



AN BILLE EITICE RIALTAIS AGUS OIFIGÍ POIBLÍ, 1991
ETHICS IN GOVERNMENT AND PUBLIC OFFICE BILL, 1991

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As initiated

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AN BILLE EITICE RIALTAIS AGUS OIFIGÍ POIBLÍ, 1991
ETHICS IN GOVERNMENT AND PUBLIC OFFICE BILL, 1991

BILL

entitled

5 AN ACT TO PROVIDE FOR THE VESTING IN THE MINISTER
FOR FINANCE AS STATE PROPERTY OF GIFTS MADE
TO PERSONS HOLDING CERTAIN PUBLIC OFFICES,
FOR THE REGISTRATION AND DECLARATION OF THE
10 FINANCIAL INTERESTS OF MEMBERS OF THE
OIREACHTAS, FOR THE REGISTRATION AND PUB-
LICATION OF THE INCOME AND EXPENDITURE OF
POLITICAL PARTIES, AND TO PROVIDE FOR OTHER
MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

15

*Gifts Made and Goods and Services Provided to Holders of Certain
Public Offices*

1.—In this Part—

Interpretation.

“Committee”—

20 (a) in relation to an office holder who is a member of Seanad
Éireann (or who holds the office of Attorney General),
means the Committee on Procedure and Privileges of
Seanad Éireann, and

25 (b) in relation to an office holder who is a member of Dáil
Éireann, means the Committee on Procedure and Priv-
ileges of Dáil Éireann;

“gift” means a gift of property, whether real or personal;

“office holder” means a person who—

(a) is a member of the Government, or
30 (b) holds the office of Attorney General or Minister of State;

“Secretary” means the Secretary to the Government;

“value”, in relation to a gift, means the price which, in the opinion
of a person authorised to inspect the gift and report to him the value
thereof for the purposes of this section, and the person paying the

of the Secretary, that gift would fetch if sold in the open market on the date on which the gift was made in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the gift.

Certain gifts to office holders by virtue of office to be State property.

2.—(1) From the date of coming into operation of this Act, where a gift the value of which exceeds £200 is made to an office holder by virtue of his office, such gift shall be deemed to be a gift made to the State. 5

(2) For the purposes of *subsection (1)* any gift made to an office holder is made to him by virtue of his office unless the gift is made by a personal friend or member of the family of that office holder or of his spouse and for purely personal reasons. 10

Office holder to notify Secretary or Committee of gifts made exceeding £200 in value.

3.—(1) Where a gift is made to an office holder which he knows or has reason to believe may exceed £200 in value, he shall, within 30 days thereafter— 15

(a) if he believes that the gift was made to him by virtue of his office, notify the Secretary, and

(b) in any other case, notify the Committee,

of the fact that such gift has been made to him.

(2) Where the making of a gift is notified to the Committee under *subsection (1) (b)*, the Committee shall— 20

(a) after receiving such evidence and submissions as it considers necessary, decide the question whether the gift was made to the office holder by virtue of his office, and

(b) if it decides that the gift was made to the office holder by virtue of his office, within 30 days thereafter, notify the Secretary of its decision thereon. 25

(3) In deciding a question under *subsection (2)* the Committee shall, unless it has reason to be satisfied to the contrary, presume that the gift in question was made to the office holder by virtue of his office. 30

(4) An office holder who, where a gift has been made to him which he knows or has reason to believe may exceed £200 in value—

(a) knowingly fails, within 30 days thereafter, to notify either the Secretary or the Committee of the fact that such gift has been made to him, or 35

(b) knowingly provides false or misleading information to either the Secretary or the Committee in connection with the making of such gift to him,

shall be guilty of an offence under this section. 40

Secretary to ascertain value of gifts.

4.—Where the Secretary receives notification under *section 3 (1) (a)* or *3 (2) (b)* in relation to a gift, he shall ascertain the value of the gift in such manner and by such means as he thinks fit, and he may authorise a person to inspect the gift and report to him the value thereof for the purposes of this section, and the person having the 45

custody or possession of the gift shall permit the person so authorised to inspect it at such reasonable times as the Secretary considers necessary.

5 5.—(1) Subject to *subsection (2)*, where the Secretary is of opinion that the value of a gift the making of which has been notified to him under *section 3 (1) (a)* or *3 (2) (b)* exceeds £200, he shall inform the Government accordingly and the gift shall thereupon vest in the Minister for Finance as State property.

Gifts exceeding £200 in value to vest in Minister for Finance.

10 (2) Where an office holder to whom a gift to which *subsection (1)* applies has been made agrees to pay to the Minister for Finance the amount by which the value of the gift exceeds £200, the Government may refuse to accept the gift and the gift shall, upon such payment being made, vest in the office holder to whom it was made.

15 6.—Where the Secretary is of opinion that the value of a gift the making of which has been notified to him under *section 3 (1) (a)* or *3 (2) (b)* does not exceed £200, he shall inform the Government accordingly and the gift shall thereupon vest in the office holder to whom it was made.

Gifts not exceeding £200 in value to vest in office holder.

20 7.—(1) An office holder who solicits or accepts the provision of goods or services to him or for his benefit at a price which he knows or suspects to be less than their commercial price shall be guilty of an offence under this section.

Prohibition on soliciting or accepting provision of goods or services at price less than commercial price.

(2) This section shall not apply to the provision of goods or services to an office holder—

25 (a) by a personal friend or member of the family of that office holder or of his spouse, where the provision of such goods or services at such a price is in the nature of a gift made to that office holder for purely personal reasons, or

30 (b) where the difference between the price at which such goods or services are provided and their commercial price (or, where a person provides goods or services to an office holder on more than one occasion during a twelve month period, the aggregate amount of such differences during any such period) does not exceed £200.

35 (3) For the purposes of this section, the commercial price of goods or services means—

40 (a) where the person by whom the goods or services are provided is in the business of providing such goods or services, the lowest price charged by him for an equivalent amount of the same goods or services at or about the time they are so provided, and

45 (b) where the person by whom the goods or services are provided is not in the business of providing such goods or services, the lowest price charged for an equivalent amount of the same goods or services at or about that time by any other person providing those goods or services on a commercial basis in the market area in which the goods or services are so provided.

Part I not to apply to gifts, goods or services to which *Part III* applies.

8.—This Part does not apply to gifts made or goods or services provided to or for the benefit of an office holder as agent or candidate of a registered party within the meaning of *Part III*.

Offences under *Part I*.

9.—A person guilty of an offence under this Part shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,000, or 5
- (b) on conviction on indictment, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years or to both.

Annual report of operation of *Part I*.

10.—The Government shall cause to be laid before each House of the Oireachtas an annual report setting out particulars of decisions 10 made under this Part within the preceding twelve months by—

- (a) the Committee,
- (b) the Secretary, and
- (c) the Government.

PART II

15

Registration of Interests of Members of Dáil Éireann and Seanad Éireann

Interpretation.

11.—In this Part—

“child”, in relation to a member, means a child who is wholly or partly dependent on that member for maintenance; 20

“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 goods and services, means—

- (a) where the person by whom the goods or services are provided 25 is in the business of providing such goods or services, the lowest price charged by him for an equivalent amount of such goods or services at or about the time they are so provided, and
- (b) where the person by whom the goods or services are provided 30 is not in the business of providing such goods or services, the lowest price charged for an equivalent amount of such goods or services at or about that time by any other person providing such goods or services on a commercial basis in the market area in which the goods or services are so 35 provided;

“Committee” means, in relation to members of Dáil Éireann, the Committee on Procedure and Privileges of Dáil Éireann and, in relation to members of Seanad Éireann, the Committee on Procedure and Privileges of Seanad Éireann; 40

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

“Register” means the Register of Members’ Interests maintained by the Clerk under *section 15*;

5 “Roll of Members” means, in relation to members of Dáil Éireann, the Roll of Members maintained pursuant to the Standing Orders of Dáil Éireann and, in relation to members of Seanad Éireann, the Roll of Members maintained pursuant to the Standing Orders of Seanad Éireann;

“spouse”, in relation to a member, does not include a spouse who is living separate and apart from that member.

10 12.—(1) Every member shall, within 28 days of signing the Roll of Members, provide to the Clerk a statement of his registrable interests in accordance with this Part.

Members to provide Clerk with statement of registrable interests.

15 (2) Every member shall provide to the Clerk a statement of any alteration in relation to his registrable interests within 28 days of that alteration occurring.

13.—A statement of registrable interests under *section 12* shall be in a form prescribed by the Committee and shall include interests of which the member is aware, of—

Statement to include interests of member’s spouse and children.

(a) the member,

20 (b) the member’s spouse, and

(c) any child of the member.

14.—(1) For the purposes of this Part the following matters shall be registrable interests and shall be included in a statement provided by a member under *section 12*, namely—

Registrable interests.

25 (a) shares in any company, indicating the name of the company and (in the case of a private company) the nature of its interests and activities;

30 (b) any family or business trust in which a beneficial interest is held, indicating the name of the trust and the nature of its operation;

(c) land, indicating the location and the purpose for which it is owned;

35 (d) directorships of companies, indicating the name of the company, whether the position is an executive or non-executive directorship and whether any income or other benefit (indicating the nature of such benefit) is derived from the position;

(e) partnerships, indicating the nature of the interests and activities of the partnership;

40 (f) liabilities exceeding £1,000 in value, indicating the nature of the liability and the creditor concerned;

(g) bonds, debentures and like investments, indicating their nature and the name of the institutions concerned;

- (h) saving or investment accounts, indicating their nature and the name of the bank or other institution concerned;
 - (i) the nature of any other assets (excluding household and personal effects) each valued at over £5,000;
 - (j) the nature of any other sources from which income in excess of £500 per year is received; 5
 - (k) gifts valued at more than £200, indicating the name of the person or association that made the gift, provided that it shall not be necessary to include—
 - (i) any gift received from a personal friend or relative of the member or of his spouse and for purely personal reasons, unless the member judges that an appearance of conflict of interest may be seen to exist, or 10
 - (ii) any gift made to or for the benefit of a member as agent or candidate of a registered party within the meaning of *Part III*; 15
 - (l) goods or services provided free of charge or at a price less than their commercial price, indicating the name of the person or association that provided such goods or services, provided that it shall not be necessary to include— 20
 - (i) goods or services provided by a personal friend or relative of the member or of his spouse, where the provision of such goods or services at such a price is in the nature of a gift made to that member for purely personal reasons, unless the member judges that an appearance of conflict of interest may be seen to exist, 25
 - (ii) goods or services provided to the member in relation to which the difference between the price at which such goods or services are provided and the commercial price (or, where a person provides goods or services to a member on more than one occasion during a twelve month period, the aggregate amount of such differences during any such period) does not exceed £200, or 30
 - (iii) goods or services provided to or for the benefit of a member as agent or candidate, of a registered party within the meaning of *Part III*; 35
 - (m) membership of any organisation;
 - (n) a position held as political consultant or adviser to any organisation, indicating the name of that organisation; and 40
 - (o) any other interests where a conflict of interest with a member's public duties could foreseeably arise or be seen to arise.
- (2) It shall not be necessary for a member to set out the amount or monetary value of any property, income, benefit in kind or liability included in a statement under this Part. 45

15.—(1) The Clerk shall maintain a Register (to be known as the Register of Members' Interests) in a form prescribed by the Committee, which shall include every statement of registrable interests provided to him under *section 12*.

Register of
Members' Interests
to be maintained by
Clerk.

5 (2) As soon as practicable subsequent to each General Election the Clerk shall lay before the Dáil (or Seanad, as the case may be) a copy of the completed Register and shall also lay before the Dáil (or Seanad) from time to time as required any notification by a member of an alteration in relation to those interests.

10 16.—(1) Where the Committee reports to the Dáil (or Seanad, as the case may be), after investigation of a complaint made to it, that a member—

Suspension of
member in breach
of *Part II*.

(a) has knowingly failed to provide a statement of registrable interests to the Clerk within the time limited by this Part,

15 (b) has knowingly failed to notify the Clerk of any alteration of those interests within the time limited by this Part,

(c) has knowingly provided false or misleading information to the Clerk, or

20 (d) has knowingly failed to provide the Committee with all information and assistance necessary for the purposes of investigating a complaint relating to that member,

the Dáil (or Seanad) may, on a motion being made in that behalf, order the suspension of the member from the service of that House.

25 (2) Where any member is suspended pursuant to a motion passed under this section his suspension shall continue—

30 (a) where the Committee has reported that the member remains in default of his obligations under this Part, until the 12th day on which that House shall sit after the day on which the Committee reports that he has ceased to be in default of those obligations, or

(b) where the Committee has reported that the member is no longer in default of his obligations under this Part, until the 12th day on which that House shall sit after the day on which he was suspended.

35 (3) Suspension from the service of a House of the Oireachtas under this section shall prevent the member so suspended from serving on any Select Committee or Special Committee of that House to which he may have been appointed prior to his suspension.

PART III

40 *Political Parties — Register of Income and Expenditure*

17.—In this Part—

Interpretation.

“agent”, in respect of a registered party, includes the financial secretary of that party as well as any agent appointed by him under *section 21*;

“commercial price”, in relation to goods or services provided at a price less than their commercial price, means—

(a) where the person by whom the goods or services are so provided is in the business of supplying such goods or services, the lowest price charged by him for an equivalent amount of the same goods or services at or about the time they are so provided, and 5

(b) where the person by who the goods or services are so provided is not in the business of supplying such goods or services, the lowest price charged for an equivalent amount of the same goods or services at or about that time by any other person providing those goods or services on a commercial basis in the market area in which the goods or services are so provided; 10

“election” includes— 15

(a) a Presidential election,

(b) an election to the European Parliament,

(c) an election to either House of the Oireachtas, and

(d) an election to a local authority within the meaning of the Local Government Act, 1941; 20

“election expenses” means expenses incurred for the purpose of promoting or opposing, directly and during an election, a particular registered party, or the election of a particular candidate;

“gift”, in relation to a gift made for the use of a registered party, includes— 25

(a) the donation of money, goods or services for the use of that party, and

(b) the provision of goods or services for the use of that party at a price which is less than their commercial price;

“Register” has the meaning assigned to it by *section 19*; 30

“registered party” means a political party whose name has been entered into the Register;

“Registrar” has the meaning assigned to it by *section 18*;

“services”, in relation to the provision of goods and services to a registered party, does not include voluntary unpaid work on behalf of that party; 35

“value”, in relation to the value of a gift consisting of the provision of goods or services at a price which is less than their commercial price, means the amount that represents the difference between the price actually paid and the commercial price of those goods and services. 40

(2) If and so long as the office of Clerk of Dáil Éireann is vacant or the holder of that office is unable through illness, absence or other cause to fulfil his duties, the Clerk-Assistant of Dáil Éireann shall act as Registrar for the purposes of this Part.

provided is in the business of supplying
mid yel

5 19.—(1) The Registrar shall prepare and maintain a register (to be known as the Register of Political Parties) in which he shall register the name of every political party which is in his opinion a genuine political party organised to contest an election or elections within the State.

Register of Political Parties.

10 (2) The Registrar shall enter in the Register in respect of every registered party all particulars which are required to be reported to him under this Part.

15 (3) As soon as practicable subsequent to the coming into force of this Act and twice yearly thereafter the Registrar shall lay before Dáil Éireann an extract from the Register setting out all particulars which were reported to him under this Part within the preceding six months.

(4) An appeal may be made to and heard and determined by the High Court against any decision of the Registrar under *subsection (1)*.

20 20.—(1) Every registered party shall, within thirty days after the coming into force of this Act or within thirty days after the party becomes a registered party, whichever is the later, by notice in writing signed by the leader of the party report to the Registrar—

Particulars to be reported to Registrar for entry in Register.

(a) the name of its leader,

25 (b) the address of its headquarters,

(c) the name or names of the officer or officers of the party authorised to sign certificates authenticating the candidature of candidates of the party at elections,

(d) its normal fiscal period,

30 (e) the name and address of its financial secretary,

(f) the names and addresses of any agents appointed by it under *section 21*, and

(g) the name and address of the auditor appointed by it pursuant to *section 24*.

35 (2) Every registered party shall, by notice in writing signed by the leader or financial secretary of the party, report to the Registrar any alteration in relation to the information provided under *subsection (1)* within thirty days of that alteration occurring and, on receipt of any such notice, the Registrar shall vary the Register accordingly.

40 21.—The financial secretary of a registered party may appoint a person or persons to act as agent of that party for the purposes of this Part.

Appointment of agents by financial secretary of registered party.

Manner in which gifts to be made for use of registered party.

22.—(1) This section applies to any gift made—

- (a) for the use of the national organisation of a registered party,
- (b) for the use of any local or subordinate organisation of members of a registered party, or
- (c) for the purpose of promoting the election of any candidate of a registered party, 5

the value of which (or, where a person makes two or more such gifts in respect of a particular registered party during its fiscal period, the aggregate value of which) exceeds £1,000.

(2) Every person who makes a gift to which this section applies— 10

- (a) (i) shall either make such gift on his own behalf out of moneys or property to which he is beneficially entitled, or
- (ii) give notice in writing to an agent of that party of the name and address of the person or body on whose behalf the gift is made, and 15
- (b) shall make such gift (or, in the case of a gift of goods or services, give notice in writing of the fact that such gift has been made) to an agent of that party.

(3) A person who fails to comply with the provisions of *subsection (2)* shall be guilty of an offence. 20

Record to be maintained of gifts made for use of registered party.

23.—(1) Every agent of a registered party shall maintain a record of all gifts made or notified to him under *section 22*, setting out—

- (a) the purpose (by reference to *paragraphs (a) to (c) of section 22 (1)*) for which the gift was made, 25
- (b) the name of the person who made such gift (or on whose behalf it was made), and
- (c) the date on which it was made.

(2) Every agent of a registered party shall make the records maintained by him under *subsection (1)* available to the financial secretary and auditor of that party. 30

(3) An agent who—

- (a) maintains a record under *subsection (1)* which he knows or ought reasonably to know contains any false or misleading statement, or 35
- (b) fails to maintain a record under *subsection (1)* containing substantially the information required by that subsection to be set out therein,

shall be guilty of an offence under this section.

24.—(1) Every registered party shall, within thirty days after the coming into force of this Act or within thirty days after the party becomes a registered party, whichever is the later, appoint an auditor who—

Annual report by auditor of registered party.

5 (a) shall be a member of a body of accountants recognised by the Minister for Industry and Commerce for the purposes of section 162 (1) (a) of the Companies Act, 1963, and

(b) shall not be a member or former member of that registered party.

10 (2) Where an auditor appointed by a registered party pursuant to *subsection (1)* ceases for any reason to hold office as such or ceases to be qualified as provided in that subsection, the party shall, within thirty days, appoint another auditor.

15 (3) The auditor appointed by a registered party shall make a report to the financial secretary of the party on each return of receipts and expenses of the party for a fiscal period prepared during his term of office and shall make such examinations as will enable him to state in his report whether in his opinion the return presents fairly the information contained in the accounting records on which the return
20 is based.

(4) An auditor in his report pursuant to *subsection (3)* shall make such statements as he considers necessary in any case where—

25 (a) the return to which the report relates does not present fairly the information contained in the accounting records on which it is based;

(b) he has not received from agents and officers of the party all the information and explanation that he has required; or

(c) proper accounting records have not been kept by the registered party, so far as appears from his examination.

30 (5) An auditor of a registered party shall have access at all reasonable times to all records, documents, books, accounts and vouchers of the party, and shall be entitled to require from the financial secretary and other officers of the party such information and explanation as is in his opinion necessary to enable him to report as required
35 by *subsection (3)*.

25.—(1) The financial secretary of a registered party shall transmit to the Registrar in respect of each fiscal period of the party—

Annual return of receipts and expenses of registered party.

40 (a) a return of the party's receipts and expenses for the fiscal period, and

(b) the auditor's report made to him under *section 24* in respect thereof.

(2) A return made under *subsection (1)* shall set out—

(a) the name of each person or body—

45 (i) that made a gift in the fiscal period for a purpose referred to in *section 22 (1)* the amount or value of which exceeded £1,000, or

- (ii) that made gifts in the fiscal period for purposes referred to in *section 22 (1)* the aggregate amount or value of which exceeded £1,000;
 - (b) the amount or value of the gift or of the aggregate of the gifts made in the fiscal period by each person or body referred to in *paragraph (a)*; 5
 - (c) the purpose (by reference to *paragraphs (a) to (c)* of *section 22 (1)*) for which each gift referred to in *paragraph (a)* was made;
 - (d) the source or sources of any other income of the party and, in respect of each such source, the amount of income derived therefrom; 10
 - (e) the election expenses of the party;
 - (f) the amount of money expended on operating expenses of the party, including travel costs of the leader of the party and other party officials; and 15
 - (g) the total of all other expenditures made by or on behalf of the party.
- (3) It shall not be necessary for a return made under *subsection (1)* to set out the income and expenses of any local or subordinate organisation of members of a registered party. 20
- (4) A return and auditor's report referred to in *subsection (1)* shall be transmitted to the Registrar—
- (a) within three months after the end of the fiscal period to which the return relates, or 25
 - (b) if an election was held during that fiscal period, within three months after the date on which that election was held,

whichever date shall be the later.

Offences by
financial secretary.

26.—A financial secretary of a registered party who—

- (a) fails to transmit to the Registrar an auditor's report and return of receipts and expenses within the time limited by *section 25 (4)*, 30
- (b) transmits to the Registrar a return under *section 25 (1)* which he knows or ought reasonably to know contains any false or misleading statement, or 35
- (c) transmits to the Registrar a return under *section 25 (1)* that does not contain substantially the information required by *section 25 (2)* to be set out therein, 40

shall be guilty of an offence under this section.

Offences by
registered party.

27.—(1) Where an offence under this Part is committed by a financial secretary or agent of a registered party acting within the scope of his authority, that registered party shall be guilty of an offence under this section. 40

(2) A prosecution for an offence under *subsection (1)* may be brought against a registered party and in the name of that party and, for the purpose of any such prosecution only, the registered party shall be deemed to be a person.

5 28.—(1) A person guilty of an offence under this Part shall be liable— Penalties.

(a) on summary conviction, to a fine not exceeding £1,000, or

10 (b) on conviction on indictment, to a fine not exceeding £10,000 or to imprisonment for a term not exceeding two years or to both.

(2) A registered party guilty of an offence under this Part shall be liable—

(a) on summary conviction, to a fine not exceeding £5,000, or

(b) on conviction on indictment, to a fine not exceeding £50,000.

15

PART IV

Short Title, Commencement and Repeals

29.—(1) This Act may be cited as the Ethics in Government and Public Office Act, 1991. Short title and commencement.

20 (2) This Act shall come into operation on the day that is six months from the date of its enactment.

30.—Section 13 of the Electoral Act, 1963, is hereby repealed. Repeals.

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú chun bronntanais a thugtar do dhaoine a shealbhaíonn oifigí poiblí áirithe a dhílsiú don Aire Airgeadais mar mhaoin Stáit, chun leasanna airgeadais comhaltaí den Oireachtas a chlárú agus a fhógairt, chun ioncam agus caiteachas páirtithe polaitiúla a chlárú agus a fhoilsiú agus do dhéanamh socrú i dtaobh nithe eile a bhaineann leis an méid sin.

BILL

(as initiated)

entitled

An Act to provide for the vesting in the Minister for Finance as State property of gifts made to persons holding certain public offices, for the registration and declaration of the financial interests of members of the Oireachtas, for the registration and publication of the income and expenditure of political parties, and to provide for other matters connected therewith.

An Teachta Breandán Ó Húilín a thug isteach

Introduced by Deputy Brendan Howlin

*Ordaíodh ag Dáil Éireann a chlóbhualadh,
26 Feabhra, 1991.*

*Ordered by Dáil Éireann to be printed,
26th February, 1991.*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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