

Code for the Conduct of Administrative Sanction Proceedings ("ASP Code")

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1. Introduction

- 1.1. The Standards in Public Office Commission (the “**Standards Commission**”) is an independent statutory body with responsibility for oversight of the obligations under the Regulation of Lobbying Act 2015¹ (the “**Lobbying Act**”). One of the functions of the Standards Commission is to impose administrative sanctions for certain breaches of the Lobbying Act.
- 1.2. This Code for the Conduct of Administrative Sanction Proceedings (“**ASP Code**”) has been prepared in accordance with section 22F(1)(b) of the Lobbying Act. It summarises the procedures under the Lobbying Act and sets out how the Standards Commission will conduct administrative sanction proceedings in practice.
- 1.3. The ASP Code has been approved by the Standards Commission and will be reviewed from time to time.

A: The Standards Commission

- 1.4. The Standards Commission is established under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001.
- 1.5. The Standards Commission is made up of six Commissioners:
 - the Chairperson, who is a judge or former judge of the Superior Courts,
 - the Comptroller and Auditor General
 - the Ombudsman
 - the Clerk of the Dáil
 - the Clerk of the Seanad
 - a former member of one of the Houses of the Oireachtas

¹ The Regulation of Lobbying Act 2015 was substantially amended by the Regulation of Lobbying and Oireachtas (Allowances to Members) (Amendment) Act 2023, as well as minor and consequential amendments by other Acts (the Data Protection Act 2018, the Water Services (Amendment) Act 2022, the Greyhound Racing Act 2019 and the Roads Act 2015). Regulations have also been made under the Lobbying Act, namely S.I. 152/2015, S.I. 366/2015, S.I. 367/2015, S.I. 360/2016, S.I. 361/2016, S.I. 362/2016, S.I. 144/2019 and S.I. 531/2023.

- 1.6. More information about the Standards Commission is available at www.sipo.ie/about/our-members/. The Standards Commission is supported in its work by a secretariat, who are civil servants of the State.

B: The lobbying regime

- 1.7. The Lobbying Act regulates lobbying activities in the State, including the creation of a register of lobbying and an obligation on registrants to submit returns of lobbying three times per year. In addition, the Lobbying Act places restrictions the ability of certain public officials to engage in lobbying activities in the year after they leave office. The regime is overseen by the Standards Commission, which is responsible for the maintenance of the register and oversight of compliance with the obligations under the Lobbying Act. Further information about the lobbying regime is available at www.lobbying.ie.
- 1.8. The Standards Commission's principal objective is to promote understanding of the lobbying regime and its obligations, with a view to supporting effective compliance and encouraging best practice. The majority of the Standards Commission's oversight work is focused on supporting compliance with the regime, rather than investigating non-compliance. However, the Standards Commission does have specific functions in dealing with non-compliance with the regime.
- 1.9. Section 18 of the Lobbying Act provides for "relevant contraventions" of the legislation, all of which attract a sanction of some kind. Most of these contraventions may be dealt with as an offence. Summary proceedings may be brought by the Standards Commission or proceedings on indictment may be brought by the Director of Public Prosecutions (the DPP). The late submission of a lobbying return may be dealt with by the issuing and payment of a fixed payment notice instead of through proceedings for an offence.
- 1.10. One of the relevant contraventions in the Lobbying Act – non-compliance with the rules relating to the 'cooling-off period' after leaving certain public offices – does not attract criminal liability, but may instead be dealt with by the Standards Commission through the imposition of an administrative sanction. Another relevant contravention – taking action intended to avoid or circumvent lobbying obligations – may be dealt with either by the Courts as an offence or by the Standards Commission through the imposition of an administrative sanction.

C: Application and effect of the ASP Code

1.11. The administrative sanctions provisions in the Lobbying Act were brought into force on 1 June 2024².

1.12. If one of the contraventions described below takes place on or after 1 June 2024, it may be investigated by the Commission in accordance with section 19 of the Lobbying Act and the [Code for the Conduct of Lobbying Investigations](#) (the “**Investigations Code**”). Following such an investigation, an administrative sanction may be imposed by the Commission.

1.13. Administrative sanctions may only be considered by the Commission in relation to the following contraventions:

- The taking of any action by a person that has as its intended purpose the avoidance or circumvention of the person’s obligations not to carry on lobbying without being registered or to submit regular lobbying returns (an “**avoidance contravention**”); or
- Contravening section 22(1) of the Lobbying Act (an “**employment contravention**”), which provides that:

“A person who has been a relevant designated public official shall not—

(a) carry on lobbying activities in circumstances to which this section applies,
or

(b) be employed by, or provide services to, a person carrying on lobbying activities in such circumstances,

during the relevant period except with the prior consent of the Commission and, where that consent is subject to conditions under subsection 5(a)(i)(II), in accordance with its terms.”

A “relevant designated public official” means a Minister of the Government, a Minister of State, a special adviser or a public servant who has been prescribed in Regulations³. The “relevant period” is the period of one year

² S.I. 531/2023.

³ See S.I. 367/2015, S.I. 362/2016 and S.I. 144/2019.

beginning with the day on which the person ceases to be a relevant designated public official.

- 1.14. The ASP Code is not an exhaustive guide to how the Commission conducts administrative sanctions proceedings, which is set out in the Lobbying Act. In the event of a conflict between the ASP Code and the legislation, the legislation will prevail.
- 1.15. The Standards Commission may depart from the procedures set out in the ASP Code where they are not appropriate in the circumstances of a particular case.

2. Conduct of administrative sanction proceedings

A: Overview

- 2.1 Any decisions in relation to administrative sanctions will be made by the Commissioners.
- 2.2 The person or body who is the subject of an investigation and on whom an administrative sanction may be imposed is referred to in this Code as “the respondent”.
- 2.3 Communication with the respondent regarding the process will be through the secretariat, who support the Commission in its work. Where the Standards Commission has been provided with the respondent’s email address, communication may be by email and/or registered post. Where email communication is not possible, communication will be by registered post.
- 2.4 The process that is followed by the Standards Commission in a particular case may vary based on the nature and seriousness of the contravention, whether a ‘minor’ or ‘major’ sanction is likely to be appropriate, and whether an oral hearing may be required.
- 2.5 To aid understanding, a simplified flow chart illustrating the likely progress of proceedings is included in Part 4 of this Code. However, the Standards Commission will take into account the particular circumstances of each case before deciding on the appropriate process.

B: The decision to consider an administrative sanction

- 2.6 A decision to consider an administrative sanction can only be made once the Commission receives a report of an investigating officer (known as an “authorised officer”) following a lobbying investigation. See the [Investigations Code](#) for further information.
- 2.7 The Standards Commission will usually consider the investigation report, together with a briefing note from the secretariat, at one of its regular meetings. The meetings of the Standards Commission are held in private.

- 2.8 The decisions available to the Standards Commission at this stage will depend on whether the contraventions which are the subject of the investigation are subject to a criminal sanction or an administrative sanction or both (see Part 1B above). The following decisions may be made by the Standards Commission following consideration of an investigation report, depending on the contravention:
- take no further action;
 - begin administrative sanction proceedings;
 - begin criminal proceedings or refer the matter to the DPP to consider beginning criminal proceedings.
- 2.9 The Standards Commission may also decide at this stage whether an oral hearing or written submissions from the respondent will be required as part of any administrative sanction proceedings (see further below).
- 2.10 Where an investigation relates in part to a contravention that attracts criminal liability and a contravention that attracts an administrative sanction (including an avoidance contravention), the Standards Commission will first consider whether criminal proceedings should be brought. The Standards Commission will suspend consideration of whether to impose any administrative sanction until a decision on whether to bring criminal proceedings has been made.
- 2.11 The Standards Commission will have regard to the [Guidelines for Prosecutors](#) prepared by the Office of the Director of Public Prosecutions when considering whether criminal proceedings are appropriate. If the Standards Commission considers that criminal proceedings are appropriate, the Standards Commission may bring and prosecute summary proceedings itself or may refer the matter to the DPP to consider prosecution on indictment.
- 2.12 The Standards Commission may be in a position to make one of these decisions on the first occasion that it considers the report, but further information or deliberation may be required before a decision can be made. The secretariat will keep the respondent informed of the Standards Commission's progress.

C: Notifying the respondent of administrative sanction proceedings

- 2.13 Where the Standards Commission has decided to begin administrative sanction proceedings, the secretariat will write to the respondent. The notice will:
- inform the respondent of the administrative sanction proceedings;
 - provide the respondent with a statement of the allegations under consideration, a copy of the evidence (including any documents or other material) on which the Standards Commission intends to rely in reaching its decision, and a copy of this Code; and
 - unless the Standards Commission has already decided that an oral hearing should be held, inform the respondent that they have a right to request either an oral hearing or the opportunity to make a submission in writing to the Standards Commission.
- 2.14 Although the respondent will already have been provided with a copy of the investigation report in accordance with section 19 of the Lobbying Act, the notice will usually also enclose a copy of that report for completeness.

D: Oral hearings

- 2.15 The Standards Commission may decide whether there has been a contravention, and whether to impose a sanction, based on the information obtained during the course of the investigation. However, the Standards Commission will hold an oral hearing if:
- an oral hearing would assist the Standards Commission to make a decision;
 - an oral hearing is required as a matter of fair procedures; or
 - the respondent requests an oral hearing.
- 2.16 Where an oral hearing is held, the Standards Commission will usually conduct the hearing in accordance with the procedure below. If the circumstances of the particular case merit a different approach, the respondent will be informed of the reasons for this.

In advance of the hearing

- 2.17 The secretariat will notify the respondent of the following matters:

- the time and place of the oral hearing;
- whether any oral evidence will be called by the Standards Commission;
- whether the Standards Commission proposes to conduct the proceedings in public or in private;
- that the respondent may give evidence, and may call oral evidence, at the hearing; and
- that the respondent, or a representative on the respondent's behalf, may make submissions orally and/or in writing.

2.18 If the respondent wishes to make an application to the Standards Commission or wishes the Standards Commission to consider any preliminary matters in advance of the oral hearing, the respondent must notify the Standards Commission of that intention in reasonable time. The respondent should make any application or raise any preliminary matters in writing in the first instance. The Standards Commission will usually consider such matters as part of its usual business and notify the respondent of its conclusion. If necessary as a matter of fair procedures, the Standards Commission may hold a short preliminary hearing to determine an application in advance of the oral hearing.

At the oral hearing

2.19 The oral hearing may be held at the Standards Commission's offices or at some other suitable location.

2.20 An oral hearing is generally held in private unless the Standards Commission decides that it should be held wholly or partly or in public. The decision to hold an oral hearing in public may be made by the Standards Commission of its own motion or following an application by the respondent. A person who attends a private hearing of the Standards Commission shall not disclose information obtained during the hearing. Disclosure is an offence under section 35 of the Ethics in Public Office Act 1995.

2.21 The following persons may attend an oral hearing held in private:

- Commissioners (at least three but up to six)

- the respondent and his or her legal representatives (if legal representatives are instructed)
- staff and legal representatives of the Standards Commission
- any witnesses, for the portion of the hearing during which they are giving evidence
- stenographer, where applicable

2.22 If the oral hearing is held in public, members of the press and media and of the general public may also attend.

2.23 The conduct of the oral hearing may vary depending on the circumstances of the particular case. However, the hearing will usually broadly follow this structure:

- A legal representative for the Standards Commission will present the case to the Standards Commission, set out the details of the alleged contraventions and explain the law.
- The legal representative for the Standards Commission will present evidence to the Standards Commission. Relevant persons may be called to give oral evidence. The respondent or their legal representatives can cross-examine any person called by the Standards Commission. The Commissioners may also ask questions of any person giving oral evidence.
- The respondent or their legal representative may present any evidence to the Standards Commission. The respondent may give evidence, but is not obliged to do so. The respondent may call any person to give oral evidence. Any person called by the respondent may be cross-examined by the legal representative for the Standards Commission. The Commissioners may also ask questions of any person giving oral evidence.
- The Commissioners may seek clarification on any matter that arises during the oral hearing.
- The legal representative for the Standards Commission will make any closing remarks to the Standards Commission. The respondent or their legal representative may also make closing remarks to the Standards Commission.

- 2.24 Any oral evidence may be given under oath or affirmation. Such an oath will be administered by one of the Commissioners.
- 2.25 An oral hearing is recorded either by audio recording or by a stenographer and transcripts may be prepared as a formal record of the proceedings. The respondent may request to be provided with a copy of the recording or transcript.
- 2.26 In general, an oral hearing may take one or two days to complete, but it is possible that it could take longer depending on the complexity of the allegations. The Standards Commission may decide to adjourn or postpone the oral hearing where justified in the circumstances.

After the oral hearing

- 2.27 Following the oral hearing, the Standards Commission will deliberate on the evidence and submissions received before reaching its decision.

E: Submissions in writing

- 2.28 As set out above, the Standards Commission may decide whether there has been a contravention, and whether to impose a sanction, based on the information obtained during the course of the investigation. However, the Standards Commission will request and consider written submissions from the respondent on the investigation report if:
- written submissions would assist the Standards Commission to make a decision;
 - an opportunity to make written submissions is required as a matter of fair procedures; or
 - the respondent requests an opportunity to make written submissions.
- 2.29 If any of the above applies, the secretariat will notify the respondent that they may make a submission in writing to the Standards Commission within 30 days. The Standards Commission may agree to an extension of the period for a further 30 days if the respondent so requests.
- 2.30 Following receipt of written submissions, the Standards Commission will deliberate on the evidence and submissions received before reaching its decision.

3. The Decision of the Standards Commission

- 3.1 The Standards Commission is required to decide:
- Whether there has been an avoidance contravention or an employment contravention;
 - If so, whether a sanction should be imposed;
 - If so, whether the sanction should be major or minor;
 - If the sanction should be major, whether it should include a financial sanction and of what amount.

A: Whether there has been a contravention

- 3.2 The Standards Commission may decide to rely on documents or other materials (as well as any oral evidence received) as the basis for its decision if it considers that it is fair in all the circumstances to do so.
- 3.3 The Standards Commission will apply the civil standard of proof in determining whether there has been a contravention, meaning that it must be satisfied on the balance of probabilities that there has been an avoidance contravention or an employment contravention before it can make a finding.
- 3.4 If the Standards Commission determines that there has been no contravention, the secretariat will notify the respondent of the decision and the reasons for it as soon as practicable. There is no right of appeal against a decision that no contravention has been committed.
- 3.5 If the Standards Commission determines that there has been a contravention, it will go on to consider whether any sanction should be imposed for the contravention.

B: Whether a sanction should be imposed and the nature of the sanction

- 3.6 The Standards Commission will decide whether a sanction should be imposed and, if so, the nature of the sanction.
- 3.7 If the Standards Commission determines that there has been a contravention but that no sanction should be imposed, the secretariat will notify the respondent of the

decision and the reasons for it as soon as practicable. There is no right of appeal against a decision that a contravention has been committed if no sanction is imposed.

3.8 If the Standards Commission determines that there has been a contravention and that a sanction should be imposed, it must decide whether the sanction to be imposed on the person should be a major sanction or a minor sanction.

3.9 A 'major sanction' means one or more of:

- a financial sanction up to €25,000;
- a prohibition from registering on the Lobbying Register for up to 2 years;
- a prohibition from making a return (or having one made for them) for up to 2 years.

3.10 A 'minor sanction' means one or more of:

- advice;
- a reprimand;
- a caution.

3.11 When the Standards Commission has decided to impose a sanction, the secretariat will notify the respondent as soon as practicable of:

- the decision and the reasons for it;
- the respondent's right to appeal the decision to the Circuit Court within 30 days;
- the need for the respondent to specify grounds of appeal in any appeal;
- that the decision is suspended until the appeal period expires or any appeal is disposed of;
- the date on which the decision will become final, if no appeal is brought;

- the need for the Standards Commission to seek confirmation from the Circuit Court of any major sanction, if no appeal is brought; and
- the method by which any financial sanction will need to be paid following confirmation by the Circuit Court.

C: Factors considered in determining sanctions

3.12 The Standards Commission will take into account all the circumstances of the case in reaching its decision as to whether a sanction should be imposed and, if so, the nature of the sanction and the amount of any financial sanction⁴. In particular, the Standards Commission will have regard to:

- the need to ensure that the sanction is appropriate and proportionate to the contravention;
- the nature of the contravention, including:
 - the gravity and duration of the contravention;
 - the impact of the contravention on transparency;
 - any excuse or explanation given by the respondent for the contravention;
 - the extent to which the respondent benefitted or may benefit from the contravention;
 - whether there is a repeated occurrence of the contravention by the respondent;
 - the extent and timeliness of any steps taken to end the improper conduct and any steps taken to remedy the consequences of the contravention;
- the respondent's conduct during the investigation, including:

⁴ The Standards Commission is required to have regard to statutory factors set out in section 22B when considering the amount of a financial sanction. Those statutory factors are incorporated in this list of factors. The Standards Commission also considers that it is appropriate to take into account this list of factors when deciding whether to impose a sanction at all and whether to impose a non-financial sanction.

- the extent of any failure by the respondent to cooperate with the investigation and any excuse or explanation given by the respondent for any such failure;
- whether the contravention continued after the respondent was notified of the investigation;
- the public interest, including:
 - the need to ensure that any like contravention will not occur in future;
 - the need for proportionality;
 - the totality of the sanction imposed, where multiple contraventions are considered;
 - the need for consistency in decision-making, having regard to any precedents set by a court or the Standards Commission in respect of a previous like contravention.

D: Appeal to the Circuit Court against any sanction

- 3.13 A respondent on whom a minor or a major sanction has been imposed may appeal to the Circuit Court against the decision to impose a sanction. An appeal may be made by notice in writing specifying the grounds of appeal.
- 3.14 If the Circuit Court confirms the decision, the Standards Commission's decision will be final unless leave is granted to appeal to the High Court on a point of law.
- 3.15 The Circuit Court may decide to annul the decision of the Standards Commission and substitute its own decision. In such a case, the Standards Commission's original decision is no longer relevant.
- 3.16 Alternatively, the Circuit Court may remit the decision to the Standards Commission for reconsideration and the making of a new decision. In such a case, the Standards Commission's original decision will be suspended until it has reconsidered the matter. The Standards Commission will follow the process outlined in Parts 2 and 3 of this Code when reconsidering its decision, subject to any directions that the Court may give.

- 3.17 The Standards Commission will notify the respondent of the Circuit Court's decision as soon as practicable, including the date on which it was made and the date from which it takes effect.

E: Court confirmation of major sanctions

- 3.18 If the Standards Commission imposes a major sanction, and the respondent does not appeal that sanction to the Circuit Court within 30 days, the Standards Commission will seek the respondent's consent in writing to the imposition of the major sanction. The Standards Commission will usually give the respondent a period of two weeks within which to respond.
- 3.19 Whether or not the respondent consents, the Standards Commission must apply to the Circuit Court for confirmation of the major sanction before it can take effect. The application to Court may be made without notice to the respondent (known as *ex parte*) if the respondent consents to the sanction, but must be made on notice to the respondent if the respondent does not consent to the sanction.
- 3.20 If the Circuit Court confirms the Standards Commission's decision, the sanction can take effect.
- 3.21 The Circuit Court may decide to annul the decision of the Standards Commission and substitute its own decision. In such a case, the Standards Commission's original decision is no longer relevant.
- 3.22 Alternatively, the Circuit Court may remit the decision to the Standards Commission for reconsideration and the making of a new decision. In such a case, the Standards Commission's original decision will be suspended until it has reconsidered the matter. The Standards Commission will follow the process outlined in Parts 2 and 3 of this Code when reconsidering its decision, subject to any directions that the Court may give.
- 3.23 The Standards Commission will notify the respondent of the Circuit Court's decision as soon as practicable, including the date on which it was made and the date from which it takes effect.

F: Publication of information about sanctions

- 3.24 The Lobbying Act requires that the Standards Commission must include in its annual report information relating to any decisions made or administrative sanctions imposed in a given year under the administrative sanctions regime. The annual report must also include information relating to any appeals against a sanction or applications for court confirmation of a sanction. However, the information in the annual report is required to be in a form which does not enable the identification of the persons involved.
- 3.25 The Standards Commission will publish anonymised case studies of its decisions in relation to administrative sanctions in a manner which does not identify the respondent.

4. Illustration of administrative sanction proceedings

Standards in Public Office Commission: Simplified illustration of administrative sanction proceedings

