

**GUIDELINES FOR MEMBERS OF SEANAD ÉIREANN
WHO ARE NOT OFFICE HOLDERS CONCERNING
THE STEPS TO BE TAKEN BY THEM TO ENSURE
COMPLIANCE WITH THE PROVISIONS OF THE
ETHICS IN PUBLIC OFFICE ACTS 1995 AND 2001.**

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**For the guidance of members (who are not office holders) for
the registration period 1st January, 2018 to 31st December,
2018**

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The Ethics in Public Office Acts 1995 and 2001

(Act Number 22 of 1995 and Act Number 31 of 2001)

The Ethics in Public Office Acts 1995 and 2001 ("the Ethics Acts") provide for the disclosure of interests by holders of certain public offices, including members of the Houses of the Oireachtas, and designated directors of and persons employed in designated positions in certain public bodies. The Ethics Acts also deal, *inter alia*, with gifts to holders of certain public offices and with personal appointments by them. The Ethics Acts established an independent Standards in Public Office Commission and a Select Committee on Members' Interests in each House of the Oireachtas.

The role of the Committee on Members' Interests of Seanad Éireann (the Committee) is to publish guidelines, to draw up a Code of Conduct for the Guidance of Members who are not office holders and to provide advice to ensure compliance with the Ethics Acts and to investigate and report in relation to possible contraventions of the Ethics Acts.

The Standards in Public Office Act 2001 ("the 2001 Act") introduced an additional area of possible complaint concerning members. Such complaints can be made by a member or any other person in respect of a member of Seanad Éireann or a connected person alleging that such member may have done an act or made an omission that is, or the circumstances of which are, inconsistent with the proper performance by such member of the functions of the office of a member or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance. These functions of the Committee relate only to those members of Seanad Éireann who are *not* holders of certain public offices.

The Select Committee on Members' Interests of Dáil Éireann has similar functions in relation to members of the Dáil (who are *not* holders of certain public offices) and the Standards in Public Office Commission has similar functions in relation to holders of certain public offices, special advisors and designated directors of and persons employed in designated positions in certain public bodies.

Introduction to Guidelines.

These guidelines for members have been drawn up by the Committee following consultation with the Standards in Public Office Commission and the Select Committee on Members' Interests of Dáil Éireann, as required under section 12 of the Ethics in Public Office Act 1995 (as amended) ("the 1995 Act"). The guidelines relate specifically to members of Seanad Éireann who are *not* office holders. Separate guidelines have been published by the Standards in Public Office Commission for members who *are* office holders, special advisors, designated directors of and persons employed in certain public bodies.

The guidelines provide information on the steps members are required to take in order to comply with the requirements of the Ethics Acts.

Section 12(4) of the 1995 Act provides that members must act in accordance with the guidelines and any advice given by the Committee under that section, unless by so doing they would be contravening another provision of the Ethics Acts. If a member is unclear as to any aspect of his obligations under the Acts, he should seek the advice of the Committee, pursuant to section 12(1)(b).

*[Note: A number of key terms arise in the Act and in the guidelines. These are set out in **bold** type on the first occasion on which they occur in a paragraph of text and a definition of each term is provided in Appendix 1].*

Guidelines for Members only: not Office Holders.

These guidelines have been compiled for use by members of Seanad Éireann who are *not* office holders. As stated previously, separate guidelines for office holders have been issued by the Standards in Public Office Commission. For the information of members, a list of office holders is given below and, accordingly, any member who is an office holder should refer to the guidelines issued by the Standards in Public Office Commission and should, in the case of any query, refer to that body for advice.

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

An Taoiseach,

An Tánaiste,

A Minister,

A Minister of State,

A member of Dáil Éireann or of Seanad Éireann who is Attorney General,

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, being an office that stands designated for the purposes of the 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, being an office that stands designated for the purposes of the Act for the time being by resolution of each House.

Procedure for Registering Interests

If you are a member of Seanad Éireann on 31 December, 2018¹ you are required to submit to the Standards in Public Office Commission ("the Commission") by 31 January, 2019 on a form provided by the Commission, a statement in writing of your registrable interests. The statement should cover any period(s) when you were a member of either House of the Oireachtas between 1 January, 2018 to 31 December, 2018, both dates included. In these Guidelines this period, referred to in the Acts as the "appropriate period", is referred to as "the Registration Period".

Your statement of registrable interests will be entered in a register established by the Clerk and a copy of the register will be furnished by the Clerk to the Standards in Public Offices Commission and will be laid before Seanad Éireann and will be published in *Iris Oifigiúil*. The Clerk may correct errors in the register and may amend the register as provided in the Acts.

¹ You will note from the definition of "**registration date**" provided in Appendix 1 that this date will always be 31 December, unless on that date the Dáil stands dissolved for the purpose of holding a general election. Where the Dáil stands dissolved on 31 December, the registration date for that year is 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.. It should be noted that, for the following year, the registration date will revert to 31 December.

Registrable Interests

The following paragraphs detail registrable interests which you are required as a member to disclose in your annual statement. It should be noted that it is *not* necessary to specify in a statement of registrable interests *the amount or monetary value* of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement. It should be noted that, other than where specifically referred to in this part (i.e. in reference to gifts, property and services and travel facilities etc.), an interest is registrable/disclosable, irrespective as to whether or not it could materially influence a member in the performance of his or her parliamentary functions.

1. Occupations etc.

A remunerated trade, profession, employment, vocation or other occupation (other than that of member, office holder or an occupation to which Part IV of the Act applies: namely Attorney General, special adviser, holder of a designated directorship or occupier of a designated positions in the civil service and the semi-state sector) held by you where the remuneration, e.g. pay, pension, retirement gratuities, benefits-in-kind, rental income (including rental income from holiday homes or any other property), severance payments, etc., during the registration period exceeds €2,600. Note: It is not a requirement that the member held the role and/or carried out the relevant work during the registration period. The key factor is when the remuneration/income/payment etc. is received.

The threshold figure of €2,600 is the gross figure. Remuneration/payment/income etc. from the same trade, profession, employment etc. is cumulative over the registration period.

Where income arises from land/property (including any house/apartment) held jointly with another it is for you to determine whether or not your share of that income exceeded €2,600 during the registration period concerned.

If you receive an income through rental of a "private home"² as explained under the heading "Land" below, the occupation of Landlord or Lessor should be declared if this income exceeds €2,600 during the registration period. So, for example, if you rent out your holiday home, the holiday home, if it is a "private home" within the meaning of the 1995 Act, (see further the section on Land below) is not registrable but any rental income is registrable under this heading once the amount exceeds the threshold. In a similar vein, if you have a second property which is occupied in part by your child, and in part rented out, the property may still be classified as a 'private home' for the purposes of the legislation but the Occupation of Landlord or Lessor becomes registrable once the income exceeds the threshold. Note that, in the case of a private home, you are not required to provide the full address of this property.

Normal pension entitlements which accrued and which were not payable during the registration period are not reckonable for the purposes of the calculation of remuneration.

An income exceeding €2,600 in the registration period concerned makes the

2 Within the meaning of s.1(4) of the Second Schedule of the 1995 Act

trade, profession, employment, vocation or other occupation registrable even if you do not yourself actually carry on the business to which that interest relates.

Please note that in no case are you required to specify the amount of income/remuneration received. The key requirement is to register the occupation.

2. Shares, etc.

If, at any time during the registration period concerned, you had a holding of shares, bonds (including government bonds), debentures or other similar investments, whether domestic or foreign, with an aggregate market value in excess of €13,000, in respect of any one **company**, or enterprise or undertaking, you are required to disclose that holding. Accordingly, for example, if a member holds €12,000 in one company and €11,000 in another, the member is not obliged to declare either holding even though the combined value of both holdings exceeds €13,000.

In relation to the value of a shareholding in a private limited company, the relevant figure is the net value of the company. The net value of the company can be calculated by subtracting the net liabilities of the company from the net assets of the company. If at any point during the registration period your share³ of the net value of the company exceeded €13,000 you should register your interest. If you are unsure whether your shareholding must be registered, you should seek the advice of the Committee on Members' Interests of Seanad Éireann. If any issue arises in respect of whether a shareholding was registrable, the Committee may, *inter alia*, rely on figures submitted by the company to any state agency (e.g. the Companies Registration Office or the Revenue Commissioners), where such figures are available.

In relation to a Public Limited Company, the relevant figure is the market value of the shares during the registration period.

Holding does not include money in a current, deposit or other similar account, including an SSIA deposit-based account, with a financial institution but does include a holding in unit trusts, managed funds or SSIA equity-based accounts.

In respect of a holding in a unit trust or managed fund, if, during the registration period, the value of the overall aggregate investment at any time exceeds €13,000, the existence of the holding must be disclosed. A break-down between individual investments within the holding in the unit trust or managed fund is not required.

Shares, bonds (including government bonds), debentures or other similar investments, whether domestic or foreign, held by you solely in the capacity as an executor to a Will are not registrable. If, however, in addition to being an executor, you are also a beneficiary of the shares, bonds (including government bonds), debentures or other similar investments, this interest is registrable if its value exceeds €13,000 at any time during the registration period concerned and the shares have been transferred to you or you have, as executor, the right to transfer ownership of such shares to yourself.

An investment exceeding the value of €13,000 held in a company which is the subject of a Business Expansion Scheme is a registrable interest. You should

³ Within the meaning of s.1(4) of the Second Schedule of the 1995 Act

judge the value of an interest of this kind against the size of the original investment rather than against its periodically fluctuating value.

A pension fund for which you are paying which will mature only on retirement and in respect of which no dividends are payable is not required to be disclosed.

3. Directorships.

A directorship, de facto directorship or shadow directorship of any company held by you at any time during the registration period concerned is a registrable interest.

For the avoidance of doubt –

- ANY directorship held by you, while a member of either House of the Oireachtas, at any time between 1 January 2018 and 31 December 2018, both dates inclusive, should be included in your statement of registrable interests.
- This includes any directorship resigned during the course of 2018.
- The terms "directorship" "de facto directorship" and "shadow directorship" should be interpreted widely. In this regard, reference should be made to the definitions of "**director**", "**de facto director**" and "**shadow director**" included at the end of these Guidelines.
- A "Company" is defined by the legislation as meaning a "body corporate" and should be interpreted in the widest possible sense, i.e. a registered or unregistered company, a local authority, a public body, a body established by charter or any other body having an existence, rights and duties distinct from the individual persons forming the group, whether that body corporate is domestic or foreign.
- Assets owned by a Company are not registrable.

4. Land.

In this section land includes property and all references to land also refer to property. You are required to disclose any interest (including freehold or leasehold interests) you have in land, including land in the State and land in any other jurisdiction, *exceeding* in value €13,000 at any time during the registration period concerned, including an interest in any contract for the purchase of land, whether or not a deposit or part payment has been made under the contract. Any interest you have in an option held by you to purchase land, whether or not any consideration (e.g. money) has been paid, should also be disclosed as should any interest you have in land in respect of which such an option has been exercised but where the land has not been conveyed to you.

You should disclose the full address of any land or property in which you have a registrable interest under this heading.

Where an interest in land is held jointly with another it is for you to determine whether or not your share of that interest exceeded €13,000 during the registration period concerned.

Land or property held by you solely in the capacity as an executor to a Will is not a registrable interest. If, however, in addition to being an executor, you are also a beneficiary of the land or property this interest is registrable if its value exceeds €13,000 at any time during the registration period concerned and the land or property has been transferred to you or you have, as executor, the right to transfer ownership of such land or property to yourself.

You are *not* required under this heading to disclose information regarding your private home and/or that of your spouse or civil partner and any subsidiary or ancillary land to such home that is not being used or developed primarily for commercial purposes. Under the 1995 Act, this means a building or part of a building that is occupied by you, your spouse, your civil partner or a child of yours or your spouse, does not need to be registered as it can be considered your private home. If you own more than one home, you should register any home which is not occupied by you, your spouse, civil partner or a child of yours or your spouse.

Holiday homes are (subject to the guidance below) not registrable where such a property is occupied by you, your spouse, your civil partner or a child of yours or your spouse. Any land ancillary to a private home (including a qualifying holiday home), similarly, does not need to be registered. Where, however, land ancillary to a private home is being used for commercial purposes, such land becomes registrable. Further, any income from the property, makes the occupation registrable where such income exceeds a gross threshold of €2,600. Members should note, therefore, that whilst private homes, holidays homes, second properties etc., which are occupied (as provided for above), are not registrable under the heading "Land", any occupational rental income from a property which exceeds €2,600 gross, cumulatively, for an individual property over the registration period, makes the occupation of Landlord or Lessor registrable under Occupations etc.

Therefore, for example: if you rent out the land attached to your private home or holiday home, this land must be registered where its use is primarily commercial. In addition, if the rental income exceeds €2,600, that rental occupation (i.e. of Landlord or Lessor) is registrable under Occupations etc.

You do not need to register land which is owned by a company with which you are involved as a director or shareholder.

5. Gifts.

You are required to disclose a **gift** or gifts by the same person, given to you during the registration period concerned where the **value**, or the aggregate value respectively, exceeded €650.

"Gift", for purposes of registration of interests *excludes* –

- (a) a donation as defined by the Electoral Act 1997 (as amended);
- (b) a gift given to you for purely personal reasons,
 - (i) by a relative or civil partner or friend of yours,
 - (ii) a relative or friend of your spouse or civil partner,
 - (iii) a relative or civil partner or friend of your child (meaning a son or daughter of any age) or
 - (iv) a relative or civil partner or friend of your spouse's child, unless acceptance of the gift could have materially influenced you in the performance of your functions as member;
- (c) Any political allowances paid out under legislation.

Gifts given to you by your political party are registrable where these are over and above the normal services and supports provided generally by the party to members.

For further information on what constitutes a donation members should refer to the "*Guidelines for TDs, Senators and MEPs*" on donations and prohibited donations issued by the Standards in Public Office Commission. Members should also refer to the Electoral Acts 1992 to 2016 which govern donations and the separate disclosure obligations which arise under that legislation. A member may also seek guidance from SIPO on the issue of donations. The issues of travel facilities, donations and the acceptance of free travel are considered further at paragraph 7 of these guidelines.

6. Property and Service.

You are required to disclose a **property** supplied or **lent**, or a service supplied to you, once or more than once by the same person during the registration period concerned, where the price(s) was (or were) less than the **commercial consideration(s)** or **price(s)** by more than €650. This includes property lent or a service supplied free of charge where the commercial consideration or price would have been more than €650. By way of example, a room in a hotel or public house provided to you for holding a clinic must be disclosed if an ordinary member of the public would have to pay at least €650 more than you for the same facility (during the registration period).

"*Property and Service*", for purposes of registration of interests, *excludes* a property supplied or lent or a service supplied to you:

- (a) as a gift *for purely personal purposes*
 - (i) by a relative or civil partner or friend of yours, or
 - (ii) a relative or friend of your spouse or civil partner, or
 - (iii) a relative or civil partner or friend of your child or of your spouse's child,

unless acceptance could have materially influenced you in the performance of your functions as a member, or;
- (b) as declared by you as a donation within the meaning of the Electoral Act 1997 (as amended).

A property or service supplied or lent for political purposes may constitute a donation within the meaning of the Electoral Act 1997 (as amended). Such a property or service, if declared as a donation does not need to be declared again under the Ethics Acts. Members should also refer to the Electoral Acts 1992 to 2016 which govern donations and the separate disclosure obligations which arise under that legislation. For further information on what constitutes a donation members should also refer to the "*Guidelines for TDs, Senators and MEPs*" on donations and prohibited donations issued by the Standards in Public Office Commission. A member may also seek guidance from SIPO on the issue of donations.

Property supplied or lent or a service supplied to you by your political party are registrable where these are over and above the normal services and supports provided generally by the party to members.

If registrable services relate to legal and/or medical services (including psychiatric or psychological services) it is sufficient to state that the services were supplied and no further detail need be registered.

7. Travel facilities, etc.

Travel facilities, living accommodation, meals or entertainment provided during the registration period concerned free of charge or at less than the commercial price must be disclosed.

Excluded are travel facilities, living accommodation, meals or entertainment supplied to you, by the same person once or more than once, free of charge during the registration period concerned where the commercial price or the aggregate of the commercial prices was less than €650, or provided where the difference between the price paid and the commercial price was not more than €650.

Travel facilities arising from the accrual of credits in generally applicable customer loyalty schemes are not registrable.

Excluded also are travel facilities, living accommodation, meals or entertainment provided:

- (i) within the State, or
- (ii) in the course and for the purpose of performing your functions as a member*, or
- (iii) in the course and for the purpose of any trade, profession, employment or other occupation (other than as member, office holder, holder of a designated directorship, occupier of a designated position or special adviser), or,
- (iv) in the case of a member, by the Inter Parliamentary Union or any of the following specified bodies: the Council of Europe and its Committees, the Organisation for Security and Co-operation in Europe, the Western European Union Assembly, the British Irish Parliamentary Assembly, the North/South Inter-Parliamentary Association, the Inter-parliamentary Conference on Common Foreign and Security Policy, the Common Defence and Security Policy and/or by other parliaments for the purpose of bilateral visits, or
- (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.

Further items *excluded* are travel facilities, living accommodation, meals or entertainment supplied as a gift *for personal reasons only* by

- (i) a relative or civil partner or friend of yours, or
- (ii) friend or relative of your spouse or civil partner, or

* Travel facilities, living accommodation, meals or entertainment provided to a member during the course of travel undertaken by a member, by virtue of his/her position as a member, which is purely of a humanitarian or educational nature, or travel undertaken by a member as a result of parliamentary expertise being sought from that member, comes within this exclusion.

(iii) friend or relative or civil partner of your child or of your spouse's child

unless the acceptance of such a gift could reasonably be seen to have been capable of influencing you in the performance of your functions.

Separate from the requirement to prepare statements and declaration of registrable interests pursuant to sections 5 & 7 of the Ethics Acts, the acceptance of free or sponsored travel also gives rise of reporting obligations as set out in the Electoral Act 1997, as amended (the 1997 Act). The Standards in Public Office Commission has concerns about the implications under electoral legislation of the acceptance by Members of free or sponsored travel. Section 22(2)(a) of the 1997 Act, defines a donation as *any contribution given for political purposes*. Section 22(2)(aa)(i)(IV) defines political purposes as, inter alia –

to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority;

The donation of free/sponsored travel and accommodation may fall within the definition of a donation and such a donation is subject to the normal aggregation and reporting thresholds and donation limits. The maximum donation that may be accepted by a Member from an individual or a registered corporate donor in any calendar year is now €1,000 and all donations exceeding €600 in aggregate must be disclosed on the member's annual Donation Statement. It is an offence to supply a false or misleading donation statement; it is also an offence to fail to take the appropriate action in relation to a donation which is in excess of the prescribed limit.

The Standards Commission considers that members should take care to ensure that they do not breach the provisions of the Electoral Acts on the acceptance of donations. Any queries on this matter should be directed to the Standards Commission.

8. Remunerated Position.

A remunerated position held by you as a political or public affairs lobbyist, consultant or advisor during the registration period concerned should be registered.

9. Contracts.

You must register an interest in any contract(s) to which you were a party or were in any other way, directly or indirectly, interested for the supply of goods or services to a Minister of the Government or a public body during the registration period if the value of the goods or services supplied during the period aforesaid exceeded €6,500.

Note that the key test is whether the value of the goods and/or services actually supplied by way of one (or more) contract(s) in the registration period exceeded €6,500 in value.

10. General Guidance.

- If you had *no* registrable interests during the registration period you must, within the same timescale, furnish a statement to this effect to the Clerk of the Seanad.
- If you have an interest that is not a registrable interest you may, if you so

wish, at any time prepare a statement of the interest and furnish it to the Clerk. Where a statement of the interest is furnished, the Ethics Acts will apply and have effect as if the interest was a registrable interest.

- If there is a change in your registrable interests you may, if you so wish, furnish a statement in writing of the change to the Clerk.
- If you are advised by the Committee under section 12 of the 1995 Act that an interest is a registrable interest you must furnish to the Clerk a statement of that interest.
- If you become a member after a registration date you may, before the next registration date, furnish a statement of your registrable interests to the Clerk.
- If you become an office holder after a registration date you may, before the next registration date, furnish a statement of your additional interests to the Clerk who will furnish a copy of the statement to the Taoiseach and to the Standards in Public Offices Commission.

Declaration of Interests in Proceedings

In accordance with section 7 of the 1995 Act, if you propose to speak or vote in proceedings in Seanad Éireann, a committee of Seanad Éireann or a joint committee of both Houses and

- (a) if you have **actual knowledge** that you or a **connected person** has a material interest in the subject matter of the proceedings and
- (b) if you have not declared such interest under the statement of registrable interests furnished by you to the Commission, where that statement has been laid before Seanad Éireann,*

then:

- (i) if you propose to speak, you must make a declaration of the interest before or during the course of your speech, and
- (ii) if you propose to vote, but not speak, you must make the declaration in writing and furnish it before voting to the Clerk of the Seanad or the Clerk to the committee concerned, as appropriate.

It should be noted that, for the purpose of this requirement only, you 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 the matter may be to confer on or withhold from you, or a connected person, a significant **benefit** or impose on you 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 of which you, or a connected person, are a member.

Where it is proposed to seek the advice of the Committee to the application of this requirement in any particular case, members are requested to inform the Committee as soon as possible that such advice is required. The Committee will endeavour to give such advice as soon as possible.

A Member who requests advice and who does not receive the advice before the speech or vote concerned shall,

- a) in the case of a speech, declare the fact of the request in the proceedings concerned and on receipt of the advice furnish a copy to the Clerk of the Seanad or the Clerk to the Committee as appropriate, and
- b) in the case of a vote, declare the request for advice in writing and furnish the Clerk of the Seanad or the Committee as appropriate a declaration in writing of the advice when received.

*If a member is in any doubt as to whether their statement of registrable interests has been laid before the House, they should make a declaration as per (i) or (ii) above, as relevant.

Specified acts

A specified act is an act or omission referred to in section 4(1)(a) of the 2001 Act. To be a specified act the act or omission in question must, or the circumstances of the act or omission must:

1. (a) be inconsistent with the proper performance of the functions of office or position,
or
(b) be inconsistent with the maintenance of confidence in such performance by the general public,
and
2. be of significant public importance.

You must bear in mind that there may be acts and omissions on your part which, though not illegal, could be regarded as being inconsistent in themselves or in their context with your proper performance as a member of your functions or duties, or with your proper exercise of your powers as member or with the maintenance by the general public of confidence in that performance or exercise.

When considering whether a matter is of significant public importance, members should note that the guidance contained in section 4(5)(b) of the 2001 Act serves to identify the conditions which necessitate a finding that a matter is, where the Committee considers it appropriate to do so, of significant public importance, i.e. that the benefit alleged to have been received by a specified person or a connected person, in the opinion of the Committee, is or might have been or expected to be not less than €12,697.00. However, this section should not be construed as meaning that matters, the value of which are below €12,697.00 could not be deemed to be of significant public importance. The Committee must have regard to "all the circumstances" when considering whether a matter is of significant public importance and in this regard the monetary limit of €12,697.00 is indicative and not decisive as to whether the matter is of significant public importance.

Members may wish to be aware that the most prevalent complaints received by the Committee relate to the alleged misuse of Oireachtas pre-paid envelopes. In this context Members are advised that free postal facilities are provided to them in their capacity as Members of the Oireachtas and in respect of their duties as public representatives.

The following non-exhaustive list contains examples of inappropriate use of Oireachtas pre-paid envelopes by members:

- (i) donation by a member of pre-paid envelopes to an individual, group or entity;
- (ii) use of pre-paid envelopes for private commercial purposes;
- (iii) use of pre-paid envelopes for electoral purposes;
- (iv) use of pre-paid envelopes by anyone other than the Member concerned or someone directly assisting him/her in carrying out his/her duties as a public representative;
- (v) use of pre-paid envelopes for party fundraising;
- (vi) use of pre-paid envelopes by a member for fundraising purposes; and donation by a member to a political party, a member of the Oireachtas, or any other body, of all or part of their pre-paid envelope allowance.

Tax Clearance Certificates and Statutory Declarations for Election Purposes

In addition to the statement of registrable interests, you are also required, not more than nine months following your election or nomination to the Seanad, to furnish to the Standards in Public Office Commission an appropriate Tax Clearance Certificate (that was issued to you not more than 9 months before, and not more than 9 months after, the election date) or application statement (that was issued to you and was made not more than 9 months before, and not more than 9 months after, the election date).

In addition, Members are required to make (one month either side of an election) a Statutory Declaration as set out in Section 21 of the 2001 Act. The Declaration must be to the effect that, at the time of the making of the declaration, you are, to the best of your knowledge and belief, in compliance with the obligations specified (i.e. the payment or remittance of any taxes, interest or penalties required to be paid or remitted under the various Acts referred to in the section to the Revenue Commissioners, and the delivery of any returns required to be made under the Acts) and that nothing in section 21(2) prevented the issue to you of a tax clearance certificate.

The Statutory Declaration must also be furnished to the Standards in Public Office Commission not more than nine months following election to Seanad Éireann.

If you contravene this section (i.e. section 21) you must '*as soon as may be*' furnish to SIPO a tax clearance certificate issued to you within that month or a statutory declaration made within that month to the effect that, at the time of making the declaration, you are now in compliance with the 2001 Act.

Note the above requirement only arises on election. It does not arise annually.

Appendix 1 - Definitions

The list below contains a selection of the definitions provided in the Ethics Acts (save where expressly mentioned otherwise) which are referred to in the guidelines. You should refer to the Ethics Acts for a more comprehensive list of definitions.

"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 the fact exists;

"application statement" is a statement issued to a member by the Collector-General to the effect that the person has applied to him or her for the issue of a tax clearance certificate and that a decision on the application has not been made. Such a statement will only issue where a person has applied for a tax clearance certificate and either (a) the Collector-General has not decided whether to issue or to refuse to issue such a certificate, or (b) the Collector-General has refused to issue such a certificate and the refusal is the subject of an appeal or further appeal under section 1094(7) of the Taxes Consolidation Act, 1997 (as applied by subsection 25(4)), that has not been determined,

"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 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;

"civil partner", in relation to a person, means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 but does not include a civil partner who is living separately and apart from the person; "For the purposes of this Act a civil partner is either of two persons of the same sex who are (a) parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity, or (b) parties to a legal relationship of a class that is the subject of an order made under section 5 that has not been dissolved or the subject of a decree of nullity" (Section 3, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010).

"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 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;

"company" means any body corporate. This should be understood as any company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act;

"connected person": A person is deemed to be connected with another where:

- (i) that person is a relative of the other person;
- (ii) that person is a business partner of the other person;
- (iii) that person is a trustee of a trust where the other person, or any of his/her children, or a body corporate which he or she controls, is a beneficiary of that trust;
- (iv) a company is connected with another person if that person has control of it, or if that person and any person 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 deemed, in relation to that company, to be connected with one another and with any person acting on the instructions of any of them to secure or exercise control of the company.

For the purposes of determining matters concerning ethics and conflicts of interests under any rule of law or enactment with respect to a person, a reference to a "connected person" or a "connected relative" of that person shall be construed as including the person's civil partner and the child of the person's civil partner who is ordinarily resident with the person and the civil partner.

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

"de facto director" means the position held by a person who is a de facto director within the meaning of the Companies Act 2014, or, in the case of a public body that is not a company (within the meaning of the Companies Act 2014) 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 (of the Act), a person who occupies the position of director of a company but who has not been formally appointed as director.

"director" means a director within the meaning of the Companies Act 2014, but includes, in the case of a public body that is not a company (within the meaning of the

Companies Act 2014) and is specified in *subparagraph (8), (9), (10), (11) or (12)*, or stands prescribed for the purposes of *subparagraph (13)*, of *paragraph 1* of the *First Schedule*, a person who is a member of it or a member of any board or other body that controls, manages or administers it, and any cognate words shall be construed accordingly;

"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;

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

For further information on what constitutes a donation members should refer to the "*Guidelines for TDs, Senators and MEPs*" on donations and prohibited donations issued by the Standards in Public Office Commission. Members should also refer to the Electoral Acts 1992 to 2016 which govern donations and the separate disclosure obligations which arise under that legislation. A member may also seek guidance from SIPO on the issue of donations.

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

"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, in relation to Seanad Éireann and its members and Clerk-

- (i) 31 December 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 31 December.

"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 2014, or, in the case of a public body that is not a company (within the meaning of the Companies Act 2014) 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 (of the Act), 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;

"specified act" means an act or omission referred to in section 4(1)(a) of the 2001 Act. A specified act by a member means an act or omission by them, the circumstances of which are inconsistent with the proper performance by them of the functions of the office or position they hold, or with the maintenance of confidence in such performance by the general public; and the matter is one of significant public importance. A specified act by a member also includes an act or omission referred to in section 4(1)(a) of the 2001 Act of a person who is, pursuant to the Act, deemed to be a connected person of the member.

However the above mentioned will not be a specified act if it—

- (a) relates to a private matter and is unrelated to the functions of the office or position by reference to which the specified person is such a person, or

(b) results from incompetence or inefficiency in the performance of, or from failure to perform, such a function, on the part of the specified person. (per s.4(2) of the 2001 Act)

"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 - CODE OF CONDUCT FOR MEMBERS OF SEANAD ÉIREANN OTHER THAN OFFICE HOLDERS

PREAMBLE

The Members of Seanad Éireann other than office holders (referred to hereafter as "Members") recognise that it is in their individual and collective interest to foster and sustain public confidence and trust in their integrity as individuals and in Seanad Éireann as an institution. To this end, Members should at all times be guided by the public good and ensure that their actions and decisions are taken in the best interests of the public.

The Members of Seanad Éireann have adopted this Code of Conduct pursuant to Article 15.10 of the Constitution and in accordance with Section 10 of the Standards in Public Office Act, 2001, the purpose of which is to guide Members in the discharge of their obligations in a manner which is consistent with the proper performance of the functions of the Office of Member of Seanad Éireann.

CODE

1. Members must, in good faith, strive to maintain the public trust placed in them, and exercise the influence gained from their public office to advance the public interest.
2. Members must conduct themselves in accordance with the provisions and spirit of the Code of Conduct and ensure that their conduct does not bring the integrity of their office or the Seanad into disrepute.
3. (i) Members have a particular obligation to behave in a manner which is consistent with the proper performance of the functions of the Office of Member of Seanad Éireann and with the maintenance of confidence in such performance by the general public.

(ii) Members must interact with authorities involved with public administration and the enforcement of the law in a manner which is consistent with their roles as public representatives and legislators.
4. (i) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person's private financial interest directly or indirectly.

(ii) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public or a broad class of persons.
5. (i) Members must base their conduct on a consideration of the public interest and are individually responsible for avoiding conflicts of interest.

(ii) Members must endeavour to arrange their private financial affairs to prevent such conflicts of interest arising and must take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.

6. Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Seanad or to any of its committees.
7. Members must fulfil conscientiously the requirements of the Seanad and of the law in respect of the Ethics in Public Office Acts and, to assist them in so doing, should familiarise themselves with the relevant legislation and guidelines published from time to time by the Select Committee on Members' Interests and the Standards in Public Office Commission as appropriate.
8. (i) Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties.

(ii) Members may accept incidental gifts and customary hospitality.
9. In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended.
10. Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
11. Members must co-operate with all Tribunals of Inquiry and other bodies inquiring into matters of public importance established by the Houses of the Oireachtas.