

ETHICS IN PUBLIC OFFICE ACTS, 1995 AND 2001

MEMORANDUM ON POWERS, FUNCTIONS AND DUTIES OF SELECT COMMITTEE ON MEMBERS' INTERESTS OF DÁIL ÉIREANN

The Ethics in Public Office Acts make provision for the setting up of a register of interests for members of Dáil Éireann. Under the Acts, a member is obliged to give the Clerk of the Dáil a written statement of his or her registrable interests and other required information, within 30 days of the registration date [*Section 5*]. A member must also make a declaration about his/her interests prior to speaking or voting on proceedings related to such interests, the outcome of which would result in a material benefit to him or a connected person [*Section 7*]. A member must not commit a specified act make an omission which is an act that is inconsistent with the proper performance of the functions of office, with the maintenance of confidence in such performance by the general public and that is a matter of significant public importance. Private matters, matters unrelated to the performance of functions or incompetence or failure to perform functions are not included [*Section 4, 2001 Act*].

The Acts further provide for the setting up of a select committee, to be called the Select Committee on Members' Interests of Dáil Éireann, to draw up and publish guidelines to assist members in compliance with the terms of the Acts, to draw up a code of conduct for non-office holders and to investigate alleged contraventions of the Acts as regards statements of interest. The first Select Committee was established by order of Dáil Éireann on 16th December, 1997. The second Committee now in existence was appointed by order dated 5th December, 2002. Explanatory notes in relation to the specific functions and duties of the Committee are set out below under the following headings:

1. Functions of the Committee;
2. Guidelines and Advice in relation to registration of members' interests;
3. Codes of conduct
4. Complaints to the Committee;
5. Investigation of complaints:-
 - 5.1 General provisions
 - 5.2 Powers of the Chairman
 - 5.3 Conduct of investigations
 - 5.4 Report on investigations
 - 5.5 Award of costs
 - 5.6 Conduct and privilege of witnesses;
6. Reports of the Committee;
7. Decisions of the Committee;
8. Confidentiality of Information;
9. Consultation;
10. Standards in Public Office Commission; and
11. Declaration of interests prior to speaking/voting.

1. FUNCTIONS OF THE COMMITTEE

The Committee has to prepare a code of conduct for non-office holders and issue guidelines to members in relation to the registration of their interests. The Committee also has to investigate alleged contraventions of the provisions of the Acts. Finally, the Committee provides advice to members on request. The Committee has to hold sittings to carry out its investigations [*Section 32(1)*]. Sittings may be held in private [*Section 32(9)*]. The Committee may receive submissions and hear evidence at such sittings.

2. GUIDELINES AND ADVICE IN RELATION TO REGISTRATION OF MEMBERS' INTERESTS

The Committee has to prepare and publish guidelines for members outlining the steps they need to take in order to comply with the Acts. These guidelines are prepared in consultation with the Standards in Public Office Commission and the Committee of the other House [*Section 12(1)(a)* and *Section 25 1(a)*].

The Committee also has an advisory role. It may give advice to any member, on request, or notify the member if it refuses to provide such advice, within 21 days of the receipt of the request. The section of the Acts about which the member is seeking advice shall not apply to that member while the advice is being sought [*Section 12(2), (3) and (4)*]. The member has to follow the guidelines and advice provided, unless to do so would contravene another provision of the Acts.

3. CODE OF CONDUCT

The Committee shall, after consultation with the Commission, draw up codes of conduct for members who are non-office holders to apply from a date specified by the House. The code shall indicate the standards of conduct and integrity for members and members shall be guided by the code which shall be admissible in any proceedings before a court or other tribunal, committee or commission. The Committee may give advice on the application or non-application of a code. Such advice shall be furnished within 21 days and shall have effect in relation to the person to whom it is given as if it formed part of the code [*Section 10, 2001 Act*].

4. COMPLAINTS TO THE COMMITTEE

The Committee has to deal with complaints alleging contraventions of the Acts. Complaints from a person, who is not a member, are sent in the first instance to the Clerk of the Dáil who can refer them to the Committee. The Clerk of the Dáil may choose not to refer such a complaint if he considers it to be frivolous or vexatious. However, in such a case, he sends a statement to the Committee giving his reasons for the non-referral of the complaint, a copy of such statement is also sent by him to the member against whom the allegation was made and the complainant. Complaints from members are sent directly to the Committee [*Section 8(2), (3), (4) and (5)*]. Complaints in relation to specified acts are sent to the Standards in Public Office Commission.

5. INVESTIGATION OF COMPLAINTS

5.1 General provisions

The Committee has to investigate complaints to decide whether the alleged contravention did occur. The Committee can also carry out an investigation on its own initiative [*Section 9(1)*].

If the Committee finds in the course of an investigation that the member concerned did not contravene the section to which the complaint relates but may have contravened another, the Committee may then investigate the latter contravention [*Section 9(2)*].

If the person who is the subject of the complaint ceases to be a member, the Committee shall not investigate or shall cease investigating the complaint unless requested by the person the subject of the complaint to carry out or continue the investigation [*Section 9(3)*].

In the absence of such a request, the Committee shall not carry out an investigation if the person is no longer a member or if he/she was an office holder at the time of the alleged contravention [*Section 9(4)*].

The Committee may also discontinue an investigation at its own discretion if, in the course of the investigation, it considers that the complaint was frivolous or vexatious. In such a case, it has to inform the complainant, the member concerned and the Clerk of the Dáil, in writing, of the reasons for its decision to discontinue [*Section 31 (1) and (3)*].

Proceedings on an investigation may be adjourned or postponed.

5.2 Powers of the Chairman

The Chairman, in order for the Committee to perform its duties in relation to the investigation of a complaint, may:

- issue a written direction (giving the date, time and place) to the member against

whom the allegation was made to attend a Committee meeting;

- issue a written direction, giving the date, time and place, to any other person involved in the investigation to attend a Committee meeting to give evidence and to bring relevant documentation or material;
- direct any person before the Committee to produce any relevant documentation and material;
- issue a written direction to any person to send any relevant documentation or material to the Committee; and
- give any other directions which he/she considers appropriate for the effective conduct of the investigation [*Section 32(2)*].

5.3 Conduct of investigations

The Committee has to decide on the procedures for the conduct of the investigation. Such procedures shall include:

- notification of both the complainant and the member, who is the subject of the complaint, of the date, time and place of the relevant Committee meeting;
- giving the member a statement of the alleged contravention, the names of witnesses giving evidence, a copy of each statement to be used by the Committee and a written note giving the nature and source of any information, favourable to the member, that has come to light during the investigations;
- enabling the attendance of both the complainant and the member at the relevant Committee meeting and enabling the member or his/her representative to present his/her case;
- admitting written statements as evidence with the consent of the member;
- acceptance of signatures to be those of the persons they are meant to be;
- examination and cross-examination of witnesses by the Committee and member respectively;
- a decision by the Committee whether the evidence should be taken under oath;
- the administration of the oath by the Chairman; and

- the maintenance of records of the proceedings [*Section 32(6)*].

5.4 Report on investigations

The Committee has to prepare a written report of the results of the investigation. It has to send a copy of the report to the member concerned and to the complainant. If it finds that a contravention has occurred, it also has to lay a copy of the report before the House [*Section 10(1)*].

This report has to show the findings of the Committee as to whether a contravention of the provisions of the Acts did or did not occur and information on the following as appropriate:

- (i) if a contravention did not occur, whether it considered the complaint to be frivolous or vexatious or that there was no basis for it;
- (iii) if a contravention did occur,
 - (a) whether it is continuing and, if so, the steps that need to be taken by the member to comply with the Acts and the time span for such compliance;
 - (b) whether it was committed inadvertently, negligently, recklessly or intentionally;
 - (c) whether it was a serious or minor contravention; and
 - (d) if the member acted in good faith, thinking that he/she had acted in accordance with published guidelines or advice provided by the Committee,

and any other matter considered appropriate [*Section 10(2)*].

The member has to take the steps advised in the report within the stated time span [*Section 36*].

If any investigation by the Committee is adjourned or postponed, the Committee may make an interim report and give copies of it to the member concerned and the complainant [*Section 10(3)*].

5.5 Award of costs

If the Committee decides that a complaint was frivolous or vexatious or decides that no contravention occurred and that there was no basis for the complaint, it may award an amount in respect of any costs or expenses incurred by any person due to the investigation.

The aggregate of such amounts, if they are awarded to a number of people, shall not exceed £1,500 to be paid by the complainant. The Committee may measure such costs and expenses [*Section 11*].

5.6 Conduct, privilege and costs of witnesses

Failure by such persons, so directed, to attend, answer questions, take the oath or produce or send relevant documentation or material shall be considered an offence. Any other action that would be considered contempt of court in a court shall also be considered contempt in this case and is an offence. False evidence shall be considered as perjury and is also an offence [*Section 32(4) and (5)*].

Witnesses shall have the same privileges and immunities as those of a witness in a court [*Section 32(8)*].

The reasonable expenses of witnesses are paid out of funds provided by the Oireachtas [*Section 32 (3)*].

6. REPORTS OF COMMITTEE

When one of its reports, or a report received from the Standards in Public Office Commission, is laid before the House, the Committee may cause a motion to be moved in the House wherein the House takes the following action or actions:

- notes the report;
- censures the office holder or other member concerned;
- suspends the office holder or other member concerned for 30 sitting days or, if the contravention is continuing, until such time as the offender takes steps to comply with the Acts.
- in certain circumstances a suspension may be accompanied by a financial penalty

However, if the Committee found that the member acted in good faith or believed that he/she was complying with guidelines and advice, the Committee shall not recommend the censure or suspension. Such suspension does not affect the payment of any allowances or entitlements due to the member [*Section 28*].

7. DECISIONS OF THE COMMITTEE

Decisions of the Committee in relation to investigations of alleged contraventions of the acts shall be those of the majority of the members of the Committee [*Section 32(7)*].

8. CONFIDENTIALITY OF INFORMATION

Information obtained by a person under the acts or by attendance at a private Committee meeting shall not be disclosed, with the exception of certain specified types of information [*Section 35(1)*].

9. CONSULTATION

The Committee, along with the Standards in Public Office Commission, is consulted by the Clerk of the Dáil about the form that the written statement of interests should take [*Section 5(1)*]. The guidelines which the Committee has to provide to members are also prepared in consultation with the Standards in Public Office Commission and the Select Committee on Members' Interests of Seanad Éireann [*Section 12(1)(a) and Section 25 1(a)*].

10. STANDARDS IN PUBLIC OFFICE COMMISSION

The Committee is obliged to consult with the Standards in Public Office Commission in the preparation of guidelines (see Paragraph 8 above). The Committee receives a copy of reports of the Standards in Public Office Commission on certain investigations. If the Committee receives such a report, the Committee has to lay that report before the House. The Committee may also receive an interim report if such is published by the Standards in Public Office Commission [*Section 24*].

11. DECLARATION OF INTERESTS PRIOR TO SPEAKING/VOTING

A member must also make a declaration about his/her interests prior to speaking or voting on proceedings related to such interests, where he has actual knowledge that the outcome would result in a material benefit to him or a connected person unless such interest has already been included in his statement of interests [*Section 7*].

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