

Appendix 6 to Circular LG 2/ 2015

Part 15 of Local Government Act 2001 for Relevant Employees

These notes have been prepared for assistance of relevant employees in relation to Part 15 of the Local Government Act 2001 and in particular relate to the annual declaration system, disclosure of interests as a matter arises in course of their duties and Code of Conduct for Employees.

- Part 1** Summary of the main provisions of Part 15
- Part 2** Annual declaration requirements
- Part 3** Disclosure requirements
- Part 4** Code of Conduct for Employees

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

Relevant Employees^x – 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 employees and one for councillors) 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 employment.

Section 171

You must furnish an annual declaration of your ‘declarable interests’. The necessary forms* will issue to all relevant employees and members 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.

^x The “Relevant employees” to whom Part 15 will apply are:

- every employee holding a post the maximum salary for which is not less than the maximum salary for the time being of a senior executive engineer and
- every other employee who is assigned duties which relate to the performance of functions under the Planning and Development Acts 2000 to 2002 and who holds a post the maximum salary of which is not less than the maximum salary for the time being of a Senior Staff Officer (Grade 6), or for which the qualifications are wholly or in part professional or technical, and
- any other employee or other person the holder of a position and designated by order of the Chief Executive.

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

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.

Section 178

The Chief Executive must disclose in writing any pecuniary or other beneficial interest he or she has or a connected person has, in respect of which he or she has “actual knowledge”, to the Cathaoirleach.

Section 179

Where you have “actual knowledge” that you or a connected person, has a pecuniary or other beneficial interest in, or material to any matter, with which you are concerned in the course of your duties, you must disclose the interest in writing to the Chief Executive.

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, 178 or 179 of the Act is an offence.

The above or similar requirements apply to members.

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

Part 2

Annual Declaration for Employees

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

Relevant employees. These are employees to whom Part 15 applies [regulation 4(2), Part 15 Regulations 2015]. They are:

- every employee holding a post the maximum salary of which is not less than the maximum salary for the time being of a senior executive engineer, and
- every other employee who is assigned duties which relate to the performance of functions under the Planning and Development Acts 2000 to 2002 and who holds a post the maximum salary of which is not less than the maximum salary for the time being of a Senior Staff Officer (Grade 6), or for which the qualifications are wholly or in part professional or technical, and
- any other employee or other person the holder of a position designated by order of the Chief Executive (section 167(1)(c)).

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 prescribed 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 includes

- 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 €34.87
- property or a service supplied or lent at less than commercial rates or free of charge, where the commercial price/consideration was more than €34.87
- a contract or contracts worth more than €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 including the address of private and holiday homes. However the address of the private home or holiday home of an employee shall not be included in the public register. See regulation 9 of the Part 15 Regulations 2015. 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.

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 €12,697.38; 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.

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 the 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.

6. When must I furnish the annual declaration form?

The return period for relevant employees is the period ending on the last day of February.

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

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

8. What if I become the holder of one of the posts later in the year?

If you are subsequently appointed/promoted/designated to one of the posts referred to in paragraph 1, the Ethics Registrar will as soon as practicable send you an annual declaration form for you to complete. You must then return the annual declaration no later than a period of 6 weeks from the date you were appointed/promoted/designated. You must cover the 12 month period leading up to and including the date you sign the annual declaration form itself.

Part 3

Disclosure of Interests by relevant employees

1. Who must disclose beneficial interests? (Section 167 and sections 178 and 179)

All relevant employees (regulation. 4(2), Part 15 Regulations 2015).

2. When must interests be disclosed? (Sections 178 and 179)

2.1 Where you as an employee, other than the Chief Executive, (for Chief Executive see 2.2 below) has “actual knowledge” that you or a connected person, has a pecuniary or other beneficial interest in, or material to any matter which is proposed or otherwise arises from or as regards the performance by the authority of any of its functions and you are concerned with the matter in the course of your duties you must disclose the interest in writing to the Chief Executive (section 179).

2.2 Where the Chief Executive 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 local authority of any of its functions, he or she must disclose the interest in writing to the Cathaoirleach (section 178).

2.3 See prohibition on influencing such matter in paragraph 8 below.

3. What is a pecuniary or other beneficial interest?

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 that you have “actual knowledge” of, of a “connected person”. A “connected person” means a brother, sister, parent or spouse of yours or a child of yours or of your 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? (Sections 178 and 179)

You must disclose in writing to the Chief Executive the nature of your interest or the fact of a connected person’s interest. You must then comply with any directions (including the reassignment of the matter to another employee) the Chief Executive may give to you. (section 179).

The Chief Executive must disclose the nature of his or her interest or the fact of a connected person’s interest in writing to the Cathaoirleach of the local authority. If the function concerned would normally be dealt with by the Chief Executive he or she must delegate the function to an employee and inform the Cathaoirleach of such delegation. (section 178(2))

6. What happens to disclosures made by relevant employees. (Section 178(3) and section 179(3))

Disclosures by employees are furnished by the Chief Executive to the Ethics Registrar and recorded in the register of interests. Disclosures by the Chief Executive are furnished by the Cathaoirleach to the Ethics Registrar and are recorded in the register of interests.

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

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. Prohibition on seeking to influence a decision where you or a connected person has a pecuniary or other beneficial interest (Section 178(2) and section 179(2))

The law provides that where you have "actual knowledge" that you 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 you "shall neither influence nor seek to influence the decision of the authority as regards the matter".

9. Code of Conduct for Employees

Your attention is also drawn to the Code of Conduct for Employees 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 Employees

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.

It is your duty to have regard to and be guided by the Code of Conduct in the exercise of your functions. Employees should bear in mind that it is primarily their responsibility to ensure that their actions whether covered, specifically or otherwise, by the Code of Conduct are governed by the ethical and other considerations implicit in it.