

Appendix 5 to Circular LG 2 / 2015

Notes on Part 15 of Local Government Act 2001 for Councillors

These notes have been prepared for assistance of members in relation to Part 15 of the Local Government Act 2001 and in particular relate to the annual declaration system, disclosure of interests at meetings and the Code of Conduct for Councillors.

- Part 1** Summary of main provisions of Part 15
- Part 2** Annual declaration requirements
- Part 3** Disclosure requirements at meetings
- Part 4** Code of Conduct for Councillors

In these notes:

“the Act” means the Local Government Act 2001 (No. 37 of 2001) as amended and references to sections are references to sections of that Act;

“Part 15 Regulations 2015” means the Local Government Act 2001 (Part 15) Regulations 2015 (SI No. 29 of 2015) which replace the Local Government Act 2001 (Part 15) Regulations 2004 (SI No. 770 of 2004).

These notes are for assistance only. They do not purport to be a legal interpretation of the Act or the Part 15 Regulations 2015 which should be consulted.

January 2015

PART 1

Local Government Act, 2001 – Part 15

Local Authority Members – Main Provisions

Section 168

It is your duty to maintain proper standards of integrity, conduct and concern for the public interest.

Section 169

Separate codes of conduct (one for members and one for employees) were issued by the Minister in 2004 following consultation with the Minister for Finance and the Standards in Public Office Commission. See Part 4 of these notes.

Section 170

You are prohibited from seeking, exacting or accepting a fee, reward or favour for anything done or not done by virtue of your office.

Section 171

You must furnish an annual declaration of your ‘declarable interests’. The necessary forms* will issue to all councillors and relevant staff in early January, or as soon thereafter in that month as is practicable, for completion and return by end February. ‘Declarable interests’ are set out in section 175 of the Act and listed on the declaration form.

Section 172

A public register of declarable interests must be maintained by the authority.

Section 173/4

An officer of the local authority will be assigned the duties of Ethics Registrar with responsibility for issue of Annual Declaration Forms etc.

* As prescribed by Local Government Act 2001 (Part 15) Regulations 2015 (S.I. NO 29 of 2015).

Section 177

You must disclose a pecuniary (i.e. financial) or other beneficial interest, of which you have “actual knowledge”, that you or a connected person has in a matter which arises at a meeting of the local authority or a meeting of a committee, joint committee or joint body of a local authority; and take no part in the discussion or consideration of the matter. If you have “actual knowledge” that such a matter will arise at a meeting at which you will not be present, you must make a disclosure in writing to the Ethics Registrar in advance of the meeting.

You are prohibited from influencing or seeking to influence a decision of the local authority in respect of any matter in which you have “actual knowledge” that you or a connected person has a pecuniary or other beneficial interest.

Section 181

Failure to comply with the requirements of section 171 or 177 of the Act is an offence.

The above or similar requirements also apply to Chief Executives and all other relevant employees.

Queries in relation to Part 15 may be taken up with the local authority.

Part 2

Annual Declaration for Councillors

1. Who must prepare and furnish an annual declaration of interests? (Section 167, 171, 175 and Part 15 Regulations 2015)

If you are a member of a local authority (whether elected or co-opted) you are obliged to prepare and furnish an annual declaration of interests.

2. What interests must I declare? (Section 175)

2.1 The interests you must declare in the prescribed annual declaration form are termed ‘declarable interests’ and are set out in section 175 of the Act. These interests cover both financial and certain other interests such as land, etc. These declarable interests are listed on the annual declaration form itself which you must complete and which will be forwarded to you by the Ethics Registrar.

2.2 **Section 175** sets out what is meant by a “declarable interest” to be included in the annual declaration under **section 171** and these interests are summarised below -

- any profession, business or occupation of dealing in or developing land
- any other paid employment or occupation
- any interest in land, within the State, including any contract for sale or purchase of land or any option to do so
- any business of dealing in or developing land by a company or body of which the person or their nominee is a member
- shares or investments over €12,697.38 in any company or enterprise
- a directorship or shadow directorship of any company
- a gift, including foreign travel facilities, but excluding gifts from a relative or friend for personal reasons, or gifts less than €634.87
- property or a service supplied or lent at less than commercial rates or free of charge, where the commercial price/consideration was more than €634.87
- a contract or contracts worth more than €6,348.69 for supply of services or goods to a local authority with which the person was any way concerned, directly or indirectly
- a paid position of political adviser, consultant or lobbyist
- any other interest set out in regulations by the Minister (none to date)
- any other interest which the person wishes to volunteer.

2.3 The above interests are largely based on those outlined in the Planning and Development Code and on the registerable interests in the Ethics in Public Office Act, 1995.

2.4 **What does the term 'land' cover?**

“Land” includes all property including buildings, dwellings, etc. All land interests in the State should be declared. In limited circumstances certain land interests need not be declared¹.

3. **What if I have no interests to declare?**

You must still sign and date the form and return it to the Ethics Registrar. Please enter ‘nil’ on the form, where appropriate.

4. **Do I need to give details of amount or monetary value in the form?**

No. [section 171(5)].

5. **What time period does my declarable interests have to cover?**

The Act and Part 15 Regulations 2015 refer to declarable interests during the ‘appropriate period’. In the case of your first declaration this covers the 12 month period leading up to and including the date you sign the annual declaration form itself. In relation to subsequent declarations you will cover the period between the date you signed the previous declaration and the date you sign the next one.

¹ Section 167(3) of the Act provides that where your interest in land or an interest relating to land or any business of dealing in or developing land is by reason only of the beneficial ownership of shares in a company or other body by you, or your nominee and the total nominal value of those shares does not exceed the lesser of €2,697.38; or $\frac{1}{100}$ th part of the total nominal value of either the issued share capital of the company or body or, where that capital is issued in shares of more than one class, the issued share capital of the class or classes of shares in which you have an interest, the annual declaration requirements do not have effect in relation to that interest or interests.

6. When must I furnish the annual declaration form?

6.1 The 'return period' is the period ending on the last day of February. You are therefore obliged to prepare and furnish your annual declaration to the Ethics Registrar no later than the last day of February.

6.2 When must I furnish the annual declaration form in a local election year?

If you are elected to a particular local authority for the first time (i.e. you were not a member of that particular authority immediately prior to the local election in question) then you must return the annual declaration form no later than 6 weeks from the day you came into office. (Regulation 6(2), Part 15 Regulations 2015). If you have been re-elected to the same local authority and therefore have previously completed your form earlier that year, you will not be issued with a new annual declaration form until the following January. It must then be completed and returned by end of February in the normal course. Only councillors who have been re-elected to their 'own local authority' are not required to complete the annual declaration form mid-year in a local election year.

7. What does the Ethics Registrar do with the annual declaration?

The public register is compiled from the annual declarations furnished by members and relevant employees.

8. What if I become a member of the local authority later in the year?

If you are co-opted to a local authority during the year, the Ethics Registrar will, as soon as practicable, send you an annual declaration form to complete. You must then return the annual declaration no later than a period of 6 weeks from the date you were co-opted to the local authority. The interests to be declared will cover the 12 month period leading up to and including the date you sign the annual declaration form itself.

9. What is the statement regarding disqualification on the annual declaration? (section 171(2))

The Act requires that the annual declaration form to be completed by members includes a statement that none of the grounds for disqualification set out in certain enactments apply to the person concerned. These disqualifications relate mainly to certain court

convictions, or result from failure to furnish certain statements under the local electoral code, or apply to holders of certain positions. The relevant statutory provisions are section 13 and section 182 of the Local Government Act 2001 and section 20 of the Local Elections (Disclosure of Donations and Expenditure) Act 1999. (A copy of these provisions is attached).

Legislative references to disqualifications

Section 13 of Local Government Act 2001

Disqualifications from local authority membership.

13.—(1) Subject to *subsection (2)*, a person is disqualified from being elected or co-opted to, or from being a member of a local authority if he or she—

- (a) is a member of the Commission of the European Community, or
- (b) is a representative in the European Parliament, or
- (c) is a Judge, Advocate General or Registrar of the Court of Justice of the European Community, or
- (d) is a member of the Court of Auditors of the European Community, or
- (e) is a Minister of the Government or a Minister of State or the chairman of Dáil Éireann (An Ceann Comhairle), or the chairman of Seanad Éireann, or
- (f) is appointed under the Constitution as a Judge or as the Comptroller and Auditor General, or
- (g) is a member of the Garda Síochána or a wholetime member of the Defence Forces as defined in section 11(4)(b) of the Electoral Act, 1992, or
- (h) is a civil servant who is not by terms of employment expressly permitted to be a member of a local authority, or
 - (i) is a person employed by a local authority, the Health Service Executive or the Child and Family Agency and is not the holder of a class, description or grade of employment designated by order under section 161(1)(b) or deemed to have been made under that section, or
 - (ii) is a person employed by the Health Service Executive and is at a grade or of a description of employment designated by order of the Minister for Health and Children, or
- (i) is a person employed by a local authority and is not the holder of a class, description or grade of employment designated by order under *section 161(1)(b)* or deemed to have been made under that section, or
- (j) is undergoing a sentence of imprisonment for any term exceeding 6 months imposed by a court of competent jurisdiction in the State, or
- (k) fails to pay any sum or any portion of any sum charged or surcharged, by an auditor of the accounts of any local authority, upon or against that person, or
- (l) fails to comply with a final judgement, order or decree of a court of competent jurisdiction, for payment of money due to any local authority, or
- (m) is convicted of, or has had a conviction confirmed on appeal for, an offence relating to any of the following:
 - (i) fraudulent or dishonest dealings affecting a local authority;
 - (ii) corrupt practice;
 - (iii) acting when disqualified.

- (2) (a) A disqualification arising under *subsection (1)(k)* commences—
- (i) where no appeal is taken, on the expiration of the time limit for an appeal, or
 - (ii) where an appeal is taken to the Minister or the High Court, on the expiration of one month from the date of an order confirming the charge or surcharge, and the disqualification shall be for 5 years from the date of its commencement.
- (b) A disqualification arising under *subsection (1)(l)* comes into effect on the seventh day after the last day for compliance with the relevant final judgement, order or decree and the disqualification shall be for 5 years from such last day.
- (c) A disqualification arising under *subsection (1)(m)* commences—
- (i) where no appeal is taken against the conviction, when the time limit for taking an appeal has passed, or
 - (ii) where an appeal is taken against the conviction and the appeal is disallowed, one month from the determination of the appeal, and the disqualification shall be for 5 years from the date of conviction or determination of the appeal, as the case may be.
- (3) Nothing in this section operates to prejudice any disqualification referred to in *section 182* or in section 20 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, or in any other enactment.

Section 182 of the Local Government Act 2001

Consequences of failure to comply with *sections 171, 177, 178 and 179.*

182.—(1) (a) Where a person is convicted of an offence under *section 181* (which relates to *section 171, 177, 178 or 179*) that person is disqualified from being elected or co-opted to or from being a member of a local authority.

- (b) A disqualification arising under *paragraph (a)* commences—
- (i) where no appeal is taken against the conviction, when the time limit for taking an appeal has passed, or
 - (ii) where an appeal is taken against the conviction and the appeal is disallowed, from the determination of the appeal,
- and the disqualification shall be for 5 years from the date of conviction or determination of the appeal, as the case may be.

(2) Where a person contravenes or fails to comply with a requirement of *section 171, 177, 178 or 179* or acts as a member of a local authority, committee, joint committee or joint body of a local authority while disqualified for membership by virtue of this section, the fact of such contravention or failure or of his or her so acting, as the case may be, does not invalidate any act or proceeding of the authority, committee, joint committee or joint body concerned.

Section 20 of the Local Elections (Disclosure of Donations and Expenditure) Act 1999 as amended

[This is not a legal text but an annotated version of section 20]

Disqualifications.

20. — (1) Where an unsuccessful candidate at an election fails to furnish to the local authority concerned, within the period specified for this purpose, a statement of donations and election expenses or a statutory declaration pursuant to *section 13(1)(a)(iii)*, the person shall, on the expiry of such specified period, be disqualified for membership of any local authority for the remainder of the term of office of the members of the local authority concerned.

(2) Where a member of a local authority elected at the election fails to furnish to the local authority concerned, within the period specified for this purpose, a statement of election expenses or a statutory declaration pursuant to *section 13(1)(a)(ii)* the member shall be suspended from membership of the authority for the period of 7 days commencing on the expiry of the time specified for this purpose, or a lesser period ending on the compliance by the member with the requirements of *section 13*, and if at the end of that period the member has not complied with the requirements of *section 13*, the member shall be disqualified for membership of any local authority.

(3) A disqualification arising pursuant to *subsection (2)* shall come into effect on the eighth day following the last day for compliance with the requirements of *section 13* and the disqualification shall apply and have effect for the remainder of the term in office of the members of the local authority concerned.

(4) Where an unsuccessful candidate or an elected member of a local authority furnishes to the local authority concerned a statement **pursuant to section 13** which to the person's knowledge is false or misleading in a material respect, the local authority concerned may bring summary proceedings against the unsuccessful candidate or elected member for making a false or misleading statutory declaration under the Statutory Declarations Act, 1938.

(5) If a person is convicted by a court of an offence following proceedings initiated under subsection (4) **or section 21(3A) (inserted by section 8 of the Electoral (Amendment) (No.2) Act 2009)**, in addition to any penalty imposed by the court, the person shall be disqualified for membership of any local authority and the disqualification shall apply and have effect for the remainder of the term in office of the members of the local authority concerned.

(6) Where a member of a local authority becomes disqualified for membership of a local authority pursuant to *subsection (2)* or (5), that person shall, immediately on such occurrence cease to be such member and a vacancy shall exist accordingly in the membership of the local authority.

(7) A person who ceases to be a member of a local authority pursuant to this section shall on such cesser also cease to be a member of any body to which that person was elected, nominated or appointed by a local authority, or of which the person is a member by virtue of being a member of a local authority; but nothing in this subsection shall be construed so as to affect the validity of anything previously done by the person while he or she was a member of that body.

Part 3

Disclosure of Interests at meetings by Councillors

1. Who must disclose beneficial interests at meetings? (Section 177)

Any member of a local authority or any member of a committee, joint committee or joint body of a local authority is required to disclose pecuniary or other beneficial interests at a meeting of the authority, committee or joint body. This requirement also applies to non-councillor committee members.

2. What interests do I need to disclose at a meeting? (Section 177)

You must disclose any “pecuniary or other beneficial interest”, of which you have “actual knowledge”, that you or a connected person has in, or which is material to any matter proposed or otherwise arises at a meeting of the local authority, committee, joint committee or joint body either as a result of any of its functions or as regards the performance of any of its functions. **See prohibition on influencing such matter in paragraph 9 below.**

3. What is a pecuniary or other beneficial interest? (Section 176)

The Act provides that a “beneficial interest” includes an interest in respect of which -

- a) you or a connected person, or any nominee of yours or of a connected person, is a member of a company or any other body which has a beneficial interest in, or which is material to, any such matter,
- (b) you or a connected person is in a partnership with or is in the employment of a person who has a beneficial interest in, or which is material to, any such matter,
- (c) you or a connected person is a party to any arrangement or agreement (whether or not enforceable) concerning land which relates to any such matter,
- (d) you or a connected person in the capacity as a trustee or as a beneficiary of a trust has a beneficial interest in, or which is material to, any such matter,
- (e) you or a connected person is acting with another person to secure or exercise control of a company which has a beneficial interest in, or which is material to any such matter.

You shall also be deemed to have a beneficial interest to be disclosed if you have “actual knowledge” that you or a connected person has a declarable interest in, or which is material to the matter. Declarable interests are set out in section 175 of the Act and on the annual declaration form which you must complete.

4. What is a connected person? (Section 166)

Your obligation to disclose interests also relates to interests of which you have “actual knowledge” of, of a “connected person”. A “connected person” means a means a brother, sister, parent or spouse or civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 of the person or a child of the person or of the spouse;. A spouse includes a person with whom you are co-habiting.

5. What must I do if I, or a connected person, has a ‘pecuniary or other beneficial’ interest? (Section 177)

You must disclose the nature of your interest or the fact of a connected person’s interest at the meeting before discussion or consideration of the matter begins. You must then withdraw fully from the meeting for so long as that matter is being discussed or considered. The Act provides that you shall take no part in the discussion or consideration of the matter and shall refrain from voting in relation to it.

6. What happens to disclosures made at meetings? (Section 177(3))

The minutes of the meeting must refer to disclosure(s) made and withdrawal(s) from the meeting. The register of interests will also record disclosures.

7. When do I not have to disclose an interest at a meeting?

You do not have to disclose an interest where

- (a) your or a connected person’s interest is so remote or insignificant that it could not reasonably be regarded as influencing a person in considering or discussing, or in voting on, any question with respect to the matter or in performing any function in relation to that matter [section 176(3)(a)].
- (b) where your interest or a connected person’s interest is as a result of being a ratepayer or a local authority tenant, service charge payer, local property tax

payer, etc. and in common with other ratepayers/tenants etc. [section 176(3)(b) and (c) and regulation 8, Part 15 Regulations 2015.]

- (c) in circumstances relating to consideration or performance of functions relating to remuneration, allowances or other payments [regulation 8, Part 15 Regulations 2015).
- (d) where your or your nominee or a connected person's interest in land or an interest relating to land or any business of dealing in or of developing land arises solely through a small shareholding in a company etc. [section 167(3))

8. If I know that I, or a connected person, has an interest in a matter arising at a future meeting at which I know I will not be present? (Section 177(2))

You must disclose this interest in writing to the Ethics Registrar in advance of the meeting.

9. Prohibition on seeking to influence a decision where you or a connected person has a pecuniary or other beneficial interest (Section 177(4))

Section 177(4) provides as follows: “A member of a local authority or of any committee, joint committee or joint body of a local authority shall neither influence nor seek to influence a decision of the authority in respect of any matter which he or she has “actual knowledge” that he or she or a connected person has a pecuniary or other beneficial interest in, or which is material to, any matter which is proposed, or otherwise arises from or as regards the performance by the authority of any of its functions under this or any other enactment.”

10. Code of Conduct for Councillors

Your attention is also drawn to the Code of Conduct for Councillors and in particular to section 3 of the code which deals with the question of conflict of personal and public interest. (See Part 4 to these Notes also).

Part 4

Code of Conduct for Councillors

The Minister issued separate national Codes of Conduct for councillors and employees under section 169 of the Local Government Act 2001 in 2004. A revised Codes of Conduct for Employees was issued in 2007. These codes of conduct complete the comprehensive ethics framework for the local government service which was introduced in January 2003. These codes represent a standard against which the conduct of all those involved in local government can be judged in the performance of their duties. They are intended to inform the public of the standards of behaviour that they have a right to expect and so help to maintain and enhance public trust and confidence. They add to and supplement the specific requirements under the Act and form an integral part of the public ethics framework.

As a councillor you are required to have regard to and be guided by the Code in the exercise of your functions. The Code provides that you are individually responsible for being alert to potential conflicts of interest, avoiding such conflicts and for ensuring that your actions, whether covered specifically or otherwise by the Code, are governed by the ethical and other considerations implicit in it.