

Public Sector Standards Bill 2015.

Summary

On 23 December 2015, the Minister for Public Expenditure and Reform published the Public Sector Standards Bill 2015.

This Bill consolidates the current legislative framework governing the ethical obligations of public officials and gives effect to the recommendations of the Tribunals.

The purpose of the Bill is to “**significantly enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks, while also achieving a shift towards a more dynamic and risk-based system of compliance and ensuring that the institutional framework for oversight, investigation and enforcement is robust and effective.**”

Among the key reforms of the Public Sector Standards Bill 2015 are: -

- the introduction of a Public Sector Standards Commissioner to replace the Standards in Public Office Commission and to oversee a reformed complaints and investigations process;
- the establishment in legislation of a set of integrity principles for all public officials (including local authority members)
- the strengthening of the legal obligation for public officials to disclose, as a matter of routine, actual and potential conflicts of interest, reinforced by a significant extension of the personal and material scope of disclosures for public officials and graduated disclosure requirements;
- the establishment of a more effective (IT-based) process for the submission of periodic statements of interests;
- the imposition of statutory prohibitions on the use of insider information, on the seeking by public officials of benefits to further their private interests, and on local elected representatives from dealing professionally with land in certain circumstances; and
- the establishment of a new statutory board to address potential conflicts of interest as public officials take up roles in the private sector.

The main heads of the Scheme are summarised below.

Part 1 (Heads 1 to 5)

This part deals with preliminary and general matters and sets out key definitions such as “public official”, “public body” “public declarable interests” and “private declarable interests”.

- **Head 1 & 2** provides for title, description & definitions contained within the bill.
- **Head 3** provides for a definition of “public official”, who holds or held a position as an employee, director or other office as one of the following:
 - **Category A – elected politicians (TD’s, Senators, MEP’s, Local Authority Members), special advisers, chairpersons and CEOs of public bodies and those on remuneration at Deputy Secretary level and above in the public sector**
 - Category B – those on remuneration between principal officer level and Deputy Secretary in the public sector, a member of the board of a public body (excluding the chairperson)
 - Category C – all other public officials.

Category A public officials will have the highest level of obligations whilst Category C public officials will have the lowest level.

- **Head 4** provides a definition of “public body” to whom the provisions of the Act will apply – a local authority is defined as a ‘public body’ within the bill
- **Head 5** provides definitions of “public declarable interests” and “private declarable interests”, in any 3 consecutive 4-month periods (Annually):
- **Public declarable interests** are the following:
 - the source of income in excess of €2,600 from any remunerated trade, profession, employment or other occupation (excluding their remuneration as a public official)
 - the source of any income which relates to dealing with or developing land by the public official, or on behalf of the public official by a company or another body of which the official or an nominee is a member
 - the source of any income from remunerated position as a lobbyist, consultant or adviser during the appropriate period
 - any contract that the public official was a party to or is interested in for the supply of goods or services to a public body if the value of the goods or services exceeds €5,000 or €5,000 in aggregate
 - any estate or interest the public official has in land (other than a family home) in excess of €10,000, including where the public official, or any nominee, is member of a company or other body that has an estate or interest in land
 - any beneficial or legal interest or holding in shares or bonds or debentures, or other like investments, in a particular company or other

enterprise or undertaking (which does not relate to land or any business of dealing in or developing land) at any time during the appropriate period if the interest exceeds €13,000, but excluding:

- money in a current, deposit or other similar account with a financial institution, or
 - an interest or holding in a company limited by guarantee that is a not-for-profit company or has charitable status and receives a tax exemption from the Revenue Commissioners as either, or that is a residential management company
 - A directorship, shadow directorship or other office or management position of any company held by the official during the appropriate period.
 - Details of political donations received during the declaration period in excess of €600 or €600 in aggregate and details of the donor, whether the donation was requested and by whom, and if a receipt was issued
 - Any other interests the public official the person may wish to volunteer
 - Travel, accommodation and related facilities above €600 must be declared except where they are:
 - provided in the course and for the purpose of the performance of the person's duties, where the cost is met by the official's employer/another public body/an international body/another State etc. or;
 - provided by a relative or another where it doesn't influence the person in the performance of their duties.
 - Gifts valued under €200 may be accepted and need not be declared. Gifts valued €200-€600 may be accepted but must be declared by all officials where they are connected with the official's functions and also declared confidentially by Category A where they are not connected with the official's functions. Gifts over €600 connected with an official's functions must be refused or remitted to the head of the organisation and the Commissioner must be notified. Gifts over €600 that are not connected with an official's functions may be accepted but must be declared privately by Category A officials.
 - Category A and Category B officials must declare the interests of their spouse or child where the official has actual knowledge that the interests could reasonably be perceived to be connected with the performance of his or her functions.
- **Private Declarable Interests:**

This head also provides a separate definition of "private declarable interests" which is a separate category of interests. **Only category A public officials will be obliged to declare these interests and such declarations shall not be published**. The following are "private declarable interests":

- the amount of income from any remunerated trade, profession, employment or source of income held by the person (other than their remuneration as a public official) in excess of €2,600 and income from dealing with land or as a consultant, adviser or lobbyist,

- own liabilities and assets over €50,000, other than pensions or a charge on the family home
- Gifts: If the value of a gift is over €200 and is given by non-relatives for reasons not connected with the official's functions it must be declared
- Travel: Travel, accommodation and related facilities over €600 given by a person who is not a relative and which are not connected with the performance of his or her functions

Is gift/travel connected with official's function?		Received from a relative		Received from a person not related	
		Not connected with function	Connected with function	Not connected with function	Connected with function
<€200 in 12 months	Travel etc	Accept, no declaration	Accept, no declaration	Accept, no declaration	Accept, no declaration
	Gifts	Accept, no declaration	Accept, no declaration	Accept, no declaration	Accept, no declaration
€200-600 in 12 months	Travel etc	Accept, no declaration	Accept, no declaration	Accept, no declaration	Accept, no declaration
	Gifts	Accept, no declaration	Accept, declared by all officials	Accept. Only Category A declares, confidentially	Accept, declared by all officials
>€600 in 12 months	Travel etc	Accept, no declaration	Accept, declared by all officials	Accept. Only Category A declares, confidentially	Accept, declared by all officials. Excludes travel etc. provided in the course and for the purpose of performing official functions
	Gifts	Accept, no declaration	Refuse/remit and notify Commissioner	Accept. Only Category A declares, confidentially	Refuse/remit and notify Commissioner

Part 2 – Chapter 1 (Heads 6 to 10)

Part 2 deals with **Public Sector Standards**. This chapter sets out broad general principles and standards of conduct which are to apply across the public sector, prohibitions on certain behaviours and provides for an obligation by public officials to make “ad hoc” declarations

- **Head 6** sets out standards of integrity (impartiality, objectivity, honesty, respect, accountability, openness and accountability) and concern for the public interest that public officials must maintain and that a code of conduct shall include guidance for this purpose.
- **Head 7** provides that a public official shall be precluded from seeking rewards or favours by virtue of their office, subject to a code of conduct
- **Head 8** provides for a requirement for a public official to make an ad hoc disclosure where they know that they or a connected person has a beneficial or pecuniary interest that is material to the performance of their functions. Such declarations by Category A officials will be made to the Commissioner and published; for category B and C, the Statement is made to the relevant person (to be set out in schedule 2), but not published.
- **Head 9** provides for a prohibition, without prejudice to any other provisions on secrecy etc., on the use of confidential information or to improperly further or to seek to further the official's or another person's private interests, subject to a Code of Conduct.
- **Head 10 prohibits local elected representatives whose outside role primarily involves the sale/ development of land, from dealing with land during their term of office (and for two years afterward) where their local authority has changed the planning or zoning status of that land and s/he has voted on the decision.**

Part 2 - Chapter 2 (Heads 11 to 13)

This chapter sets out the **obligation to furnish a tax clearance certificate** which will apply to specified persons in the public sector (Category A)

- **Head 11 provides that Category A public officials must submit a tax clearance certificate or an application statement within 6 months of commencement of the Act or on assignment, and every year thereafter. The Judicial Appointments Boards shall not recommend a person for appointment unless they are tax compliant (Head 8). A Minister shall not appoint a person as a chairperson or as a member of a board unless they are tax compliant.**
- **Head 12** provides that a person in breach of Head 11 must submit evidence of their subsequent compliance as soon as possible
- **Head 13** provides for the issuance of and refusal to issue tax clearance certificates by the Collector General to Category A officials.

Part 2 – Chapter 3 (Heads 14 to 16)

This chapter provides for disclosure of interests:

- **Head 14** provides an obligation on Category A and B officials to furnish a statement of public declarable interests in a format to be determined by the Commissioner. Category A public officials will be also be obliged to submit, in tandem, details of their private declarable interests. Their statements will be submitted to the Commissioner and the public declarable interests will be published. Category B public officials will submit their declarations of public declarable interest to the relevant public body and these will not be published. Interests will need to be reviewed three times a year (in April, August and December) and must cover the period from when the person applied for the position up to 12 months after ceasing it. **Once the first declaration is made, no further declarations will be required unless there is a significant change in interests.** All categories of staff must also submit ad hoc declarations and where they do, these will be published. Subhead 4 provides that statements of declarable interests must include details of the donor of any gifts. Subhead 5 requires the inclusion of details of political donations. Subhead 9 provides that private statements of interests will be held confidential. Subhead 11 provides that an elected public official who declares details of the political donations received shall not also be obliged to submit a donations statement.
- **Head 15** provides for the retention of ad hoc declarations and statements of interests. A statement relating to legal and medical services shall not identify who supplied legal and medical services.
- **Head 16** provides that certain documents and information regarding the appointment of special advisers must be laid before the Houses of the Oireachtas.

Part 3 (Heads 17 to 20)

This Part establishes the Public Sector Standards Commissioner to enforce the provisions of the draft General Scheme of the Bill

- **Head 17** provides for the establishment of the Office of the Public Sector Standards Commissioner and creates the role of Public Sector Standards Commissioner, who will be independent in the performance of their functions.
- **Head 18** provides for the provision of advice by the Commissioner in relation to compliance with the provisions of the Act. In the prosecution and investigations of breaches, regard will be given to whether a person complied with the advice furnished.
- **Head 19** provides for development of a model code of conduct, and the prevention of conflicts through education training and research. All public officials must comply with the Code in the performance of their duties. Public bodies may issue their own codes to meet particular requirements, based on the model code. The Commissioner may review such codes and advise amendments. A court may have regard to a code of conduct in any proceedings under the Act.
- **Head 20** provides for the Annual Report of the Commissioner or any other that the Minister requests or the Commissioner considers appropriate.

Part 4 - Chapter 1 (Head 21)

This Part relates to contraventions. Chapter 1 Head 21 deals with offences and sets out clearly when a person is guilty of committing an offence.

Part 4 - Chapter 2 (Heads 22-25)

Chapter 2 deals with complaints and preliminary inquiries

- **Head 22** provides for the making of complaints to the Commissioner and Head 23 allows for these to be dismissed by the Commissioner in certain circumstances.
- **Head 24** provides for the Commissioner to request an official to carry out a preliminary inquiry, sets out the process for conducting the inquiry, and sets out possible actions by the Commissioner on receipt of the report of the inquiry and depending on the gravity or otherwise of the contravention, if any.
- **Head 25** provides for immunity from sanctions including dismissal for the complainant where he/she acted in good faith and provides for the restriction of the disclosure of the identity of the complainant by the Commissioner or Deputy Commissioner where it is considered necessary and appropriate to do so.

Part 4 - Chapter 3 (Heads 26-37)

Chapter 3 deals with investigations.

- **Head 26** provides for the establishment of a Deputy Commissioner who will have the power to appoint investigations officers. The Deputy Commissioner and the investigation officers will be independent in the carrying out of investigations. The Deputy Commissioner will prescribe the procedure to be followed in the conduct of the investigations. Subhead (5) provides for the Commissioner, within certain time limits, to refer matters to the Deputy Commissioner for investigation where a valid complaint has been made, where the Commissioner considers that a breach may have occurred or where he/she considers a matter should be investigated in the public interest. Subheads (8) and (9) provide for an investigation to be discontinued in certain circumstances, with subhead (10) providing for Heads 35 and Head 36 to apply in relation to costs in such circumstances
- **Head 27** sets out the powers of the Deputy Commissioner in the context of investigations including directions to attend to give evidence, provide documents etc. It also provides for the issue of warrants by District Judges to enter and search premises for the purposes of an investigation. The Head shall not apply to any private papers (within the meaning of Article 15.10) of a member or a record relating to the private paper or confidential communications within the meaning of Part 10 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 or an official document within the meaning of Part 11 of that Act.
- **Head 28** sets out the investigations procedure including the holding of hearings in public or private by the investigations officer who may receive or take evidence orally, by affidavit, or by other modes of transmission, on oath, or outside the State. Subhead (13) provides that the reasonable expenses of witnesses directed to attend before the Commissioner to give evidence will be paid by the State. Subhead (15) sets out elements that the investigations procedure must include inter alia notification, those giving evidence or being investigated will be given the details of evidence held in relation to them and may comment by way of written or oral submissions etc. Subheads

(16) and (17) set out that information may not be disclosed or produced on grounds of legal professional privilege. Subhead (18) provides that the Commissioner, the Deputy Commissioner, an investigations officer or a member of staff must not be hindered in the performance of his/her functions.

- **Head 29** provides that documents and reports of the Commissioner, the Deputy Commissioner or investigation officers and statements made to them wherever published shall be absolutely privileged. Likewise utterances made by a person conducting investigations shall be privileged.
- **Head 30** provides for admissibility of certain evidence.
- **Head 31** provides the Commissioner with powers to discover documents. A person who wishes to object must specify the grounds in the affidavit of documents. The rules of court relating to discovery of documents in High Court proceedings apply and if a person fails to follow them the Commissioner can apply to the High Court, which can order compliance.
- **Head 32** provides for the preservation of documents relevant to an investigation.
- **Head 33** provides for a prohibition on the disclosure of information where meetings are held in private but with certain exceptions which are set out in subhead (2).
- **Head 34** sets out the actions to be taken following an investigation. It provides inter alia that on conclusion of an investigation, the Deputy Commissioner will provide a report to the Commissioner and gives the Commissioner the power to rehear oral evidence where the evidence is contested. Subhead (3) sets out the steps the Commissioner may take following receipt of the report including referral back to the Deputy Commissioner, provision of confidential advice/guidance if the matter is considered minor, referral to a public body where appropriate, taking action under Part 5 or under Head 42. Subhead (5) provides that the finding of a contravention may be appealed to the High Court and under subhead (6) the respondent must be informed of the outcome of the investigation.
- **Head 35** provides that the Commissioner may issue an order for the payment of the costs incurred by any person appearing before him or her by another person. These costs may be recovered in the courts.
- **Head 36** provides that the Commissioner may award costs against a complainant under certain circumstances. An order for costs can be appealed to an appeals officer.
- **Head 37** provides that a report of an investigation will be prepared which will set out the findings and recommended sanctions. It also sets out under subhead (3) to whom the report will be provided.

Part 5 - (Heads 38-41)

This Part deals with prosecution of offences.

- **Head 38** deals with prosecution of offences. Where the Commissioner considers following a preliminary enquiry or an investigation that an offence may have been committed, he/she may prosecute summarily or refer the matter to the DPP. Summary proceedings may be commenced within 6 months from the date of the Commissioner's report or from when sufficient evidence to justify proceedings comes to the knowledge of

the initiator of the proceedings, but no proceedings shall be initiated later than 5 years from the date on which the offence was committed.

- **Head 39** provides powers to the Commissioner to impose a fixed penalty of €200 on a person who commits a summary offence under the Act, payable by a date specified on the penalty notice. No prosecution will take place if the fixed penalty is paid to the Commission before the date specified.
- **Head 40** provides that a person convicted of a summary offence will be liable to a Class B fine, or imprisonment for a period not more than 12 months, or to both. On conviction on indictment, they are liable to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 5 years, or to both.
- **Head 41** deals with consequences of a conviction under the Act. Where a person who is not a member of the Oireachtas is convicted of a summary offence, a Court may order their suspension from their position for 12 months; or for a period the Court may specify, if convicted on indictment.

Part 6 - (Heads 42 – 44)

This Part deals with civil consequences of contravention.

- **Head 42** deals with the civil consequences of a contravention. It provides that the Commissioner may issue a censure, a warning, give a direction to secure compliance with the Act or recommend that the person be suspended or disqualified. The public body is notified of the decision as is the public official. The official may appeal to the High Court within 21 days of receiving the notification. Subheads (4) and (5) deal with the hearing of the appeal and the making of orders by the High Court, on application to it by the Commissioner, confirming or setting aside the decision, making a new decision etc. Subhead (8) provides that nothing will prevent a person who is eligible from standing for election.
- **Head 43** provides the relevant House with the power to suspend a member for a period not exceeding 12 months following receipt of a report of the Commissioner which makes a finding of a contravention. Such a recommendation may be appealed to and must be confirmed by the Courts under Head 42.
- **Head 44** provides for automatic disqualification of a person from a first position as a public official where that person is not tax compliant or fails to become tax compliant in due course but it would not disqualify a person from standing for election nor from continuing to hold their existing position as a public official.

Part 7 - (Heads 45-46)

This part provides for the establishment of the Outside Appointments Board on a statutory basis

- **Head 45** provides that a public official must inform the head of their public body if they intend to be engaged with an outside business they have had official dealings with or that would gain an unfair advantage from employing them. An official at Assistant Secretary level or above must first obtain the consent of the Outside Appointments Board where a post-term employment taken up within 12 months might give rise to a conflict of interest. The Outside Appointments Board may give consent unconditionally or subject to conditions or refuse to give consent for specified periods.

- **Head 46** provides for the establishment of the Outside Appointments Board on a statutory basis. The details of the OAB's powers etc. will be developed in conjunction with the OPC.

Part 8 (Heads 47-51)

This part provides for repeals, transitional and saver, etc.

- **Head 47** provides for the repeal of the Ethics in Public Office Act 1995, Standards in Public Office Act 2001, Part 15 of the Local Government Act 2001 and certain sectoral provisions.
- **Head 48** provides the Minister with powers to make regulations in relation to any matter referred to in the Bill. Subhead (3) provides for the variation of monetary amounts by Ministerial order in respect of the provisions other than those in relation to offences or political donations
- **Head 49** provides for the payment by the Oireachtas of expenses incurred by the Minister in the administration of the Act and also any other expenses sanctioned by the Minister.
- **Head 50** provides for the adaptation of references in other legislation to the Standards in Public Office Commission and Chairperson of the Standards in Public Office Commission.
- **Head 51** provides that certain section of the Ethics in Public Office Acts will continue in force in relation to investigations, complaints, inquiries and reports which will have commenced prior to the enactment of superseding provisions of this Bill. Subsection 3 provides that guidelines and codes of conduct published by the Standards in Public Office Commission which were in force before the commencement of the Act, will continue in force for a period of 12 months or, if sooner, until a replacement code is drawn up.

Please note the foregoing is intended to be a helpful plain English summary of the main points of the Bill. The original text should be consulted before taking any definitive action on the content. Also take note that this is a Bill which is subject to considerable amendment before enactment.