

# Model Act on Integrity in Public Life



The Commonwealth

Office of Civil and  
Criminal Justice Reform

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# Introduction

Good governance is one of the Commonwealth's fundamental values. The Commonwealth Charter provides:

*We reiterate our commitment to promote good governance through the rule of law, to ensure transparency and accountability and to root out, both at national and international levels, systemic and systematic corruption.*

Citizens are entitled to expect that public officials, both elected and non-elected, behave according to the highest standards of ethical behaviour.

This Model Act on Integrity in Public Life provides a model, in particular for small Commonwealth jurisdictions, for legal, institutional and practical arrangement for sustaining and strengthening integrity in public life. The Model Act includes Codes of Conduct for public officials and also guidelines on conflict of interest.

The Model Act is intended as a working document that requires careful adaptation to the specific needs and circumstances of each jurisdiction concerned. It is not designed to displace any legislative arrangements already in existence in any jurisdiction. Nor is it intended to replace other models for encouraging ethical behaviour in public life that may also be available and applicable.

As such, the Model Act represents one possible approach to handling the issue of integrity in public life. It will be for each individual jurisdiction to consider the merits of this model alongside other possible approaches and to reach an informed decision on which approach best meets their needs. In particular, the Integrity Commission proposed by the Model Act is intended to provide each small Commonwealth jurisdictions with an ideal against which countries may test the fitness for purpose of whichever institutional framework might be considered best suited to administer the Model Act.

# Background

In October 2007, Law Ministers and Attorneys General of small Commonwealth jurisdictions directed the Secretariat to develop a model code of conduct for public officials, guidelines on conflict of interest and supporting legislative provisions, to be designed to meet the particular needs and requirements of small jurisdictions.

The resulting Model Act and Codes of Conduct was informed by three regional seminars. The first involved 18 jurisdictions in the Caribbean (held at Montego Bay, Jamaica, in September 2010), the second involved 10 jurisdictions in the Pacific (held in Auckland, New Zealand, in November 2011), and the third was for remaining small Commonwealth jurisdictions (held at Marlborough House, London, United Kingdom in October 2012) of which seven jurisdictions were able to take part.

The Secretariat is grateful to the participants of the regional seminars. They have scoped, shaped and refined the project through constructive, imaginative and practical contributions. These contributions have greatly assisted the production of the Model Act and Codes of Conduct.

The Model Act was endorsed for consideration by small Commonwealth jurisdictions by a meeting of Law Ministers and Attorneys General of small Commonwealth Jurisdictions, held from 12 to 13 September 2013 in Marlborough House, London. The Model Act was further noted by Commonwealth Law Ministers at their meeting held from 5 to 8 May 2014 in Gaborone, Botswana.

# Summary of the Provisions of the Model Act

The Model Act provides for Ministers and non-elected public officials to abide by the terms of the Codes of Conduct and to make written declarations of interest. It details offences constituting abuse of office, misconduct and neglect of duty. It sets up an Integrity Commission and provides for its composition, functions and powers.

The Model Act is explicitly drafted to apply to public servants involved in all of the main areas of governance: the executive, the legislature and officers employed by parliament, and the judiciary.

The duties imposed on these officials by the Model Act include to abide by the relevant Code of Conduct, to sign a copy of the Code that applies to them, and to draw up, maintain and sign a Declaration of Interest.

A requirement for signature of a copy of the Code of Conduct generates a public undertaking to act in a particular way, to which the general public can hold Ministers and all public officials accountable. In this way transparency and accountability – both of which are key constituents in upholding integrity in public life – are enhanced.

In types of cases that are particularly blameworthy, of conduct contrary to the terms of the Model Act, the Act proposes an offence under the heading of “abuse of office” or “misconduct and neglect of duty” (sections 5 and 6).

In the Model Act, responsibility for administering the Act is placed on a dedicated Integrity Commission established specifically for the purpose. In this regard, it is expected that Commonwealth jurisdictions may wish to adopt and adapt the machinery that they already have to hand. The Integrity Commission provisions allow drafters to postulate what they consider to be the key characteristics that ideally should be found in any official or organisation given responsibility for taking on the functions that are central to promoting integrity in public life.

Part III of the Model Act establishes the Commission as an independent body with the following main functions:

- To promote and enforce integrity and accountability of public officials
- To identify areas of public duty in which significant conflict of interest issues are likely to arise
- To devise guidelines on conflicts of interest
- To advise public officials on the application of the Act, the Codes of Conduct and the guidelines
- To oversee the signing of Codes of Conduct by public officials
- To investigate allegations of offences under the Act.

Whatever official or institution administers the Act, they must be:

- Independent and seen to be independent
- Ready to build up a body of expertise that will enable the offering of guidance and the giving of practical advice and leadership to public officials within the jurisdiction.
- Made up of commissioners of good standing and reputation, with the necessary skills to discharge effectively the ethical, legal, accounting and enforcement obligations imposed on them
- Small and able to act promptly and decisively.

# Integrity in Public Life Act<sup>1</sup>

## Arrangement of sections

### Part I – Preliminary

1. Short title, commencement and application
2. General definitions

### Part II – Codes of Conduct, Declarations and Offences by Public Officials

3. Codes of Conduct and declarations of private interests and liabilities
4. Availability for inspection of Codes of Conduct and declarations
5. Abuse of office
6. Wilful misconduct and neglect of duty

### Part III – The Integrity Commission

7. Integrity Commission
8. Functions of Commission
9. Staff of Commission

### Part IV – Powers of investigation of Commission

10. Powers of investigation
11. Persons may not object to supplying information, etc.

### Part V – Finance, Accounting and Miscellaneous

12. Finance and accounting
13. Annual report
14. Non-liability of Commission for acts done in good faith
15. Subsidiary legislation

#### **Schedule 1** Codes of Conduct

#### **Schedule 2** Procedure of the Commission

[Although the Guidelines on Conflicts of Interest are not a constituent part of the Act, they are central to its purpose in that they help to explain the Codes of Conduct (see section 3). For ease of reference the Guidelines are reproduced at pages 15 to 19 as an Annex to the Act].

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1 The title is deliberately shorthand chosen to highlight the ultimate purpose of the legislation. However, it should be remembered that this model Act, in conformity with the original mandate from the Law Ministers of Small Commonwealth Jurisdictions, is confined to codes of conduct and guidelines for dealing with conflicts of interest. The reader should not expect therefore to find a comprehensive treatment of all the measures that can be expected to be found in a programme to improve standards of behaviour in public life generally.



# Integrity in Public Life Act

an Act to provide for Codes of Conduct and declarations of interest for public officials; for the offences of abuse of office, and of wilful misconduct and neglect of duty; for the establishment of the Integrity Commission, its functions and powers, including in particular the issuing of guidelines on conflict of interest and the investigation of offences under the Act; and for ancillary and connected matters

[Commencement ]

Enacted by the Parliament of...

## Part I – Preliminary

### Short title, commencement and application

- 1(1) This Act may be cited as the Integrity in Public Life Act 201...
- (2) This Act comes into force on a date to be appointed by the Minister<sup>2</sup> by notice in the Gazette, and different dates may be appointed for different provisions<sup>3</sup> of it.
- (3) This Act binds the [Government] [Crown]<sup>4</sup>.

### General definitions

2. In this Act:

"abuse of office" means the offence provided for in section 5(1);

"asset" means anything of economic value owned by a person, and includes an intangible asset such as an option to purchase, or a trademark, patent or copyright;

"Code of Conduct" means a Code set out in Form A or B in Schedule 1; "Commission" means the Integrity Commission established by section 7;

"Commissioner" means the Chairperson and other Commissioners appointed under section 7(3);

"guidelines" means guidelines on conflict of interest issued by the Commission under section 8(1);

"investigator" means a Commissioner or person authorised by the Commission to carry out investigations;

"private interests" are not limited to interests which generate a direct financial or other economic benefit, and as well as personal assets include:

- (a) directorships or membership of governing bodies of organisations, whether corporate or unincorporated, held by a person or a person associated with him or her;

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2 This term is not defined here, as it is normally conveniently defined in an Interpretation Act or similar legislation as "the Minister responsible for the matter in question".

3 The delay would probably be necessary to allow for the making of subsidiary legislation under section 15.

4 Although the Government would clearly be bound by necessary implication here, it is usual to provide so in terms.

(b) personal affiliations and associations, including those that are party political, trade union, professional, charitable and ethnic;

(c) family assets and interests,

and also extend to future potential employment and benefits;

"public authority" means:

(a) a government department or agency;

(b) a local authority;

(c) the police force;

(d) a body established by or under a statute, or by other means, to perform executive or advisory functions of a public nature<sup>5</sup>;

(e) a body that is wholly owned by the government, or in which the government has a controlling interest,

but does not include the armed forces<sup>6</sup>;

"public official" means:

(a) the [President] [Governor-General] [Prime Minister<sup>7</sup>];

(b) a Minister, Assistant Minister, Parliamentary Secretary or other political appointee as a member of the government;

(c) a Member of Parliament;

(d) a person employed by the Speaker or the legislature;

(e) a judge, magistrate or other person holding a judicial post, including an ombudsman;

(f) a person employed in a public authority;

(g) a person employed as a special adviser or assistant to a public official<sup>8</sup>, and includes a person acting in, or temporarily appointed to, any of those posts<sup>9</sup>;

"senior public official" means a public official of a class prescribed under section 15(1)<sup>10</sup>.

5 This is widely drawn to include NGOs set up to administer and advise on certain areas of activity in which the government has an interest, e.g. charities, conduct of professions, conservation or tourism. The paragraph recognises that these might be set up e.g. as a company under the Companies Act or appointed administratively. Alternatively, where there are only a few such bodies, the actual relevant ones could be specified in a Schedule. The Code of Conduct relevant to them would probably require a modified Form B in Schedule 1.

6 The scheme of this legislation is probably not suited to application to the armed forces, which operate in different and much more restricted areas of work. If similar legislation is intended to apply to them it might more conveniently be drafted within the framework of armed forces legislation.

7 For jurisdictions which have the Queen as Head of State, it is a matter for consideration as to whether the Governor-General should be inserted here, and the Prime Minister put into paragraph (b).

8 The Code of Conduct relevant to these would probably need to be a modified Form B in Schedule 1.

9 Many Interpretation Acts have a general provision to the effect that a power or duty is to apply to a person acting in or temporarily appointed to a post, and this clarifying provision may not be necessary.

10 It would be for individual jurisdictions to decide exactly who is to come within this term.

## Part II – Codes of Conduct, declarations and offences by public officials

### Codes of Conduct and declarations of private interests and liabilities

- 3(1) A public official must abide by the relevant Code of Conduct in Schedule 1<sup>11</sup>, and within the prescribed period of taking office:
- (a) sign a copy of the Code relevant to him or her; and
  - (b) make and sign a written declaration in the prescribed form of his or her private interests and liabilities.
- (2) In the case of a senior public official, the written declaration under subsection (1)(b) must be renewed annually.
- (2) A public official who fails to make or renew a declaration under subsection (1)(b) or (2), or who makes a declaration that is false or misleading in a material particular, commits an offence and is liable to imprisonment for 6 months and<sup>12</sup> a fine of ...

### Availability for inspection of Codes of Conduct and declarations

- 4(1) The signed Codes of Conduct and declarations of all public officials under section 3(1) are to be kept by the Commission and:
- (a) in the case of senior public officials, are to be made available by it for inspection by the public<sup>13</sup>;
  - (b) in the case of other public officials, may be made available for inspection only where and in so far as the Commission is of the opinion that it is in the public interest to do so.
- (2) If the Commission is of the opinion that a public official's personal security might be put at risk by disclosure of particular information under subsection (1)<sup>14</sup>, it may, to that extent only, redact the information disclosed to the public.

### Abuse of office

- 5(1) A public official commits an offence of abuse of office if he or she<sup>15</sup>:
- (a) seeks or accepts personal or private benefit for the official or a member of his or her family, or person associated with him or her, whether or not the benefit places the official under an obligation to the person giving or offering the benefit;
  - (b) uses public funds or resources for private purposes, including party political purposes, or in furtherance of private interests;

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11 A failure to abide would not of course automatically subject the official concerned to criminal proceedings (for those to be considered the conduct would have to come within section 4 or 5), although it might of course subject the individual to disciplinary proceedings.

12 This follows a conventional Commonwealth drafting technique for penalties. The insertion of "and" between the different penalties is a drafting device adopted in many countries to indicate that they may be imposed cumulatively or in the alternative. See also footnote 16.

13 The details (for example the requirement to keep signed CCs and declarations in a register), are to be filled in by regulations under section 15(1).

14 An example might be the disclosure of an address or location of real or personal property of the official.

15 Further reference is made to footnote 1. The offences do not purport to cover all aspects of behaviour in public life, but concentrate on the central theme of the Act: the matter of conflicts of interest.

- (c) fails to act impartially, or gives undue preferential treatment to a person or group of persons;
  - (d) misuses information acquired in the course of his or her duties;
  - (e) acts in a way that allows, or might reasonably be thought to allow, a conflict to arise between the public duties and private interests of the official;
  - (f) interferes in, or seeks to influence, otherwise than as part of his or her duty, the appointment, promotion, suspension, demotion or dismissal of a public official or other person; or
  - (g) induces or encourages another public official to act contrary to the relevant Code of Conduct.
- (2) An offence under subsection (1)(d) is committed whether or not the person is still a public official at the date of the offence.
- (2) A person who commits an offence under this section is liable to imprisonment for five years<sup>16</sup>.

### Wilful misconduct and neglect of duty

6. A public official who wilfully:
- (a) misconducts him or herself; or
  - (b) neglects to perform his or her duty,

to such a degree as to amount to an abuse of public trust in the office holder, commits an offence<sup>17</sup> and is liable to imprisonment for five years.

## Part III – The Integrity Commission

### Integrity Commission

- 7(1) The Integrity Commission is established<sup>18</sup>.
- (2) The Commission is a body corporate<sup>19</sup> that:
- (a) has a seal; and
  - (b) may sue and be sued and, so far as is possible for a body corporate, may in the carrying out of its functions exercise the rights, powers and privileges, and incur the liabilities and obligations, of a natural person of full age and capacity.

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16 This formula presumes that there are relevant interpretation and criminal procedure provisions allowing for the imposition of lesser penalties (fine, probation, community service, etc.) as alternatives. The stated custodial penalties are of course (in line with Commonwealth conventions on drafting of penalties) maximum terms and intended as guides as to the seriousness of the offences; it would obviously be open to individual jurisdictions to insert different penalties as they consider appropriate.

17 Misconduct in public office is in fact a common law offence. For an offence to be made out under this section there would undoubtedly have to be proved a high degree of misconduct, or a deliberate failure to perform a duty, involving an improper, dishonest or oppressive motive. The most recent example of a prosecution in the UK has involved a gross breach of public trust in a senior police officer. A paper on the subject of the offence recently produced in England & Wales by the Crown Prosecution Service may be found at [http://www.cps.gov.uk/legal/l/lo/misconduct\\_in\\_public\\_office/](http://www.cps.gov.uk/legal/l/lo/misconduct_in_public_office/)

18 It is recognised that some jurisdictions might not want, or have the resources, to set up a new, formally constituted, body. In that event the functions might be given to an existing institution such as the Ombudsman, or to a specific appointee such as a retired judge.

19 This status is probably required so that the Commission can have as high a degree of independence as possible. The incidents of corporate status are set out shortly in accordance with modern drafting on the subject, but individual jurisdictions may have their own preferred format.

- (3) The Commission is to consist of the Chairperson and not less than two nor more than four other Commissioners<sup>20</sup>, each to be appointed by the [President] [Governor-General]<sup>21</sup> from among independent and respected members of the community.
- (4) At least one of the Commissioners must have practised at some time as an accountant and at least one as a lawyer.
- (5) A Commissioner holds office for three years, and is eligible for re-appointment for one further term of three years, on terms and conditions directed by the Public Service Commission.
- (6) A Commissioner ceases to hold office in the event of his or her being:
  - (a) declared bankrupt;
  - (b) adjudged medically to be of unsound mind; or
  - (c) convicted of an offence carrying a maximum sentence of imprisonment for 6 months or more.
- (7) A Commissioner may resign his or her office at any time by notice in writing to the [President] [Governor-General].
- (8) Schedule 2 has effect with regard to the proceedings of the Commission.

## Functions of Commission

- 8(1) The functions of the Commission are:
- (a) to promote and enforce the integrity and accountability of public officials;
  - (b) to identify areas of public duty in which significant conflict of interest issues are likely to arise;
  - (c) to devise and keep up to date guidelines on conflict of interest for the conduct of public officials;
  - (d) to advise public officials on the application of this Act, the Codes of Conduct and the guidelines;
  - (e) to administer the signature and retention of signed Codes of Conduct and declarations of interest under section 3;
  - (f) to investigate a complaint from any source that a public official has committed an offence under section 5 or 6, or is acting or may be about to act in a way that constitutes such an offence, and to communicate to the appropriate authorities the results of any such investigation;

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<sup>20</sup> These numbers seem sensible, though of course could be varied in individual jurisdictions.

<sup>21</sup> Provision for appointment by the President (or Governor-General where appropriate), rather than the relevant Minister (see note 1), stresses the importance of the appointments. It might be thought desirable to include a modification such as "in consultation with party political leaders in Parliament".

- (g) where in the opinion of the Commission the circumstances so warrant, to report specifically on, and make recommendations as to, any investigation undertaken under paragraph (f)<sup>22</sup>.
- (2) In exercising its functions the Commission is not subject to the direction or control of any person.

### Staff of Commission

- 9(1) Subject to subsection (2), the Commission may to the extent and on the conditions it considers necessary to carry out its functions:
  - (a) employ staff, whether full or part time; and
  - (b) engage on contract professional, technical or other assistance.
- (2) The Commission must ensure that members of its staff employed or appointed to undertake investigations are qualified to do so effectively:
  - (a) by virtue of previous employment<sup>23</sup>; or
  - (b) after undergoing suitable training.

## Part IV – Powers of investigation of Commission Powers of investigation

- 10(1) In the performance of its function to investigate complaints, the Commission may by notice in writing require any person to supply information to it or produce a document or thing.
- (2) An investigator may, on production of his or her authority to act if so required, enter premises occupied or used by a public authority and:
  - (a) search for and inspect documents or other things on those premises;
  - (b) take copies of documents.
- (3) The public authority concerned must make available to an investigator any facilities necessary to enable the powers in subsection (2) to be exercised.
- (4) An investigator may seek a warrant from a magistrate to enter private premises where the investigator reasonably believes that it is necessary in furtherance of the investigation.
- (5) Where a warrant is granted under subsection (4), the powers of search, inspection and taking copies in subsection (2) apply to the investigator and the duty to make facilities available in subsection (3) applies to the owner or occupier of the premises concerned.

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22 It is not envisaged that the Commission (or the authority vested with its functions) itself would have the power to prosecute; it would anyway be hoped that there would not be many prosecutions under the Act. Nor does the Act give power to the Commission itself to directly dismiss or suspend a public official convicted of an offence under the Act, or to declare such a person ineligible to hold office, although consideration might be given as to whether this would be desirable. It would be bound to report generally on its activities under section 13, but this paragraph envisages a situation of sufficient gravity as to warrant a specific report. This ties in with paragraph 6 in each of the Codes of Conduct.

23 For example ex-police officers.

- (6) A person commits an offence if he or she:
- (a) obstructs or fails to assist an investigator in the exercise of a power under this section; or
  - (b) gives false or misleading information to the Commission or an investigator, and is liable to imprisonment for two years.

### Persons may not object to supplying information, etc.

- 11(1) A person other than a suspect may not object to supplying information or a document or thing under section 10(1) on the grounds that it might tend to incriminate him or her<sup>24</sup>; but if objection is made, and it does tend to incriminate the person, neither the fact that the requirement was made nor the statement, document or thing supplied may be mentioned or used in any proceedings against that person except, if applicable, proceedings for an offence of giving false or misleading information under section 10(6)(b).
- (2) In this section, "suspect" means a person the Commission or an investigator reasonably believes to have committed an offence under this Act, whether or not the person has been charged with that offence.

## Part V – Finance, accounting and miscellaneous<sup>25</sup>

### Finance and accounting

- 12(1) The funds of the Commission are:
- (a) money appropriated by Parliament for the purpose of the Commission;
  - (b) other money lawfully received by or made available to the Commission<sup>26</sup>.
- (2) The Commission must cause annual estimates of its receipts and payments relating to the administration of this Act to the Minister<sup>27</sup>.
- (3) The Commission must keep proper accounts which are to be audited by the Auditor General, and on return of the certified audited accounts must forward a copy of them to the Minister, who must lay them before Parliament without delay.

### Annual report

13. The Commission must, within nine months of the end of each financial year, prepare a report on the operation of the Commission during that year, and forward a copy to the Speaker.

### Non-liability of Commission for acts done in good faith

14. Neither the Commission nor a person acting on its behalf is liable for an act done or omission made in good faith under this Act.

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24 This power, as is recognised, cannot be used to override the right of a suspect not to have to self-incriminate, but is inserted for cases e.g. where information might disclose evidence of other offences by the person concerned.

25 These provisions are minimal, and might need to be fleshed out a little in individual jurisdictions which might well have general legislation governing NGOs.

26 For example in the form of interest on investments.

27 Here and in subsection (3) the usual public accounting procedure is followed.

## Subsidiary legislation

- 15(1) The Minister, on the advice of the Commission, is to<sup>28</sup> make regulations<sup>29</sup> prescribing:
- (a) categories of public officials to be regarded as senior public officials for the purposes of this Act;
  - (b) the period or periods of time within which different categories of public officials must sign relevant Codes of Conduct and declarations of interest;
  - (c) the form and manner in which the declarations are to be made;
  - (d) the manner in which the Codes and declarations are to be:
    - i. delivered to and retained by the Commission; and
    - ii. made available for public inspection.
- (2) The Minister is by order:
- (a) to publish guidelines on conflict of interest formulated by the Commission under section 8(1)(c);
  - (b) if the Commission so advises,<sup>30</sup> to amend:
    - i. a Code of Conduct in Schedule 1;
    - ii. the rules of procedure in Schedule 2.
- (3) Before an order under subsection (2)(b)(i) comes into force it must be laid before, and assented to by resolution of, Parliament<sup>31</sup>.

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28 It could be that the power (in this case actually a duty) to make subsidiary legislation is given directly to the Commission itself. More usually it is given to "the Minister" who, being in most Commonwealth jurisdictions an MP, and hence directly answerable to Parliament, is given the task of putting forward the business of an organisation not represented there. Further, the Commission (or other authority) might well not have the expertise to draft the necessary subsidiary legislation (all the more so where the function of the Commission is given to another authority or individual). The formula used here makes it clear that the Minister is under a duty to follow the advice of the Commission in the making of subsidiary legislation.

29 The particular form taken by the legislation might vary a little from jurisdiction to jurisdiction, but by common convention *regulations* are usually the vehicle for general administrative rules and procedures, while *orders* (see subsection (2)) are usually thought appropriate for short, discrete measures. The main thrust of the order promulgating the guidelines would be inserted as a Schedule to it.

30 The publication of guidelines is a requirement of the Act, but the powers to amend obviously apply only where the Commission considers the measures to be necessary.

31 This is known as "positive resolution" procedure and needs to be inserted so that Parliament can consider the amendments as of course.



# Schedule 1

## Codes of Conduct

(section 3(1))

In the Codes set out in this Schedule, except where indicated otherwise, a reference to a Minister or Ministers includes a reference to the [President] [Governor-General] [Prime Minister], and in every case includes also a reference to a Deputy, Assistant or Junior Minister, and a Parliamentary Secretary or other political appointee as a member of the Government.

## Form A

### Code of Conduct relating to the [President] [Governor-General] [Prime Minister] and

#### Ministers

1. As part of the terms of my appointment as [President] [Governor-General] [Prime Minister] [a Minister], I ..... make this open commitment to act in accordance with this Code of Conduct. I undertake to lodge a signed copy of this commitment with the Integrity Commission and declare that I will perform my duties and carry out my functions:
  - honestly
  - in full compliance with the law
  - in accordance with the public interest
  - in a way that earns and deserves the trust and confidence of the public<sup>32</sup>
2. In particular, I give the following specific undertakings:
  - I will not accept any gift, fee, hospitality or other personal benefit save in accordance with the guidelines
  - I will ensure that public resources are not used for private, including party political, purposes
  - I will act fairly and impartially in performing my duties and functions and will never give undue preferential treatment to any group or individual or improperly discriminate against any group or individual
  - I will not abuse the power and authority vested in me, for example by using information acquired in the course of my official duties to advance my private interests or the private interests of others
  - I will ensure that no conflict arises, or appears to arise, between my public duties and my private interests, and I will follow the Integrity Commission's guidelines on conflict of interest

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<sup>32</sup> It is recognised that Ministers may also need to swear an oath of loyalty under the Constitution on taking office and care needs to be taken to see that there is no conflict between that and this declaration.

- Save where my duties require it, I will not seek to interfere in any way in the selection, appointment, promotion, suspension, demotion or dismissal of a public official or other person
  - I will not ask, encourage or instruct a non-Ministerial public official to do anything that is contrary to the provisions of the Code of Conduct relevant to him or her
  - I will perform my duties and functions conscientiously and to the best of my ability
  - I will make every effort to ensure the public resources for which I am responsible are used in an efficient, economic and effective way
  - I will take my share of collective responsibility for decisions and actions which are central to the Government's responsibilities to the public and its political programme
  - I will be ready to be held to account, and to give a full, accurate and truthful account, of those decisions and actions for which I am individually or collectively responsible as [President] [Governor-General] [Prime Minister] [a Minister], and will do so in accordance with the requirements of any law on freedom of information
  - I will admit and correct any error that I might make in giving my account immediately I become aware of it
3. Should I need advice or guidance on the interpretation or application of this Code, I will seek it from the Integrity Commission.
  4. In particular, I will look to the Commission for help on how best to interpret and apply this Code should circumstances exist or arise that might constitute an obstacle to my complying with it in an effective, economic and proportionate manner.<sup>33</sup>
  5. I will co-operate fully with the Commission should it consider it necessary to investigate an allegation that I have acted in contravention of this Code.
  6. I will give effect to the findings and recommendations of the Commission following any such investigation up to and including resigning my post as [President] [Governor-General] [Prime Minister] [Minister].<sup>34</sup>

Signed ..... Dated .....

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33 This envisages situations that might well arise concerning conflict of interest situations in small jurisdictions.

34 Although there is no power directly to enforce compliance with this undertaking, political, press and general public awareness pressures would be expected to exert considerable influence on the person concerned to comply. And in suitable cases prosecution might result.

# Form B

## Code of Conduct relating to non-Ministerial public officials

1. As part of the terms of my appointment as a public official within the meaning of the Integrity in Public Life Act, I ..... make this open commitment to act in accordance with this Code of Conduct. I declare that I will perform the duties of my employment:
  - honestly
  - in full compliance with the law
  - in accordance with the public interest
  - in a way that earns and deserves the trust and confidence of the public and of the Ministers whom I am called upon to serve and support
2. In particular, I give the following specific undertakings:
  - I will not accept any gift, private benefit or hospitality save in accordance with the Integrity Commission's guidelines
  - I will deal with members of the public impartially and will never give undue preferential treatment to any group or individual or improperly discriminate against any group or individual
  - I will not abuse my public position, for example by using information acquired in the course of my official duties to advance my private interests or the private interests of others
  - I will perform my duties responsibly, with dedication and commitment and to the best of my ability
  - I will take all the decisions I am required to take on merit
  - I will deal with members of the public fairly, sensitively, courteously, promptly and effectively
  - I will make sure that public funds and resources entrusted to me are used properly and efficiently and only for the purposes for which they are provided
  - I will follow the guidelines in all other relevant respects
3. Should I be appointed to a position where I serve a Minister or Ministers directly, I give the following further undertakings:
  - I will serve duly appointed Ministers, whatever their political party affiliation, to the best of my ability and with complete professional commitment
  - I will advise Ministers on the basis of the best evidence available, drawing attention to any relevant expert or professional opinion or advice, and will set out clearly and accurately the relevant facts and options for action
  - I will not allow my own personal political views to determine any advice that I give or any decisions that I take
  - I will not deceive or knowingly mislead Ministers

- I will conduct business with Ministers confidentially [and will release official information only in accordance with the provisions of the Freedom of Information Act]
  - I will not frustrate the implementation of decisions taken by Ministers whether by acts of commission or omission
4. If I believe that I am being instructed, encouraged or asked, whether by a Minister or other public official, to act in a way that conflicts with this Code, I will report the matter to the Integrity Commission, who will be responsible for ensuring that I am not penalised in any way for reporting my concern.
  5. I will co-operate fully with the Commission should it consider it necessary to investigate an allegation that I have acted in contravention of this Code.
  6. So far as it is within my power, I will give effect to the findings and recommendations of any such investigation up to and including resigning my post.
  7. If I am a senior public official within the meaning of the Integrity in Public Life Act I will look to the Integrity Commission for help on how best I and my staff should interpret and apply this Code should circumstances exist or arise that might constitute an obstacle to my complying with it in an effective, economic and proportionate manner.

Signed ..... Dated .....

# Schedule 2

## Procedure of Commission

(section 6(8))

1. In this Schedule "Chairperson" includes a Commissioner who is acting in that post<sup>35</sup>.
2. The Commission is to meet as often as business requires, but in any event not less than four times in each year<sup>36</sup>.
3. At meetings of the Commission:
  - (a) at least half of the Commissioners must be present to constitute a quorum;
  - (b) a matter is to be determined by a majority of the votes of Commissioners present;
  - (c) in the event of an equality of votes, the Commissioner presiding at the meeting<sup>37</sup> has a casting as well as a deliberative vote.
4. The Chairperson may, and on the written application so to do by two or more Commissioners must, convene a special meeting of the Commission at any time or place.
- 5(1) The Commission must cause minutes of all proceedings at its meetings to be kept.
  - (2) Minutes so kept, if approved by the Commission and signed by the Chairperson<sup>38</sup>, are evidence of those proceedings and, unless the contrary is proved, the meeting to which the minutes relate is to be taken to have been held and the business recorded in them to have been transacted accordingly.
6. A decision of the Commission is not affected by:
  - (a) a vacancy in the membership of the Commission;
  - (b) a defect afterwards discovered in the appointment or qualification of a Commissioner;
  - (c) a minor irregularity in the convening or conduct of a meeting of the Commission.
7. Subject to this Schedule, the Commission may regulate its own procedures.

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35 In many Interpretation Acts a general provision exists to the effect that duties etc. may be carried out by a person acting in a post. If so, this paragraph might not be necessary.

36 This might clearly be subject to local variation.

37 This could be a Commissioner other than the Chairperson (as defined in paragraph 1).

38 A contrast is drawn here with the person referred to in paragraph 3(c).

# Annex

## Guidelines on Conflict of Interest<sup>39</sup>

(Senior public officials)

### Interpretation

1. In these Guidelines:

"Act" means the Integrity in Public Life Act;

"chief officer" means the public service head of a Ministry or Government department<sup>40</sup> or the chief executive officer of any other public authority;

"Commission" means the Integrity Commission established by section 7 of the Act;

"conflict of interest" means a conflict between the public duty and private interests of a public official, in which the public official has private interests which could improperly influence the performance of his or her official duties and responsibilities<sup>41</sup>;

"declaration of interests and liabilities" means the declaration required to be made by a senior public official under section 3 of the Act;

"private interests", "public official" and "senior public official" have the meanings given by section 2 of the Act.

### Avoidance of conflicts of interest

2. A senior public official must not allow legitimate interests and affiliations as a private citizen to compromise decisions that he or she must make by virtue of office impartially on their merits, especially where a decision is required in a case where fairness and absence of bias are essential, and in particular must:
- (a) arrange his or her private interests in a manner that preserves public confidence in the official's personal integrity as well as that of his or her Ministry and the Government;
  - (b) take full personal responsibility for ensuring that no conflict of interest arises, or appears to arise, between his or her public duties and private interests;
  - (c) recognise that public confidence in his or her integrity and impartiality would be damaged if the conflict of interest were to remain unresolved.

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39 These guidelines do not, under the proposed scheme, form part of the Act itself, but would be promulgated in the form of subsidiary legislation (in practice a Schedule to an order made under section 15). In some jurisdictions these guidelines might strictly speaking not qualify as "legislation" as they are not by *themselves* binding, but merely advisory. Thus, a breach of them could not directly lead to prosecution and a potential criminal penalty (although it might involve internal disciplinary measures) but would of course be evidence from which abuse of office under the Act could be inferred.

40 The term used might beg the question as to exactly whom it covers as regards head of a Ministry, etc. (e.g. those whose posts might be of equivalent status – Solicitor General, Auditor General, Chief Parliamentary Counsel, Chief Medical Officer), in which case it might need to be clarified for the purposes of this definition in individual jurisdictions.

41 This is a definition adopted from the OECD.

### Disclosure of interests and liabilities<sup>42</sup>

3. A senior public official must accept full responsibility for:
  - (a) providing adequate disclosure of relevant information in his or her declaration of interests and liabilities, recognising that the Commission's duty under the Act is to make that declaration available for public inspection;
  - (b) informing the Commission when circumstances change or when a new situation arises resulting in a possible conflict of interest.

### Advice of Commission to be followed

4. In general a senior public official must follow the advice of the Commission in matters relating to declaration of private interests and liabilities and, where the Commission judges that the private interests of a senior public official could compromise departmental decisions, the official must be willing to:
  - (a) dispose of assets or other interests;
  - (b) accept any restrictions on their operation directed by the Commission; or
  - (c) if disposal or restriction is not proportionate or practicable, abstain from involvement in any departmental decision which could be compromised by the retention of the asset or interest.

### Refusal of gifts, etc.

- 5(1) A senior public official must refuse to accept a personal gift or hospitality:
  - (a) which might place him or her under an improper obligation, or might reasonably appear to do so;
  - (b) in any event where the value of the gift or hospitality exceeds .... in value;

and must ensure that any gift or hospitality received below that value is recorded in a register of gifts kept for that purpose by the Ministry<sup>43</sup>.

- (2) The register under subparagraph (1) must be made available for inspection by the public.

### Duties of chief officers

6. A chief officer must:
  - (a) take responsibility for drawing up and implementing policies, processes and practices (including the provision of guidance and training) designed to encourage the effective control and management of conflicts of interest;
  - (b) look to the Commission for advice and help on how best to apply these guidelines in an effective, economic and proportionate manner;
  - (c) co-operate with the Commission in the management, scrutiny, investigation and resolution of conflicts of interests;

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<sup>42</sup> The stipulated period within which the declaration must be made is to be prescribed in regulations made under section 15 of the Act.

<sup>43</sup> The requirement to keep such a register is not itself part of the present scheme of legislation. It is submitted that it would better be provided for under more general legislation affecting the Public Service.

- (d) seek the Commission's help so that any conflict of interest issue is resolved in the public interest;
- (e) implement the findings of any of the Commission's investigations;
- (f) be prepared to resign his or her post if so recommended by the Commission.

## Guidelines on Conflict of Interest<sup>44</sup>

### (Public officials other than senior public officials)

#### Interpretation

1. In these Guidelines:

"Act" means the Integrity in Public Life Act;

"chief officer" means the public service head of a Ministry or Government department or the chief executive officer of any other public authority;

"Commission" means the Integrity Commission established by section 6 of the Act;

"conflict of interest" means a conflict between the public duty and private interests of a public official, in which the public official has private interests which could improperly influence the performance of his or her official duties and responsibilities;

"declaration of interests and liabilities" means the declaration required to be made by a public official under section 3 of the Act;

"private interests" and "public official" have the meanings given by section 2 of the Act. Avoidance of conflicts of interest

2. A public official must not allow legitimate interests and affiliations as a private citizen to compromise decisions that he or she must make by virtue of office impartially on their merits, especially where a decision is required in a case where fairness and absence of bias are essential, and in particular must:

- (a) arrange his or her private interests in a manner that preserves public confidence in the official's personal integrity as well as that of his or her Ministry and the Government;
- (b) take full personal responsibility for ensuring that no conflict of interest arises, or appears to arise, between his or her public duties and private interests;
- (c) recognise that public confidence in his or her integrity and impartiality would be damaged if the conflict of interest were to remain unresolved.

#### Disclosure of interests

3(1) A public official must accept full responsibility for:

- (a) providing adequate disclosure to his or her employer of relevant information in his or her declaration of interests and liabilities;

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44 Where notes appear in the guidelines for senior public officials, they are not repeated here.



- (b) informing the employer when circumstances change or when a new situation arises resulting in a possible conflict of interest.
3. The contents of the declaration under subparagraph (1) are to remain confidential unless it is considered by the Commission that it, or relevant extracts from it, are required to be published in order to maintain public confidence in the integrity and impartiality of the public authority by which he or she is employed.

### Advice of head of department to be followed

- 4(1) In general a public official must follow the advice of his or her head of department in matters relating to declaration of interests and, where the head of department judges that the assets or private interests of a public official could compromise departmental decisions, the official must be willing to:
- (a) dispose of assets or other interests;
  - (b) accept any restrictions on their operation directed by the Commission; or
  - (c) if disposal or restriction is not proportionate or practicable, abstain from involvement in any departmental decision which could be compromised by the retention of the asset or interest.
- (2) A public official must be prepared to undergo training provided by his or her employer on how to avoid unacceptable conduct and relationships, especially in areas where the risks of conflict of interest have been identified by the Commission as high.

### Refusal of gifts, etc.

- 5(1) A public official must refuse to accept a personal gift or hospitality:
- (a) which might place him or her under an improper obligation, or might reasonably appear to do so;
  - (b) in any event where the value of the gift or hospitality exceeds .... in value;
- and must ensure that any gift or hospitality received below that value is recorded in a register of gifts kept for that purpose by the Ministry.
- (2) The register under subparagraph (1) must be made available for inspection by the public.

### Duty to co-operate in the implementation of guidelines

1. A public official must:
- (a) co-operate with his or her employer in the arrangements put in place for the management, scrutiny, investigation and resolution of conflicts of interest, and, should a conflict arise, seek any help needed from senior officials so that it is resolved in the public interest;
  - (b) look to senior officials for advice and help on how best to apply these guidelines in an effective, economic and proportionate manner;
  - (c) implement the findings of any investigations including, if necessary, being prepared to resign his or her post.



The Commonwealth