

Preliminary Submission on Reform and Consolidation of Ireland's Statutory Framework for Ethics in Public Life

14 January 2022

Dear Minister,

I write on behalf of Transparency International (TI) Ireland to offer its preliminary submission on the Reform and Consolidation of Ireland's Statutory Framework for Ethics in Public Life.

Due to the pressure of time, we are unable to provide a comprehensive or detailed response to the call for public comments but will do so as soon as possible.

Notwithstanding the merits of this public consultation, we believe that the Public Sector Standards Bill 2015 should be restored to the Dáil Order Paper without undue delay. While there was room for improvement, the Bill implemented many of the recommendations arising from the Mahon Tribunal and broadly reflected international good practice.

Indeed, Minister Howlin described the Bill as 'ground-breaking legislation' which was the product of 'years of work'.¹ It would be 'a new, robust and positive framework for identifying, disclosing and managing conflicts of interest, as well as providing for a streamlined and consistent approach to ethics legislation across the public sector'.²

It is worth noting the Hamilton Review Group's concerns that 'any delay in implementing the proposed reforms [of the Ethics Acts] will not only pose a set-back to the progress made in the context of Ireland's evaluations by the relevant international monitoring bodies, but will also have adverse implications for the State's anti-corruption regime'.

Furthermore, and as Minister Donohoe noted in 2017, 'much work [had] been completed since the Bill was considered in Committee, including work specifically requested by the Finance, Public Expenditure and Reform, and Taoiseach Committee (the Committee)³

Upon the conclusion of this Statutory Framework review, we would suggest that the PSSB be restored to the Dáil Order Paper and amendments taken at Committee Stage that would take note of submissions made during the review and public consultation.

In the meantime, please find below our responses to questions posed in the Public Consultation document published by your Department.

¹ <https://www.irishtimes.com/news/politics/howlin-to-bring-new-ethics-law-to-cabinet-next-week-1.2458617>

² <https://www.oireachtas.ie/en/debates/debate/dail/2016-01-20/32/>

³ https://www.oireachtas.ie/en/debates/debate/select_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2017-04-06/2/

Yours sincerely,

John Devitt
Chief Executive
Transparency International Ireland

Question 1: Do you agree with the broad policy approach as a viable basis to guide legislative reform for the statutory framework for ethics?

We agree with the need for set of integrity principles for public officials at both national and local level as well as new statutory requirements & strengthening of existing obligations as provided for in the 2015 Bill. We would also recommend a significant extension of the current disclosure regime and consistency in applying standards, including loans, liabilities and guarantees thereof to the value of €30,000 or more. Likewise, we would also support the graduated approach for different categories of public official again as provided for under the 2015 Bill.

In addition, we support a more effective, streamlined and efficient process for the submission of periodic statements of interests. Provision should be made for the digitisation of returns and publication of declarations of registrable interests in a format similar to that published by the Companies Registration Office, the Register of Beneficial Ownership and the Register of Lobbying. The current practice which only requires officials and public representatives to fill in, post or scan paper documents poses an undue administrative burden on officials and the Standards in Public Office Commission. It also makes search and retrieval of such information difficult for the public.

Question 2: What, if any, drawbacks can you see with this approach? – What unintended consequences might it have?

We are not aware of any evidence to suggest that greater transparency and enhanced procedures for managing conflicts of interest would pose any risk to the public interest. We are aware of the concerns raised by the Finance Committee over the burden of reporting on local authority members, and the powers granted to a Public Sector Standards Commissioner to undertake preliminary inquiries and retrieve evidence, and the requirement, *inter alia* to provide additional financial information.

It should be clear however, that there is no justification for not applying the same if not higher standards of probity and transparency to office holders and public representatives than applies to other professions. Adequate safeguards for confidentiality, privacy and due process can be provided for in the same way as they are to members of An Garda Síochána, for example, who are and will be subject to enhanced disclosure requirements as part of efforts to address corruption-related risks and restore public confidence in the service.

Question 3: Placing certain basic principles on a statutory basis (i.e., concern for the public interest) are likely to form part of proposals. Do you agree with this approach? What principles would you like to see in Ireland's statutory framework for ethics?

Yes. The Seven Principles of Public Life (also known as the Nolan Principles)⁴ offer an informative example of how a set of standards might look. However, whatever values are enshrined in any set of principles, they should be informed by a multi-stakeholder dialogue on ethics in public office which goes beyond the strict remit of this public consultation.

⁴ <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

Question 4: In so far as the statutory framework for ethics may interact with personal rights (i.e., privacy by published registers of interests and the right to earn a livelihood by restrictions post-term employment) – what sort of measures would represent a fair and appropriate balance between personal rights and the public interest?

Not all declarable interests – such as those of connected persons to certain public officials - ought to be published. Nonetheless, the type of interests that are registrable such be expanded, *inter alia*, to include income, loans and liabilities above €30,000 in value. This information should be made available to the Commission so that it can advise on and inquire into any breach of the Acts that might impact on public confidence in the policy making process.

Question 5: What further suggestions for changes, if any, would you make? Please explain the reason for your proposed change, and where possible, advance evidence or arguments in support. Evidence might be factual, legal or based on your experience.

We will make further suggestions that reflect international good practice and experience as soon as possible.