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Explanatory Memorandum](#)

AN BILLE UM EITIC IN OIFIGÍ POIBLÍ (LEASÚ) 2007
ETHICS IN PUBLIC OFFICE (AMENDMENT) BILL 2007

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Principal Act defined.
 2. Amendment of Section 5 of Principal Act.
 3. Amendment of Section 15 of Principal Act.
 4. Requirements in relation to certain benefits given to relevant persons.
 5. Amendment of Section 16 of Principal Act.
 6. Amendment of Second Schedule to Principal Act.
 7. Short title and collective citation.
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ACTS REFERRED TO

Ethics in Public Office Act 1995

1995, No. 22

Ethics in Public Office Acts 1995 and 2001



AN BILLE UM EITIC IN OIFIGÍ POIBLÍ (LEASÚ) 2007
ETHICS IN PUBLIC OFFICE (AMENDMENT) BILL 2007

BILL

entitled

5 AN ACT TO AMEND THE ETHICS IN PUBLIC OFFICE ACT
1995 AND TO MAKE PROVISION FOR CONNECTED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.**—In this Act “Principal Act” means the Ethics in Public Office Act 1995. Principal Act defined.

2.—Section 5 of the Principal Act is amended— Amendment of Section 5 of Principal Act.

(a) by the insertion after subsection (1) of the following subsection:

15 “(1A) Each statement required to be furnished to the Commission under subsection (1) shall include a statement that the member has complied with section 15A.”,

and

(b) by the substitution for subsection (2) of the following subsection:

20 “(2) Where a person who is a member on a registration date did not have a registrable interest at any time during the appropriate period specified in subsection (1), he or she shall, not later than the following 31 January, prepare and furnish to the Commission a statement in writing of
25 that fact together with a statement that the member has complied with section 15A.”.

3.—Section 15 of the Principal Act is amended in subsection (1) by the substitution of “€2,000” for “€650”. Amendment of section 15 of Principal Act.

Requirements in relation to certain benefits given to relevant persons.

4.—The Principal Act is amended by the insertion in Part III, after section 15, of the following new section:

“Requirements in relation to certain benefits given to relevant persons.

15A.—(1) This section applies to—

- (a) a person who is a Minister of the Government or a Minister of State, 5
- (b) a person who holds the office of Attorney General,
- (c) a person who is Chairman or Deputy Chairman of Dáil Éireann,
- (d) a person who is Chairman or Deputy Chairman of Seanad Éireann, 10
- (e) a person who is a member of Dáil Éireann,
- (f) a person who is a member of Seanad Éireann. 15

(2) A person to whom this section applies is referred to in this section as a ‘relevant person’.

(3) Where a relevant person is offered a benefit to which this section applies, other than in the circumstances referred to in subsection (4)(a), that person shall not accept the benefit unless he or she has in accordance with this section made an application in writing to the Commission under this section and received the opinion of the Commission that acceptance of the benefit would not be likely to influence the person concerned in the performance of his or her functions or duties as a relevant person. 20 25

(4) (a) The circumstances in which a relevant person may, subject to paragraph (b), accept a benefit to which this section applies are circumstances where, by reason of the occasion on which the benefit was offered or supplied, it would have been impractical to defer accepting the benefit until the opinion of the Commission had been received. 30 35

(b) A relevant person who accepts a benefit to which this section applies in the circumstances referred to in paragraph (a), shall, within 30 days of accepting the benefit concerned, make an application to the Commission in writing under this section, and unless the relevant person receives the opinion of the Commission that acceptance of the benefit would not be likely to influence the person concerned in the performance of his or her functions or duties as a relevant person that person shall— 40 45 50

(i) return the money or property the subject of the benefit to the donor, or where the donor refuses to accept the return of the benefit, surrender the benefit to the Secretary General to the Government, or

(ii) where the benefit consists of a non-returnable benefit, pay to the donor an amount being the value of the benefit accepted by the person, or where the donor refuses to accept such payment, pay such amount to the Secretary General to the Government.

(c) Where a benefit or the amount of the value of a benefit is surrendered or paid to the Secretary General to the Government under paragraph (b), the benefit or amount shall be disposed of as if it were a gift referred to in section 15.

(d) Where a benefit constitutes a non-returnable benefit the value of the benefit shall be such value as the Commission determines to be the commercial consideration or commercial price attributable to the benefit less any amount paid by the relevant person in respect of the benefit.

(e) Where, having considered an application under this section, the Commission has notified the relevant person concerned that it is unable to issue an opinion that acceptance of the benefit concerned would not be likely to influence the relevant person concerned in the performance of his or her functions or duties as a relevant person, and as a consequence the relevant person concerned is obliged to return a benefit or an amount in respect of a non-returnable benefit, the relevant person shall comply with his or her obligation to do so within 30 days of the determination of the Commission or such further period as may be specified by the Commission.

(5) (a) Where a relevant person makes an application under this section the Commission may request such further information regarding the matter as it believes is necessary to consider the application, and the relevant person concerned shall furnish such information to the Commission within such reasonable period of time as may be specified by the Commission.

(b) Without prejudice to the generality of paragraph (a), the information which the Commission may request may include information which relates to—

- (i) the scope or extent of the functions or duties of the relevant person concerned, 5
- (ii) the identity of the donor,
- (iii) the nature of the occupation, trade, business or profession of the donor, 10
- (iv) the length of time the donor has been a friend of the relevant person,
- (v) the purpose of the benefit, 15
- (vi) the nature or value of the benefit,
- (vii) the number, frequency, nature and value of similar benefits received from the same donor.

(6) On being furnished with information which it has requested, the Commission shall, if satisfied that the information furnished is sufficient to do so, determine the application under this section and shall, in writing, notify the relevant person concerned of the determination made. 20 25

(7) In this section—

‘donor’ means a person who offers to give or gives a benefit to which this section applies to a relevant person;

‘money’ includes documents and financial instruments which entitle a person to receive money or money’s worth, whether or not such entitlement arises— 30

- (a) on the happening of an event,
- (b) by reason of that person being the holder, owner or otherwise of the instrument, or 35
- (c) by reason of the exchange or surrender of the financial instrument in whole or in part; 40

‘non-returnable benefit’ means property or a service which has already been consumed or used or could not, in the view of the Commission, reasonably be returned to the donor of the benefit.

(8) Subject to subsection (9), in this section a ‘benefit to which this section applies’ means a benefit offered or given to a relevant person to 45

whom this section applies by a friend of the person for personal reasons only, and which benefit consists of—

- (a) a gift of money,
- (b) a loan of money,
- (c) a gift of property other than money,
- (d) the supply or loan of property other than money,
- (e) the provision of travel facilities, living accommodation, meals or entertainment,
- (f) the provision or supply of a service (other than a service referred to in paragraph (e)),

the aggregate value of which is an amount greater than €2,000.

(9) (a) The value of a benefit referred to in paragraph (b) of subsection (8) is the amount of the loan.

(b) The value of a benefit referred to in paragraphs (c) to (f) of subsection (8) shall be the commercial consideration or commercial price attributable to the benefit less any amount paid by the relevant person in respect of the benefit.

(10) Subject to subsection (11), for the purposes of aggregation under this section every benefit referred to in subsection (8) which is received by or offered to a relevant person from the same donor within a period in respect of which a statement is to be made under section 5 shall be aggregated, and where a benefit is offered in a case to which subsection (3) applies or received in a case to which subsection (4)(a) applies which if accepted or when received, as the case may be, would cause the amount of €2,000 to be exceeded, that last benefit shall be considered to be a benefit to which this section applies notwithstanding that the benefit concerned is of an amount or value which is less than €2,000.

(11) Benefits received before the coming into operation of this section shall not be aggregated with benefits received after the coming into operation of this section.

(12) Subsection (10) applies to a person who holds the office of Attorney General and who is not a member as if the reference in that subsection to a period in respect of which a statement is

required to be made under section 5 were a reference to a period in respect of which a statement is required to be made under section 16.

(13) References in this section to the performance of a function or duty in a position are references to the performance of the function or duty by the relevant person concerned personally, or by another person in pursuance of a direction given to the person, in relation to the particular matter concerned, by the relevant person personally or a person acting on behalf of and with the personal knowledge of the relevant person.

(14) Information received by or held by the Commission in connection with an application under this section shall not be disclosed without the consent of—

(a) the relevant person concerned, or

(b) the Minister.

(15) Subsection (14) does not apply to a report prepared by the Commission under section 24 or an investigation under section 23.”.

Amendment of
Section 16 of
Principal Act.

5.—Section 16 of the Principal Act is amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) A person who holds or held the office of Attorney General shall in addition to a statement under subsection (1) furnish a statement to the Taoiseach and the Commission that the person has complied with section 15A and the statement shall be furnished at the same time as a statement under subsection (1) or if no such statement is required, at the time such statement would have been required to be made.”.

(b) by the insertion after subsection (4), of the following subsection:

“(5) Where a person who holds the office of Attorney General is a member subsection (1A) shall not apply to the person during the period of the person’s membership.”.

Amendment of
Second Schedule to
Principal Act.

6.—Paragraph 1 of the Second Schedule to the Principal Act is amended:

(a) in subparagraph (1) by the substitution of “€5,000” for “€2,600”,

(b) in subparagraph (2) by the substitution of “€20,000” for “€13,000”,

(c) in subparagraph (4) by the substitution of “€20,000” for “€13,000”,

(d) in subparagraph (5)(a)(ii) by the substitution of “€2,000” for “€650”,

(e) in subparagraph (5)(b)(i) by the substitution of “€2,000” for “€650”,

5 (f) in subparagraph (5)(b)(ii) by the substitution of “€2,000” for “€650”,

(g) in subparagraph (6)(c) by the substitution of “€2,000” for “€650”,

10 (h) in subparagraph (6)(d) by the substitution of “€2,000” for “€650”, and

(i) in subparagraph (8) by the substitution of “€10,000” for “€6,500” where it twice appears.

7.—(1) This Act may be cited as the Ethics in Public Office (Amendment) Act 2007. Short title and collective citation.

15 (2) The Ethics in Public Office Acts 1995 and 2001 and this Act may be cited together as the Ethics in Public Office Acts 1995 to 2007.



AN BILLE UM EITIC IN OIFIGÍ POIBLÍ (LEASÚ) 2007
ETHICS IN PUBLIC OFFICE (AMENDMENT) BILL 2007

EXPLANATORY AND FINANCIAL MEMORANDUM

[This memorandum is not part of the Act and does not purport to be a legal interpretation.]

General

The purpose of this Bill is to provide that Ministerial and Parliamentary office holders and Oireachtas members are not to accept benefits worth in aggregate more than €2,000 from a friend for personal reasons in a period (usually a calendar year) comprehended by an interests statement prepared under the Ethics in Public Office Act 1995, unless they have obtained the Standards in Public Office Commission's opinion that acceptance would not be likely to influence the recipient in the performance of his or her functions or duties. If offered a benefit on an occasion where it would not be practical to refuse it, the recipient must seek the opinion afterwards, and must return or give up the benefit or its value if the Standards Commission is unable to issue such an opinion.

The Bill also increases the monetary thresholds for registrable interests, and the monetary threshold at which a gift given to an office holder by virtue of his or her office is deemed to be a gift to the State, in the 1995 Act.

Provisions

Section 1 defines the term "Principal Act", used throughout the Bill, as meaning the Ethics in Public Office Act 1995.

Section 2 provides that the statements prepared each year under the 1995 Act by office holders and Oireachtas members and sent to the Standards Commission are to include a statement that they have complied with Section 4 of this Bill. It also provides that "nil statements" (i.e. where the person has no registrable interests) are to be furnished to the Standards Commission instead of to the Clerk of the relevant House of the Oireachtas as at present.

Section 3 increases from €650 to €2,000 the monetary threshold at which a gift given to an office holder by virtue of his or her office is deemed to be a gift to the State.

Section 4 defines Ministers (including the Taoiseach and Tánaiste), Ministers of State, the Attorney General, the Chairman and Deputy Chairman of Dáil Éireann and of Seanad Éireann, and members of

Dáil Éireann and of Seanad Éireann, as “relevant persons”. It provides that such persons are not to accept benefits worth in aggregate more than €2,000 from a friend for personal reasons in a period comprehended by an interests statement, unless they have obtained the Standards Commission’s opinion that acceptance would not be likely to influence the recipient in the performance of his or her functions or duties as a relevant person (including the performance of such functions or duties by a person under the relevant person’s direction). If offered a benefit on an occasion on which it would not be practical to refuse it, the relevant person must seek the opinion of the Standards Commission within 30 days of accepting it.

A benefit can be a gift of money or property and includes a loan, whether of money or property. It also includes the supply of services, including travel facilities, accommodation, meals and entertainment. The value of benefits from the same friend in a period will be aggregated in determining whether the €2,000 threshold has been exceeded. For a gift or loan of money, the amount of the gift or loan will be what counts; for services or a loan of property, the value will be the commercial value less any amount paid by the recipient. Benefits received before the Bill comes into operation will not count.

The Standards Commission can ask the relevant person to provide such further information (e.g. the purpose of the gift, the identity of the donor, what his or her occupation is, how long he or she has been a friend, whether he or she has given similar gifts in the past) as it considers necessary to consider the application for its opinion.

The Standards Commission will notify its opinion to the relevant person in writing. Unless the person receives the opinion of the Commission that acceptance of the benefit would not be likely to influence the recipient in the performance of his or her functions or duties, he or she must not accept the benefit. If the person has already accepted the benefit, he or she must return it to the donor or, if the donor refuses it, must surrender it to the Secretary General to the Government. If the benefit is non-returnable (e.g. has already been consumed or used), the relevant person must pay its value to the donor or, if refused, to the Secretary General to the Government; in such cases, its value will be its commercial price as determined by the Standards Commission less any amount paid in respect of it by the relevant person. A relevant person who is obliged to return a benefit or its value must do so within 30 days or such longer period as may be determined by the Standards Commission. Where a benefit is surrendered or its value paid to the Secretary General to the Government, it or its value will be disposed of as if it were a gift to the State.

The Standards Commission will be precluded from disclosing information about an application for its opinion without the consent of the person concerned or the Minister for Finance. This prohibition will not apply to an investigation by the Standards Commission or to a report by the Standards Commission to the Oireachtas.

Section 5 requires the Attorney General, if not an Oireachtas member, to furnish a statement of compliance with *Section 4* to the Taoiseach and to the Standards Commission at the same time as his or her annual statement of registrable interests under the 1995 Act, or, where he or she has no registrable interests, to furnish a statement on compliance at that time in any event.

Section 6 updates the monetary thresholds for registrable interests in the 1995 Act. These are interests that are disclosable in annual statements of registrable interests under the Ethics Acts, and refer

to items such as a remunerated trade or profession, shares, interests in land, property supplied or lent, etc.

The following table shows the existing thresholds and those proposed in the Bill:

Ethics in Public Office Act 1995	Existing threshold	Proposed threshold
Second Schedule — Registrable Interests		
A remunerated trade, profession, etc. the remuneration from which exceeded	€2,600	€5,000
Shares, etc. if the aggregate value exceeded	€13,000	€20,000
Any interest in land the value of which exceeded	€13,000	€20,000
Gifts, excluding gifts the aggregate value of which did not exceed	€650	€2,000
Property supplied or lent or a service supplied at less than the commercial price by more than	€650	€2,000
Travel facilities, living accommodation, meals or entertainment, excluding those supplied at prices less than the commercial price by not more than	€650	€2,000
Any contract for the supply of goods or services to a Government Minister or a public body if the value exceeded	€6,500	€10,000

Section 7 provides for the short title of the Act and for its collective citation with the other Ethics Acts (the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001).

Financial Implications

There are no discernable financial implications for the Exchequer.

*An Roinn Airgeadais
Aibreán, 2007.*