

**INVESTIGATIONS UNDER**  
**THE ETHICS IN PUBLIC OFFICE ACTS 1995 AND 2001 AND**  
**THE LOCAL GOVERNMENT ACT 2001**

**STATEMENT OF INTENDED PROCEDURES**

**JANUARY 2011**

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### **APPENDIX 1**

# 1 INTRODUCTION

1.1 The Standards in Public Office Commission ("the Commission") was established by section 21 of the Ethics in Public Office Act 1995 ("the Ethics Act") as amended by section 2 of the Standards in Public Office Act 2001 ("the Standards Act") for the purpose of discharging the functions conferred on it by both Acts.<sup>1</sup> In accordance with section 29(3) of the Standards Act, these Acts will be referred to in this document as "the Ethics Acts". By virtue of section 21(2) of the Ethics Act as amended by section 2 of the Standards Act, the Commission consists of the following persons:

- (a) a chairperson who shall be a judge or a former judge of the Supreme Court or the High Court,
- (b) the Comptroller and Auditor General,
- (c) the Ombudsman,
- (d) the Clerk of Dáil Éireann,
- (e) the Clerk of Seanad Éireann, and
- (f) a person who is appointed by the Government following resolution passed by each House approving the proposed appointment, and who is a former member of one of the Houses and is not a representative in the European Parliament.

1.2 The Commission's functions include the formulation of guidelines to assist persons in complying with the requirements of the Ethics Acts and the provision of advice to certain persons in relation to the provisions of those Acts. The Commission also has certain functions under Part 15 of the Local Government Act 2001 ("the Local Government Act") and the Electoral Acts 1997 to 2009 ("the Electoral Acts").

1.3 Section 22 of the Ethics Act provides for the making of complaints to the Commission relating to suspected contraventions of the provisions of Part II, III or IV of the Ethics Act or the doing of a specified act (as defined in section 2(2) of the Ethics Act, as inserted by Schedule 1 of the Standards Act, see footnote <sup>6</sup> in Appendix 1). Section 4 of the Standards Act provides for the making of complaints to the Commission where a specified person (as defined in section 4(6)(a) of the Standards Act) has carried out a specified act or has contravened a provision of the Ethics Act or a provision of the Electoral Acts.

<sup>1</sup> *The Ethics in Public Office Act 1995 was extensively amended by the Standards in Public Office Act 2001. Unless otherwise indicated, references in this document to a provision or provisions of the earlier Act are to those provisions as amended by the later Act.*

- 1.4 Section 180(2) of the Local Government Act provides that the Ethics Acts shall apply in relation to a local authority, subject to the provisions of that section, including inter alia, the powers of investigation and report conferred on the Commission. Accordingly, under section 174(8) of the Local Government Act, a complaint in relation to a member or employee of a local authority may fall to be investigated by the Commission where the complaint is one made to the Commission by the appropriate person or persons in that local authority to whom the matter of an alleged contravention of Part 15 of the Local Government Act by that member or employee has been brought to their attention by the Ethics Registrar of that local authority. A person may complain directly to the Commission about an alleged contravention of Part 15 of the Local Government Act. However, the Commission is of the view that all local avenues should be exhausted before a complaint is made to it, and that accordingly in the first instance, the local authority's ethics registrar should be made aware of any alleged contravention. Under section 174(7) of the Local Government Act, where the ethics registrar becomes aware of a possible contravention, it is his or her duty to bring the matter to the attention of either the manager for and/or the Cathaoirleach of the local authority, who shall consider what action should be taken.
- 1.5 Section 23 of the Ethics Act provides for the investigation of such complaints by the Commission and also confers on the Commission the power to carry out such an investigation on its own initiative. Further and more detailed provision for such investigations is made elsewhere in the Ethics Act, particularly in section 32. Section 6 of the Standards Act empowers the Commission to authorise inquiry officers, if it so decides, to assist it in carrying out an investigation.
- 1.6 While, in general, the Commission's functions in relation to members of the Houses of the Oireachtas are confined to "office holders", section 22(5) of the Ethics Act, as amended, provides that complaints in relation to members of the Oireachtas may fall to be investigated by the Commission where the complaint is one made to the Commission by the chairman of the relevant Committee on Members' Interests itself or where, in the case of a third party complaint, the complaint is referred to the Commission by the chairman of the Committee concerned.
- 1.7 Section 32(6) of the Ethics Act, so far as it is relevant to the Commission, provides that "The procedure of ... the Commission in relation to an investigation by it under this Act shall, subject to the provisions of this Act, be such as shall be determined by ... the Commission." and then proceeds to set out certain specified matters for which provision is required to be made by the Commission.
- 1.8 The purpose of this document is to state the procedures which the Commission proposes to follow in carrying out investigations under the Ethics Acts. This statement of procedures is intended to reflect the mandatory provisions of the Ethics Acts but it also sets out the approach of the Commission to issues likely to arise which are not provided for, or not provided for in detail, in the Ethics Acts. The Commission emphasises that its functions are inquisitorial rather than adversarial in nature. Furthermore, the Commission has no coercive or punitive power. However, the Commission appreciates that the outcome of investigations carried out by it under the Ethics Acts may have significant implications for

those concerned. The procedures set out in this document are intended to ensure that such investigations are conducted in accordance with fair procedures and so as to ensure a fair result.

- 1.9 It is not, however, possible to anticipate every issue which may arise in relation to investigations under the Ethics Acts or to provide, in advance, a detailed blueprint of the Commission's procedures in every eventuality. Therefore, it may be necessary to supplement or modify these procedures in the particular circumstances of individual investigations and the Commission reserves the right to so do, subject of course to the provisions of the Ethics Acts. It may also be necessary to revise the procedures described in this statement in the light of the Commission's experience of the actual operation of the Ethics Acts.
- 1.10 The Commission is committed to exercising its investigative powers under the Ethics Acts fairly and thoroughly and as expeditiously as possible, consistent with these over-riding imperatives.
- 1.11 This document is not intended to be an exhaustive statement of the provisions of the Ethics Acts so far as they relate to investigations and should be read in conjunction with both Acts. Obviously, in the event of there being any conflict between any part of this document and any provision of the Ethics Acts, the latter will prevail.

## 2 COMPLAINTS

- 2.1 Detailed provision for the making of complaints to the Commission is made in section 22 of the Ethics Act and section 4 of the Standards Act to which reference should be made. Section 174 of the Local Government Act requires ethics registrars to bring possible contraventions of Part 15 of that Act by members or employees of local authorities, members of committees of local authorities and persons whose services are being availed of by a local authority to the attention of the manager for and/or the Cathaoirleach of the local authority who in turn can submit a complaint to the Commission. A summary of these provisions is contained in Appendix 1.
- 2.2 Subject to section 22(1)(b) of the Ethics Act (which provides for complaints in relation to an office holder in respect of an alleged contravention of Part II of the Act dating from the period before the person concerned became an officer holder), and section 22(5) (which provides for the referral of a complaint, made or referred to it, to the Commission, by the Chairman of either of the Committees on Members' Interests of Dáil Éireann or of Seanad Éireann or the making of a complaint by the Chairman of either Committee in relation to a member) the Commission has no power to receive complaints against members of the Houses of the Oireachtas as such, such powers being conferred on the appropriate Committee of the House by sections 8 and 9 of the Ethics Act.
- 2.3 The Commission's function in relation to complaints is to receive and consider complaints against office holders and the other categories of person referred to in section 22 of the Ethics Act, section 4 of the Standards Act and sections 167(1) and 167(2) of the Local Government Act. The provisions of section 22 identify the persons who may make complaint regarding the different categories of persons who are subject to requirements of the Ethics Acts. All complaints under section 22 of the Ethics Act and section 4 of the Standards Act are to be made directly to the Commission.
- 2.4 Other than providing that all complaints made under section 22 of the Ethics Act, and section 4 of the Standards Act are to be made "in writing", the Ethics Act is silent on the form that such complaints should take. However, in order to enable the Commission to discharge properly its function of deciding whether or not it is appropriate to carry out an investigation of that complaint, it is essential that it be as detailed and as specific as possible. The Commission is therefore of the view that every complaint made under section 22 of the Ethics Act and section 4 of the Standards Act should clearly identify the person against whom complaint is made, should specify the alleged contravention of the provisions of the Ethics Act and/or the Standards Act and/or the Local Government Act, the subject-matter of the complaint, and set out in detail the basis for alleging that contravention. Where documentary material is relevant, copies of that material should be furnished with the complaint where possible.
- 2.5 Section 8 of the Standards Act precludes the Commission from investigating a complaint unless the identity of the person making the complaint is disclosed. However, section 8 permits the Commission, if it considers it appropriate to do so, to restrict the disclosure of such identity to those persons whom the Commission is of the view should know the

identity of the person making the complaint for the purposes of or by reason of the investigation of the complaint or otherwise in the interests of justice.

### **3 THE DECISION TO INVESTIGATE**

- 3.1 Where a complaint is made or referred to the Commission under section 22 of the Ethics Act or made to the Commission under section 4 of the Standards Act, the Commission shall carry out an investigation. However, in regard to a complaint made under section 4 of the Standards Act, if the Commission forms the view that the subject matter of the complaint is not of sufficient gravity to warrant investigation by the Commission, the Commission has the discretion either not to investigate the complaint or to refer the complaint to the appropriate entity or person as set out in section 4(5) of the Standards Act. Furthermore, the Ethics Acts envisage that where a complaint is made under section 4 in relation to the doing of a "*specified act*", then, unless the complaint is made or referred to the Commission by the chairman of a Committee, the Commission should not carry out an investigation unless it is of the opinion, after considering the report of an inquiry officer, that there is sufficient evidence to establish a prima facie case: see section 23(1A) of the Ethics Act (inserted by section 7 of the Standards Act).
- 3.2 In every other case, the decision whether or not to carry out an investigation is one for the Commission to make, having regard to what it considers "appropriate". Where, however, the Commission is considering whether to carry out an investigation of a matter relating to a person who holds or held a designated directorship of, or occupies or occupied a designated position in, a public body which was not the subject of a complaint under section 22, it is obliged to consult with the relevant Minister of the Government and must only carry out the investigation if the additional requirements of section 23(2) are met.
- 3.3 In deciding whether or not to carry out an investigation, as in the discharge of all its functions under the Ethics Acts, the Commission acts independently. The provisions of section 21 of the Ethics Act provide that the Commission's functions under section 23 must be discharged by the Commission as a whole and cannot be discharged while there is any vacancy amongst its members. Equally, these functions cannot be delegated to any of the Commission's staff. Section 32(7) of the Ethics Act provides that a decision of the Commission in relation to an investigation by it under the Ethics Acts or any question arising in the course of such an investigation may be that of a majority of its members. It should be noted, however, that section 21(2I) of the Ethics Act (inserted by section 2 of the Standards Act) permits such functions of the Commission as it may determine to be performed in relation to such matter or matters as the Commission determines by the Commission consisting only of the chairperson.
- 3.4 In considering whether or not to carry out an investigation, the Commission will have regard to all the material before it. The nature of the material before the Commission to support the complaint will clearly be of primary importance in deciding whether an investigation is warranted. However, having regard to the broad discretion conferred upon the Commission by the terms of section 23, it is neither practicable nor appropriate to seek to set out an

exhaustive list of all of the factors which the Commission may have regard to in making this decision.

- 3.5 It is important to emphasise that a decision by the Commission to carry out an investigation signifies only that it considers it appropriate to carry out an investigation in accordance with the Ethics Acts for the purpose of determining whether there has been a contravention of the provisions of either Act. It does not imply that the Commission has reached any view on the truth or otherwise of any complaint made to it.
- 3.6 Before deciding whether or not to carry out an investigation under the Ethics Acts, the Commission may communicate with the person who would be the subject of such investigation in relation to the subject matter of such investigation. Such communication may be appropriate in order to obtain information or to clarify matters which may have a bearing on the decision whether or not to initiate an investigation. Whether or not there will be any such communication, and the form and contents of it, will be a matter to be determined by the Commission having regard to the particular circumstances of each specific case. Where such communication takes place, the Commission will have due regard to anything said by the person concerned in deciding whether or not to carry out an investigation.
- 3.7 A significant aspect of the Standards Act is that, in section 6, it permits the Commission to appoint "Inquiry Officers" for the purpose of assisting the Commission in the performance of its functions. Whenever so requested by the Commission, an Inquiry Officer shall carry out a preliminary inquiry into a complaint made under section 22 of the Ethics Act or section 4 of the Standards Act. In conducting that inquiry, the Inquiry Officer may seek a statement from and/or interview the complainant and/or the person against whom the complaint has been made. The Inquiry Officer may also interview or seek a statement from any other person whose evidence would or might, in the opinion of the Inquiry Officer, be relevant to the inquiry. He or she may also request the production of any documents considered to be relevant to the inquiry. Following such an inquiry, the Officer is required to prepare a report of the results of the inquiry and to furnish that report, together with any statements and other documents furnished to the officer in the course of the inquiry. The report must not contain any "*determination or findings*" but, if the Commission so requests, it shall contain an expression of the opinion of the officer as to whether there is *prima facie* evidence to sustain the complaint.
- 3.8 The Commission's current view - which is, of course, subject to revision in the light of actual experience - is that the appointment of an inquiry officer is likely to be beneficial in most cases. Use of the section 6 procedure is likely to assist in ensuring that complaints are the subject of a full formal investigation by the Commission only where that is truly warranted and is also likely to assist in establishing the proper parameters for such an investigation, as well as avoiding the necessity of the Commission itself becoming involved in an information-gathering exercise. Accordingly, whenever a complaint is made to the Commission pursuant to section 22 of the Ethics Act or section 4 of the Standards Act, the Commission will, as a preliminary matter, give consideration to whether an inquiry officer should be requested to carry out a preliminary inquiry under section 6. There may, of course, be cases where the carrying out of such a preliminary inquiry will not be necessary as, for instance, where the facts are clear and not the subject of any dispute.

## 4 THE INVESTIGATION

- 4.1 This section deals with cases where the Commission is obliged or has decided to initiate an investigation. As already indicated, it is likely that, in most such cases, that decision will be made only after a preliminary inquiry into the complaint has been carried out and the report on that inquiry considered by the Commission.
- 4.2 Section 32(1) of the Ethics Act, so far as it relates to the Commission, provides that it shall hold sittings for the purpose of an investigation by it under the Act and further provides that it may receive submissions and evidence as it thinks fit at such sittings. Section 32(6) goes on to make detailed provision for the calling of witnesses at such sittings and other related matters. Further and more detailed reference will be made to the provisions of section 32(6) below.
- 4.3 Regardless of whether a preliminary inquiry had been conducted or not, it will normally be necessary for the Commission to obtain statements from potential witnesses and relevant documentation will also have to be obtained. The Commission anticipates that, in many cases, such statements and other material will be voluntarily furnished to it. Where necessary, however, the chairperson of the Commission will exercise the power to give directions conferred on him/her by section 32(2) of the Ethics Act and in particular section 32(2)(c) and (d). In addition, section 18 of the Standards Act permits the chairperson of the Commission to give directions to "any person" to make discovery on oath of any documents relating to any matter relevant to the functions of the Commission.<sup>2</sup> In certain cases - where, for instance, the chairperson proposes to exercise the power under section 32(2)(d) of the Ethics Act or section 18 of the Standards Act to direct the production of private bank accounts of the person the subject of the investigation - he or she will normally be notified of the proposal to give such a direction and afforded an opportunity to make any representations he or she wishes to make in that regard. In other cases, however, a direction under section 32(2) or section 18 may be given without any reference to the person the subject of the investigation. The precise steps taken by the Commission will vary from one investigation to the next, as will the duration of this stage of the Commission's work.
- 4.4 The Commission may, as it considers appropriate, hold a preliminary sitting (and, where necessary, more than one such sitting) for the purposes of dealing with any preliminary and/or procedural issues arising in relation to the particular investigation it is carrying out.

<sup>2</sup> *It should also be noted in this context that section 19 of the Standards Act imposes on persons an obligation to preserve documents or information in their possession or control which he or she knows to be relevant to an investigation or intended investigation of the Commission until the investigation and any related proceedings are completed.*

- 4.5 Prior to holding any sitting for the purposes of hearing evidence or receiving submissions in connection with its investigation (other than the preliminary sitting or sittings already referred to), the Commission will, in accordance with the provisions of section 32(6)(a) of the Ethics Act, notify the person the subject of the investigation of the date, time and place of the relevant sitting of the Commission. Where the investigation arises from a complaint made under section 22 of the Ethics Act or section 4 of the Standards Act, the complainant will receive a similar notification. To the maximum extent practicable, sittings of the Commission will be scheduled for a date and time that suits all interested parties. Sittings of the Commission will normally be held in the Commission's premises at Leeson Street. However, an alternative venue may be utilised by the Commission as it considers appropriate.
- 4.6 Again, prior to holding any sitting for the purposes of hearing evidence or receiving submissions (other than the preliminary sitting or sittings already referred to), the Commission will, in accordance with the requirements of section 32(6)(b) of the Ethics Act, give the person the subject of the investigation certain specified information relating to the investigation, including a statement of the contravention of the Ethics Acts alleged and copies of any statements intended to be used by the Commission. The Commission will also endeavour to comply with any reasonable request made by or on behalf of the person the subject of the investigation in relation to the exercise by the chairperson of his/her powers under section 32(2) of the Ethics Act for the purposes of securing the attendance of witnesses and/or the production of documents which that person wishes to present to the Commission.
- 4.7 The Commission will, in accordance with the requirements of section 32(6)(c), (f) and (g) of the Ethics Act, ensure that the person the subject of the investigation will be entitled to present his or her case to the Commission, to cross-examine witnesses called by the Commission and to call witnesses on his or her own behalf. The order in which witnesses will be called to give evidence will be determined by the Commission. The Commission will also determine whether or not evidence should be given on oath. However, while there may be exceptional cases which, for example, involve no disputed issue of fact and where sworn evidence may therefore appear unnecessary, the Commission envisages that evidence will normally be given on oath. Where evidence is being given on oath, the chairman of the Commission will administer the relevant oath to each witness. Where a witness objects to taking an oath, the witness will instead be asked to affirm.
- 4.8 A witness whose evidence had been, is being or is to be given before the Commission in proceedings under the Ethics Acts is entitled to the same privileges and immunities as a witness in a court, save that such witness cannot refuse to answer a question or refuse to produce a document on the ground that the answer or document might incriminate him or her. (See section 32 of the Ethics Act and section 16 of the Standards Act). However, any statement or admission made by a person before the Commission (or an inquiry officer or person appointed under section 32(4A) of the Ethics Act, as amended) shall not be admissible as evidence against that person in any proceedings, other than proceedings for breach of the provisions of section 32(4) (failure to obey a direction to attend and failure/refusal to answer a question or produce a document) and 35(5) (giving false

evidence) of the Ethics Act or section 17 of the Standards Act (obstruction of the Commission).

- 4.9 The Commission shall, as far as practicable, ensure that the evidence of all relevant witnesses is presented. Witnesses called by the Commission will be examined by the Commission or its legal advisers and will then be subject to cross-examination by or on behalf of the subject of the investigation. Where the person the subject of the investigation gives evidence and/or calls witnesses, they will be subject to cross-examination by or on behalf of the Commission.
- 4.10 The Commission is also empowered, where for sufficient reason it considers it appropriate to do so, to arrange for the examination of a person at any place in or outside the State by a member of the Commission, a member of the staff of the Commission or any other person and the evidence of that person will be admissible for the purposes of an investigation being conducted by the Commission: section 32(4A) & (4B) of the Ethics Act (inserted by Schedule 1 of the Standards Act).
- 4.11 Written statements may be admitted into evidence by the Commission, provided that the person the subject of the investigation consents to same. The Commission intends to avail of this procedure to the maximum possible extent, particularly where the statement concerned deals with uncontroversial issues and/or is directed to the proof of formal matters. The power to admit any written statement into evidence does not, however, prejudice the powers of the Commission, through its chairman, to direct the attendance of persons before the Commission for the purposes of giving evidence and/or producing documents where the Commission considers it appropriate.
- 4.12 The Commission will, subject to the provisions of the Ethics Act, rule on any evidential issues which may arise in the course of an investigation being carried out which appear to require determination by the Commission, including issues relating to the admissibility of evidence, (including any issue concerning privilege claimed by a witness), issues relating to relevance and issues as to the proper scope of the examination and cross-examination of witnesses before the Commission. Where objection is taken to any evidence (oral or otherwise) given or intended to be given before the Commission, the Commission shall consider such objection and rule on same as it considers appropriate.
- 4.13 The Commission will, subject to the provisions of the Ethics Act, rule on any procedural issues which may arise in the course of an investigation being carried out which appear to require determination by the Commission. Where objection is taken to any procedures adopted or intended to be adopted by the Commission, the Commission shall consider such objection and rule on same as it considers appropriate.
- 4.14 Any signature appearing on a document produced before the Commission (including, but not limited to, a witness statement) shall, in the absence of evidence to the contrary, be taken to be that of the person whose signature it purports to be.
- 4.15 The proceedings of the Commission shall be recorded in such manner as the Commission shall determine and such record of the proceedings prepared as may be directed by the Commission shall accurately set out such proceedings.

- 4.16 Sittings of the Commission for the purposes of an investigation by it under the Ethics Acts shall be held in public save where otherwise directed by the Commission pursuant to section 32(9) of the Ethics Act. The Commission may, at its discretion, direct that the whole or any part of any such sitting shall be held in private where it considers it appropriate to give such a direction. In determining whether or not to hold any sitting of the Commission in private, the Commission will have regard to, but will not be bound by, the views (if any) of interested parties, including in particular the views of the person the subject of the investigation. Where a sitting of the Commission, or any part of it, is held in private, the provisions of section 35(1) of the Ethics Act, which prohibit the disclosure by any person of information obtained by being present at such a private sitting, will apply.
- 4.17 Nothing in the previous paragraph, or in any other part of this document, prejudices or affects the capacity of the Commission to meet in private session from time to time where same appears expedient for the due discharge by the Commission of its functions under the Ethics Act or Standards Act or confers on any person any entitlement to be present at such private sessions.
- 4.18 The Commission may be assisted in the carrying out of investigations under the Act by such legal advisers as it appears appropriate to the Commission to retain. Such legal advisers may, at the request of the Commission and on its behalf, examine or cross-examine (as the case may be) witnesses called to give evidence before the Commission. Such legal advisers may also, at the request of the Commission, make submissions to the Commission on such matters as the Commission may consider appropriate. The Commission's legal advisers may also give such legal advice to the Commission as it may require. The Commission's legal advisers shall have no role in the Commission's decision-making but may give legal advice in relation thereto if so requested by the Commission.
- 4.19 The person the subject of the investigation may present his or her case to the Commission in person or through a legal or other representative. That person may, by him or herself or by such representative, make an opening statement to the Commission, may examine or cross-examine (as the case may be) witnesses called to give evidence before the Commission and may address the Commission on relevant matters which arise in the course of the Commission's investigation and may make a closing submission to the Commission upon the conclusion of the evidence.
- 4.20 Section 32(5) of the Ethics Act provides that, if a person gives false evidence before the Commission in such circumstances that, if he or she had given that evidence before a court, he or she would be guilty of perjury, he or she shall be guilty of that offence. It is also an offence to fail or refuse to attend before the Commission when directed or, being in attendance, to refuse to take the oath if required to do so, to refuse to answer any question put to which the Commission is entitled to require an answer or to produce any document which the Commission legally requires: section 32(4). Obstruction of the Commission is a separate offence under section 17 of the Standards Act.
- 4.21 Where a witness is directed to attend before the Commission pursuant to section 32(2)(b) of the Ethics Act, the reasonable expenses of that witness shall be paid out of moneys provided by the Oireachtas. What will constitute reasonable expenses will vary from case to case. In

the event of a dispute, the Commission will determine the appropriate amount of expenses. Where a witness is directed to attend before the Commission under this provision, a sum in respect of the expenses of his or her attendance, equivalent to the sum which a witness summoned to attend before the High Court would be entitled to have tendered to him, will be tendered to such witness at the same time as he or she is served with the direction in question. This sum - referred to in the context of court proceedings as a 'viaticum' - is intended to cover the cost of travel and related costs.

- 4.22 Section 9 of the Standards Act permits the Commission to make orders in relation to the costs incurred by any person appearing before it. Section 9 is addressed further in section 7 of this document.
- 4.23 The Commission may adjourn or postpone proceedings in relation to an investigation under section 23 of the Ethics Act as it considers appropriate. This power might, for instance, be exercised where criminal proceedings were being considered, or had been brought, by the Director of Public Prosecutions arising from the same matters as were the subject of the Commission's investigation. Where the Commission exercises this power, it may, if it considers it appropriate to do so, furnish an interim report on its investigation.
- 4.24 If, at any time in the course of investigating a complaint made to it, or referred to it, under section 22 of the Ethics Act, section 4 of the Standards Act or section 174 of the Local Government Act, other than a complaint made by a member or a person referred to in paragraphs (c) or (d) of section 22(4) of the Ethics Act, the Commission forms the opinion that the complaint concerned is frivolous or vexatious, it may discontinue such investigation, in which case the provisions of section 31(3) and 31(4) of the Ethics Act shall apply.
- 4.25 Where the Commission, either during or at the conclusion of an investigation under section 23, forms the opinion that the person the subject of the investigation has not contravened the provision of the Ethics Act, Standards Act, or Part 15 of the Local Government Act to which the investigation relates but may have contravened another provision of Part II, III or IV of the Ethics Act, the Standards Act or Part 15 of the Local Government Act, it may carry out an investigation to determine whether the person concerned has contravened that other provision.

## **5 THE CONSEQUENCES OF FAILURE TO CO-OPERATE WITH THE COMMISSION**

- 5.1 In order to enable it to carry out its investigative function effectively, the Oireachtas has conferred on the chairperson of the Commission significant powers to direct the attendance of persons before the Commission (section 32(2)(a) & (b)) and the production of documents to it (section 32(2)(c) & (d)). The chairperson may also give other directions for the purposes of the proceedings that appear to him or her to be reasonable and just. By virtue of section 32(4) of the Ethics Act, failure to abide by such a direction may constitute a criminal offence, for which significant penalties are provided by section 37 of the Ethics Act. It is also a criminal offence to obstruct the Commission, an inquiry officer or a person who is a member of the staff of the Commission or who is carrying out an examination under section 32(4A): section 17 of the Standards Act. Such obstruction may occur "*by act or omission*". The penalties provided for in section 37 of the Ethics Act also apply to the offence of obstruction.

## **6 THE REPORT OF THE COMMISSION**

- 6.1 In accordance with section 24 of the Ethics Act, the Commission will prepare a report in writing of the result of every investigation, other than investigations which have been discontinued by the Commission in accordance with section 31(2) (where the Commission has formed the view that the complaint concerned is frivolous or vexatious). Section 24(1) provides for the circulation of such reports and additional provision in this regard is contained in section 24(5). Section 24(3) makes detailed provision for the content of such reports. Section 180 of the Local Government Act makes detailed provision for the circulation of such reports by the Commission relating to a member or an employee of a local authority or to any other person to whom section 167(1) or 167(2) relates.
- 6.2 During the course of an investigation, if the Commission forms the opinion that evidence sufficient to sustain a complaint made or referred to it under section 22 of the Ethics Act or made under section 4 of the Standards Act is not or is unlikely to become available, the Commission may decide not to carry out, or to discontinue, an investigation but if it does so decide, it shall prepare a record of the decision and the provisions of section 24(1) and 24(4) of the Ethics Act shall apply in relation to such a record as if it was a report under that section.
- 6.3 Where the Commission determines that there is a continuing contravention of any of the relevant provisions of the Ethics Acts or of the Local Government Act, the Commission is obliged to include in its report its determination as to the steps required to be taken by the person the subject of the investigation to secure compliance with such provisions and the time period within which such steps are to be taken. Section 36 of the Ethics Act provides that the person concerned shall take the specified steps within the specified time.
- 6.4 Apart from the situation provided for in section 36, where the person the subject of the Commission's investigation is a member of either House of the Oireachtas, section 28 of the Ethics Act provides that it is a matter for the relevant House of the Oireachtas to determine what action, if any, ought to be taken on foot of the Commission's report. The Commission has no further function in this respect. Where the person the subject of the investigation is not a member of either House, he or she may be subject to disciplinary sanctions in the event of a contravention of the provisions of the Act being established. Again, however, the Commission has no further function in this respect.
- 6.5 Section 24(2) of the Ethics Act provides that, where either during or at the conclusion of an investigation, the Commission forms the opinion that the person the subject of the investigation may have committed a criminal offence relating to the performance of his or her relevant public duties, whether as an office holder or otherwise, it shall prepare a report in writing in relation to the matter and furnish that report, together with any relevant documents or other things, to the Director of Public Prosecutions. Section 24(2) further provides that the Director shall notify the Commission as to whether or not any criminal proceedings have been taken in respect of any matter mentioned in the report and, where proceedings have been brought, as to the final outcome of such proceedings. The Commission is, by virtue of section 24(2)(b), obliged to add to its report under section 24(1),

a copy of any report furnished to the Director of Public Prosecutions, together with a statement of any notification or notifications received by the Commission from the Director.

## 7 COSTS

- 7.1 Section 9 of the Standards Act provides that following an investigation by the Commission under section 23 of the Ethics Act the Commission may either at its own discretion or on the application of any person appearing before it order that the whole or part of the costs necessarily incurred by that person, as taxed by a Taxing Master of the High Court, be paid to that person by any other person named in the Order or that the whole or part of the costs incurred by the Commission, as taxed aforesaid, be paid to the Minister for Finance by any other person named in the Order. Such an order may be made if and only if, having regard to "*the findings of the Commission*" and "*all other relevant matters*", including the matters specified in section 9(1), the Commission is of the opinion that there are sufficient grounds rendering it equitable to do so.
- 7.2 Having regard to the terms of section 9, it is clearly impossible to anticipate in what circumstances and in what manner the Commission may exercise its power under section 9. It will, however, do so fairly and in accordance with fair procedures.
- 7.3 Section 26 of the Ethics Act provides that where, following investigation by the Commission of a complaint referred to, or made to the Commission under section 22 of the Ethics Act (other than complaints made under section 22(4) of the Ethics Act and section 4 of the Standards Act), the Commission determines that the complaint was frivolous or vexatious or determines that there has been no contravention of the relevant provisions of the Ethics Acts and that there were no reasonable grounds for the complaint, the Commission may order that such amount or amounts as it considers appropriate in all the circumstances, but in any event not exceeding €1,950.00, in respect of the reasonable costs and expenses incurred by any person before it (including costs incurred in respect of legal representation) in relation to the investigation should be paid by the complainant. For the purpose of exercising this power, the Commission is empowered to measure the costs and expenses concerned. The powers of the Commission under this section also apply when an investigation is discontinued under section 31(2) of the Act.

## APPENDIX 1

The following chart describes the route prescribed by the Ethics Acts for the making of a complaint to the Commission regarding an office holder<sup>1</sup> or Part IV position holder<sup>2</sup> or a member of either House of the Oireachtas or other persons where a contravention of the Ethics Act and/or Standards Act and/or the Local Government Act may have occurred:

<b>Complainant</b>	<b>Subject of Complaint</b>	<b>Subject Matter of complaint</b>
A member of the public (section 22(1) of the Ethics Act)	An office holder <sup>3</sup>	A provision of Part II, III or IV of the Ethics Act while an office holder or of Part II before becoming an office holder
A member of the Dáil or Seanad (section 22(3) of the Ethics Act)	A Part IV position holder	A provision of Part IV of the Ethics Act
A member of the Dáil or Seanad (section 22(3) of the Ethics Act)	An office holder <sup>4</sup>	A provision of Part II, III or IV of the Ethics Act while an office holder or of Part II before becoming an office holder
The Minister for Finance (section 22(4)(a) of the Ethics Act)	A Part IV position holder (other than an office holder)	A provision of Part IV
Any Minister (with the consent of the Minister for Finance) (section 22(4)(b) of the Ethics Act)	Certain specified Part IV position holders	A provision of Part IV
A specified public body (section 22(4)(c) of the Ethics Act)	A designated director or employee of that body	A provision of Part IV
An individual to whom a statement in writing is furnished under section 17 or 18 of the Ethics Act (section 11(b) of the Standards Act)	A designated director or employee of that body	A provision of Part IV
The "appropriate authority" within the meaning of the Civil Service Regulation Act 1956, as amended, (other than a Minister of the Government) in relation to a civil servant (section 22(4)(d) of the Ethics Act)	A civil servant subject to the provisions of Part IV of the Ethics Act	A provision of Part IV
Committee on Members Interest of Dáil Éireann/or Seanad Éireann (section 22(5) of the Ethics Acts) <sup>5</sup>	A member of Dáil Éireann or Seanad Éireann, as the case may be (other than a member who at the relevant time was an office holder)	A provision of Section 5, 7 or 12 of the Ethics Act or a 'specified act' <sup>6</sup>
Any person (section 4 of the Standards Act)	Specified person <sup>7</sup>	A provision of the Ethics Acts, of Part 15 of the Local Government Act or a 'specified act',
The person or persons notified by an Ethics Registrar of a local authority of an alleged contravention of the Local Government Act (Section 174(8) of the Local Government Act; section 4 of the Standards Act) <sup>8</sup>	A member or an employee of a local authority; a member of a committee of a local authority and a person whose services are being availed of by a local authority.	A provision of Part 15 of the Local Government Act

<sup>1</sup> "Office holder" is defined in section 2(1) of the Act. It includes a Minister of the Government or a Minister of State (past or present), a TD or Senator who holds the office of Attorney General (past or present), the Chairman and Deputy Chairman of Dáil Éireann (past or present) and the Chairman and Deputy Chairman of Seanad Éireann (past or present).

<sup>2</sup> This expression is used as a shorthand description of the various offices referred in Part IV of the Act. Part IV of the Act applies to the Attorney General (section 16), persons holding designated directorships in certain public bodies referred to in the First Schedule of the Act (section 17), persons holding designated positions of employment within such a public body (section 18) and "special advisers" (section 19).

<sup>3</sup> A complaint may be made in respect of an alleged contravention of Part II, III or IV of the Act which occurred while the person concerned was an office holder. In addition, complaint may be made against an existing office holder in respect of an alleged contravention of Part II which occurred before the person became an office holder.

<sup>4</sup> See footnote 3 above.

<sup>5</sup> A Committee may also refer to the Commission a complaint made to it by a third party regarding a member of Dáil Éireann or Seanad Éireann (other than a member who at the relevant time was an office holder): section 22(5) of the Ethics Act (as amended). Section 8(2) of the Ethics Act provides that a person other than a member may complain to the Clerk of the relevant House about a member (other than an office holder) contravening section 5 or 7 or doing a 'specified act'. Where appropriate, the Clerk will refer the matter to the relevant Committee on Members' Interests. Section 8(4) of the Ethics Act provides that a member may complain to the relevant Committee on Members' Interests about a member (other than an office holder) contravening section 5 or 7 or doing a 'specified act'.

<sup>6</sup> A 'specified act' is an act done or an omission made after the commencement of section 2 [of the Standards Act, ie after 10 December 2001] that is, or the circumstances of which are, such as to be inconsistent with the proper performance by the specified person of the functions of the office or position by reference to which he or she is such a person or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance (section 4(1)(a) of the Standards Act). Section 4(6) provides: "Without prejudice to the generality of the expression "significant public importance" in subsection (1), a matter shall, if the Commission consider it appropriate to do so having regard to all the circumstances, be deemed by it, for the purposes of that subsection, to be of significant public importance if it relates to a benefit alleged to have been received by a specified person or a person who, in relation to a specified person, is a connected person and, in the opinion of the Commission, the value of the benefit was, is or might have been or be expected to be or to become not less than £10,000" (ie. €12,697).

<sup>7</sup> "Specified person" is defined in section 4(6)(a) of the Standards Act. It includes an office holder, (but not a member), a Part IV position holder, and a director or employee of a public body at the time to which the complaint concerned relates. In view of the provisions of sections 167(1), 167(2) and 180(2) of the Local Government Act, a 'specified person' also includes a member of a local authority, an employee of a local authority, a member of a committee of a local authority and a person whose services are being availed of by a local authority.

<sup>8</sup> Either the Manager or the Cathaoirleach of the local authority concerned or both, depending on against whom in the local authority the contravention is alleged.