

**Annual Report**  
of the  
**Public Offices Commission**  
for  
**1996**

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## **Foreword.**

I hereby present the first Annual Report of the Public Offices Commission to the Minister for Finance pursuant to the provisions of Section 27(2)(a) of the Ethics in Public Office Act, 1995.

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Seán Treacy, T.D.,  
Ceann Comhairle,  
Chairman, Public Offices Commission.

May, 1997.

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### **1. Introduction.**

This is the first annual report of the Public Offices Commission. The Commission was established on November 1st, 1995, in accordance with Section 21 of the Ethics in Public Office Act, 1995. The inaugural meeting of the Commission was held on November 2nd,

1995. The Commission met on six further occasions up to the end of 1996. It is appropriate that this first report should outline in some detail the role of the Commission including the powers at its disposal in discharging its statutory functions.

The enactment of the Ethics in Public Office Act, with effect from July 22nd, 1995, was a significant development in Irish public life providing, for the first time since the foundation of the State, that office holders, other members of Dáil and Seanad Éireann and certain categories of persons in the public service would have to disclose their interests to an extent defined in statute. The level, circumstances and frequency of disclosures required by the legislation are dealt with later in this report.

In enacting the legislation, the Oireachtas has set down guiding principles in terms of standards required of those covered by the legislation in performing their public service functions. The observance of these principles is a matter primarily for the individuals concerned but is subject to control in a number of respects including the disclosure and other compliance requirements of the legislation. Ethics in public life is not a new concept and the legislation is primarily aimed at reinforcing the public service ethos which has always been there.

It will be noted that the Ethics in Public Office Act, 1995 is effective from July 22nd, 1995. It would not, therefore, have been open to the Commission, under the existing legislation, to consider an involvement in matters relating to alleged payments to politicians and public servants on dates prior to July 22nd, 1995 which are currently, and have been, the subject of enquiry in other fora.

## **2. The Ethics in Public Office Act, 1995.**

The Ethics in Public Office Act, 1995 (the Act) provides for the annual disclosure of interests by office holders (including the Taoiseach, Tánaiste, Ministers and Ministers of State), other

members of the Houses of the Oireachtas, the Attorney General, special advisers and holders of designated directorships and persons occupying designated positions in certain public bodies.

The Act also deals with the surrender to the State of gifts above a certain value given to office holders by virtue of their office and with the disclosure of details concerning personal appointments made by them.

In addition to the annual statements of interests, separate ad hoc statements are required from office holders and the public servants who are covered by the Act where they have a material interest which impinges on some function falling to be performed by them. In the case of parliamentarians, they must also make ad hoc declarations when speaking or voting in proceedings of either House of the Oireachtas, including Committees, where they have a material interest in the subject matter of the proceedings and the interest has not already been publicly disclosed under the Act.

The Act establishes a Public Offices Commission and Select Committees on Members' Interests in both Houses of the Oireachtas, with powers of investigation. The Commission is independent in the performance of its functions under the Act. It is required to submit an Annual Report on its activities to the Minister for Finance which is laid by the Minister before each House of the Oireachtas. The Commission may prepare such other reports for the Minister as it considers appropriate which the Minister may lay before each House. This does not include reports of investigations carried out under the Act which are subject to separate reporting arrangements as described later in this report.

### **3. Membership of the Public Offices Commission.**

The membership of the Public Offices Commission, as provided for in the Act, is as follows :

- the Comptroller and Auditor General
- the Ombudsman
- the Chairman of Dáil Éireann
- the Clerk of Dáil Éireann
- the Clerk of Seanad Éireann.

The appointment of replacements is provided for in the legislation when any of the members listed above is temporarily unable to act or when any of the positions above is vacant.

At its first meeting the Commission appointed the Chairman of Dáil Éireann (An Ceann Comhairle) as Chairman for a period of two years. The Commission also appointed the firm of A&L Goodbody as its legal advisers, following a selection process. Mr Brian Allen, a Senior Investigator in the Office of the Ombudsman, was seconded to act as Secretary of the Commission.

#### **4. Functions of the Public Offices Commission.**

The Act requires the Commission to publish guidelines, to provide advice to assist compliance with the Act and to investigate and report in relation to possible contraventions of the Act by office holders, the Attorney General, special advisers and holders of designated directorships and persons occupying designated positions in certain public bodies. The Select Committees on Members' Interests of the Dáil and of the Seanad have similar functions in relation to members of those Houses who are not office holders.

The Commission is also required to receive certain statements of interests and must be consulted in relation to other aspects of the operation of the legislation.

The functions of the Commission (other than investigations) may be performed, under the supervision and subject to the general direction of the Commission, by members of the staff of the Commission who are duly authorised.

The Commission wishes to record its appreciation to the Secretary and his staff for the support and assistance provided during the course of the year.

#### **Guidelines and Advice.**

In February, 1996 the Commission published separate detailed guidelines to office holders and to public servants setting out in precise terms their duties and responsibilities under the Act. The appropriate guidelines were circulated to all office holders and to heads of Government Departments and Offices. The Commission asked the heads of Government Departments and Offices to ensure that the guidelines for public servants were made available to persons in their organisations who are covered by the Act.

During the course of the year the Commission received many requests for advice on steps required to be taken in order to comply with the provisions of the Act. At the time of writing (April, 1997) almost 200 such requests had been received. These covered a wide range of issues concerning the operation of the legislation and were from persons in all of the categories within the Commission's remit. The advice was provided in each case within the 21 day period prescribed by the Act.

Great care was taken by the Commission, in consultation with its legal advisers and, as is required by the legislation, with the Select Committees on Members' Interests of the Houses of the Oireachtas, in the preparation of the guidelines to ensure that they comprehensively reflected the legal duties and responsibilities placed on individuals by the Act and, subject to that constraint, were as user-friendly as possible.

In dealing with requests for advice and other enquiries, the Commission recognised the fact that the disclosure of interests and other requirements of the legislation represented a new departure for most of the individuals concerned and that certain misconceptions and misunderstandings as to the obligations to be met would be encountered. In that context the Commission was happy to invest both time and energy in explaining to enquirers, on the telephone and in writing, the exact position in relation to the points they had raised.

It is, however, a cause of some concern that many of the requests for advice related to matters already dealt with clearly in the guidelines. The Commission will be issuing further guidelines in due course which will reflect experience to date in dealing with the operation of the Act and will expand on some aspects of the guidelines as already published. These guidelines will be in Irish and in English. The Commission hopes that any future guidelines will be fully utilised by all concerned as a reference point in identifying the obligations attaching to individuals under the Act. There will, of course, always be occasions when a particular matter giving rise to a question relating to a provision of the Act, or its applicability, will not be dealt with in sufficient detail in the guidelines. The Commission would, of course, expect to be requested to provide advice in such circumstances.

The onus to comply with the terms of the legislation rests principally with the individual. There is, therefore, an obligation on each person who is covered by the Act to be familiar with its terms and to take whatever steps are necessary to ensure compliance whether in relation to the furnishing of annual statements of interests or otherwise.

### **Investigation of Complaints.**

One of the principal features of the legislation is the provision whereby the Commission is empowered to carry out investigations of complaints alleging contraventions of the Act.

The jurisdiction of the Commission in this regard extends to office holders, the Attorney General, special advisers and to the other public servants whose directorships or positions have been designated under the Act.

The Select Committees on Members' Interests of the Houses of the Oireachtas have similar investigative functions in relation to members of those Houses who are not office holders.

The Act sets out the procedure to be followed in making a complaint about an office holder or a public servant who is covered by the Act. The position in this regard is that :

- Any person (including a member of the public but excluding members of the Houses of the Oireachtas) may make a written complaint to the relevant Clerk (of the Dáil or Seanad) about an alleged contravention of the Act by an office holder which occurred after the passing of the Act (i.e. July 22nd, 1995). The complaint would be referred by the Clerk to the Commission. The complaint may relate to :
  - (i) a serving office holder or
  - (ii) a serving office holder in relation to a period when he/she was a member of the Oireachtas before becoming an office holderor
  - (iii) a person who is no longer an office holder (and possibly no longer a member of the

Houses of the Oireachtas) in relation to a period when he/she was an office holder.

The Clerk would not refer any such complaint to the Commission if he/she considered it frivolous or vexatious and, in such circumstances, the Clerk would forward a statement in writing of the reasons for this opinion to the Commission.

- A member of the Houses of the Oireachtas may make a written complaint directly to the Commission in relation to an alleged contravention of the Act by an office holder or a public servant (i.e. an Attorney General who is not a member of either House, special advisers, designated directors, persons in designated positions).
- The Minister for Finance may make a written complaint directly to the Commission in relation to a person covered by the Act other than an office holder.
- Any other Minister of the Government may make a written complaint to the Commission, with the consent of the Minister for Finance, in relation to an alleged contravention by a public servant (i.e. holders of designated positions, designated directors, special advisers) who is functioning in the first mentioned Minister's area of responsibility.
- Where the management of a civil service body (e.g. the Revenue Commissioners, the Civil Service Commission, the Office of the Houses of the Oireachtas) is vested in a group other than a Minister of the Government, such group, being the appropriate authority, may make a written complaint to the Commission in relation to an alleged contravention by a civil servant in the body (i.e. holders of designated positions).
- A public body, other than a civil service body staffed by civil servants of the Government or the State, (e.g. a semi-state company) may make a written complaint to the Commission in relation to an alleged contravention by a public servant in the body (i.e. designated directors, persons in designated positions).

The Act also provides that the Commission may, on its own initiative without having

received a complaint, decide to carry out an investigation. The Commission has not, to date, received, or had referred to it by either Clerk, any complaint alleging contravention of the terms of the Act on the part of an office holder or a public servant nor did the Commission consider that there were circumstances which would warrant it exercising its prerogative to initiate an investigation. It may be useful, however, to set down how the Commission would go about investigating a complaint and reporting on it and how such reports would be dealt with. This is done in Appendix I.

The Commission is aware that the circumstances giving rise to an investigation under the Act could have serious consequences for the persons concerned in the investigation. Under the provisions of the Act which govern the conduct of any investigation, adherence to the requirements of natural and constitutional justice are in effect provided for in any such investigation undertaken. In that connection the Commission has taken steps to ensure, in consultation with its legal advisers, that these requirements and the provisions of the Act will be strictly adhered to.

#### **Receipt of Statements by the Commission.**

It has been evident during the course of the year that an element of confusion exists about the extent to which statements of interests, and other material, are required to be furnished directly to the Commission. Another question frequently raised relates to the level of disclosure applying to information supplied under the Act. It might be useful for those covered by the Act to refer to Appendix II where the occasions and frequency attaching to the furnishing of information to the Commission are described as are, in general terms, the circumstances in which there could be disclosure of the information.

Up to the date of writing (April, 1997), a total of 418 statements have been received by the Commission as follows :

	1996	1997
Statements of Office Holders' Additional Interests under Section 13 of the Act :	35	34
Statements of Interests of the Attorney General under Section 16 of the Act :	1	1
Statements of Interests of Designated Directors under Section 17 of the Act :	-	222
Statements of Interests of Special Advisers under Section 19 of the Act :	64	56
Statements of a Material Interest under Sections 14, 16 and 19 of the Act :	5	-

A question has arisen as to whether the Attorney General, designated directors, persons in designated positions and special advisers are required by the Act to furnish annual statements if they, or their spouses or children, have no registrable interests which could materially influence them in performing their functions. Strictly speaking the Act does not require that statements be furnished in such circumstances. The same applies to office holders' additional interests (registrable interests of their spouses and children). However, the Commission is of the view that it would be desirable that statements would be furnished albeit that they would be "nil" statements.

As already pointed out, it is a matter principally for individuals to comply with the requirements of the legislation. This includes, for office holders and the public servants who are covered by the Act, an onus on them to furnish a statement of interests in circumstances where this would be appropriate. There is no provision whereby a responsibility lies with the Commission or, indeed, with anybody else, to pursue such persons who have not furnished a statement. However, failure to furnish a statement where one is required would represent a contravention of the terms of the Act on the part of the person concerned.

## **Consultations with the Commission.**

The functions of the Commission in relation to investigations, the giving of advice and the publication of guidelines have already been described.

In addition to these functions, consultation with the Commission is statutorily required in a number of respects. In responding to such consultations, the Commission has attempted, within the framework of the legislation, to adopt a pragmatic approach and to be constructive in the observations it has put forward. There is no requirement that the views proffered by the Commission should be accepted. However, the Commission would expect that such would be the case unless it was clearly evident that an alternative approach to that suggested by the Commission was warranted in a particular case.

The two main areas where consultation is required involve the Select Committees on Members' Interests of each House and the Government.

The Select Committees are required to consult with the Commission in relation to the separate guidelines which they are required to publish to members of each House (who are not office holders) of steps to be taken by the members to comply with the Act. As already pointed out, the Commission is responsible for publishing similar guidelines to office holders and to public servants and in turn must consult with the Committees in relation to these.

A product of the cross-consultation process should be consistency in the guidance given to all categories of persons covered by the Act on matters common to them. This objective was achieved to a great extent in regard to the first sets of guidelines published by the Commission and the Committees in 1996 but not one particular aspect in 1997.

While the statutory right of each constituent body involved in the consultative process, namely the Commission and the Select Committees of both the Dáil and the Seanad, to decide on their respective guidelines at the end of the day is acknowledged, it is hoped that the merits of a consistency of approach will be resumed and maintained in future years.

The Government is required to consult with the Commission in relation to guidelines for office holders regarding the steps to be taken by office holders in cases where they are offered or supplied with property or services at less than the commercial price or a loan of property free of charge or for less than the commercial price or a service free of charge. The guidelines in question were published by the Government in August, 1996.

The Clerk of each House of the Oireachtas is also required to consult with the Commission in regard to the form to be used for the statements of interests of members of the relevant Houses.

## **5. The Commission and the Electoral Bill, 1994.**

### **The Electoral Bill, 1994**

The Electoral Bill, 1994, as initiated, proposed a wide ranging role for the Commission. During the course of the year the Commission was involved in considering its position in relation to the Bill. The Bill proposed :

- (i) to establish, on a statutory basis, a commission to revise Dáil and European Parliament constituencies;
- (ii) to make provision for payments out of the Central Fund to qualified political parties (i.e. with, inter alia, at least one member in the Dáil) and (pursuant to Ministerial regulations) to non-party members of the Dáil;
- (iii) to make provision for disclosure of substantial donations received by
  - (a) political parties,
  - (b) members of both Houses of the Oireachtas,
  - (c) members of the European Parliament and
  - (d) candidates at elections, including candidates at Presidential elections;
- (iv) to impose specific limits, which may be adjusted from time to time, on election expenditure by political parties and candidates at Dáil and European Parliament elections, and to impose limits, to be specified by Ministerial order, on expenditure by candidates at Presidential elections;
- (v) to prohibit acceptance of anonymous donations, in excess of £100, made to political parties, members of either House, members of the European Parliament, or to candidates at Dáil, Seanad or European Parliament elections and to prohibit acceptance of anonymous donations, in excess of a limit to be specified by Ministerial order, made to candidates at Presidential elections;
- (vi) to provide that similar arrangements regarding donations and election expenditure may be made, pursuant to Ministerial regulations, in relation to local authorities;
- (vii) to provide voting arrangements for persons unable, by reason of their occupation, to vote at polling stations;

(viii) to provide for other electoral matters.

### **Role of the Commission.**

It was proposed that the Commission would monitor the operation of the Bill in relation to :

- (i) how the public funding of qualified political parties and non-party members of the Dáil had been used,
- (ii) the disclosure of donations (and the surrender of anonymous donations) received by political parties, members of both Houses of the Oireachtas, members of the European Parliament and unelected candidates,
- (iii) the control of election expenditure, within specified limits, by political parties and candidates at Dáil and European Parliament elections,
- (iv) the disclosure of donations (and the surrender of anonymous donations) received by candidates at Presidential elections and
- (v) the control of election expenditure, within limits to be specified, by candidates at Presidential elections.

The Bill proposed that, where the Commission deemed it appropriate to do so, it would furnish a written report on matters arising in relation to the foregoing. Any such report would be laid before each House of the Oireachtas. It was also proposed that where the Commission was of the opinion that there may have been a contravention of the provisions of the legislation, it would furnish a written report on the matter to the Director of Public Prosecutions. The Commission would be enabled to make such inquiries as it considered appropriate and to require persons to furnish to it any information and documents deemed to be necessary for the performance of its statutory duties.

Progress of the Bill during 1996 was delayed to allow for consideration of the implications of the Supreme Court judgement in the McKenna case. In December it was decided by the Government that the Bill should be reactivated and revised.

It is the intention of the Commission to seek meaningful consultation in relation to proposals

which are to be included in the revised Bill and which would have serious implications for the work of the Commission. In particular the Commission will be seeking assurances that additional functions under the revised Bill, which are proposed to be assigned to the Commission and which it considers to be inappropriately placed, will be carefully considered before the Bill is enacted.

## **6. Commission Costs in 1996.**

The following costs were incurred by the Commission in 1996.

The bulk of the expenditure relates to salaries. The other major items of expenditure cover office machinery and office premises. Both of these reflect the "start-up" nature of the Commission's operations and will not arise to the same extent for the foreseeable future. They represent, in the main, the cost of purchasing computer and other equipment which is essential in discharging the Commission's statutory functions and the fitting out, in consultation with the Office of Public Works, and furnishing of secure accommodation for the Commission Secretariat within the building occupied by the Office of the Ombudsman.

The expenditure is provided for in Subhead B of Vote 17.

Staff Salaries	<b>£104,704</b>
Travel and Subsistence	<b>£30</b>
Incidental Expenses	<b>£6,436</b>
Postal and Telecommunications	<b>£4,036</b>
Office Machinery and other	<b>£40,117</b>
Office Premises Expenses	<b>£19,221</b>
Legal and Consultancy	<b>£5,114</b>
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	<b>£179,658</b>

## **Appendices**

### **Appendix I.**

This Appendix sets out the investigation procedure and also covers the reporting of investigations.

#### **Investigation Procedure.**

If the Commission decided that it was appropriate to carry out an investigation, there are a number of requirements set down in the Act which would govern the conduct of the investigation. In the following paragraphs the main features are outlined, including the powers of the Commission to compel witnesses and documents.

The Commission would hold sittings for the purpose of an investigation where it would receive submissions and such evidence as it thought fit. The Act provides that sittings of the Commission for the purposes of an investigation may be held in private.

The subject of the investigation would be given a statement of the alleged contravention of the Act, the names of proposed witnesses, a copy of each statement intended to be used at the Commission sitting and a written indication of the nature and source of any information available which may be favourable to the subject and of which he/she may be unaware. The subject of the investigation and the complainant would be entitled to be present at the relevant sitting of the Commission and the subject would be entitled to present his/her case in person or through a legal or other representative. Written statements would be admissible as evidence to the Commission with the consent of the subject.

At the investigation hearing, provision would be made for examination by the Commission of witnesses called by the Commission and for their cross-examination by the subject of the investigation. Provision would also be made for the examination by the subject of his/her own witnesses and for their cross-examination by the Commission. The Commission would determine whether such examination would occur under oath. A witness before the

Commission would be entitled to the same privileges and immunities as a witness in a court.

For the purpose of an investigation hearing, the Chairman of the Commission would be entitled to :

- direct the subject of an investigation to attend before the Commission on a specified date, at a specified time and place;
- direct any other person whose evidence is required to attend before the Commission to give evidence and to produce any specified document or thing;
- direct any person who is before the Commission, other than the subject of the investigation, to produce any specified document or thing;
- direct any person to send to the Commission any specified document or thing;

and to give any other directions that appear to the Chairman to be reasonable and just.

The Commission would be required to pay the reasonable expenses of any person whom it directs to attend before it. In addition, with certain exceptions, the Commission would be entitled, where it determined following an investigation that a complaint was frivolous, vexatious or without reasonable grounds, to order that amounts (not exceeding £1,500), being the reasonable costs and expenses incurred by any person before it, be paid to the person by the complainant.

A person who failed to co-operate with the Commission would be guilty of an offence. This would include refusal to attend before the Commission, to take the oath, to answer questions, to produce any document or thing or to fail to send to the Commission any such document or thing, or any other action or inaction which in a court would be regarded as contempt. A person who gave false evidence before the Commission would be guilty of the offence of perjury. A person found guilty of an offence under the Act would be liable, on summary conviction, to a fine of up to £1,000 and/or imprisonment for up to 6 months and, on indictment, to a fine of up to £20,000 and/or imprisonment for up to 3 years.

## **Investigation Reports.**

The Commission would be required to report in writing on the result of an investigation. The report would be furnished by the Commission to :

- the subject of the investigation;
- the person who made the complaint;
- in the case of an office holder determined by the Commission as having contravened the Act, the appropriate Select Committee on Members' Interests;
- in any other case, the Minister for Finance or the relevant Minister where the subject of the investigation occupied a position within a Department of State or Office administered by the relevant Minister.

The report of an investigation would set out the findings of the Commission including its determination as to whether there had been a contravention of the Act and whether the contravention was continuing. If the contravention was continuing the report would indicate the steps required to be taken to secure compliance with the Act and the timescale for taking such steps. A report, where a contravention had been determined, would also indicate :

- whether the contravention was inadvertent, negligent, reckless or intentional;
- whether, in all the circumstances, the contravention was serious or minor;
- whether the person acted in good faith and in the belief that his/her action accorded with guidelines published or advice given in writing by a Select Committee on Members' Interests or by the Commission.

Where a report of an investigation was furnished by the Commission to a Select Committee, the Committee would be required to lay a copy of the report before the House concerned.

The House could :

- (a) take note of the report;
- (b) censure the office holder or other member concerned or

(c) suspend the office holder or other member concerned from the service of the House for up to 30 days or, if the contravention was continuing, for a longer period as may be required to secure compliance with the Act.

If the Commission's report determined that the office holder or member acted in good faith and in the belief that his/her actions were in line with guidelines issued or advice given in writing by a Select Committee or the Commission, the taking of the actions referred in (b) and (c) of the previous paragraph would not be recommended.

In a case where a report of the Commission was furnished to a Minister of the Government and it included a determination that there had been a contravention of the Act by a public servant (i.e. Attorney General who is not a member of either House, special adviser, designated director, holder of a designated position) and that the contravention was a serious matter, the Minister concerned would be required to lay a copy of the report before each House.

If the Commission, during or after an investigation, formed the opinion that the person being investigated may have committed an offence (as distinct from a contravention of the Act) relating to the performance of his/her functions it would report, in writing, to the Director of Public Prosecutions. This could arise, for instance, if evidence of corruption was disclosed by the investigation. The Commission would attach to its report any relevant document or thing in its possession.

The Director of Public Prosecutions would notify the Commission as to whether or not proceedings had been brought and would notify the Commission of the outcome (including any appeal, rehearing or retrial). In those circumstances the Commission's investigation report would include the report to the Director of Public Prosecutions and the notification received by the Commission from the Director.

If the Commission adjourned or postponed investigation proceedings or was advised by the Director of Public Prosecutions that proceedings had been taken in response to its report, the Act provides that it may prepare an interim report and furnish it to the relevant parties as it

saw fit.

Where a contravention of the Act was not determined, the investigation report would state whether the Commission was of the opinion that the complaint was frivolous, vexatious or without reasonable grounds. As pointed out earlier, if such a conclusion was reached the Commission could, in certain circumstances, order that amounts (not exceeding £1,500), being the reasonable costs and expenses incurred by any person before it, be paid to the person by the complainant.

## **Appendix II.**

This Appendix deals with the furnishing directly to the Commission of statements of interests and other material and also covers the question of disclosure of information.

### **Receipt of Statements by the Commission.**

Office holders.

The Clerk of each House is required, within 60 days of the annual registration date, or as soon as possible thereafter, to provide to the Commission a copy of the registers established by them. The registers, which are laid by the Clerks before the appropriate House and published in *Iris Oifigiúil*, contain the annual statements of members' (including office holders) own registrable interests. The Clerks are also required to provide to the Commission a copy of the annual statements of office holders' additional interests (i.e. registrable interests of spouses and children which could materially influence the office holders in performing their functions). It should be noted from this that office holders should furnish both statements to the appropriate Clerk and not to the Commission. The standard form to be used by office holders for declaring their own interests as a member of the Oireachtas is supplied by the appropriate Clerk. The form for additional interests is available from the Department of Finance.

The Clerk of each House also furnishes to the Commission :

- (i) a copy of any statement of a change in an office holder's additional interests;
- (ii) a copy of any statement of an office holder's additional interests not already declared;
- (iii) a copy of any statement of an office holder's additional interests declared as a result of guidelines or advice issued by the Commission;
- (iv) a copy of any statement of additional interests of a person who becomes an office holder after a registration date.

There is also an obligation to furnish a statement where an office holder proposes to perform a function of the office and he/she, or a connected person, or another office holder has a material interest in a matter to which the function relates. The statement in that case is furnished by the office holder to the Commission (and, in the case of Ministers and Ministers of State, to the Taoiseach).

In circumstances where an office holder, or a connected person, has a material interest and the office holder proposes to make a request to another office holder in relation to the performance of a function by the other office holder, the second office holder (who must be made aware of the facts) is required to furnish a statement, as above.

In relation to the foregoing, it may be useful to explain that a person, or a connected person, has a "material interest" in a matter if the consequence or effect of -

- (a) the performance by the person of a function of his or her office, or
- (b) any decision made in relation to or in the course or as a result of the performance of such a function by the person, concerning that matter may be to confer on or withhold from the person, or a connected person, a significant benefit without also conferring it on or withholding it from persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person, or the connected person, is a member.

### **The Attorney General.**

An Attorney General, who is not a member of either House, must furnish to the Commission (and to the Taoiseach) an annual statement of his/her own registrable interests and additional interests. These are the registrable interests by which he/she could be materially influenced in performing his/her functions. The single standard form for disclosing the Attorney's own and additional interests is supplied by the Department of Finance.

A second requirement arises where a function falls to be performed by the Attorney and he/she, or a connected person, has a material interest in a matter to which the function relates. In those circumstances, a statement of the facts and of the nature of the interest must be

furnished to the Taoiseach and to the Commission. This second statement would be required whether or not the interest had been disclosed in the annual statement.

### **Designated directors and special advisers.**

Designated directors and special advisers must also furnish to the Commission (and to an officer of the body in the case of the former and the relevant office holder in the case of the latter) an annual statement of their own registrable interests and additional interests by which they could be materially influenced in performing their functions. The standard forms for disclosing these interests are supplied by the Department of Finance.

They must also furnish a statement where a function falls to be performed by them in which they, or a connected person, have a material interest.

Such statements would be furnished by designated directors to the other directors of the body and, if they proposed to perform the function, to the Commission. Special advisers would furnish their statements of a material interest to the Commission and to the relevant office holder whether or not they proposed to perform the function. It is worth pointing out that designated directors and special advisers should not perform a function where a material interest arises unless there are compelling reasons for doing so which are notified to the appropriate parties outlined above.

### **Designated positions.**

In the case of holders of designated positions, annual statements are required to be furnished to the relevant authority within the body and not to the Commission but are available to the Commission. The single standard form for disclosing these interests is supplied by the Department of Finance. Their statements where a function falls to be performed by them in which they, or a connected person, have a material interest should be furnished to the relevant authority within the body only.

As in the case of designated directors and special advisers, persons in designated positions should not perform a function where a material interest arises unless there are compelling

reasons for doing so which are notified to the relevant authority.

#### Statements on Leaving.

The legislation requires the Attorney General, designated directors, persons in designated positions and special advisers to furnish a statement of registrable interests when leaving a position. The statement should cover the period from the last previous registration date, or the date of appointment if this was later, to the date on which the appointment ended.

#### Voluntary Statements.

It is worth pointing out also that provision is made in the Act for furnishing, on a voluntary basis, statements relating to interests or additional interests (spouses and children) that are not registrable interests as specified in the Second Schedule to the Act .

#### Retention of Statements

With the exception of statements of their own interests furnished to the Clerks by members of each House, including office holders, which are entered in a register, it is a requirement of the Act that statements of interests furnished under the Act be retained for a period of 15 years. The Commission can request and have furnished to it a copy of any such statements. The same provision applies to any information furnished to the Secretary of the Government relating to gifts to office holders or property or services offered or supplied to office holders.

#### **Disclosure of information.**

On the question of disclosure of information contained in statements furnished under the Act, the position is that statements of their own registrable interests furnished by members of both Houses of the Oireachtas (including office holders) are, as already outlined, laid before the relevant House and published in Iris Oifigiúil. The information would, therefore, be in the public domain. The same would be true of statements of senior special advisers' own registrable interests, and other information relating to special advisers, which are laid by office holders before each House of the Oireachtas, as well as statements made by members of either House concerning a material interest in the subject matter of proceedings of the

House or a Committee.

As far as other information is concerned, the Act contains a general provision to the effect that a person should not disclose information obtained under the Act or by being present at a sitting of the Commission or a Select Committee on Members' Interests. To do so constitutes an offence.

Exemptions to this general rule are as follows :

- Disclosure, in the public interest, by a Minister of the Government.
- Disclosure of information, from certain statements, by the person to whom the statements were furnished, to specified parties in circumstances where the person disclosing is of the opinion that a conflict may exist between an interest specified, or an undisclosed interest, and the public interest.
- Disclosure by a person in the course of the performance of the person's functions or disclosure to a Minister of the Government, the Secretary to the Government, a Select Committee on Members' Interests, the Commission or a relevant authority where it is in the public interest.
- Disclosure to comply with an order of a court for the purpose of proceedings in that court.
- Disclosure by, or with the consent of, the person to whom the information relates, of information contained in a report of an investigation by the Commission or a Select Committee on Members' Interests which has not been laid before either House.

As already stated, a person found guilty of an offence under the Act would be liable, on summary conviction, to a fine of up to £1,000 and/or imprisonment for up to 6 months and, on indictment, to a fine of up to £20,000 and/or imprisonment for up to 3 years.