



Coimisiún um Chaighdeán in Oifigí Poiblí Standards in Public Office Commission

Supporting Ethics Compliance: Top Ten Best Practices for Public Bodies

Introduction

Public bodies have a duty to ensure that employees with statutory obligations under the Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts) are informed of their obligations and encouraged to comply. Public bodies are also required to take appropriate steps to identify and address any non-compliance by designated directors and designated employees.

In fulfilling this duty, public bodies are expected to receive and manage statements of interest (annual and ad hoc), identify and managing potential conflicts of interest, address possible instances of non-compliance, and support employees to comply with their tax clearance disclosure obligations.

The Standards Commission has developed this document to provide best practices for public bodies to support compliance and address non-compliance with the Ethics Acts.

Requirements of the Ethics Acts

The Ethics Acts provide for:

- disclosure of interests by, *inter alia*, persons who hold ‘designated directorships’ (designated directors) and persons who occupy ‘designated positions of employment’ (designated employees) in public bodies – these may be made annually and as statements of material interests as they arise;
- provision of evidence of compliance with taxation legislation by persons appointed to ‘senior office’ on appointment; and
- codes of conduct that apply to designated directors, designated employees and appointees to ‘senior office’.

An interest may also include interests of a connected person (e.g. a spouse, civil partner, child, child of a spouse, business partner or other ‘connected person’ as appropriate).

Section 11 of the Standards in Public Office Act 2001 provides that an individual to whom a statement is furnished pursuant to section 17 or 18 of the Ethics in Public Office Act 1995 (i.e. an ‘officer of the body’ or a ‘relevant authority’ respectively):

- may request the person who furnished it to provide him or her with information in relation to the statement or any matter arising from it, and

- if he/she considers that the person may have contravened Part IV of the Ethics in Public Office Act 1995, he/she may make a complaint to the Standards Commission.

There is an implicit duty on all ‘officers of the body’ and ‘relevant authorities’ to consider whether the statutory obligations have been complied with by designated directors and by designated employees. Public bodies have an interest in ensuring not only that disclosures are made and recorded, but that potential conflicts of interest are managed proactively.

The following ten actions have been identified as best practices to help public bodies ensure they are effectively supporting compliance with the Ethics Acts.

Ten Actions Public Bodies May Take to Support Compliance

1. Nominate an ethics contact in the organisation.

- All public bodies should nominate an individual(s) to be the Ethics Contact(s) for the organisation.
- The Ethics Contact should assist all designated directors, designated employees and appointees to ‘senior office’ to comply with their obligations under the Ethics Acts.
- The Ethics Contact should also be the point of contact with the Standards Commission.

2. Maintain a register of Designated Directorships and Designated Positions of Employment.

- All public bodies should maintain a register of designated employees and/or designated directors within the organisation and ensure that it is kept updated to take account of appointments, transfers, promotions, retirements, etc.

3. Establish clear oversight procedures.

- All public bodies should have procedures in place to oversee compliance with the Ethics Acts by all designated directors and designated employees.
- Ensure effective policies and procedures are in place for the following:
 - Annual statements of interest;
 - Statements of material interest;
 - Regular notification to the Standards Commission of appointments to senior office;
 - Records retention; and
 - Ethics training.
- Ensure effective review of disclosures to identify possible non-compliance or conflict of interest risks.

- Person to whom statements are submitted should review them to determine if there is evidence of non-compliance or a risk of a conflict of interest.
- Consultation with the relevant line manager may be useful, as they may be best placed to identify issues based on their knowledge of the functions to be performed by the person.
- Statements should be crosschecked against previous returns under the Ethics Acts, returns made under other legislation or any other information which is available and relevant (e.g. under any relevant code of conduct). Failure to make a statement may have to be addressed or considered further as a possible contravention.
- Manage possible conflicts proactively.
 - Where a possible conflict arises, put in place measures to manage it where possible (e.g. reassign file responsibility, ensure documents not shared with person etc.)
- Manage contraventions.
 - Where there is evidence of a possible contravention, the ‘officer of the body’ or the ‘relevant authority’ must consider whether a complaint to the Standards Commission is warranted. The complaints procedures set out on the Commission’s website should be adhered to - <https://www.sipo.ie/about/make-a-complaint/>

4. Ensure all new appointees are aware of their obligations under the Ethics Acts.

- Public bodies should inform all new appointees (designated directors, designated employees or appointees to ‘senior office’) of their obligations under the Ethics Acts as soon as they take up the position, in particular the following:
 - (a) annual statements of interests, (which refer to potential conflicts of interests and are required to be completed and furnished by 31 January of the following year); and
 - (b) statements of a ‘material interest’ (which can arise at any time and refer to an actual conflict of interests).
- Persons appointed to ‘senior office’ should also be informed on appointment of their obligations to provide evidence of tax compliance to the Standards Commission within 9 months of the date of their appointment, and informed that details of their appointment will be provided to the Commission.
- The Standards Commission should be notified of each appointment to ‘senior office’ around the time of the appointment and will contact the person directly.
- The following additional information should be provided to each person:
 - A link to the Standards Commission’s guidelines for public servants on compliance with the Ethics Acts - <https://www.sipo.ie/acts-and-codes/guidelines/public-servants/index.xml>
 - That they may seek statutory advice by contacting the Standards Commission (ph 01-6395666 or email: info@sipo.ie)

- That administrative queries (e.g. where to find statement forms, where to send them, etc.) should be directed to the relevant ethics contact within the public body and not to the Standards Commission.

5. Establish effective annual statements of interest process.

- Annual statements of interest must be submitted before 31 January for the preceding calendar year (e.g. statements for 1 January to 31 December 2019 must be submitted by 31 January 2020).
- Where no interests are identified, it is strongly recommended that persons be encouraged to submit a nil statement. Nil statements are not a statutory obligation but are best practice.
- Persons holding more than one position as ‘designated director’ and/or ‘designated employee’ must furnish a separate statement of interests in respect of each position held.
- Bodies should provide a blank statement of interests form to each designated director or designated employee in the body and remind them of their obligations.
- The relevant person to whom statements should be submitted is listed in Appendix 2 (Civil Service) or Appendix 3 of the Guidelines for Public Servants.
- Designated directors must also submit their statements to the Standards Commission.
- ‘Designated directors’ must submit their statement to both the ‘officer of the body’ and the Standards Commission. Both statements must contain an original signature as the legislation does not provide for the furnishing of copies of statements.
- ‘Designated employees’ should provide their annual statements only to the ‘relevant authority’, and not to the Standards Commission.
- Statements must be signed and dated. The Standards Commission will return statements furnished by designated directors which do not comply with this requirement, or by employees who have submitted it to the Commission in error.

6. Establish effective statements of ‘material interest’ process.

- Where a person (or a connected person) has a material interest, he/she must make a statement of the facts of the matter, setting out the function to be performed or the decision to be taken and the material interest which arises.
 - A ‘designated director’ must provide that statement to all other directors.
 - A person occupying a ‘designated position of employment’ must provide that statement to the ‘relevant authority’ for the position, as set out in either Appendix 2 (Civil Service) or Appendix 3 to the guidelines for public servants.
- Where a person or a connected person has a ‘material interest’, he/she must not perform the function, unless there are compelling reasons.
 - If there are compelling reasons, a statement of those reasons must be prepared and provided to the other directors and to the Standards Commission.
 - A person occupying a ‘designated position of employment’ must provide that statement to the ‘relevant authority’ for the position.

- Please note that there are no templates or forms for either a statement of a ‘material interest’ or a statement of compelling reasons. A statement must set out all relevant facts.

7. Issue regular reminders.

- All public bodies should issue reminders of ethics obligations and disclosure requirements. These may issue at the beginning of the year and again mid-year.
- Reminders should include reference to annual statements of interest, statements of a material interest, and any applicable code of conduct, and include links to the Commission’s guidelines on compliance with the Ethics Acts.

8. Conduct training.

- Public bodies should hold new appointee training and regular refresher sessions for others on the provisions of the Ethics Acts and on any relevant code of conduct.
- Training should also be provided to ‘officers of the body’, ‘relevant authorities’ and ethics contacts regarding their obligations under the Ethics Acts and/or these procedures.

9. Maintain confidentiality.

- It is an offence to disclose information contained in a statement provided under the Ethics Acts, other than in accordance with the provisions of section 35(2) of the Ethics in Public Office Act 1995, as amended - <http://revisedacts.lawreform.ie/eli/1995/act/22/section/35/revised/en/html>

10. Observe statutory retention period

Statements must be retained for 15 years and must be provided to the Standards Commission, if requested. In light of the provisions of section 35, statements must be retained confidentially and made available only to those who have the need and authority to view them.

Need more information?

Any queries regarding these best practices may be directed to the Standards Commission by phone at 01-639 5666 or by email to info@sipo.ie.

The Standards in Public Office Commission is an independent, non-partisan body with supervisory roles under four separate pieces of legislation. Legislation overseen by the Commission includes: the Ethics in Public Office Acts 1995 and 2001, the Electoral Act 1997, the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014, and the Regulation of Lobbying Act 2015.