed under *subsection (2)* to attend before a Committee or the Commission and, in the case of a person so directed under *paragraph (b)* of that subsection, having had tendered to him or her any sum in respect of the expenses of his or her attendance which a witness summoned to attend before the High Court would be entitled to have tendered to him or her, without just cause or excuse disobeys the direction, 5
- (b) being in attendance before a Committee or the Commission pursuant to a direction under the said *paragraph (b)*, refuses to take the oath on being required by the Committee or the Commission, as the case may be, to do so or refuses to answer any question to which the Committee or the Commission, as the case may be, may legally require an answer or to produce any document or thing in his or her possession or power legally required by the Committee or the Commission, as the case may be, to be produced by the person, 10 15
- (c) fails or refuses to send to the Committee or the Commission, as the case may be, any document or thing legally required by the Committee or the Commission, as the case may be, under *paragraph (d)* of *subsection (2)* to be sent to it by the person or without just cause or excuse disobeys a direction under *paragraph (d)* of *subsection (2)*, or 20 25
- (d) does any other thing in relation to the proceedings before the Committee or the Commission, as the case may be, which, if done in relation to proceedings before a court by a witness in the court, would be contempt of that court, 30

shall be guilty of an offence.

(5) If a person gives false evidence before a Committee or the Commission in such circumstances that, if he or she had given the evidence before a court, he or she would be guilty of perjury, he or she shall be guilty of that offence. 35

(6) The procedure of a Committee or the Commission in relation to an investigation by it under this Act shall, subject to the provisions of this Act, be such as shall be determined by the Committee or the Commission, as the case may be, and the Committee or the Commission, as the case may be, shall, without prejudice to the generality of the foregoing, make provision for— 40

- (a) notifying the complainant, in the case of a complaint under *section 8* or *22*, and notifying the person the subject of the investigation of the date, time and place of the relevant sitting of the Committee or the Commission, as the case may be, 45
- (b) giving the person the subject of the investigation a statement of the contravention of this Act alleged, the names of the witnesses whom it is proposed to call to give evidence before the Committee or the Commission, as the case may be, relating to such contravention, a copy of each statement intended to be used at the Committee or the Commission, as the case may be, and an indication in 50

5 writing of the nature and source of any information relating to the matter which has come to notice in the course of the investigation of the alleged contravention which may be favourable to the person aforesaid and of which he or she may be unaware,

10 (c) enabling the person the subject of the investigation and, in the case of a complaint, the complainant or a person representing the complainant to be present at the relevant sitting of the Committee or the Commission, as the case may be, and enabling the person the subject of the investigation to present his or her case to the Committee or the Commission, as the case may be, in person or through a legal or other representative,

15 (d) enabling written statements to be admissible as evidence by the Committee or the Commission, as the case may be, with the consent of the person the subject of the investigation,

20 (e) enabling any signature appearing on a document produced before the Committee or the Commission, as the case may be, to be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be,

25 (f) the examination by or on behalf of the Committee or the Commission, as the case may be, and the cross-examination by or on behalf of the person the subject of the investigation concerned (on oath or otherwise as it may determine) of witnesses before the Committee or the Commission, as the case may be, called by it,

30 (g) the examination by or on behalf of the person the subject of the investigation and the cross-examination by or on behalf of the Committee or the Commission, as the case may be (on oath or otherwise as the Committee or the Commission, as the case may be, may determine), of witnesses before the Committee or the Commission, as the case may be, called by the person the subject of the investigation,

40 (h) the determination by the Committee or the Commission, as the case may be, whether evidence at the Committee or the Commission, as the case may be, should be given on oath,

(i) the administration by the chairman of the Committee or the chairman of the Commission, as the case may be, of the oath to witnesses before the Committee or the Commission, as the case may be, and

45 (j) the making of a sufficient record of the proceedings of the Committee or the Commission, as the case may be.

50 (7) A decision of a Committee or the Commission in relation to an investigation by it under this Act or any question arising in the course of such an investigation may be that of a majority of its members.

(8) A witness whose evidence has been, is being or is to be given before the Committee or the Commission, as the case may be, in proceedings under this Act shall be entitled to the same privileges and immunities as a witness in a court.

(9) Sittings of a Committee or the Commission for the purposes of an investigation by it under this Act may be held in private. 5

(10) A Committee or the Commission may adjourn or postpone proceedings in relation to an investigation under *section 9* or *23*, as the case may be.

(11) The following shall be absolutely privileged: 10

(a) documents of the Commission, and documents of its members connected with the Commission or its functions, wherever published,

(b) reports of the Commission, wherever published,

(c) statements made in any form at meetings or sittings of the Commission by its members or officials and such statements wherever published subsequently. 15

Independence of Commission.

33.—The Commission and its members shall be independent in the performance of their functions under this Act.

Retention of statements and matters concerning legal or medical services.

34.—(1) A statement furnished under *section 13, 14, 16, 17, 18, 19* or *29* and a record of any information given to the Secretary to the Government pursuant to *section 15* or guidelines under that section shall be retained for a period of 15 years from the date on which it was so furnished or given and, whenever so requested by the Commission during that period, it or a copy of it shall be furnished to the Commission. 20 25

(2) Notwithstanding anything in this Act a statement prepared and furnished by a person pursuant to *section 5, 13, 16, 17, 18, 19* or *29* of an interest specified in *paragraph 1 (5) (b)* of the *Second Schedule* and relating to legal services or medical services (including psychiatric or psychological services) shall specify only that legal services or medical services, as the case may be, were supplied to the person or to another person (who shall not be identified in the statement) as respects whom the first-mentioned person is required by the section to furnish a statement; and the form of the statement determined under this Act shall be such as to facilitate compliance with the foregoing provision. 30 35

Prohibition of disclosure of information.

35.—(1) A person shall not disclose information obtained by him or her under this Act or by being present at a sitting of a Committee or Commission held in private. 40

(2) *Subsection (1)* does not apply to—

(a) the disclosure of information in the public interest by a Minister of the Government,

(b) the disclosure of information contained in—

(i) a statement under *section 13* or *14 (1)* or a statement under *section 29 (2)* in relation to an interest specified in *section 13*, 45

- (ii) a statement under *section 17* or *18* or a statement under *section 29 (2)* in relation to an interest specified in *section 17* or *18*, or
- 5 (iii) a statement under *section 19* or a statement under *section 29 (2)* in relation to an interest specified in *section 19*,

by a person to whom the statement is furnished under this Act ("the first-mentioned person") to—

- 10 (I) in the case of a statement referred to in *subparagraph (i)*, such Minister of the Government,
- (II) in the case of a statement referred to in *subparagraph (ii)*, such directors of, or persons occupying positions of employment in, the public body concerned, and
- 15 (III) in the case of a statement referred to in *subparagraph (iii)*, such persons,

as the first mentioned person considers appropriate in a case where that person is of opinion that the information is such as to show that there may exist a conflict between an interest specified in the statement, or an undisclosed interest, of the person by whom the statement is furnished as aforesaid and the public interest,

20

(c) the disclosure of information by a person—

- (i) in the performance of his or her functions, or
- 25 (ii) in the public interest, to a Minister of the Government, the Secretary to the Government, a Committee, the Commission or a person standing determined for the time being under *section 18* as a relevant authority, or
- 30 (iii) pursuant to an order of a court for the purpose of proceedings in that court,

or

(d) the disclosure, by or with the consent of the person to whom the information relates, of information contained in a report of a Committee under *section 10* or the Commission under *section 24* that has not been laid before either House.

35

(3) A person who contravenes *subsection (1)* shall be guilty of an offence.

40 36.—Where a report of a Committee under *section 10* or a report of the Commission under *section 24* includes a determination that specified steps be taken by a person to secure compliance by the person with this Act, the person shall take those steps within the period specified therefor in the report.

Obligation to comply with determinations of Committees and Commission.

Provisions in
relation to offences.

37.—(1) A person guilty of an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both, or 5

(b) on conviction on indictment, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. 10 15

Amendment of
Prevention of
Corruption Acts,
1889 to 1916.

38.—The Prevention of Corruption Acts, 1889 to 1916, shall be amended as follows:

(a) in the Public Bodies Corrupt Practices Act, 1889—

(i) in section 1— 20

(I) by the substitution for “any member, officer or servant of”, in each place where it occurs in subsection (1) and (2), of “an office holder or his or her special adviser or a director of, or occupier of a position of employment in,”, and 25

(II) the substitution for “public body”, where it secondly occurs in subsection (1) and (2), of “office holder or public body”,

and

(ii) in section 2, by the substitution of the following paragraph for paragraph (a): 30

“(a) (i) if the conviction is a summary conviction, be liable to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or 35

(ii) if the conviction is on indictment, be liable to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 7 years or to both,

and paragraphs (b) to (e) of this subsection shall apply only if the conviction is on indictment; and”, 40

and

(iii) in section 7, by the substitution of the following definitions for the definitions of “public body” and “public office”; 45

“‘public office’ means any office or employment of a person as an office holder or special adviser or as a director of, or occupier of a position of employment in, a public body;

5 ‘director’, ‘office holder’, ‘public body’ and ‘special adviser’ have the meanings assigned to them by the *Ethics in Public Office Act, 1995*.”

(b) in section 1 of the Prevention of Corruption Act, 1906—

10 (i) in subsection (1), by the substitution for the words from “and shall be liable” to the end of the subsection, of “and shall be liable—

(I) on summary conviction, to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both, or

15 (II) on conviction on indictment, to a fine not exceeding £50,000 or to imprisonment for a term not exceeding 7 years or to both.”,

and

20 (ii) by the substitution of the following subsection for subsection (3):

25 “(3) In this Act ‘agent’ also includes an office holder or a director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid).”,

and

(c) in the Prevention of Corruption Act, 1916—

30 (i) by the deletion of section 1,

(ii) by the substitution of the following section for section 2:

35 “2.—Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, as amended, or the Public Bodies Corrupt Practices Act, 1889, as amended, it is proved that any money, gift or other consideration has been paid or given to or received by an office holder or special adviser or a director of, or occupier of a position of employment in, a public body by or from a person or agent of a person holding or seeking to obtain a contract from a Minister of the Government or a public body, the money, gift or consideration shall be deemed to have been
40
45 paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.”, and

(iii) in section 4, by the substitution of the following subsection for subsections (2) and (3):

“(2) In this Act ‘director’, ‘office holder’, ‘special adviser’ and ‘public body’ have the meanings assigned to them by the Public Bodies Corrupt Practices Act, 1889, as amended, and ‘agent’ and ‘consideration’ have the meanings assigned to them by the Prevention of Corruption Act, 1906, as amended.”,

and the said section 1, as amended by this section, of the Public Bodies Corrupt Practices Act, 1889, is set out in the Table to this section.

TABLE

1. (1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of an office holder or his or her special adviser or a director of, or occupier of a position of employment in, a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said office holder or public body is concerned, shall be guilty of a misdemeanour. 15 20

(2) Every person who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of an office holder or his or her special adviser or a director of, or occupier of a position of employment in, any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such office holder or public body as aforesaid is concerned, shall be guilty of a misdemeanour. 25 30

Section 2.

FIRST SCHEDULE

PUBLIC BODIES

1. Each of the following shall be a public body for the purposes of this Act:

(1) a Department of State (including, as respects any particular Department of State, any office or body not otherwise standing specified in or under this Schedule in relation to which functions are vested in the Minister of the Government having charge of that Department of State), 35

(2) the Office of the President, 40

(3) the Office of the Tánaiste,

(4) the Office of the Attorney General,

(5) the Office of the Comptroller and Auditor General,

(6) the Office of the Ombudsman,

(7) the Office of the Houses of the Oireachtas, 45

(8) a local authority (within the meaning of the Local Government Act, 1941),

(9) a health board,

- (10) a body, organisation or group established—
- (a) by or under any enactment (other than the Companies Acts, 1963 to 1990), or
 - (b) under the Companies Acts, 1963 to 1990, in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,
- 5
- 10 (11) a company (within the meaning of the Companies Act, 1963) a majority of the shares in which are held by or on behalf of a Minister of the Government,
- (12) any other body, organisation or group appointed by the Government or a Minister of the Government,
- 15 (13) any other body, organisation or group financed wholly or partly out of moneys provided by the Oireachtas that stands prescribed for the time being (being a body, organisation or group that, in the opinion of the Minister, ought, in the public interest and having regard to the provisions and spirit of this Act, to be prescribed).
- 20 2. (1) In *paragraph 1* "Office", in relation to a person, means the offices in which the administration and business relating to the functions of the person are carried on.
- (2) There shall be deemed to be included in *subparagraphs (8) to (12) of paragraph 1* any subsidiary (within the meaning of the Companies Act, 1963) of a public body specified in those subparagraphs.
- 25

SECOND SCHEDULE

Section 2.

REGISTRABLE INTERESTS

1. Each of the following interests shall be a registrable interest for the purposes of this Act:
- 30 (1) a remunerated trade, profession, employment, vocation or other occupation of the person concerned (other than that of office holder or member or an occupation to which *Part IV* applies) at any time during the appropriate period, in relation to that person, specified in *section 5 (1)* or *20* the remuneration from which to the person
- 35 concerned during that period exceeded £2,000,
- (2) a holding by the person concerned of shares in, or bonds or debentures of, or other like investments in, a particular company or other enterprise or undertaking if the aggregate value of the holding exceeded £10,000 at any time during the appropriate period
- 40 aforesaid,
- (3) a directorship or shadow directorship of any company held by the person concerned at any time during the appropriate period aforesaid,
- (4) any interest in land of the person concerned, being an interest
- 45 the value of which exceeded £10,000 at any time during the appropriate period aforesaid, including—

- (a) the interest of the person in any contract entered into by him or her for the purchase of land, whether or not a deposit or part payment has been made under the contract, and
- (b) the interest of the person in— 5
 - (i) any option held by him or her to purchase land, whether or not any consideration has been paid in respect thereof, or
 - (ii) land in respect of which such an option has been exercised by the person but which has not yet been conveyed to the person, 10

but excluding any interest in land consisting of any private home of the person or of his or her spouse, that is to say, a building or part of a building that is occupied by the person or his or her spouse or a child of the person or of the spouse as a separate dwelling and any garden or other land usually occupied with the dwelling, being land that is subsidiary or ancillary to it, is required for its amenity or convenience and is not being used or developed primarily for commercial purposes, 15

- (5) (a) a gift given to the person concerned during the appropriate period aforesaid, but excluding— 20
 - (i) a gift given to the person by a relative or friend of the person or of his or her spouse or of a child of the person or his or her spouse for purely personal reasons only, unless the acceptance of the gift by the person could have materially influenced him or her in the performance of his or her functions as a member, office holder, Attorney General, holder of a designated directorship, occupier of a designated position or special adviser, and 25 30
 - (ii) a gift given to the person, or gifts given to the person by the same person, during the period aforesaid, as respects which the value, or the aggregate value, of the property the subject of the gift or gifts did not exceed £500 at any time during the period aforesaid, 35
- (b) (i) property supplied or lent or a service supplied to the person, once or more than once by the same person during the period aforesaid, for a consideration or considerations or at a price or prices less than the commercial consideration or considerations or the commercial price or prices by more than £500, and 40
- (ii) property lent or a service supplied to the person, once or more than once by the same person during the period aforesaid, free of charge if the commercial consideration or considerations or the commercial price or prices was or were more than £500, 45

other than property supplied or lent or a service supplied to a person by a relative or friend of the person or of his or her spouse or of a child of the person or of his or her spouse where such supply or loan was in the nature of a gift to the person and for personal reasons only unless the acceptance of the property or loan or the service by the person could have materially influenced him or her in the performance of his or her functions as a member, office holder, 50

Attorney General, holder of a designated directorship, occupier of a designated position, or special adviser,

5 (6) travel facilities, living accommodation, meals or entertainment supplied during the appropriate period aforesaid to the person concerned free of charge or at a price that was less than the commercial price or prices, but excluding—

(a) travel facilities, living accommodation, meals or entertainment provided—

(i) within the State, or

10 (ii) in the course and for the purpose of—

(I) the performance of the functions of the person as a member, office holder, holder of a designated directorship, occupier of a designated position or special adviser, or

15 (II) the trade, profession, employment, vocation or other occupation (other than an occupation specified in *subclause (I)*) of the person,

or

20 (iii) in the case of a member, by the Inter Parliamentary Union (or such other (if any) similar bodies as may be specified by the Committee in guidelines published by it under *section 12*) or any organisation of states or governments of which the State or the Government is a member or a body of or associated with any such body or organisation,

25 (b) travel facilities, living accommodation, meals or entertainment supplied to the person by a relative or friend of the person or of his or her spouse or of a child of the person or his or her spouse where such supply was in the nature of a gift given to the person for personal reasons only, unless the acceptance by the person of such facilities, accommodation, meals or entertainment might reasonably be seen to have been capable of influencing him or her in the performance of his or her functions as a member, office holder, Attorney General, holder of a designated directorship, occupier of a designated position or special adviser,

30 (c) travel facilities, living accommodation, meals or entertainment supplied to the person, once or more than once by the same person during the period aforesaid, free of charge if the commercial price, or the aggregate of the commercial prices, of the facilities, accommodation, meals or entertainment did not exceed £500, or

35 (d) travel facilities, living accommodation, meals or entertainment supplied to the person, once or more than once by the same person during the period aforesaid, at a price or prices less than the commercial price or prices by not more than £500,

40 (7) a remunerated position held by the person concerned as a political or public affairs lobbyist, consultant or adviser during the appropriate period aforesaid,

(8) any contract to which the person concerned was a party or was in any other way, directly or indirectly, interested for the supply of goods or services to a Minister of the Government or a public body during the appropriate period aforesaid if the value of the goods or services supplied during the period aforesaid exceeded £5,000 or, in case other goods or services were supplied under such a contract as aforesaid to a Minister of the Government or a public body during the period aforesaid, if the aggregate of their value and the value aforesaid exceeded £5,000. 5

2. (1) In *paragraph 1 (2)*, "holding" does not include money in a current, deposit or other similar account with a financial institution. 10

(2) In *paragraph 1 (3)*, "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. 15 20

BILLE

dá ngairtear

Acht do dhéanamh socrú le haghaidh nochtadh na leasanna atá ag sealbhóirí oifigí poiblí áirithe (lena n-áirítear comhaltaí de Thithe an Oireachtais) agus ag stiúrthóirí ainmnithe ar chomhlachtaí poiblí áirithe agus ag daoine atá fostaithe i bpoist ainmnithe i gcomhlachtaí poiblí áirithe, le haghaidh ceapadh coiste ag gach Teach acu sin, agus le haghaidh bunú coimisiúin, chun sárúithe ar an Acht seo a imscrúdú agus chun treoirlínte a leagan síos lena áirithiú go gcomhlíonfar an tAcht seo, do thoirmeasc ar shealbhóirí oifigí poiblí áirithe bronntanais luachmhara a choimeád, do leasú na *Prevention of Corruption Acts, 1889 to 1916*, agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Tánaiste a thíolaic

*Ritheadh ag Dáil Éireann,
14 Meitheamh, 1995*

BILL

entitled

An Act to provide for the disclosure of interests of holders of certain public offices (including members of the Houses of the Oireachtas) and designated directors of and persons employed in designated positions in certain public bodies, for the appointment by each such House of a committee, and for the establishment of a commission, to investigate contraventions of this Act and to establish guidelines to ensure compliance therewith, to prohibit the retention of valuable gifts by holders of certain public offices, to amend the Prevention of Corruption Acts, 1889 to 1916, and to provide for related matters.

Presented by the Tánaiste

*Passed by Dáil Éireann,
14th June, 1995*

BAILE A-THA CLIATH:
ARNA FHOILSIÚ- AG OIFIG AN ISOLA-THAIR

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APPENDIX IV

A Parliamentary Summary of the Ethics in Public Office Act (Ireland)



AN BILLE UM EITIC IN OIFIGÍ POIBLÍ, 1994
ETHICS IN PUBLIC OFFICE BILL, 1994

EXPLANATORY MEMORANDUM

Introduction

The Bill provides for the disclosure of interests by people holding public office or employment, and deals with gifts to office holders and with personal appointments by office holders. It also establishes an independent Commission, and a Select Committee in each House of the Oireachtas, to oversee its key provisions.

Disclosure of interests

The Bill provides for the making of annual written statements of certain personal interests of the following:

- Members of the Oireachtas;
- Office holders, i.e. the Taoiseach, Ministers and Ministers of State, Ceann Comhairle and Leas-Cheann Comhairle, Cathaoirleach and Leas-Cathaoirleach.
(The Oireachtas may also designate chairpersons of Oireachtas committees as office holders for the purposes of the Bill);
- Senior special advisers;
- Senior public and civil servants in designated positions;
- Designated directors of State bodies;
- Senior executives holding designated positions in State bodies.

The statements provided by Oireachtas Members and office holders will be entered in a register and published. Statements of interests of senior special advisers will be laid before the Houses of the Oireachtas and given to the Commission.

The Bill sets out, in respect of each category, to whom statements are to be given.

Apart from ordinary Oireachtas Members, any person making an annual statement must include those interests of a spouse or child which are known to the person making the statement and which could materially influence that person in the performance of his or her public duties.

Statements made by public and civil servants, directors and executives in respect of their personal interests and those of a spouse or

child will be confidential, but will be available to the Commission either directly or on request. Any interests disclosed by an office holder or special adviser in respect of a spouse or child will also be confidential but will be furnished to the Commission and, in the case of Ministers and Ministers of State, also to the Taoiseach.

Ad hoc disclosure of interests

The annual disclosures are supplemented by provisions in the Bill requiring once off declarations where a potential conflict of interest could arise in the performance of official duties or functions, between the public interest and the interests of the individual concerned or the interests of connected persons, e.g. close relatives or business partners.

Designated public and civil servants, senior executives and board members of State bodies and special advisers are generally prohibited from performing a function where there is a conflict of interest unless there are compelling reasons, which must be given in writing, for such performance.

Interests to be declared

The *Second Schedule* to the Bill sets out the categories of registrable interests. These comprise:

- outside income,
- shares, etc.,
- directorships,
- land holdings (other than family homes),
- certain gifts of property or services (subject to exclusions e.g. personal gifts),
- certain travel, accommodation, etc. provided free or below cost,
- consultancies etc.,
- public contracts,
- other interests which could materially influence the person in the performance of the functions or duties of their position.

The Bill does not require the disclosure of the value of any such interests. Interests below a threshold value do not have to be disclosed, e.g. gifts worth less than £500, income of less than £2,000 or property or shares worth less than £10,000.

The Committees and the Commission will issue guidelines and provide advice to those required to disclose interests under the Bill.

Gifts to office holders

The Bill provides that gifts worth over £500 to office holders, their spouses or children, which are given by virtue of that office are to become the property of the State.

Appointments by office holders

The Bill provides that personal appointments by office holders (e.g. personal assistants, special advisers) will be temporary and will cease

when the office holder leaves office. The Government will be precluded from appointing such persons to permanent positions in the civil service.

Details of personal appointments by office holders are to be laid before the Houses of the Oireachtas, including details of the contract of appointment and whether the appointee is a relative of the office holder. In the case of senior appointees, details of the relevant qualifications of the appointee and of his or her interests are also to be laid before the Houses.

These arrangements apply equally to appointments whether on an employee or on a contract basis.

Overseeing the Bill

The Bill provides for the making of complaints and for the investigation of possible contraventions of its provisions. Compliance with the terms of the Bill is deemed to be a term of appointment of designated public servants, senior executives and board members of State bodies and of special advisers.

Under the Constitution each House of the Oireachtas regulates its own affairs. The Bill, therefore, provides for separate investigation arrangements in relation to ordinary Members of the Oireachtas. The Bill also provides for resolutions of the relevant House(s), bringing the Bill into effect for the House(s).

Select Committees

In the case of ordinary Members of the Oireachtas, a Select Committee of each House will investigate complaints in relation to a Member and will report to that House. The Bill provides for a range of possible sanctions by the House arising from such reports.

Commission

The Bill provides for a Commission comprising—

The Comptroller and Auditor General,
The Ombudsman,
The Ceann Comhairle,
The Clerk of the Dáil,
The Clerk of the Seanad.

The Commission will undertake the investigation of complaints in relation to office holders, special advisers, public servants, including civil servants, and senior executives and directors of State bodies.

The Select Committees and the Commission are also entitled to undertake investigations on their own initiative. They both have powers to call witnesses and send for records in pursuing an investigation.

Offences

The Bill creates a number of offences in respect of failure to comply with directions of the Committees or the Commission in relation to investigations. The unauthorised disclosure of information such as that contained in confidential statements will also be an offence.

The Bill amends the Prevention of Corruption Acts, 1889 to 1916 to ensure these apply fully to office holders, directors of State bodies and to all those employed in the civil service and wider public sector. The penalties are also updated and rationalised.

Part I — Preliminary and General

Part I contains provisions for short title, commencement and collective citations and interpretation, and for regulations and expenses.

Part II — Members

Part II provides for statements of interests to be made by Oireachtas Members (including office holders), and a public register of those interests, the appointment of Select Committees in each House to deal with complaints and to investigate possible contraventions of the Act by Oireachtas Members, reports by Committees, the award of costs by Committees, and for guidelines and advice from the Committees.

Part III — Office Holders

Under this Part, office holders will be required to make certain statements additional to those required of them as Oireachtas Members under *Part II*. Arrangements are also put in place to deal with certain gifts (including gifts of services) made to office holders, or to a spouse or child of an office holder.

Part IV — The Public Service

This makes provision for statements of interests to be made by designated directors and those holding designated positions of employment in public bodies, and by special advisers to office holders.

It also provides for procedures relating to personal appointments by office holders.

Part V — The Commission

This contains provisions for the establishment, membership and functions of an independent standing Commission to deal with complaints and to investigate possible contraventions of the Act by office holders, special advisers, and by designated directors and those holding designated positions of employment in public bodies.

Provision is also made for reports of investigations, for guidelines and advice from the Commission, the award of costs, and the making of annual and special reports by the Commission.

Part VI — Miscellaneous

Provision is made supplementing the annual statements requirements of *Parts II, III and IV*, and for the following: action by the Houses where reports of contraventions are laid before them; the discontinuance of investigations in certain circumstances; the powers of the Select Committees and the Commission in investigations; the independence of the Commission and its members; the period during which statements of interests must be retained and be available to the Commission on request; a prohibition of the disclosure of confidential information; the mandatory nature of determinations of the Committees and the Commission; provisions in relation to offences; and the amendment of the Prevention of Corruption Acts, 1889 to 1916.

Detailed Provisions.

Part I — Preliminary and General

Sections 1 to 4 respectively contain provisions for: short title, commencement, partial cesser and collective citations; interpretation; regulations; and expenses.

Section 1 provides that the Act will be commenced in relation to Ministers, Ministers of State, special advisers, and the holders of

designated directorships or positions of employment in public bodies, by order of the Government. In relation to the Houses of the Oireachtas and the Members of these, including the Chairman and Deputy Chairman and the Clerks and committees, the Act will be commenced by resolutions of the Houses.

Section 2 provides for interpretation. Two definitions are of special importance viz. "material interest" and "connected person".

Simply stated, a "material interest" (or possible conflict of interest) arises where the performance of the duties or functions of an office or employment could so affect the personal interests of the office holder or employee or those of a "connected person" as to confer a significant personal benefit.

"Connected person" includes a spouse or child, other close relatives, certain trustees, partners, and connected or controlled companies.

Both definitions are contained in *section 2 (3)* and *2 (2)* respectively.

Section 3 provides for regulations in which, *inter alia*, the Minister for Finance will be able to designate directorships and positions of employment in the public bodies covered by the *First Schedule*. The holders or occupiers of these directorships or positions will be required to make the disclosures of interests referred to above.

Part II — Members

Section 5 provides that Oireachtas Members (including Ministers and Ministers of State) will furnish annually to the Clerk of the Dáil or Seanad, as appropriate, a written statement of their registrable interests (listed in the *Second Schedule*). These statements will be in respect of Members' interests only i.e. the interests of spouses or children will not be given (except in the case of office holders—see *Part III* below).

It is also provided that it will not be necessary to specify in such statements, the amount or value of any interest or the remuneration of any outside occupation.

Section 6 requires each Clerk to enter each statement received, or a copy, in an annual register and to lay that Register before the relevant House within a set time, to publish it in the Irish Oifigiúil, and to provide a copy to the Commission (see *Part V* below). Statements of Ministers and Ministers of State will also be given to the Taoiseach.

The Clerks will be empowered to correct errors in the register and to take account of any statements made under *section 28* (e.g. voluntary updating statements — see *Part VI* below). Details of these will be published also.

Section 7 requires that an Oireachtas Member (including a Minister or Minister of State), speaking or voting in Oireachtas proceedings in which that person or a "connected person" has a "material interest", must declare that fact. No such statement need be made if the relevant interest has already been disclosed in the Member's annual statement.

Such declarations will be published in the Order Paper of the relevant House of the Oireachtas.

Sections 8 and *9* provide for the appointment by each House of a Select Committee on Members' Interests to deal with complaints about, and to investigate possible contraventions of the Act by serving

Members (excluding office holders — see under *Part V* below for the position in relation to these).

Complaints by non-Members will be made to the relevant Clerk who will refer these to the relevant Select Committee, unless he or she considers the complaint to be frivolous or vexatious. In such cases the Clerk will report that finding to the complainant, the Member complained of, and the Select Committee.

Members complaining about possible contraventions of the Act by other Members will do so directly to the relevant Select Committee. However, under *section 29* (see *Part VI*), such complaints will not be proceeded with if the committee forms the opinion that the complaint is frivolous or vexatious. In such cases, the complainant and the person complained of will be notified accordingly, in writing.

Sections 8 and *9* provide also that complaints made or investigations commenced will be taken no further if the Member complained of, or under investigation, ceases to be a Member, unless that Member requests the Committee to carry out, or complete, an investigation.

Under *section 10*, a Committee will prepare a report on each investigation it completes setting out its findings as follows:—

whether there has been a contravention of the Act, whether it is continuing, and, if so, the steps to be taken by the Member to secure compliance with the Act;

whether, where the Committee finds that there has been no contravention, the complaint was frivolous or vexatious or that there were no reasonable grounds for it;

whether any contravention was inadvertent or negligent or reckless or intentional;

whether the contravention was a serious or minor matter;

where there has been a contravention, whether the Member acted in good faith or in the belief that he or she had acted in accordance with guidelines issued or written advice given by a Committee.

Where a report finds that a Member was in contravention of the Act, that report will be laid before the relevant House (see under *section 27, Part VI* for the sanctions that could apply in this situation). Otherwise, reports are made to the Member complained of, and any complainant.

Where a report of a Select Committee on Members' Interests finds that a Member is to take specified steps to secure compliance with the Act, he or she must take those steps as soon as may be or as otherwise directed (see *section 34* in *Part VI*).

Section 11 provides that where a Committee finds that a complaint is frivolous or vexatious or that there has not been a contravention and that there were no reasonable grounds for the complaint, it may order that a complainant is to pay some or all of the costs and expenses incurred subject to a limit of £1,000 in relation to the investigation. These costs will be measurable by the Committee and will be recoverable as a simple contract debt in the courts.

Under *section 12*, a Select Committee will be obliged, after consultation with the other Select Committee and the Commission, to publish mandatory guidelines concerning the steps to be taken by Members to ensure compliance with the Act. Members will also be

able to seek specific advice on any provision of the Act and, where the relevant Committee gives such advice, the Member must act on it.

Pending a Committee's response to a request for advice e.g. in relation to whether a particular interest is registrable, any requirement to include such an interest in the annual statement will not apply. The Committee will have 21 days to respond to a request. If the advice emerges that the interest is registrable, the Member will be obliged to disclose it in the annual statement, or if that statement has already been made, in a separate amending statement under *section 28* (see *Part VI*).

Section 12 also provides that a Committee will not recommend certain of the sanctions provided for under *section 27, Part VI*, where it finds that a Member, or where the Commission finds that an office holder, contravened the Act while acting in good faith or in the belief that his or her actions were in accordance with guidelines published, or advice given in writing, by a Committee or the Commission, as appropriate.

Part III — Office holders

"Office holder" is defined in *section 2, Part I* as including Ministers, Ministers of State, and the Chairman and Deputy Chairman of both Houses of the Oireachtas. There is also scope to designate, by resolution of the relevant House or Houses, the chairpersons of Oireachtas committees as office holders for the purposes of the Act.

In *Part III*, office holders are required to make certain statements additional to those required of them as Oireachtas Members under *Part II*.

Section 13 requires office holders when making an annual statement under *section 5*, to make a confidential statement of any "additional interests" i.e. certain interests (defined by reference to the *Second Schedule*) of a spouse or child which could materially influence the office holder in the performance of his or her functions.

Such statements of "additional interests" will be made to the relevant Clerk, but will not be published. The Clerk will copy these statements to the Commission and, in the case of office holders who are Ministers and Ministers of State, to the Taoiseach.

As in the case of annual statements made by Oireachtas Members, it will not be necessary to specify the amount or value of any interest or the remuneration of any outside occupation.

Section 14 provides that where a Minister or Minister of State has a "material interest" (see under *section 2* above) in the personal performance of his or her function as a Minister, he or she will be obliged to furnish a written statement to the Taoiseach setting out the facts and the nature of the interest. Where the Taoiseach has such a material interest, he or she will furnish such a statement to the Chairman of the Commission. Other office holders will furnish such statements to the Commission.

Any such statement not furnished directly to the Commission will, nevertheless, be available to it on request e.g. in the event of an investigation (see under *section 32, Part VI*).

Section 15 deals with gifts of real and personal property made to an office holder or a spouse or child. It also deals with services offered or supplied free of charge or at a price less than the commercial price

and with property offered or supplied at such a price or loaned (including leased or let) on such a basis.

Gifts the value of which exceed £500 given to an office holder (or to a spouse or child of an office holder) in virtue of his or her office will be deemed to be gifts to the State and will vest in the Minister for Finance.

Gifts given to an office holder or a spouse or child of an office holder by a friend or relative for personal reasons will not be regarded as gifts given in virtue of office. Neither will gifts given by virtue of some other office or position or status held by the recipient, nor will gifts given as a contribution to the election expenses of the office holder (the latter will be a matter for separate legislation).

The *section* also makes general provision for the reporting of gifts made by virtue of office, and for the custody and disposal (including loan, sale, or donation for charitable purposes) of such gifts on behalf of the State.

Part IV — The Public Service

Section 16 requires that any person holding a “designated directorship” (see under *section 3* above) in a public body (see the *First Schedule*) will be required to make a confidential annual statement (to the public body and to the Commission) of the person’s interests (and those of a spouse or child) which could materially influence that director in the performance of the functions of the directorship. “Interests” is defined by reference to the *Second Schedule*.

Where a function falls to be performed by the director in respect of which he or she or a “connected person” has a “material interest” (see under *section 2* above), that director will be required to inform the other directors of the relevant facts in writing.

That director will also be obliged not to perform the function unless there are compelling reasons requiring him or her to so do, and in this situation he or she will be required to provide a written statement of those reasons to the other directors and to the Commission.

It will be a term of the office of a designated director that he or she will comply with these disclosure requirements.

Section 17 provides for similar disclosure arrangements for those holding “designated positions” of employment (see under *section 3* above) in public bodies (see the *First Schedule*).

As in the case of designated directors, these employees will be required to make the same kind of confidential annual statements of interests, but to the “relevant authority”. The “relevant authority” will be determined by the Minister for Finance and normally will be the head of, or a senior person in, the organisation in which the employee works and, in some cases, the Commission.

These employees will also be required to follow the same procedures in respect of situations where a “material interest” arises. In such cases the necessary details of the “material interest” and of the compelling reasons requiring the performance of the particular function will be furnished, in writing, to the “relevant authority”.

As in the case of directors, the requirement to meet these disclosure requirements will be a term of the employment of the holder of the designated position.

Section 18 deals with "special advisers"; broadly stated advisers and personal assistants. See *section 18 (1)* for the definition.

The period for which persons are special advisers will end not later than the date on which the relevant Minister or Minister of State ceases to hold office and this will be a term of the conditions of appointment. It will not be possible for the Government to appoint special advisers, or former special advisers, to established positions in the civil service.

Ministers will be required to lay details of the contracts or appointments of all special advisers before the Houses and, if the special adviser is a relative, a statement of that fact.

Senior special advisers (the level will be prescribed by regulations) will be subject to similar disclosure requirements as will apply to designated directors and the holders of designated positions under *sections 16* and *17* respectively. Their annual statements and the statements required in respect of a "material interest" will be made to the Minister to whom the adviser is assigned, and to the Commission.

Senior special advisers will also be required to undertake not to engage in any other employment which might reasonably be seen as capable of interfering with, or being incompatible with, the advisership.

Ministers will be required to lay the annual statements of their senior special advisers (except for any interests of a spouse or child) before both Houses of the Oireachtas, together with details of the qualifications of the adviser relevant to the functions of the position.

As in the case of directors and the holders of designated positions of employment, the requirement to meet these disclosure requirements, and to give the undertaking, will be a term of the special advisership.

Section 19 contains technical provisions relating to the annual statements to be made by designated directors, the holders of designated positions of employment and special advisers and the period to be covered by the first and subsequent such statements. It also provides that the Minister for Finance will specify the dates on which statements will be required, and the form of, and the specific information which will be required to be given in, such statements.

It also provides that, as in the case of annual statements made by Oireachtas Members and office holders, it will not be necessary to specify the amount or value of any interest or the remuneration of any outside occupation.

Part V — The Commission.

Section 20 establishes a Commission with the following membership:—

- the Comptroller and Auditor General,
- the Ombudsman,
- the Chairman of Dáil Éireann,
- the Clerk of Dáil Éireann,
- the Clerk of Seanad Éireann.

The section also makes provision for the temporary appointment of persons to act in place of members in the event of vacancy or inability

to act, a prohibition on members acting in respect of a matter affecting themselves or an employee, quorum for meetings, the appointment of a Chairman, permitting decisions by majority vote and casting vote for Chairman. Provision is also made for allowing the Commission to act in event of vacancies — except in relation to investigations, the delegation of functions to staff of Commission, allowing the Commission to determine its business and procedure by standing orders or otherwise, and, finally, there is provision for the staffing and expenses of the Commission.

Section 21 sets out the complaints mechanism in respect of alleged contraventions of the Act by office holders, special advisers, designated directors and the holders of designated positions of employment, while *section 22* provides for the investigation by the Commission of such complaints, and for related matters.

Section 22 provides also for investigations by the Commission of possible contraventions of the Act, acting on its own initiative i.e. in the absence of a formal complaint. Where such an investigation concerns a designated director or holder of a designated position, the Commission must first consult the relevant Minister and public body explaining why an investigation is warranted and giving them an opportunity to make representations. Having considered any such representations, the Commission will not investigate unless it considers it appropriate so to do and where an adequate investigation will otherwise not be carried out.

Complaints can be made about, and investigations conducted in respect of possible contraventions of the Act by, persons in respect of any time when they were office holders, special advisers, or designated directors or holders of designated positions in public bodies.

This applies even if the person concerned are no longer serving, unlike the position relating to Oireachtas Members.

Section 23 requires the Commission, in respect of every investigation it completes to provide a written report to the person the subject of the investigation, the person who made the complaint (if any), and to the relevant Minister where appropriate.

The contents of these reports will be similar to those provided for in respect of reports of the Committees (see under *section 10, Part II*).

If the Commission's report finds that an office holder was in contravention of the Act, the report will be furnished to the relevant Select Committee and the Committee will cause a copy of that report to be laid before the relevant House (see under *section 27, Part VI* for the sanctions that could apply in this situation).

Where a Minister receives a report from the Commission of a contravention of the Act by a special adviser, or by a designated director or the holder of a designated position in a public body, he or she can lay that report before both Houses of the Oireachtas.

Section 23 also provides that where, during or after an investigation of a contravention, the Commission suspects that an offence has been committed (under the Act or otherwise) it will refer the matter to the DPP. The DPP will advise whether or not proceedings have been taken and, if so, the outcome of these. These details will be included in the Commission's report of the investigation of the contravention.

Provision is also made to allow the Commission to adjourn or

postpone an investigation and to issue an interim written report in such cases or in a case where the DPP has indicated that a prosecution has been undertaken following a referral from the Commission.

Under *section 24* the Commission will be obliged, after consultation with the Select Committees, to publish mandatory guidelines concerning the steps to be taken by office holders, special advisers, designated directors and the occupiers of designated positions in public bodies, to ensure compliance with the Act. Such persons will also be able to seek specific advice on any provision of the Act and, where the Commission gives such advice, they must act on it.

Pending the Commission's response to a request for advice e.g. in relation to whether a particular interest need be disclosed in an annual statement, any requirement to include such an interest in the annual statement will not apply. The Commission will have 21 days to respond to such requests. If the advice emerges that the interest is to be disclosed, the person will be obliged to make that disclosure in the annual statement, or if that statement has already been made, in a separate amending statement under *section 28, Part VI*.

Section 25 provides that where the Commission finds that a complaint was frivolous or vexatious or that there has not been a contravention and that there are no reasonable grounds for the complaint, it will be able to order that a complainant is to pay some or all of the costs and expenses (subject to a limit of £1,000) incurred in the investigation. These costs and expenses will be measurable by the Commission and will be recoverable as a simple contract debt in the courts.

Section 26 provides for the making by the Commission of annual and special reports (other than reports under *section 23* in respect of investigations) to the Minister for Finance and for the laying of such reports before the Houses of the Oireachtas.

Part VI — Miscellaneous.

Section 27 provides that where reports of a Committee, or reports of the Commission furnished to a Committee, are laid before a House (i.e. reports that a Member or office holder had been found in contravention of the Act), the Committee may cause a motion to be moved for a resolution that the House take any of the following actions i.e. the noting of the report, the censuring of the Member or office holder, and, or, his or her suspension from the House with or without pay for a specified period.

By virtue of *section 12* (see *Part II*), a Committee will not recommend anything other than the noting of the report where the report finds that a person contravened the Act while acting in good faith or in the belief that his or her actions were in accordance with guidelines published, or advice given in writing, by the Committees or the Commission.

Section 28 provides for the making of statements outside the periods specified in respect of annual statements under *section 5, 13 and 19*.

Provision is made for the voluntary amendment of statements where the interests of the person change between the making of one annual statement and the next. For example, if a person's interests change before the next annual statement is due, he or she may update voluntarily the annual statement already made.

Annual statements which are submitted late are also provided for, as are statements made on foot of guidelines issued or advice given

by the Commission or by a Select Committee under *sections 24 or 12* respectively. Statements furnished on foot of a report of a contravention by a Select Committee or the Commission under *section 10 or 23* respectively are provided for also.

Such statements will be processed and published in the same way as the annual statements to which they relate.

Section 29 provides for the discontinuance of an investigation by the Commission or by a Select Committee where it is of the opinion that the relevant complaint was frivolous or vexatious. The complainant and the person complained of will be notified accordingly, in writing.

Section 30 sets out the powers of the Commission and the Select Committees in relation to investigations. It provides for the following; requiring the attendance of the person who is the subject of the complaint, requiring the attendance and giving of evidence by witnesses and the production of documents and things, the giving of directions, and the payment of witnesses' expenses.

The section also creates a number of offences in respect of investigations. Failure to attend before a Committee or the Commission, or failure to take an oath or answer certain questions or comply with certain directions, or actions similar to contempt of court or perjury, will be offences which will be prosecuted summarily or on indictment.

Detailed provision is made in respect of the procedures to be followed by the Commission and by Select Committees.

Provision is also made for the following: majority decisions by the Commission or a Select Committee; privileges and immunities of witnesses similar to those to which witnesses in a court are entitled; allowing the Commission and the Select Committees to sit in private; and allowing the Commission and the Committees to adjourn or postpone proceedings in relation to an investigation.

Section 31 provides for the independence of the Commission and its members in the performance of their functions under the Act.

Section 32 requires that all statements of interests (other than those published in the Registers of Members' Interests) be retained for a period of 15 years to be available to the Commission, on request during that period.

Section 33 makes it an offence for a person to disclose information obtained by him or her under the Act or by being present at a sitting of the Commission or a Select Committee on Members' Interests. The purpose is to protect the confidentiality of certain statements of interests and certain Commission and Select Committee proceedings.

Certain disclosures within public bodies are allowed in respect of statements of interests where such disclosure is for the purposes of identifying a possible conflict between the interests of the person who made the statement and the public interest.

Disclosure of information by a person in the performance of his or her functions is also allowed, as are certain disclosures in the public interest or pursuant to an order of a court. Finally, disclosure of information contained in a report of the Commission or a Select Committee not laid before either House is allowed by or with the consent of the person to whom the report relates.

Section 34 provides that, where a report of the Commission or a Select Committee on Members' Interests contains a determination that a person is to take specified steps to secure compliance with the Act, he or she must take those steps as soon as may be or as otherwise directed.

Section 35 makes provision in relation to the offences created under *sections 30* and *33* (see above). Persons summarily convicted will be liable to a maximum fine of £1,000 and, or, a maximum of six months imprisonment, while those convicted on indictment will be liable to a maximum fine of £20,000 and, or, a maximum of three years imprisonment.

Section 36 amends the Prevention of Corruption Acts 1889, to 1916 to ensure that the Acts apply not only to all public sector employees but to office holders, special advisers and directors of public bodies as defined in the Act.

The penalties are also updated and rationalised. Specific provision is made on summary conviction for a maximum fine of £1,000 and, or, a maximum term of imprisonment of 12 months. On conviction on indictment, the fine and term of imprisonment is set at a maximum of £50,000 and, or, a maximum of seven years imprisonment.

First Schedule — Public Bodies.

This Schedule (read with *sections 2* and *3*) specifies the public bodies in which directorships or positions of employment may be designated by the Minister for Finance, the holders of which will be obliged to make statements of interest under, and otherwise meet the requirements of, *sections 16* or *17*.

The Schedule is designed to cover all public sector bodies, including civil service departments and offices, local authorities, health boards, the commercial and non-commercial State bodies, and bodies or organisations financed wholly or partly out of monies provided by the Oireachtas.

Second Schedule — Registrable Interests.

The Second Schedule sets out what is meant by "registrable interest" or "interests" for the purposes of the statements to be made by Oireachtas Members under *section 5* or *7*, by office holders under *sections 13* and *14*, by designated directors and the holders of designated positions of employment under *section 16* or *17* respectively, and by special advisers under *section 18*.

Members, office holders, directors, employees, and special advisers will identify, by reference to these categories, the interests to be disclosed in statements.

Subparagraphs (1) to (9) of the Schedule cover the following:—

(1) Income in excess of £2,000 from another trade, profession or employment etc. in the period covered by the statement (referred to hereafter as the "relevant period").

(2) Any holding of shares, bonds, debentures and similar investments with a value in excess of £10,000 in a company or enterprise etc. at any time during the relevant period.

(3) Any directorship, or shadow directorship of any company in the relevant period.

(4) Any interest in land the value of which exceeded £10,000, in the

relevant period but excluding any private home (and land subsidiary or ancillary to that home) of the person making the statement or of his or her spouse.

(5) Certain gifts worth over £500, or gifts from any one person the aggregate value of which exceeded £500, in the relevant period.

This requirement applies equally to gifts of property or services. It also applies where property or services were provided at below commercial prices and where the resulting saving from any one source exceeded £500 in the relevant period.

Gifts given by relatives and friends for purely personal reasons need not be disclosed, unless they could have materially influenced a person in the performance of his or her functions.

(6) Travel facilities, living accommodation, meals or entertainment supplied free of charge or at a price less than the commercial price.

Such facilities etc. provided within the State or in the course of the recipient's work e.g. as an Oireachtas Member or under (1) above are excluded, as are facilities provided by a relative or friend as a personal gift (unless the acceptance of these might reasonably be seen as capable of influence).

Also excluded are facilities etc. provided free of charge or at a price(s) less than the commercial price(s) where the difference or aggregate difference in value did not exceed £500 in the relevant period.

(7) Any paid position held as political or public affairs lobbyist, consultant or adviser.

(8) Any contract in the relevant period with a public body worth over £5,000 (or where the aggregate of such contracts exceeded this amount) in which the person making the statement had a direct or indirect interest.

(9) Any other interests held by a person which could have materially influenced him or her in the performance of his or her functions.

It will not be necessary to specify in any statement of interests the amount or monetary value of any interest or the remuneration of any outside occupation.

In the case of Oireachtas Members, the format of annual statements and the information which will be required therein in respect of the interests listed above will be determined by the Clerks after consultation with the Select Committees and the Commission. In all other cases, these will be matters for the Minister for Finance.

*Oifig an Tánaiste,
Bealtaine, 1994.*

APPENDIX V

Summary of the Nolan Report (The United Kingdom)

Standards in Public Life

Summary of the Nolan Committee's First Report on Standards in Public Life

At the request of the Prime Minister, the Nolan Committee has spent six months inquiring into standards in British public life. We have concentrated on Members of Parliament, Ministers and Civil Servants, executive Quangos and NHS bodies.

We cannot say conclusively that standards of behaviour in public life have declined. We can say that conduct in public life is more rigorously scrutinised than it was in the past, that the standards which the public demands remain high, and that the great majority of people in public life meet those high standards. But there are weaknesses in the procedures for maintaining and enforcing those standards. As a result people in public life are not always as clear as they should be about where the boundaries of acceptable conduct lie. This we regard as the principal reason for public disquiet. It calls for urgent remedial action.

This leaflet summarises the Committee's unanimous conclusions and lists its recommendations.

The Seven Principles of Public Life

Selflessness

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

Integrity

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

Objectivity

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

Accountability

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

Openness

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

Honesty

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

Leadership

Holders of public office should promote and support these principles by leadership and example.

.....

**These principles apply to all aspects of public life.
The Committee has set them out here for the benefit of
all who serve the public in any way.**

General recommendations

**Some of our conclusions have general application
across the entire public service:**

Principles of public life

The general principles of conduct which underpin public life need to be restated.
We have done this in the seven principles opposite.

Codes of Conduct

All public bodies should draw up Codes of Conduct incorporating these principles.

Independent Scrutiny

Internal systems for maintaining standards should be supported by independent scrutiny.

Education

More needs to be done to promote and reinforce standards of conduct in public bodies,
in particular through guidance and training, including induction training.

Members of Parliament

A fall in public confidence in the financial probity of MPs has coincided with an increase in the number of MPs holding paid consultancies which relate to their Parliamentary role. Some 30% of backbench MPs now hold such consultancies.

The House of Commons would be less effective if all MPs were full-time professional politicians, and MPs should not be prevented from having outside employment.

It reduces the authority of Parliament if MPs sell their services to firms engaged in lobbying on behalf of clients. This should be banned.

Other Parliamentary consultancies and the fact that some MPs have more than one are also a cause for concern. It is impossible to be certain that MPs with such consultancies never allow their financial interests to affect their actions in Parliament, yet this would clearly be improper.

Guidance associated with the Register of Members' Interests has led to some confusion among MPs as to what conduct is acceptable. The long-established law of Parliament in this area should be reaffirmed.

Full disclosure of consultancy agreements and payments, and of trade union sponsorship agreements and payments, should be introduced immediately. Over the next year Parliament should review the merits of allowing MPs to hold consultancies, taking into account the wider implications of greater restrictions.

The Register of Interests should be more informative. The rules on declaring interests, and on avoiding conflicts of interest, should be set out in more detail. A Code of Conduct for MPs should be drawn up. We have set out a draft. The Code should be restated at the start of each new Parliament. More guidance for MPs, including induction sessions, should be available.

The public needs to know that the rules of conduct governing MPs' financial interests are being firmly and fairly enforced. There have been calls for these rules to be put into statute

law and enforced by the courts. We believe that the House of Commons should continue to be responsible for enforcing its own rules, but that better arrangements are needed.

By analogy with the Comptroller and Auditor General, the House should appoint as Parliamentary Commissioner for Standards, a person of independent standing who will take over responsibility for maintaining the Register of Members' Interests; for advice and guidance to MPs on matters of conduct; for advising on the Code of Conduct; and for investigating allegations of misconduct. The Commissioner's conclusions on such matters would be published.

When the Commissioner recommends further action, there should be a hearing by a sub-committee of the Committee of Privileges, comprising up to seven senior MPs, normally sitting in public, and able to recommend penalties when appropriate. MPs who are being heard should be entitled to be accompanied by advisers.

Ministers and Civil Servants

Very high standards of conduct are rightly expected from Ministers and civil servants. While there is public disquiet, this focuses on fairly narrow issues.

A Code of Conduct for civil servants has recently been announced. The existing guidance for Ministers is sound but needs to be drawn together into a clear set of principles.

The public interest requires that allegations of ministerial misconduct be promptly investigated. Normally this is a matter for the Prime Minister. Who should investigate, and whether to publish a report, will vary from case to case, but in such cases civil servants should not be drawn into the party debate and their advice should remain confidential.

There has been much concern over Ministers who, on leaving office take positions in companies with which they have had official dealings. For two years after leaving office senior civil servants have to seek clearance from an independent advisory committee before joining private companies. The same need to protect the public interest arises with Ministers and special advisers, who should be subject to a similar clearance system.

For both Ministers and civil servants the system should be made more open to public scrutiny than at present.

There is insufficient monitoring of the effectiveness of similar arrangements for more junior civil servants, and these should be reviewed.

Very large changes in the management and structure of the civil service have taken place. Greater delegation and diversity mean that more positive action has to be taken to reduce the risk of impropriety. In particular, political interference in the pay and promotion of individuals must be avoided.

While the new independent appeal system for civil servants is welcome, better arrangements within Departments for the confidential investigation of staff concerns on propriety are needed.

More needs to be done to ensure that all civil servants remain aware of the standards of conduct required in the public sector.

The rules on acceptance of gifts and hospitality for both Ministers and civil servants are sufficiently strict, and need not be changed.

Quangos

(Executive NDPBs and NHS Bodies)

Executive Non-Departmental Public Bodies (NDPBs) and National Health Service bodies are public bodies with executive powers whose Boards are appointed by Ministers. They have almost 9000 Board Members and spend some £40bn a year.

There is much public concern about appointments to Quango Boards, and a widespread belief that these are not always made on merit. The Government has committed itself publicly to making all appointments on merit.

While individual posts should always be filled purely on merit, it is important that the overall composition of boards should represent an appropriate mix of relevant skills and background. This range should be clearly and publicly set out in job specifications.

Ministers should continue to make board appointments, but an independent Public Appointments Commissioner should be appointed to regulate, monitor and report on the public appointments process.

The Government is already taking steps to develop best practice and to ensure that the widest range of candidates is secured. In future the Commissioner should recommend best practice and Departments should have to justify any departures from it.

Formal and impartial assessment of candidates is essential. The advisory panels being introduced in the NHS should become universal, and they should all include an independent element. All candidates whom Ministers consider for all appointments should have been approved as suitable by an advisory panel.

Following recent scandals, much has been done to improve and standardise arrangements to secure high standards of conduct in NDPBs. This process needs to continue. All NDPBs and NHS bodies should have codes of conduct, in line with the principles which apply to all public bodies, for board members and staff.

There remain differences in the legal framework governing standards of conduct in NDPBs, NHS bodies and local authorities. The Government needs to review this area and consider whether greater consistency can be achieved.

Further steps are needed to safeguard propriety both internally and externally. Internally, the Accounting Officer's responsibility for propriety as well as financial matters needs to be emphasised, and better confidential avenues are needed for investigation of staff concern about propriety.

Externally, the role of auditors in propriety matters needs to be emphasised. Audit arrangements should be reviewed to ensure that best practice applies to all bodies.

Recommendations

We set out below our specific recommendations.

More details on each are in the relevant chapter of our report.

We believe it would be helpful to those to whom we have addressed the report if we gave some broad indication of the timescale within which we consider that recommendations could be implemented. We therefore place our recommendations into one of three broad categories:

- A those recommendations which we believe could be implemented with the minimum of delay;**
- B those recommendations which could in our view be implemented—or on which we would expect to see significant progress towards implementation—by the end of this year;**
- C recommendations which we recognise will take longer to implement, but on which we would wish to re-examine progress in the latter part of next year.**

Members of Parliament

1. Members of Parliament should remain free to have paid employment unrelated to their role as MPs. [A]
2. The House of Commons should restate the 1947 resolution which places an absolute bar on Members entering into contracts or agreements which in any way restrict their freedom to act and speak as they wish, or which require them to act in Parliament as representatives of outside bodies. [A]
3. The House should prohibit Members from entering into any agreements in connection with their role as Parliamentarians to undertake services for or on behalf of organisations which provide paid Parliamentary services to multiple clients or from maintaining any direct or active connections with firms, or parts of larger firms, which provide such Parliamentary services. [B]
4. The House should set in hand without delay a broader consideration of the merits of Parliamentary consultancies generally, taking account of the financial and political funding implications of change. [A]
5. The House should:
 - require agreements and remuneration relating to Parliamentary services to be disclosed; [B]
 - expand the guidance on avoiding conflicts of interest; [B]
 - introduce a new Code of Conduct for Members; [B]
 - appoint a Parliamentary Commissioner for Standards; [B]
 - establish a new procedure for investigating and adjudicating on complaints in this area about Members. [B]

6. On disclosure of interests we recommend:

- the Register should continue broadly in its present form, and should be published annually. [B]

However the detailed entry requirements should be improved to give a clearer description of the nature and scope of the interests declared;

- updating of the Register should be immediate. The current updated version should be made more widely available electronically; [B]
- from the beginning of the 1995/96 session (expected in November) Members should be required to deposit in full with the Register any contracts relating to the provision of services in their capacity as Members, and such contracts should be available for public inspection; [B]
- from the same time, Members should be required to declare in the Register their annual remuneration, or estimated annual remuneration, in respect of such agreements. It would be acceptable if this were done in bands: eg under £1,000; £1,000–5,000; £5,000–10,000; then in £5,000 bands. An estimate of the monetary value of benefits in kind, including support services, should also be made; [B]
- Members should be reminded more frequently of their obligations to Register and disclose interests, and that Registration does not remove the need for declaration and better guidance should be given, especially on first arrival in the House. [B]

7. Members should be advised in their own interests that all employment agreements which do not have to be deposited should contain terms, or be supported by an exchange of letters, which make it clear that no activities relating to Parliament are involved. [B]

8. The rules and guidance on avoiding conflict of interest should be expanded to cover the whole range of business pertaining to Parliament, and particular attention should be paid to Standing Committees. [B]

9. The House should draw up a Code of Conduct setting out the broad principles which should guide the conduct of Members; this should be restated in every new Parliament. [B]

10. The Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament. [C]

11. On procedure we recommend:

- the House should appoint a person of independent standing, who should have a degree of tenure and not be a career member of the House of Commons staff, as Parliamentary Commissioner for Standards; [B]
- the Commissioner should have the same ability to make findings and conclusions public as is enjoyed by the Comptroller and Auditor General and the Parliamentary Commissioner for Administration; [B]

-
- the Commissioner should have independent discretion to decide whether or not a complaint merits investigation or to initiate an investigation; [B]
 - the Commissioner should be able to send for persons, papers and records, and will therefore need to be supported by the authority of a Select Committee with the necessary powers; [B]
 - we consider that a sub-committee of the Committee of Privileges, consisting of up to seven very senior Members, would be the best body to take forward individual cases recommended by the Commissioner for further consideration; we recommend that such a sub-committee should be established; [B]
 - in view of the fact that there would be a prima facie case to investigate, we recommend that hearings of the proposed sub-committee should normally be in public. We also recommend that the sub-committee should be able to call on the assistance of specialist advisers and that a Member who so wishes should be able to be accompanied by advisers before the sub-committee; [B]
 - the sub-committee should be given discretion to enable an adviser to act as the Member's representative at hearings; [B]
 - as the sub-committee would report to the full Privileges Committee this would have the practical effect of giving the Member a right of appeal to that Committee. Only the most serious cases should need to be considered by the whole House. [B]

The Executive: Ministers and Civil Servants

12. The first paragraph of Questions of Procedure for Ministers (QPM) should be amended to say: 'It will be for individual Ministers to judge how best to act in order to uphold the highest standards. It will be for the Prime Minister to determine whether or not they have done so in any particular circumstance.' [A]

13. The Prime Minister should put in hand the production of a document drawing out from QPM the ethical principles and rules which it contains to form a free-standing code of conduct or a separate section within a new QPM. If QPM is to remain the home for this guidance, we recommend that it is retitled 'Conduct and Procedure for Ministers' to reflect its scope. [A/B]

14. Careful consideration should be given to ensuring that the most appropriate means is used for the investigation of cases of alleged impropriety affecting Ministers. Other than in exceptional circumstances, the general rule that advice from civil servants to Ministers should not be made public should apply in these cases. [A]

15. A system similar to the civil service business appointment rules should apply to Ministers. The system should operate on an advisory basis, and it should be administered by the existing Advisory Committee on Business Appointments. [A]

16. In parallel with the civil service arrangements for permanent secretaries, an automatic waiting period of three months should apply to former Cabinet Ministers, but not to other Ministers or Whips. In cases where a further waiting period is recommended, the maximum waiting period should be set at two years from the date of leaving office. [A]

17. The advisory committee should be able to advise an applicant, whether a civil servant or a former Minister, that they feel that the application is not appropriate, and to make public that advice if it is not taken. [A]

18. Former Ministers, having received the advice of the advisory committee, should have the right of appeal to the Prime Minister of the day, who would be able to reduce any waiting period or relax any conditions if the appeal were well-founded. [A]

19. The system should be as open as possible, while protecting the personal privacy of Ministers. [A]

20. The Government should monitor the workload of the advisory committee under the new arrangements and put in place contingency arrangements for its staffing to be augmented to deal with the aftermath of any change of administration. [B]

21. Departments, as well as maintaining records of gifts, should maintain records of hospitality accepted by Ministers in their official capacity and should make these records available if asked to do so. [A]

22. The new performance pay arrangements for the senior civil service should be structured so as not to undermine political impartiality. [A]

23. The draft civil service code should be revised to cover circumstances in which a civil servant, while not personally involved, is aware of wrongdoing or maladministration taking place. [A]

24. The operation of the appeals system under the Code should be disseminated as openly as possible, and the Commissioners should report all successful appeals to Parliament. [B]

25. Departments and agencies should nominate one or more officials entrusted with the duty of investigating staff concerns raised confidentially. [A]

26. The new civil service code should be introduced with immediate effect, without waiting for legislation. [A]

27. The Cabinet Office should continue to survey and disseminate best practice on maintaining standards of conduct to ensure that basic principles of conduct are being properly observed. [A]

28. There should be regular surveys in departments and agencies of the knowledge and understanding staff have of ethical standards which apply to them; where such surveys indicate problem areas, guidance should be reinforced and disseminated appropriately, particularly by way of additional training. [A]

29. The Advisory Committee on Business Appointments should, when an appointment has been taken up, give the reasons for its decision in that particular case. [A]

30. The operation, observance and objectives of the civil service business appointment rules should be reviewed. [B]

31. Special advisers should be subject to the business appointment rules. [A]

32. A central or local record of invitations and offers of hospitality accepted should be kept in all departments and agencies. There should be clear rules specifying the circumstances in which staff should seek management advice about the advisability of accepting invitations and offers of hospitality. [A]

Quangos

*(Executive Non-Departmental Public Bodies and
National Health Service Bodies)*

Appointments

33. The ultimate responsibility for appointments should remain with Ministers. [A]

34. All public appointments should be governed by the overriding principle of appointment on merit. [A]

35. Selection on merit should take account of the need to appoint boards which include a balance of skills and backgrounds. The basis on which members are appointed and how they are expected to fulfil their role should be explicit. The range of skills and background which are sought should be clearly specified. [A]

36. All appointments to executive NDPBs or NHS bodies should be made after advice from a panel or committee which includes an independent element. [C]

37. Each panel or committee should have at least one independent member and independent members should normally account for at least a third of membership. [C]

38. A new independent Commissioner for Public Appointments should be appointed, who may be one of the Civil Service Commissioners. [B]

39. The Public Appointments Commissioner should monitor, regulate and approve departmental appointments procedures. [C]

40. The Public Appointments Commissioner should publish an annual report on the operation of the public appointments system. [C]

41. The Public Appointments Unit should be taken out of the Cabinet Office and placed under the control of the Public Appointments Commissioner. [B]

42. All Secretaries of State should report annually on the public appointments made by their departments. [B]

43. Candidates for appointment should be required to declare any significant political activity (including office-holding, public speaking and candidature for election) which they have undertaken in the last five years. [B]

44. The Public Appointments Commissioner should draw up a code of practice for public appointments procedures. Reasons for departures from the code on grounds of "proportionality" should be documented and capable of review. [C]

Propriety

45. A review should be undertaken by the Government with a view to producing a more consistent legal framework governing propriety and accountability in public bodies, including executive NDPBs, NHS bodies and local government. This should involve all relevant departments and be co-ordinated by the Cabinet Office and the Treasury. [C]

46. The adoption of a code of conduct for board members should be made mandatory for each executive NDPB and NHS body. [B]

47. It should be mandatory for the board of each executive NDPB and NHS body to adopt a code of conduct for their staff. [B]

48. Board members and staff of all Executive NDPBs and NHS bodies should be required on appointment to undertake to uphold and abide by the relevant code, and compliance should be a condition of appointment. [B]

49. Sponsor departments should develop clear disciplinary procedures for board members of executive NDPBs and NHS bodies with appropriate penalties for failing to observe codes of conduct. [C]

50. The role of NDPB and NHS accounting officers should be redefined to emphasise their formal responsibility for all aspects of propriety. [B]

51. The Audit Commission should be authorised to publish public interest reports on NHS bodies at its own discretion. [B]

52. The Treasury should review the arrangements for external audit of public bodies, with a view to applying the best practices to all. [C]

53. Each executive NDPB and NHS body that has not already done so should nominate an official or Board Member entrusted with the duty of investigating staff concerns about propriety raised confidentially. Staff should be able to make complaints without going through the normal management structure, and should be guaranteed anonymity. If they remain unsatisfied, staff should also have a clear route for raising concerns about issues of propriety with the sponsor department. [B]

54. Executive NDPBs, supported by their sponsor departments, should:

- develop their own codes of openness, building on the government code and developing good practice on the lines recommended in this report; [B]
- ensure that the public are aware of the provisions of their codes; [B]

sponsor departments should:

- encourage executive bodies to follow best practice and improve consistency between similar bodies by working to bring the standards of all up to those of the best; [B]

the Cabinet Office should:

- produce and periodically update guidance on good practice for openness in executive NDPBs and NHS bodies. [B]

55. New board members should on appointment make a commitment to undertake induction training which should include awareness of public sector values, and standards of probity and accountability. [B]

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APPENDIX VI

**Rules on the Registration and Declaration of Financial Interests
(The United Kingdom)**



HOUSE OF COMMONS

**Rules on the
Registration and Declaration
of Financial Interests**

**Registry of Members' Interests
House of Commons**

October 1994

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HOUSE OF COMMONS

RULES ON THE REGISTRATION AND DECLARATION OF FINANCIAL INTERESTS

INTRODUCTION

1. This guide is produced in accordance with a recommendation in the First Report of the Select Committee on Members' Interests, session 1991-92.¹ That report, which was a wide-ranging review of the House's rules for the registration and declaration of the financial interests of Members of Parliament, was approved by the House on 28 June 1993. The guide is based on the report and uses its exact wording and interpretation as far as possible.
2. The House has two distinct but related methods for the disclosure of the private financial interests of Members of Parliament: *registration* of interests in a Register which is open for public inspection; and *declaration* of interest in the course of debate in the House and in other contexts. The main purpose of the Register is to give public notification on a continuous basis of those pecuniary interests held by Members which might be thought to influence their parliamentary conduct or actions. The main purpose of declaration of interest is to ensure that fellow Members of the House and the public are made aware, *at the time* when a Member is making a speech in the House or in Standing Committee or examining a witness before a Select Committee, of any past, present or potential future pecuniary interest which might reasonably be thought to be relevant to the proceedings.
3. The terms "registration" and "declaration", although often confused, should not be used interchangeably but should distinguish clearly those two separate methods of disclosure. That is how the terms are used in this guide. The rules of registration are described in section I and the rules of declaration in section II. Section III of the guide describes the three other registers, additional to the Register of Members' Interests, which are compiled in accordance with the rules of the House and are available for inspection only by Members of Parliament.
4. All the rules described in this guide derive their authority from resolutions of the House rather than from statute or common law, and are therefore enforced by the House of Commons itself. Members of Parliament (or others) who do not comply with the rules may be adjudged to have committed a contempt of the House and may be disciplined by the House accordingly.
5. Correct observation of the rules of registration and declaration does not exempt a Member from the overriding obligation to have regard to the long-standing rules and resolutions of the House concerning financial inducements and bribes. In the words of Erksine May's Parliamentary Practice:

“the acceptance by any Member ... of a bribe to influence him in his conduct as such Member or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted to intended to be submitted to the House or any committee thereof is a breach of privilege.”²

6. Ministers of the Crown who are Members of the House of Commons are subject to the rules of registration and declaration in the same way as all other Members. In addition, Ministers are subject to guidelines and requirements laid down by successive Prime Ministers and by the Cabinet Office in order to ensure that no conflict arises nor appears to arise between their private interests and their public duties.³ Those requirements are not enforced by the House of Commons and so are beyond the scope of this guide.

I. REGISTER OF MEMBERS' INTERESTS

History and Authority

7. The establishment of a Register of Members' Interests was first approved in principle by a resolution of the House of 22 May 1974, which states:

“That every Member of the House of Commons shall furnish to a Registrar of Members' Interests such particulars of his registrable interests as shall be required, and shall notify to the Registrar any alterations which may occur therein, and the Registrar shall cause these particulars to be entered in a Register of Members' Interests which shall be available for inspection by the public.”

The detailed rules of registration were then drawn up by a Select Committee and approved by the House on 12 June 1975. The first published edition of the Register appeared in December 1975. The 1975 rules have been superseded by the resolution of 28 June 1993, mentioned in the first paragraph of this guide. The governing resolution of 22 May 1974 remains in force.

Administrative arrangements and inspection

8. The duty of compiling the Register rests with the Registrar of Members' Interests, who is a senior official in the Department of the Clerk of the House of Commons. The Registrar also acts as Clerk to the Select Committee on Members' Interests, which is appointed under Standing Order No. 128 and is responsible, among other things, for examining the arrangements made for the compilation, maintenance and accessibility of the Register and for considering any specific complaints made in relation to the registering or declaring of interests.

9. The Committee's practice has been to authorise the printing of the Register once a year, as it stands on a designated date in January. This printed edition is published and put on sale by Her Majesty's Stationery Office. Between those annual publications, the Register is regularly updated in a looseleaf form and, in that form, is available for public inspection in the Registry, which is situated in the Committee Office of the House of Commons.

Inspection is by prior appointment (Tel. 071-219 6615). When the House is sitting, the Register may be inspected between 11 a.m. and 5 p.m. on Monday to Thursday and between 11 a.m. and 3 p.m. on Friday. During parliamentary recesses, and especially during the month of August, more limited hours of inspection apply. A further copy of the looseleaf version of the Register is placed in the Library of the House for the use of Members.

10. Members of Parliament are required to complete a registration form and submit it to the Registrar within three months of taking their seat after a General Election. For a Member returned at a by-election, the time limit is four weeks. The authority of the Select Committee on Members' Interests is required before the first Register of a new Parliament is published; publication may therefore be delayed beyond the three month period, particularly if there is delay in the appointment of the Committee. After the initial publication of the Register, it is the responsibility of Members to notify changes in their registrable interests within four weeks of each change occurring.

Complaints

11. Complaints of failure to disclose interests in accordance with the rules of the House must be made to the Registrar in writing. A complaint by one Member against another is automatically referred by the Registrar to the Select Committee on Members' Interests. A complaint by a member of the public is referred to the Select Committee only if the Registrar is satisfied that the evidence tendered in support of the allegation affords *prima facie* substantiation of its accuracy. The Select Committee has in the past made clear that "it is not sufficient to make an unsubstantiated allegation and expect the Committee to assemble the supporting evidence"; it has further stated that it "would not normally regard a complaint founded upon no more than a newspaper story or a television report as a substantiated allegation."

12. Communications between a member of the public and the Registrar are not covered by Parliamentary privilege nor privileged at law.

Definition of the Register's purpose

13. The main purpose of the Register of Members' Interests is to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought by others to influence his or her actions, speeches or vote in Parliament, or actions taken in his or her capacity as a Member of Parliament.

14. The registration form specifies nine categories of registrable interests, details of which are given in the following paragraphs of this guide. But this detail does not detract from the obligation of Members to keep the overall definition of the Register's purpose in mind when registering their interests. Members are responsible for making a full disclosure of their interests, and if they have relevant interests which do not fall clearly into one or other of the specified categories, they are nonetheless expected to register them.

The nine categories of registrable interests

Directorships (Category 1)

15. In this section of the registration form Members are required to register any remunerated directorships which they may hold in public or private companies. Here as elsewhere in the form, "remuneration" includes not only salaries and fees, but also the receipt of any taxable expenses, allowances or benefits, such as the provision of a company car. Details of remuneration and benefits are not registered; it is necessary only to register the name of the company in which the directorship is held and to give a broad indication of the company's business, where that is not self-evident from its name. Where a Member is Chairman of a company, it is customary to mention that fact.

16. A Member is also required to register directorships which are themselves unremunerated but where the companies in question are associated with or subsidiaries of a company in which he or she holds a remunerated directorship.

17. Members who wish to register other unremunerated directorships (for example on the governing boards of charitable trusts, learned societies, or sporting or artistic organisations) may do so, although it is not required by the rules; but any such entry should be made in the Miscellaneous section at the end of the form (category 10) and not in section 1. The same applies to any other unremunerated interest which a Member considers it necessary to register.

18. Companies which have not begun to trade or have ceased trading need not be registered, either in this section or in section 9 (shareholdings). "Not trading" should, however, be interpreted in a strict sense; if a company is engaged in any transaction additional to those required by law to keep it in being, then a directorship in that company should be registered.

Remunerated employment, office, profession etc. (Category 2)

19. This is the principal catch-all category for registering outside employment and sources of remuneration not clearly covered elsewhere in the registration form. When registering employment, Members should not simply state the employer company and the nature of its business, but should also indicate the nature of the post which they hold in the company or the services for which the company remunerates them. Entries should be as clear as possible, consistent with brevity. Members who have paid posts as consultants or advisers should indicate the nature of the consultancy, for example "management consultant", "legal adviser", "parliamentary and public affairs consultant".

20. Members who have practised a profession but have ceased to practise on being elected to Parliament or taking up ministerial office often continue to register the profession with a bracketed remark such as "non-practising" after it. This is particularly desirable in cases of sleeping partnerships and where it is likely that the Member will resume the profession at a later stage.

21. Membership of Lloyd's should be registered in this section. Members who have resigned from Lloyd's should continue to register their interest as long as syndicates on which they participated continue to have years of account which are open or in run-off. The date of resignation should be registered in such circumstances. Members of Lloyd's are also required to disclose the categories of insurance business which they are underwriting.⁵

Clients (Category 3)

22. If any directorship or employment registered under categories 1 or 2 involves the provision to clients of services which depend essentially upon or arise out of membership of the House, the Member is required to disclose the names of the clients and the nature of their business in this section of the Register. For example, if a Member is employed as a parliamentary adviser by a firm which is itself a consultancy and therefore is providing such advice and services to its clients, the Member should disclose those of the consultancy's clients with whom he has a personal connection or who benefit, directly or indirectly, from his advice and services. The same requirement applies where a Member, on his or her own account, accepts payment or material benefits for providing such services, but not on such a regular basis as to warrant registration as employment under section 2 of the Register. Where a company is named as a client, the nature of the company's business should be indicated briefly; this requirement applies throughout the registration form.

23. The types of services which are intended to be covered by this category of the Register include action connected with any parliamentary proceeding, sponsoring meetings or functions in the parliamentary buildings, making representations to Ministers, fellow Members or public servants, accompanying delegations to Ministers, and the provision of advice on parliamentary or public affairs. A Member who has clients in a non-parliamentary professional capacity (for example as a doctor, solicitor or accountant) is not required to register the clients, provided it is clear beyond doubt that the services which are being provided do not arise out of or relate in any manner to the Member's membership of the House.

Sponsorship (Category 4)

24. This part of the form is divided into two main subsections. Subsection (a) relates to sponsorship or financial support of the Member as a candidate at the previous election: here the Member is required to register the source of any contribution to his or her election expenses in excess of 25 per cent. of the total of such expenses.

25. Subsection (b) relates to other forms of sponsorship, which is interpreted to cover any regular or continuing support from companies or organisations from which the Member receives any financial or material benefit in support of his or her role as a Member of Parliament. For example, it is necessary to register the provision of free or subsidised accommodation and the provision of the services of a research assistant free or at a subsidised salary rate. It is also necessary, in this subsection, to register any regular donation in excess of £500 per year made by an organisation or company to the Member's constituency party if the donation is linked directly to the Member's candidacy in the constituency or if he or she acted as an intermediary between the donor and the constituency party.

26. There is a third question in this category of the form, supplementary to subsection (b) and designed solely to elicit whether the Member benefits personally from any payment or material benefit registered in that subsection. In other words, its purpose is to distinguish clearly between benefits accruing directly to the Member and those accruing solely to the constituency party.

27. Trade union sponsorships will normally be registrable under both subsections (a) and (b), particularly if they are based on the Labour movement's "Hastings Agreement" of 1933; but if trade union donations to a constituency party are not linked in any way to the Member's candidacy in a constituency and were not arranged or solicited by the Member nor paid via him or her, they are exempt from registration. The same criteria for registration apply to regular donations made to a constituency party by any other organisation or company.

Gifts, benefits and hospitality from UK sources (Category 5)

28. This section is for the registration of any gift or material advantage above a specified value, received by the Member of Parliament or the Member's spouse from any company, organisation or person within the United Kingdom, which in any way relates to membership of the House. The specified financial values above which gifts and benefits must be registered are -

- (a) for tangible gifts (such as money, jewellery, glassware etc.), £125;
- (b) for other benefits (such as hospitality, tickets to sporting and cultural events, provision of services etc.), 0.5 per cent. of the parliamentary salary (about £160 as at October 1994).

29. Benefits should be registered not only if they are provided *gratis* but also if they are provided at a price below that generally available to members of the public. However, benefits known to be available to all Members of Parliament without discrimination need not be registered.

30. The requirement to register under this section (and under section 7) extends to benefits received by any company or organisation in which a controlling interest is held by the Member or by the Member and spouse jointly.

31. Gifts and material benefits are exempt from registration if they do not relate in any way to the Member's membership of the House. The same criterion applies to the following two sections of the Register, and its interpretation in any particular case is necessarily a matter of judgement. Both the possible motive of the giver and the use to which the gift is put have to be considered; if it is clear on both counts that the gift or benefit is entirely unrelated to the Member's membership of the House, it need not be registered; if there is any doubt on either count, it should be registered.

Overseas Visits (Category 6)

32. The basic requirement in this category is to register any overseas visit, made by the Member or the Member's spouse and relating to or in any way arising out of membership of the House, the cost of which was not wholly borne by the Member or out of United Kingdom public funds. The Member has to register the date and destination of the visit and the name of the organisation, Government, company or individual which met the cost. Where only part of the costs was borne by an outside source (for example the accommodation but not the costs of travel), those details should be stated briefly. When an overseas visit has been arranged by a registered All-Party or parliamentary group or by a party backbench group, it is not sufficient to name the group as the sponsor of the visit: the Government, organisation, company or person which is ultimately meeting the cost should be specified.

33. The following categories of visit are exempt from registration, on the grounds that they arise naturally and necessarily out of a Member's parliamentary duties, are paid for directly or indirectly out of United Kingdom public funds, or involve reciprocity of payment between the UK Government or Parliament and the Governments or Parliaments of other countries:

- (i) Visits abroad with or on behalf of a Select Committee of the House or the British-Irish Parliamentary Body;
- (ii) Visits undertaken on behalf of or under the auspices of the Commonwealth Parliamentary Association, the Inter-Parliamentary Union, the British-American Parliamentary Group, the Council of Europe, the Western European Union, the North Atlantic Assembly or the CSCE Parliamentary Assembly;
- (iii) Visits arranged and paid for wholly by a Member's own political party;
- (iv) Visits paid for wholly by an institution of the European Community or by a political group of the European Parliament;
- (v) Visits as part of an Industry and Parliament Trust fellowship.

Visits which are entirely unconnected with the Member's membership of the House (see para. 31 above) are also exempt from registration.

Overseas Benefits and Gifts (Category 7)

34. This section of the form is for the registration of any payments, material benefits or advantages received by the Member or the Member's spouse from any foreign Government, organisation or person, other than the provision of travel, accommodation or hospitality overseas already registered under category 6. The financial limits and other guidelines set out in paragraphs 28 to 31 above apply equally to this category of registration.

35. Members should also use this section of the form to indicate where an interest already entered in categories 1, 2 or 3 entails the receipt of payments from abroad, unless that is clear from the wording of the earlier entry. A simple cross reference to the entry in question is sufficient for this purpose.

Land and Property (Category 8)

36. The requirement in this section is to register any land or property, other than any home used solely for the personal residential purposes of the Member or the Member's spouse, which has a substantial value or from which a substantial income is derived. Thus second homes need not be registered unless regularly let at commercial rents; but a farm on which the Member has a residence should be registered because it has a substantial value aside from the residential use.

37. Entries should be reasonably specific as to the nature of the property and its general location, for example:-

Woodland in Perthshire
Dairy farm in Wiltshire
3 residential rented properties in Manchester

38. No specific limits have been set to define the phrases "substantial value" and "substantial income". Members who are in doubt whether property which they own is substantial enough to require registration are advised to consult the Registrar.

Shareholdings (Category 9)

39. In this section Members are required to register shareholdings in any public or private company or other body which have a nominal value -

- (a) greater than £25,000, or
- (b) less than £25,000 but greater than 1 per cent. of the issued share capital of the company or body.

For this purpose "nominal value" means the face value of the shareholding rather than its market value. For example, a holding of 30,000 £1 shares in a company whose shares are currently trading at 50p would be registrable; a holding of 10,000 £1 shares in a company whose shares are currently trading at £5 would not be registrable. Similarly, a holding of 10 shares in a company with only 50 issued shares would be registrable irrespective of its market value.

40. When determining whether or not shareholdings are registrable under these criteria, Members should include not only holdings in which they themselves have a beneficial interest but also those in which the interest is held by or on behalf of their spouse or dependent children.

41. For each registrable shareholding, the entry should state the name of the company or body, briefly indicate the nature of its business, and make clear which of the alternative criteria for registration is applicable.

Miscellaneous (Category 10)

42. This section is for the registration of interests which Members consider to be relevant and covered by the definition of the Register's purpose (see para. 13 above), but which do not obviously fall within any of the specified categories. Examples of interests which Members may choose to register in this way are unremunerated directorships, honorary positions on charitable trusts or professional associations, and shareholdings which are not covered by the criteria specified in category 9.

II. DECLARATION OF INTEREST

The rule of declaration

43. The Register of Members' Interests was intended to supplement but not to replace the longer-standing practice of the House that a Member should draw attention to a relevant pecuniary interest when making a speech in the House or in Standing Committee or when examining a witness before a Select Committee. This is emphasised by the fact that on the same occasion in 1974 when the House passed the resolution approving the principle of a Register, it also passed the resolution which strengthened the previous convention about declaration of interest into a rule. The rule states that:

“in any debate or proceeding of the House or its committees, or transactions or communications which a Member may have with other Members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit that he may have had, may have, or may be expecting to have.”

Past and potential interests

44. The terms of this rule mean that, whereas the Register records interests that are current or (in the case of visits, gifts etc.) date from the recent past, the obligation to declare relevant interests extends also to past and potential future interests. In practice it is rare for a past interest to be sufficiently relevant to the matter in hand to justify a declaration. Potential interests, on the other hand, may be far more significant. Where, for example, a Member is debating legislation or making representations to a Minister on a matter from which he has a reasonable expectation of personal financial advantage, candour is essential. In deciding when a possible future benefit is sufficiently tangible to necessitate declaration, the key word in the rule which the Member must bear in mind is “expecting”. Where a Member's plans or degree of involvement in a project have passed beyond vague hopes and aspirations and reached the stage where there is a reasonable or realistic expectation that in certain circumstances a financial benefit will accrue, then a declaration explaining the situation should be made.

The test of relevance

45. It is for the Member to judge whether a pecuniary interest is sufficiently relevant to a particular debate, proceeding, meeting or other activity to require a declaration. The Select Committee on Members' Interests has given the guidance that the basic test of relevance should be the same for declaration as it is for registration of an interest, namely that an interest should be declared if it might reasonably be thought by others to influence the speech, representations or communication in question.⁶ A Member who acts as a paid consultant to an outside firm or organisation should invariably make a declaration when speaking or making representations on a subject which affects the interests of that firm or organisation. Members who practise a profession such as banking, medicine or the law, should declare that fact when the pecuniary interests of the profession are clearly and directly affected by the issue under discussion. Otherwise Members with professional interests should use their discretion and personal judgement in deciding when a declaration is appropriate. The same applies to Members sponsored by a trade union.

Content of declaration

46. A declaration should be brief but sufficiently informative to enable a listener to understand the nature of the Member's pecuniary interest without recourse to the Register or other publications.

Early Day Motions

47. Where a Member in charge of an Early Day Motion has a pecuniary interest which is registered in the Register of Members' Interests and is relevant to the subject matter of the motion, the interest should be declared to the Table Office (verbally or in writing) at the time the motion is tabled. The declaration is then recorded in a footnote on the Notice Paper when the motion is printed. This rule applies also to amendments to Early Day Motions.

Chairmen and Members of Select Committees

48. By a resolution of 13 July 1992, the House approved certain sections of a report by the Select Committee on Members' Interests relating to the financial interests of Chairmen and Members of Select Committees.⁷ The main effects of that resolution, briefly summarised, are as follows:

- (i) Before a select committee proceeds to the election of a Chairman, its members are required to give details of their pecuniary interests for circulation to the committee. (This requirement does not apply to committees of a wholly procedural nature.)
- (ii) Declarations of relevant pecuniary interest should be made, and minuted in the committee's minutes of proceedings, both when the committee is deciding on a subject of inquiry and in the presence of witnesses when evidence is taken during an inquiry.

- (iii) When a member of a committee, particularly the Chairman, has a pecuniary interest which is directly affected by a particular inquiry or when he or she considers that a personal interest may reflect upon the work of the committee or its subsequent report, the Member should stand aside from the committee proceedings relating to it.

Complaints

49. The complaints procedure described in paragraph 11 of this guide applies to failure to declare as well as to failure to register pecuniary interests.

III. OTHER REGISTERS

50. Under the authority of a resolution of the House of 17 December 1985, three other Registers are maintained by the Registry. Unlike the Register of Members' Interests, these Registers are not printed and put on sale, nor open to public inspection; but they are made available in the Library of the House of Commons and in the Registry offices for personal inspection by Members of Parliament. Inquiries about the three Registers, which are described below, should be directed in the first instance to the Assistant Registrar (071-219 5978).

Register of Parliamentary Journalists

51. Those holding full passes to the Palace of Westminster as lobby journalists, as journalists accredited to the Parliamentary Press Gallery, or for parliamentary broadcasting, are required to register both the employment for which they received the pass and any other paid occupation or employment where their privileged access to Parliament may be relevant.

Members' Staff

52. Those holding full passes as Members' secretaries or research assistants are required to register any relevant gainful occupation other than that for which the pass is issued. An occupation is "relevant" for this purpose if it might reasonably be thought to be advantaged in any way by access to the parliamentary buildings and their services and facilities. Members' staff are also required to register visits, gifts or other benefits which they receive and which are covered by the definitions in categories 5, 6 and 7 of the Register of Members' Interests.

All-Party and Parliamentary Groups

53. Commons officers of All-Party Groups, Parliamentary Groups and similar groups whose membership is open to Members of either House of more than one party are required to register the names of the officers of the Group and the source and extent of any benefits, financial or in kind, which they may enjoy. These registrable benefits include the provision of staff help by outside organisations or individuals. In such cases it is also necessary to register any other relevant gainful occupation which those staff may have.

References

1. House of Commons Paper No. 326 (1991-92).
2. Erskine May's Parliamentary Practice, 21st edition, pp. 119-121, where the relevant cases and past resolutions of the House are set out.
3. Questions of Procedure for Ministers (Cabinet Office, May 1992: ISBN O 7115 0233 1).
4. First Report of the Select Committee on Members' Interests, 1992-93 (HC 383, 1992-93, para. 4).
5. Second Report of the Select Committee on Members' Interests, 1993-94 (HC 353, 1993-94, para. 18). HC Deb. Vol. 246, cols. 1115-1140 (13 July 1994).
6. First Report of the Select Committee on Members' Interests, 1992-93 (HC 326, 1992-93, para. 78).
7. First Report of the Select Committee on Members' Interests, 1990-91 (HC 108, 1990-91, paras. 8-16, 24 and 25).