

**CODE OF CONDUCT
FOR
OFFICE HOLDERS**

**AS DRAWN UP BY THE GOVERNMENT PURSUANT TO SECTION 10(2)
OF THE STANDARDS IN PUBLIC OFFICE ACT, 2001**

Published by the Standards in Public Office Commission
in accordance with section 10(11) of the Standards in Public Office Act, 2001

July 2003

Table of Contents

Part 1

Introduction and General Principles

1.1. Purpose of the Code of Conduct	1
1.2. Persons to whom the Code of Conduct applies	1
1.3. Requirement to observe the Code of Conduct	2
1.4. Principles of Ethical Conduct	2
1.5. Highest ethical standards to be applied at all times	2
1.6. Chairs of Committees	3

Part 2

Section 1

Statutory Framework

2.1. Statutory obligations relating to conduct in public life	4
---	---

Section 2

Additional Requirements

2.2. Additional Guidance for Office Holders	6
2.2.1. Tribunals of Inquiry	6
2.2.2. Accountability to the Houses of the Oireachtas	6
2.2.3. Public Resources	6
2.2.4. Business and other interests	6
2.2.5. Lobbyists	7
2.2.6. Records of Official Meetings	7
2.2.7. Appointments	8
2.2.8. Gifts	8
2.2.9. Constituency Matters	8

Appendix : Guidelines on Compliance with the provisions of the Ethics in Public Office Act, 1995 & 2001 (*including, at its Appendix 3, the Government Guidelines for Office Holders issued pursuant to Section 15(4) of the Ethics in Public Office Act, 1995*)

Part 1

Introduction and General Principles

1.1. Purpose of the Code of Conduct

This Code of Conduct for the guidance of office holders has been drawn up by the Government in accordance with Section 10 (2) of the Standards in Public Office Act 2001 (2001 Act).

In accordance with Section 10(6) of the 2001 Act, it is designed to

“indicate the standards of conduct and integrity for the persons to whom it relates in the performance of their functions and in relation to any matter connected with or affecting or likely or appearing to affect such performance and in relation to such other matters (if any) as may be specified in the code.”

This Code does not make provision in relation to matters for which adequate provision is made in existing guidelines and will apply prospectively, i.e. from the date of publication.

1.2. Persons to whom the Code of Conduct applies

In accordance with the terms of the Ethics in Public Office Acts, 1995 & 2001 (Ethics Acts) this Code applies to office holders, namely

- the Taoiseach
- the Tánaiste
- a Minister
- a Minister of State
- an Attorney General who is a member of Dáil Éireann or Seanad Éireann
- a person who is Chairman or Deputy Chairman of Dáil Éireann or Chairman or Deputy Chairman of Seanad Éireann
- a person who holds the office of Chairman of a Committee of either House of the Oireachtas, being an office that stands designated, for the purpose of the Ethics in Public Office Act, 1995 (1995 Act), for the time being by resolution of that House or
- a person who holds the office of Chairman of a Joint Committee of both Houses of the Oireachtas, being an office that stands designated, for the purposes of the 1995 Act, for the time being by resolution of each House.

1.3. Requirement to observe the Code of Conduct

In accordance with the provisions of the Ethics Acts, office holders shall, in so far as it is relevant, have regard to and be guided by the Code in the performance of their functions and in relation to any other matters specified in the Code. This Code seeks to ensure that office holders must at all times observe, and be seen to observe, the highest standards of ethical behaviour in the carrying out of the functions of their office. Office holders are obliged to act in accordance with advice given and guidelines published by the Standards in Public Office Commission (Standards Commission) unless to do so would constitute a contravention of another provision of the Ethics Acts. Pursuant to Section 10(8) of the 2001 Act, codes of conduct will be admissible in proceedings before a Court or other tribunal or a Committee or the Standards Commission and any relevant provision may be taken into account in determining a matter.

1.4. Principles of Ethical Conduct

Holders of public office have a duty to keep faith with the public trust placed in them by the manner in which they carry out their official responsibilities. This is a personal responsibility and requires them at all times to promote the common good, fairly and impartially, to conscientiously and prudently apply the resources of their office in furtherance of the public interest and to observe the highest ethical standards in the performance of their duties.

The Standards Commission has described ethical behaviour in the following terms

"A successful ethics regime is one which provides mechanisms whereby the sensitivities of political/public life can be handled, where competing interests can be reconciled and where individual legislators/executives can be guided in their difficult decisions by reference to the general principle that the public interest should always take precedence over the interests of the individual and, perhaps more importantly, over the interests of a political party whether in power or in opposition."

These are the principles which should guide office holders.

1.5. Highest ethical standards to be applied at all times

In addition to complying with those formal requirements, office holders should at all times observe the highest standards of behaviour and act in good faith with transparency, fairness and impartiality to promote the common good in the performance of their official functions.

Ministerial office holders, in the performance of their functions, need to respect the particular requirements of the many different and distinct roles

that they hold, e.g. as a member of Cabinet, as a Minister of a Department of State, as an elected public representative.

Ministers also have a responsibility to ensure that special advisers are accountable to them for the performance of their functions in accordance with the provisions of the Public Service Management Act, 1997.

Special advisers cease to hold their position when the relevant Minister ceases to hold office as outlined in the Public Service Management Act, 1997.

Office holders in particular should

- act only by reference to and dedicate the resources of their offices in furtherance of the public interest
- make decisions and encourage and support the making of decisions on merit and without discrimination
- not be influenced in their official duties by personal considerations
- be accountable for their decisions
- protect the integrity of the offices they hold
- respect confidences entrusted to them in the course of their official duties
- respect at all times the role of the Accounting Officers of their Departments and the obligations of staff under the Civil Service Code of Conduct.

1.6. Chairs of Committees

The increasing role and importance of Committees in the Houses of the Oireachtas has placed the chairs of such Committees in a more prominent role. There is a need for the chairs of Committees to be mindful of this increased responsibility in the conduct of their business.

Part 2

Section 1 – Statutory Framework

2.1. Statutory obligations relating to conduct in public life

There is already in place a comprehensive statutory framework for the regulation of conduct in public life. It is a requirement of this Code of Conduct that office holders comply fully with all of the requirements in that framework as well as any requirements which may be introduced in the future.

The following are key elements of the statutory framework in relation to the conduct of office holders:

The Ethics in Public Office Act, 1995 and the Guidelines for Office Holders concerning the steps to be taken by them to assist compliance with the provisions of the Ethics in Public Office Act, 1995

The 1995 Act includes provisions in relation to office holders for the disclosure of interests, for the treatment of gifts, and for the fulfilment of their responsibilities in relation to special advisers appointed by them or on their behalf.

Information on the steps office holders need to take in order to comply with the provisions of the 1995 Act is set out in the Guidelines, a copy of which is contained in the attached Appendix.

The Standards in Public Office Act, 2001

The 2001 Act established the Standards Commission, which subsumed the Public Offices Commission established by the 1995 Act. The Standards Commission has enhanced powers under the 2001 Act and an offence of obstruction of the Standards Commission or its agents has been created.

The 2001 Act also requires the Government, from time to time, to draw up codes of conduct for the guidance of office holders. The 2001 Act provides that the Guidelines drawn up pursuant to the 1995 Act (referred to above) continue in force.

Additional requirements are imposed by the 2001 Act on members of the Houses of the Oireachtas in respect of tax compliance. These also apply to an Attorney General who is not a member of either House.

Prevention of Corruption Acts

The 1995 Act amended the Prevention of Corruption Acts in a number of respects, such as increasing the penalties for corruption to a maximum of 7 years imprisonment and a fine of up to € 63,486.90.

The 1995 Act increased corruption penalties to 10 years and unlimited fine(s). It also introduced a presumption of corruption, in certain circumstances, from a failure to disclose political donations, and secondly where a person exercising certain functions receives money or other benefit from a person who has an interest in the exercise of those functions.

The 1995 Act also makes liable to an offence of corruption, third parties who seek to corrupt others, in addition to persons who are directly involved in an activity.

Other Provisions

Office holders must also have regard as appropriate to

- the Code of Conduct for Members of Dáil Éireann and Seanad Éireann
- the Electoral Act, 1997, as amended
- the Local Government Act, 2001, which sets out an ethical framework for the local government service

Section 2 – Additional Requirements

2.2. Additional Guidance for Office Holders

In addition to requirements which are legislatively prescribed, office holders should observe the following requirements:

2.2.1. Tribunals of Inquiry

Tribunals of Inquiry established by the Houses of the Oireachtas have a crucial role in maintaining and in some cases restoring public confidence in the political and administrative organs of Government. Office holders (as is the case, of course, for the general public) are required by law to co-operate fully with Tribunals of Inquiry and all other lawfully constituted investigations or inquiries.

2.2.2. Accountability to the Houses of the Oireachtas

Office holders, who are members of the Houses of the Oireachtas, are accountable to the Houses of the Oireachtas in accordance with the arrangements set out in the Constitution or in the Standing Orders of the respective Houses. It is of paramount importance that office holders give accurate and truthful information to the Houses of the Oireachtas, correcting any inadvertent error at the earliest opportunity.

2.2.3. Public Resources

Office holders are provided with facilities at public expense in order that public business may be conducted effectively. The use of these facilities should be in accordance with this principle. Holders of public office enjoy an enhanced public profile and should be mindful of the need to avoid use of resources in a way that could reasonably be construed as an inappropriate raising of profile in the context of a General Election.

Official facilities should be used only for official purposes. Office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which, undoubtedly, are attached to office.

2.2.4. Business and other interests

Office holders should not engage in any activities that could reasonably be regarded as interfering or being incompatible with the full and proper discharge by them of the duties of their office.

Office holders should not hold company directorships carrying remuneration. Even if remuneration is not paid, it is regarded as undesirable for them to hold directorships. A resigning director may enter into an arrangement whereby a company would agree to his/her re-appointment as a director upon ceasing to be an office holder.

An office holder should not carry on a professional practice while an office holder but may make arrangements for the maintenance of a practice until such time as s/he ceases to be an officer holder and returns to the practice.

Office holders should not take any part in the decision-making or management of the affairs of a company or practice and should dispose of, or otherwise set aside for the time-being, any financial interests which might conflict, or be seen to conflict, with their position as an office holder.

Office holders, in taking up appointments on leaving office, should be careful to avoid any real or apparent conflict of interest with the office they formerly occupied. Particular care should be taken in the first few months following departure from office. Office holders should give careful consideration to the type of occupation chosen having left office. Although it is in the public interest that former office holders are able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety when taking up a particular appointment. In this context, office holders should act in a way which ensures it could not be reasonably concluded that an office holder was influenced by the hope or expectation of future employment with the firm or organisation concerned or that an unfair advantage would be conferred in a new appointment by virtue of, for example, access to official information the office holder previously enjoyed.

2.2.5. Lobbyists

It is an integral part of a functioning democracy that particular sections of society will endeavour to highlight issues of sectoral importance with office holders. In this respect contact between office holders and lobbyists is to be expected. However, as guidance, such dealings should be conducted so that they do not give rise to a conflict between public duty and private interest.

2.2.6. Records of Official Meetings

In all cases where meetings are arranged for the purpose of transacting official business, office holders should be accompanied by an official who would act as a note-taker in the office holder's own interest. In any event, it is advised that an official or adviser should attend before the conclusion of a meeting to record details of any decisions reached.

2.2.7. Appointments

Subject to provisions in legislation or other formal requirements for the establishment of Government bodies or the filling of positions, appointments by members of the Government should be made on the basis of merit, taking into account the skills, qualifications and experience of the person to be appointed, as well as any other relevant criteria including, for example, requirements in relation to gender balance.

2.2.8. Gifts

The Government Guidelines for Office Holders published pursuant to Section 15(4) of the 1995 Act and the Guidelines for Office Holders, in relation to the acceptance of gifts by office holders, produced by the Standards Commission provide a framework in relation to the acceptance of gifts. A copy is contained at Appendix 3 to the Guidelines for Office Holders (as attached in the Appendix to this Code).

Additionally, office holders should not accept offers to meet the costs of travel facilities and/or commercial accommodation in connection with official activities (including of a spouse/partner if so accompanied), where such offers are made by private citizens or private enterprises. Discretion may be used where an office holder is the official guest of another Government or official body, or of a not for profit representative organisation or the like.

Office holders should be particularly sensitive of acceptance of gifts or hospitality from friends, or connected persons, as defined in the 1995 Act, where such persons have, or are likely to obtain, a benefit or suffer a loss arising from a decision made, or to be made, by an office holder or by the Government, of which the office holder is aware.

2.2.9. Constituency Matters

In their capacity as elected representatives, Ministers (including Ministers of State) are free to make representations on behalf of constituents, including to other Ministers, provided that the responses sought or expected to their representations or given to the representation of other office holders are in keeping with responses which would be given to members of the Houses of the Oireachtas generally. Ministers are free to receive representations from other office holders on a similar basis.

Appendix

Guidelines on Compliance with the provisions of the Ethics in Public Office Acts, 1995 & 2001

*(including, at Appendix 3, the Government Guidelines for Office Holders
issued pursuant to section 15(4) of the Ethics in Public Office Act, 1995)*

**GUIDELINES ON COMPLIANCE WITH THE PROVISIONS OF THE ETHICS
IN PUBLIC OFFICE ACTS, 1995 and 2001**

OFFICE HOLDERS
(Third Edition)

Standards in Public Office Commission,

18 Lower Leeson Street,

Dublin 2.

Tel: (01) 639 5666

Fax: (01) 639 5684

Email: sipo@ombudsman.gov.ie

Web: www.sipo.ie

December 2002

<u>Contents</u>	<u>Page</u>
Introduction	1
Ethics in Public Office Acts - General Background	3
Disclosure Requirements for Office Holders as Members	6
<i>A. Annual Statement of Registrable Interests</i>	6
<i>B. Disclosure of a Material Interest in Proceedings of the Houses</i>	8
Additional Disclosure Requirements as Office Holders	9
<i>A. Statement of Additional Interests</i>	9
<i>B. Statement of a Material Interest in a Function to be Performed</i>	11
<i>C. Gifts</i>	13
<i>D. Property and Services</i>	14
Special Advisers	15
General Guidance	16
<u>Appendices</u>	
Appendix 1 - Definitions	17
Appendix 2 - Registrable Interests	22
Appendix 3 - Government Guidelines (section 15(4) of 1995 Act)	26
Appendix 4 - Gifts	31
Appendix 5 - Obligations in relation to Special Advisers	34

Introduction

These guidelines for office holders, which are published by the Standards in Public Office Commission (Standards Commission), replace and revoke the guidelines which were published by its predecessor, the Public Offices Commission, in February 1998.

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

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

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

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

A number of other important terms used in these guidelines and in the legislation are defined in Appendix 1 of these guidelines. Office holders are entitled, pursuant to section 25 of the 1995 Act, to request advice from the Standards Commission on any provision of the Ethics Acts or on the application of any provision in any particular circumstance. This includes the code of conduct for office holders which is being drawn up by the Government and will be published, in due course, by the

Standards Commission. The 1995 Act provides that, where requested, such advice must be provided by the Standards Commission within 21 days or, alternatively, the Standards Commission may decline to give advice. Ideally, to eliminate any risk of misunderstanding, requests for advice should be made in writing (including by e mail). Normally, the Standards Commission will provide, or confirm, all advice of a substantive nature, in writing.

When a request for advice is made to the Standards Commission in relation to a particular case, the provision concerned of the Ethics Acts will not, as respects the person who made the request, apply in relation to that case during the period from the making of the request to the time when the advice is given or the Standards Commission declines to give advice.

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

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

An Irish language version of these guidelines will be made available where requested.

Ethics in Public Office Acts - General Background

Ethics in Public Office Act, 1995 (the 1995 Act)

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

Standards in Public Office Act, 2001 (the 2001 Act)

2. The 2001 Act provides for the establishment of the Standards Commission and confers on it the functions of its predecessor, the Public Offices Commission.
3. The principal functions of the Standards Commission, as inherited from the Public Offices Commission, are to publish guidelines, to provide advice on request to assist compliance with the Ethics Acts and to investigate and report in relation to possible contraventions. Generally, these functions relate to office holders, special advisers and designated directors and employees of specified public bodies.
4. A Tax Clearance Certificate must be provided to the Standards in Public Office Commission by office holders and will issue, on application, from the Collector General where an office holder is in compliance with the obligations imposed by the Tax Acts, the Capital Gains & Acquisitions Tax Acts

and the Value-Added Tax Acts, as amended, in relation to the payment or remittance of any taxes, interest or penalties due and the delivery of any returns required. The Tax Clearance Certificate must have issued to the office holder from the Collector General not more than nine months before and not more than nine months after his or her election or nomination.

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

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

5. Contravention of the above requirements relating to Tax Clearance Certificates and Statutory Declarations will lead to investigation by the Standards Commission and the drawing up of a written report of the result of the investigation. The report will be provided to the relevant Committee on Members' Interests who will cause it to be laid before the House.
6. As compared to the 1995 Act, the 2001 Act provides for a wider range of circumstances in which a complaint can be made to the Standards Commission. These include, for example, complaints in respect of the Acts or omissions of "a specified person" (who is defined in the 2001 Act and which includes an office holder) which may be inconsistent with the proper performance by "the specified person" of the functions of his or her office or position. The 2001 Act also provides for immunity for complainants and establishes a basis whereby the Standards Commission can appoint Inquiry Officers to carry out preliminary inquiries into complaints.
7. The 2001 Act requires the drawing up of codes of conduct for office holders, for other members

of the Houses and for the public service. These codes of conduct will be published by the Standards Commission and will indicate standards of conduct and integrity for the persons to whom they relate in the performance of their functions and connected matters. The codes will be admissible in any proceedings before a court or other tribunal or a Committee on Members' Interests of either House of the Oireachtas or the Standards Commission and any provision of any such code that appears to any of the aforementioned bodies to be relevant to a question in the proceedings may be taken into account in determining the question.

Disclosure Requirements for Office Holders as Members

A. Annual Statement of Registrable Interests

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

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

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

9. The form for the registration of interests is provided to members of both Houses by the Standards Commission in January each year. An Irish language version of the form is available on request.
10. Interests held by members under the following general headings are registrable on this form:

- (1) Occupational income, etc., other than that as office holder or member
- (2) Shares, etc.
- (3) Directorships
- (4) Land and buildings
- (5) Gifts

- (6) Supplies of property or services
- (7) Travel facilities, etc.
- (8) Remunerated position as a lobbyist, etc.
- (9) Contracts with the State

11. A fuller description of each registrable interest is given in Appendix 2 of these guidelines.
12. It is not necessary to specify the amount or monetary value of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement.
13. The annual statements of registrable interests of members are forwarded by the Standards Commission to the Clerk of Dáil or Seanad Éireann, as appropriate. Each Clerk will establish a Register of Members' Interests which will be laid before Dáil or Seanad Éireann, as the case may be, and published in *Iris Oifigiúil*. A copy of the Register will be furnished by the Clerk to the Standards Commission. The Clerks may also correct errors or otherwise amend the Register as provided for in the 1995 Act.

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

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

Additional Disclosure Requirements as Office Holders

A. Statement of Additional Interests

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

21. A copy of each statement of additional interests of an office holder will be furnished by the appropriate Clerk to the Standards Commission. Copies of the statements of additional interests of Ministers and Ministers of State will also be furnished by the Clerk to the Taoiseach.

Notes: *(i) Statement of Additional Interests forms are provided by the Minister for Finance.*
 (ii) Statements of Additional Interests are not published in the normal course.

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

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

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

C. Gifts

26. In addition to the following paragraphs dealing with gifts, office holders should familiarise themselves with the guidelines published by the Government, in August 1996 under section 15(4) of the 1995 Act, on the steps to be taken if an office holder, or a spouse or a child, is offered or supplied with property or services at below the commercial price, or with a loan of property free or below the commercial price, or a service free. The Government guidelines are reproduced in Appendix 3 of these guidelines.
27. An office holder is required to surrender any gift with a value in excess of **€650** which, by virtue of his or her office, is given to the office holder, or to a spouse, a child or a child of a spouse of the office holder. Any such gift will be deemed to be a gift given to the State and will vest in the Minister for Finance. An office holder will, as soon as possible following receipt of such a gift, inform the Secretary General to the Government and retain custody of the property concerned on behalf of the State until such time as the instructions of the Secretary General regarding its disposal are received. The Secretary General will, in accordance with the general directions of the Government, arrange for custody of the property by, or on behalf of, the State or for its disposal by sale or gift. In the event of a sale the proceeds may be paid to the Exchequer or be donated to charity. The office holder is obliged to comply with the instructions of the Secretary General in this regard when so directed by him or her.
28. The surrender requirement will not apply to a gift given as a contribution for political purposes (in which case it may be disclosable under the Electoral Acts, 1997 to 2002). Neither will it apply to a gift given by a friend or relative for personal reasons or by virtue of another office or position held (other than office holder) or because of a status enjoyed in another capacity.
29. In the event of doubt, the Secretary General to the Government will determine the value of any gift and the question of whether any gift has been given by virtue of the office held.

Exemptions

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

D. Property and Services

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

Medical and Legal Services

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

Special Advisers

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

General Guidance

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

Appendix 1

Definitions

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

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

"benefit" includes-

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

or other advantage and the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;

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

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

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

at or about the time of the first-mentioned supply or lending of property or the first-mentioned supply of a service from a person who carries on such a business;

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

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

"company" means any body corporate;

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

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

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

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

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

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

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

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

consequence or effect

- (a) of the performance by the person of a function of his or her office, or
 - (b) of any decision made in relation to or in the course or as a result of the performance of such a function by the person,
- concerning that matter may be to confer on or withhold from the person or the connected person a significant benefit or impose on the person a significant loss, liability, penalty, forfeiture, punishment or other disadvantage without also conferring it on, withholding it from or imposing it on persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person or the connected person is a member;

"the Minister" means the Minister for Finance;

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

"property" means real or personal property. A person shall be deemed to have an interest in property if the person would be regarded as having, for the purposes of the Capital Acquisitions Tax Act, 1976, the power to make a disposition of that interest;

"registration date" means-

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

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

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

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

- (a) occupies or occupied an excluded position (within the meaning of the Civil Service Commissioners Act, 1956) having been selected for appointment to that position by an office holder personally otherwise than by means of a competitive procedure,
or
- (b) is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive procedure, and whose function or principal function as such a person is or was to provide advice or other assistance to or for the office holder;

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

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

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

Appendix 2

Registrable Interests

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

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

(a) Occupational Income, etc.

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

(b) Shares, etc.

A holding by an office holder of shares, bonds, debentures, or other like investments in any particular company or other enterprise or undertaking, with an aggregate nominal or market value in excess of **€13,000** at any time during the appropriate period. Holding does not include money in a current, deposit or other similar account with a financial institution but does include a holding in unit trusts or managed funds.

(c) Directorships

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

(d) Land (including premises)

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

purchase land, whether or not any consideration has been paid in respect thereof, or land in respect of which such an option has been exercised but which has not been conveyed to the office holder.

An office holder is not required under this heading to disclose information regarding his or her private home or that of a spouse and any subsidiary or ancillary land to such home that is not being used or developed primarily for commercial purposes. Also excluded is a holiday home and any other private home used by an office holder or his or her family and any land that is subsidiary or ancillary to it which is required for its amenity or convenience and is not being used or developed primarily for commercial purposes.

(e) Gifts

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

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

(f) Property and Services

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

Excluded is property supplied or lent or a service supplied to an office holder, as a gift for purely personal reasons, by a relative or friend of the office holder or of his or her spouse or child or of the spouse's child, unless acceptance could have materially influenced the office holder in the performance of his or her functions as a member or office holder.

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

(g) Travel facilities, etc.

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

Excluded are:

- *travel facilities, living accommodation, meals or entertainment supplied, by the same person, once or more than once, free of charge during the appropriate period where the commercial price or the aggregate of the commercial prices was less than €650, or supplied where the price paid was less than the commercial price by not more than €650.*
- *travel facilities, living accommodation, meals or entertainment provided:*
 - (i) *within the State,*
 - (ii) *in the course and for the purpose of performing the functions of an office holder as a member or office holder*
 - (iii) *in the course and for the purpose of any trade, profession, employment or other occupation of an office holder (other than member or office holder)*
 - (iv) *as a member, in the course of Conferences of the Inter Parliamentary Union, Conferences and Parliamentary Assemblies of the Council of Europe and its Committees, Parliamentary Assemblies of the Organisation for Security and Co-operation in Europe, Parliamentary Assemblies of the Western European Union, bilateral visits pursuant to invitations from the speakers of other parliaments and such other conferences and visits as may arise from time to time,*
 - (v) *as a member, by any other organisation of states or governments of which this State or the Government is a member or a body of or associated with.*
- *travel facilities, living accommodation, meals or entertainment supplied as a gift for personal reasons by a relative or friend of an office holder or of his or her spouse or child or of the spouse's child, unless the acceptance of such might reasonably be seen to have been capable of influencing the office holder in the performance of his or her functions as a member or office holder.*

(h) Remunerated Position

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

(i) Contracts

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

Appendix 3

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

The text that follows (*in italics*) is a reproduction of the guidelines published by the Government on 14 August, 1996 pursuant to section 15(4) of the 1995 Act. Please note that (1) all references to the Public Offices Commission should be read as references to the Standards in Public Office Commission and (2) all references to the Secretary to the Government should be read as references to the Secretary General to the Government.

1. **General**

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

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

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

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

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

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

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

3. **What is covered?**

The following come within the guidelines:-

- property or a service at below commercial price
- a loan of property free of charge, or for less than the commercial value of the loan
- a service free of charge

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

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

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

- as a donation for political purposes
- for personal reasons only by a friend or relative
- available also to members of the public, either generally (e.g. property arising from super-club points) or in particular circumstances (e.g. travel arrangements following family bereavement, missing a flight etc.)
- by virtue of a position other than that as office holder (i.e. by virtue of being a

Member of the Houses of the Oireachtas, officer of a local club or by being the holder of another position)

- *in the course of and for the purpose of performance of duties of office holder, (e.g. hotel facilities for attendance at EU Council meetings), including representational role by spouse where this is in accordance with established practice*
- *where there is no intention to and it does not confer any benefit, directly or indirectly on the office holder*

5. Steps to be taken...

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

5.1 If offered

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

5.2 If supplied

(a)(i) Where such property/services are supplied to a Minister /Minister of State by virtue of ministerial office, or s/he becomes aware that such are supplied to a spouse or child, s/he must notify the Secretary to the Government in writing, and s/he must make an appropriate refund to the person supplying the benefit. The Secretary to the Government will in turn inform the Taoiseach, Tánaiste and such other Minister as may be specified by Government, on the matter.*

*(a)(ii) In the event of a refund to the donor not being practicable, the Taoiseach, Tánaiste and specified Minister shall determine alternative appropriate action, such as donation of an equivalent amount to a particular voluntary body or charity. A Minister** /Minister of State must act in accordance with such a determination.*

(a) (iii) In all cases where such property/services are supplied, the Secretary to the

Government will notify the Public Offices Commission on the matter and on the action taken. Ministers / Ministers of State must provide any information required by the Secretary to the Government so as to enable him/her to discharge this function.

- (b) *An office holder who is not a Minister / Minister of State must notify the Public Offices Commission on the matter, and make a refund, or if this is not practicable, a donation, to be determined by the Commission, on the basis of (ii) above.*

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

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

5.3 If unsure

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

6. General

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

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

or free

Property

Examples would include :

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

Services

Examples would include :

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

Appendix 4

Gifts

1. As already stated, a gift given to an office holder, or a spouse or child, by virtue of his or her office, which exceeds €650 in value, must be surrendered. There is also a requirement that such a gift will be disclosed in the office holder's annual statement of registrable interests.

2. Because of the office held, some office holders are more likely than others to attract gifts which would fall to be surrendered. Examples might include the Taoiseach and the Minister for Foreign Affairs who would be prominently engaged in State visits and representation abroad and in hosting State visits and foreign dignitaries to this country. The Standards Commission recognises that the protocol of such occasions often involves an exchange of gifts and the traditions and culture of some nations can result in the giving of quite valuable gifts. The following general advice on gifts may be helpful in this regard. Office holders should bear in mind that the Secretary General to the Government is empowered by the 1995 Act to make determinations both on the value of any gift and the question of whether a gift was given by virtue of office.

Aggregation of Values

3. In so far as the disclosure requirement is concerned, the Second Schedule to the 1995 Act makes it clear that gifts received from the same person in the course of a single registration period should be aggregated for the purpose of determining whether or not their total value exceeds €650. If the aggregate value of such gifts during any one registration period exceeds the threshold, each individual gift should be declared, even when the individual value does not exceed the €650 threshold. Where a gift comprises of more than one item, being presented together on the same occasion by the same person, the total value of the gift will be used for disclosure purposes. Likewise, any gifts which are intrinsically linked to one another, even if presented separately during the same registration period, must have their values aggregated for disclosure purposes. Gifts which are intrinsically related to one another but presented in different registration periods, where each item individually has a value of less than €650 but where the aggregate value exceeds €650, need not, strictly speaking, be disclosed as the threshold would not be exceeded in any single registration period. However, the staggering of related gifts

between registration periods could be seen as seeking to circumvent the spirit, if not the letter, of the legislation.

4. The requirement to surrender gifts is of course a different one to that of disclosure. Section 15 of the 1995 Act provides that where a gift valued in excess of **€650** is given to an office holder by virtue of his or her office, that gift shall be deemed to be a gift given to the State and shall be vested in the Minister for Finance. Section 15 omits any reference to the notion of the cumulative value of gifts within any one registration period; "gift" is referred to in the singular throughout that section. The Standards Commission is, therefore, of the view that the 1995 Act does not require the surrender of gifts received from one source, but presented on separate occasions during any one registration period, where the cumulative value exceeds **€650** but where the value of each gift is individually less than the **€650** threshold. The Commission is also of the view that, for the purpose of surrender, gifts presented together on a single occasion should be treated separately. In other words, each separate gift must exceed the **€650** threshold before being required to be surrendered. This would not, of course, apply to gifts which are intrinsically linked to each other (e.g. decanter and glasses), received in any one registration period, whose values should be aggregated for this purpose.
5. Gifts which are intrinsically related to one another, but presented separately in different registration periods, could give rise to difficulties. If, for example, such gifts comprise part of a set, the total value of which exceeds the sum of the individual parts, it is certainly arguable, although not strictly required under the 1995 Act, that the gift should be viewed in its entirety and, provided that value exceeds **€650**, it should be surrendered.
6. The following examples may be useful:

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

Example B : Gifts having a combined value below **€650** can be retained, while a

single gift with a value in excess of €650 should be surrendered. The value of gifts should be aggregated for the purpose of establishing the requirement to disclose them. If the combined value exceeds €650, all gifts must be disclosed.

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

Exemptions from 'Gift' Classification

7. The following would not be classified as gifts for the purposes of section 15 of the Act :
 - (a) Awards made to an office holder in recognition of certain specified achievements of a public nature following a process of nomination and selection from a number of qualified persons (e.g. European of the Year, Nobel Prize). Such awards may involve the giving of tokens as an intrinsic element of the award.
 - (b) Awards conferred on an office holder in recognition of certain specified achievements of a public nature where the award is made by a recognised and properly constituted academic institution and/or a civil, religious or sporting body (e.g. Honorary Degrees, Freedom of a City). Generally speaking, such awards do not have any direct monetary value. They may, however, involve the giving of tokens or regalia as an intrinsic element of the award.
 - (c) Subject to the prior approval of the Government in accordance with Article 40.2.2° of the Constitution, awards conferred by a foreign Government or a foreign Head of State in accordance with established and recognised procedures of general applicability (e.g. Papal Honours, Legion of Honour). These awards may involve the giving of tokens or regalia as an intrinsic element of the award.

Appendix 5

Obligations in relation to Special Advisers

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

1. A "special adviser" means a person who
 - (a) occupies or occupied an excluded position (within the meaning of the Civil Service Commissioners Act, 1956) having been selected for appointment to that position by an office holder personally otherwise than by means of a competitive procedure, or
 - (b) is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive procedure,

and whose function, or principal function, is, or was, to provide an office holder with advice or other assistance. This could include, inter alia, Personal Advisers, Personal Assistants, Personal Secretaries, Press Officers, certain drivers, etc. Such an appointment or employment ends not later than the date on which the office holder for whom the person is acting as a special adviser ceases to hold the office to which the appointment or employment referred. This will be deemed to be a condition of the special adviser's appointment or employment.

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

2. The provisions of the Ethics Acts outlined in paragraphs 3 to 7 below apply to persons in the special adviser category whose remuneration exceeds the maximum salary (standard scale) of a higher executive officer in the Civil Service. They also apply to special advisers appointed pursuant to section 11 of the Public Service Management Act, 1997.
3. A special adviser will, each year not later than 31 January, furnish to the office holder and the Standards Commission a statement of interests (as described in Appendix 2 of these guidelines) covering the period from 1 January (or the date of commencement, if later) up to 31 December of the preceding year. The statement should contain information, of which the special adviser has actual knowledge, relating to his or her own interests and those of his or her spouse or child or child of a spouse, which could materially influence the special adviser in, or in relation to, the performance of the functions of the special advisership.
4. Where a person, for whatever reason, ceases to be a special adviser, the person will provide both the office holder and the Standards Commission with a statement of interests (including the interests of a spouse or child) within twenty eight days of the date of cessation. Such statement would cover the period from 1 January, or the date of commencement, if later, in the year in question up to the date of cessation.
5. A special adviser is also required to provide a statement of the facts to the office holder and the Standards Commission if a specific function falls to be performed by the special adviser and he or she, or a connected person, has a material interest in a matter to which the function relates. The statement should be furnished as soon as possible. In such circumstances, the special adviser will not perform the function unless there are compelling reasons to do so. If the special adviser does propose to perform the function, he or she will, before, or if that is not reasonably possible, as soon as may be afterwards, provide a statement in writing of the compelling reasons to the office holder and the Standards Commission.
6. A special adviser will undertake that he or she will not engage in any trade, profession, vocation or other occupation which might reasonably be seen to be capable of interfering, or being incompatible, with the role of special adviser.

7. It is deemed to be a condition of the appointment or employment of a special adviser that the person will comply with the requirements set out in paragraphs 3 to 6 above.

Laying of Documents before the Houses of the Oireachtas

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

Note: *The requirements at paragraph 8(i) and paragraph 9 above are once-off rather than annual requirements. The documents would not require to be laid more than once unless there was a significant change in the information to be provided. General round pay increases may be ignored for this purpose.*

10. The documentation described in paragraphs 8(i) and 9 above must be laid by the office holder before each House of the Oireachtas not more than 60 days after the person was appointed or employed to act as a special adviser.
11. Any annual statement of a special adviser's own interests, as described in paragraph 3 above, which has been furnished to an office holder must be laid by the office holder before both Houses not later than 60 days after 31 January, i.e. generally not later than 1

April (or 2 April in a leap year).

12. Any statement of interests furnished by a special adviser on leaving the position, as described in paragraph 4 above, must be laid by the office holder before each House within sixty days of its receipt.
13. Where a person ceases to be an office holder, he or she must, within 60 days from the date of its receipt, lay before each House any statement of a special adviser's own interests which was furnished to the office holder by a special adviser whose appointment was terminated as a consequence, as well as any annual, or other, statement of a special adviser's own interests which, up to the date of leaving office, had not already been laid.
14. The requirement at paragraph 13 above also applies to documents, not already laid, relating to the appointment or employment of a special adviser, the qualifications of a special adviser and whether the special adviser is a relative of the office holder.
15. Where an office holder dies or becomes incapacitated, the laying of documents pertaining to his or her special advisers becomes a matter for the Taoiseach.
16. The procedure for laying documents before the Houses of the Oireachtas is relatively simple - Department of Finance Confidential Circular 3/78 refers. The form to accompany documentation is obtainable from the Stationery Office; it should also be available within each Department. Three copies of each document to be laid, together with the appropriate form, should be forwarded to the Clerk of each House; the envelope should be marked for the attention of the Librarian.
17. The annual statement of a special adviser's own interests may be the only document which needs to be laid each year if the documents relating to qualifications, terms of appointment or employment and whether the person is a relative were laid in a previous year and the information contained therein has not changed significantly.

**Standards in Public Office Commission,
18 Lower Leeson Street, Dublin 2.
Tel: (01) 6395666 Fax: (01) 6395684
email: sipo@ombudsman.gov.ie
website: www.sipo.ie**