

**CER Code of Business Conduct  
for Members of the Commission**

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Code of Conduct for Members of the Commission	2004	Niamh Drew	
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**Code of Conduct for Members of the Commission – Confirmation of Compliance**

Member of Commission: \_\_\_\_\_

I confirm that:

- I have read and am fully aware of the Code of Conduct for Members of the Commission and,
- I comply, and will continue to comply, with the Code and will confirm compliance with the Code as and when required.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

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## CODE OF BUSINESS CONDUCT

### 1. INTRODUCTION

The Commission for Energy Regulation ('the CER') is the independent body responsible for overseeing the regulation of Ireland's energy and water sectors. The CER was initially established and granted regulatory powers over the electricity market under the Electricity Regulation Act, 1999. The enactment of the Gas (Interim) (Regulation) Act, 2002 expanded the CER's jurisdiction to include regulation of the natural gas market, while the Energy (Miscellaneous Provisions) Act 2006 granted the CER powers to regulate electrical contractors with respect to safety, to regulate to natural gas undertakings involved in the transmission, distribution, storage, supply and shipping of gas and to regulate natural gas installers with respect to safety. The Electricity Regulation Amendment (SEM) Act 2007 outlined the CER's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This market is regulated by the CER and the Northern Ireland Authority for Utility Regulation (NIAUR). The CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector. The introduction of the Petroleum (Exploration & Extraction) Safety Act 2010 has also added to the functions of the organisation. In addition, the Water Services Act 2013 has seen the CER become the economic regulator of the Irish public water and wastewater sector. The Commission's focus in water is on protecting the consumer interest in the setting of charges for water supply and wastewater treatment and disposal.

The CER has developed this Code of Conduct for Members of the Commission as required under:

- State Bodies Guidelines (March 1992);
- Section 2.1 of the Code of Practice for the Governance of State Bodies (2001 and revised & updated by the Department of Finance June 2009);
- Section 8 of the Gas (Interim) (Regulation) Act 2002;

This Code of Conduct also takes into account the relevant provisions and requirements of, amongst others, the Ethics in Public Office Acts 1995 and 2001, the Employment Equality Acts 1998 – 2011, the Equal Status Acts 2000 - 2011, Safety, Health and Welfare Act 2005, the Data Protection Acts 1988 and 2003, Freedom of Information Acts 1997 - 2014, Electricity Regulation Act 1999 and the Gas (Interim) Regulation Act 2002 (as amended). This policy should be read in conjunction with the CER's Entertainment Policy.

The CER Code of Conduct is an important element of the overall framework within which all CER members are required and expected to work in order to ensure that the functions of the CER is carried out effectively. It sets out the standards required of all in the discharge of their duties. These standards of conduct and these values are set in the context of a commitment to excellence and a high quality public service, which strives to maintain high levels of performance and personal responsibility. It aims to establish an agreed set of ethical principles and prevent the development of unethical practices.

## **2. OBJECTIVES**

The objectives of the Code are:

- to set out an agreed set of ethical principles
- to promote and maintain confidence and trust
- to prevent the development or acceptance of unethical practices
- to promote the highest legal, management and ethical standards in all the activities of the CER
- to promote compliance with best current management practice in all the activities of the CER; and
- to set out the standards and behaviour expected of members of the Commission

## **3. GENERAL PRINCIPLES**

Each member of the Commission is required to ensure that the CER's values of

- Integrity
- Impartiality
- Professionalism
- Transparency
- Effectiveness

are constantly reinforced and developed throughout the organisation. In order to achieve these values the following fundamental principles are applicable throughout the organisation:

### **3.1 Integrity**

1. Subject to the Electricity Regulation Act 1999 (as amended) the Commission shall be independent in the performance of its functions.
2. Members of the Commission must ensure that it accounts and reports and accurately reflects its business performance and are not misleading or designed to be misleading.
3. Members of the Commission are required to avoid the use of the CER's resources or time for personal gain and/or for the benefit of persons or organisations unconnected with the CER or its activities.
4. Members of the Commission must not acquire information or business secrets by improper means.
5. Members of the Commission will ensure that the CER complies with best practice with regard to corporate governance.

### **3.2 Transparency & Confidentiality of Information**

1. Members of the Commission must be committed to providing access to information relating the CER's activities in a way that is transparent and that enhances its accountability to the general public.
2. Members of the Commission will ensure that the CER consults with stakeholders in the course of its activities.

3. Members of the Commission are committed to complying with the Ethics in Public Office Acts 1995 and 2001, the Freedom of Information Acts 1997 - 2014, and the Data Protection Acts 1988 and 2003.
4. Members of the Commission are required to disclose outside employment or business interests, which they consider may be in conflict or in potential conflict with the business of the Commission;
5. Members of the Commission should not be involved in outside employment or business interests in conflict or in potential conflict with the business of the Commission;
6. Members of the Commission are required to respect the confidentiality of sensitive information held by the CER. Sensitive information includes commercially sensitive information, personal information and information received in confidence by the Commission. Additionally, section 13 of the Electricity Regulation Act 1999 (as amended) sets out the prohibition of unauthorised disclosure of confidential information obtained by members of the Commission.
7. Members of the Commission will observe the strictest confidentiality in relation to all discussions and decisions taken at meetings of the Commission.
8. Members of the Commission will undertake appropriate consultation procedures with affected parties where it is proposed to release confidential or commercially sensitive information concerning them in the public interest.

### **3.3 Obligations**

1. Members of the Commission will ensure that they and the CER fulfil all regulatory and statutory functions, duties and obligations applicable.
2. Members of the Commission must ensure that its purchasing practices for goods and engagement of consultancy and/or any other services is in compliance with public procurement legislation and best practice guidelines, including the CER's Ethics in Public Procurement annexed to this document. Additionally members must ensure to the extent practicable in the circumstances that prescribed budgets for sanctioning any relevant expenditure are adhered to.
3. Members of the Commission are required to use reasonable endeavours to attend all Commission meetings.
4. Members of the Commission are required to introduce controls to prevent fraud including adequate controls to ensure compliance with prescribed procedures in relation to claiming of expenses for business travel.

### **3.4 Loyalty**

1. Members of the Commission acknowledge the responsibility to be loyal to the CER and to be fully committed to all its activities.
2. Members of the Commission acknowledge their duty to conform to the highest standards of business and professional ethics.
3. Members of the Commission acknowledge their role in leading the organisation to achieve the CER's Mission, acting in the interests of consumers, to ensure that, energy is supplied safely; the lights stay on; the gas continues to flow; a reliable supply of clean water and efficient treatment of waste water; the prices charged are fair and reasonable; and regulation is to best international practice

### **3.5 Fairness**

1. The Commission is committed to complying with employment, equality and equal status legislation.
2. The Commission is committed to fairness and impartiality in all its business dealings and in the performance of its functions and duties.

### **3.6 Work and the External Environment**

1. Members of the Commission will place the highest standards on promoting and preserving the health and safety of employees and in accordance with the Safety, Health and Welfare Act 2005. The CER has a safety statement in place and will continue to implement appropriate measures to protect the safety, health and welfare of all staff and visitors to its business premises.
2. The Commission will ensure that community concerns are fully considered in all its activities and operations.
3. The Commission will endeavour to minimise any detrimental impact of its operations on the environment.
4. The Customer Charter sets out the CER's commitment to a high quality of service to consumers of gas, electricity and water.

### **3.7 Gifts**

1. The receipt of gifts by members of the Commission from those with whom they have official dealings or from persons regulated by the CER must be governed by the highest standards. Members of the Commission will avoid giving or receiving corporate gifts, hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgement on business transactions. The overriding concern is that the actions of members of the Commission be above suspicion and that their actions should not give rise to any actual or perceived conflict of interest.
2. The term "gift" includes any benefit, which is given to a member of the Commission free of charge or at less than its commercial price. Gifts of modest value (e.g. diaries, pens, etc.) may be accepted and retained. It should be noted that under the Ethics in Public Office Acts 1995 and 2001, as an Office Holder, members of the Commission are required to surrender any gift, with a value in excess of €650, given, by virtue of their office, to them or their spouse, their child or a child of their spouse.
3. Members of the Commission may not solicit gifts, support or sponsorship, directly or indirectly from any business with which they have contact through their official duties or persons regulated by the CER.
4. Members of the Commission should not accept special facilities or discounts on private purchases from any business with which they have contact through their official duties or entities or persons regulated by the CER.
5. Members of the Commission should make themselves familiar with the Guidelines on Compliance and with the Provisions of the Ethics in Public Office Acts 1995 and 2001 - Office Holders.
6. It should be noted that, under the Prevention of Corruption Act 1889-1916 as amended by the Ethics in Public Office Act 1995 and 2001, the corrupt giving of gifts to or receipt of gifts by members of the Commission is a criminal offence punishable by imprisonment or fine or both.

### **3.8 Hospitality**

1. The receipt of hospitality, as distinct from gifts, by members of the Commission from those with whom they have official dealings or from persons regulated by the CER must be governed by the highest standards. This includes hospitality which might affect or appear to affect the ability of the donor or the recipient to make independent judgement on business transactions. The overriding concern is that the actions of members of the Commission be above suspicion and that their actions should not give rise to any actual or perceived conflict of interest.
2. Members of the Commission may accept what would be regarded as routine hospitality, such as a business lunch. However, what may be regarded as “routine” for this purpose will depend on a number of factors such as the value of the hospitality offered, the frequency of offers, whether there is an element of reciprocity and the circumstances in which it is offered.
3. Invitations of a social kind (e.g. cultural, sporting or entertainment events) should be declined except where the interests of the Commission can be clearly demonstrated in advance or where these arrangements involve/include other participants in the energy, safety or water market and the business justification is both compelling and exceptional. Acceptance must be agreed in advance and approved by the Chairperson.
4. Members of the Commission must decline certain types of hospitality, for example where travel and/or overnight costs are involved. The only exception to this rule may be when an employee is speaking at a conference and travel and accommodation is provided by the organisers, and only then with the prior approval of the Chairperson.
5. In cases of doubt, where an individual is concerned about issues relating to the acceptance of hospitality, the matter should first be discussed with the Chairperson.

### **3.9 Responsibility**

1. The Commission will circulate this Code of Business Conduct to all members of the Commission. It is the responsibility of the Members of the Commission to review, follow and retain this Code of Business Conduct.
2. The Human Resources Manager will provide practical guidance and direction to the Commissioners as required on such areas as gifts and entertainment and on any other ethical considerations, which may arise from time to time.

The Commission will review this Code from time to time as appropriate.



## **RELEVANT LEGISLATION**

### **GAS (INTERIM) (REGULATION) ACT, 2002**

8.—(1) The Commission shall, following consultation with the Minister, draw up a code of conduct in respect of controls on the interests and ethical behaviour to apply to each member of the Commission and member of the staff of the Commission.

(2) The Commission shall publish any code of conduct drawn up under *subsection (1)*.

### **CODE OF PRACTICE FOR THE GOVERNANCE OF STATE BODIES**

2.1 All State bodies should have written Codes of Business Conduct for Directors and Employees. Typical components of such a code are listed in Appendix B to this document. The requirements of the Companies Acts which relate to the behaviour of directors should be implemented in the case of those State bodies which are statutory boards, even where their legislation does not reflect these requirements. The code for employees, a copy of which should be given to every employee, should embrace such matters as duty to the State body, avoidance of conflict of interest, limits on outside activities, acceptance of gifts and honesty in dealings. The up to date codes of business conduct should be available upon request with a copy of each such code being accessible through the State body's web site (where relevant).

## **Ethics in Public Procurement**

### **1. Introduction**

The purpose of this note is to provide information to assist public sector buyers to conduct purchasing in a way that satisfies probity and accountability requirements and to offer a framework within which contracting authorities may wish to draw up more detailed internal procurement procedures relevant to their own activities.

These guidelines do not purport to be a legal interpretation of the relevant legislation or Circulars. Accordingly, contracting authorities should familiarise themselves thoroughly with the provisions applying.

### **2. Guiding Principles**

It is very important that the public procurement function is discharged with probity, transparency and accountability in a manner that secures best value for public money.

*Probity* requires the purchasing process to be conducted

- ethically;
- honestly; and
- with fairness to all participants

*Transparency* and *accountability* require that the basis for decisions is demonstrably clear and objective and that the purchaser is held to account for the conduct of the procurement process.

Contracting authorities must be cost effective and efficient in the use of resources while upholding the highest standards of integrity. Procurement practices are subject to audit and scrutiny under the Comptroller and Auditor General (Amendment) Act 1993 and Accounting Officers are publicly accountable for expenditure incurred. Management in contracting authorities should ensure that there is an appropriate focus on good practice in purchasing and, where there is a significant procurement function, that procedures are in place to ensure compliance with all relevant guidelines.

### **3. Probity**

In the context of procurement, the aim should be that individuals and organisations are trusted and respected by those with whom they deal and that business is conducted by all parties not only efficiently but in a fair and reasonable manner. Some of the practical implications of ensuring probity in procurement are set out in the following sub-sections.

#### **3.1 Legality**

There is an obligation on officials to exercise their powers lawfully. Officers must be aware of the provisions of the various Acts, Directives, regulations, policies and procedures that are relevant to their function. Compliance with national and EU legal requirements is a duty owed to contractors, suppliers, and service-providers by awarding authorities. Contractors, suppliers, and service-providers who have been treated unfairly or whose rights have been infringed in the public procurement process have a right to legal redress under EU remedies Directives.

If officials are unsure of the legal, policy or procedural requirements, they must seek advice from their line managers.

### **3.2 Disclosure of Interest**

Any form of personal interest which may impinge, or might reasonably be deemed by others to impinge, on a public official's impartiality in any matter relevant to his or her duties should be disclosed in writing to line management. Personal interest includes an interest of a relative or connected person. Line management must then decide if the exercise should be dealt with by another member of staff or seek further advice.

### **3.3 Gifts**

Public officials should not accept benefits of any kind from a third party which might reasonably be seen to compromise their personal judgement or integrity. The actions of public officials must be above suspicion and not give rise to any actual or potential conflict of interest and their dealings with commercial and other interests should bear the closest possible scrutiny.

It is not possible to give guidelines for every conceivable situation that may arise but if a doubt arises about a particular situation line management should be consulted. The following general guidelines provide a framework within which decisions in this area can be made or local rules formulated:

- Gifts must never be solicited, directly or indirectly.
- Subject to local rules, an official may accept and retain gifts of low intrinsic value. Any gift of more significant value should be refused. The policy of the contracting authority and the ethical rules that apply to public officials should be explained to the donor so that reasons for refusal are not misunderstood or offence caused. Particular care should be taken in relation to offers of gifts from donors who stand to derive a personal or commercial benefit from their relationship with the contracting authority concerned.
- Cash, gift cheques or any vouchers that may be exchanged for cash may not be accepted regardless of the amount.
- Public purchasers must never solicit sponsorship for social, sporting, charitable or similar organisations or events from contractors, suppliers or service providers. Where such sponsorship is offered, it may only be accepted when expressly approved in writing by management. (This is not intended to relate to instances of appropriate and acceptable sponsorship of projects or activities which are related to a contracting authority's official activities and are otherwise in accord with public procurement rules).
- Public purchasers must not seek or accept special facilities or discounts on private purchases from contractors, suppliers or service providers with whom they have official dealings.

It should be noted that the Prevention of Corruption Acts 1889 to 2001, as amended by the Ethics in Public Office Act 1995, provide that money, gifts or other consideration received by a public official from a person holding or seeking to obtain a contract from a public body is deemed to have been received corruptly unless the contrary is proved.

### **3.4 Hospitality**

Normal business practice may occasionally justify accepting routine / modest

hospitality from suppliers provided that:

- The frequency and scale of hospitality is not allowed by the recipient to reach a position whereby he or she might be, or might be reasonably deemed by others to have been, influenced in making a business decision as a consequence of such hospitality.
- The number of officers availing of the hospitality is kept to a minimum.
- Invitations do not include provisions deemed to be excessive, such as significant travel, overnight accommodation or trips abroad.
- Availing of the hospitality does not identify the contracting authority in a public way with any particular contractor, supplier or service provider.

Under the Civil Service Code of Standards and Behaviour, which applies to central government departments and offices, offers of hospitality should be reported to line management. Particular care should be taken where suppliers are in the process of tendering for business. In this regard there should be no acceptance of gifts or hospitality from contractors, suppliers or service providers involved in a current tendering process.

#### **4.0 Transparency and Accountability**

Procurement transactions and decisions must in all respects be fair, equitable and ensure value for money. Contracting authorities must be able to justify decisions made and actions taken.

In organising the procurement function, management in contracting authorities must ensure appropriate separation of duties within the procurement cycle. For example, insofar as possible, ordering and receiving goods and services should be distinct from payment for goods and services.

Accurate written records (including computer records) are essential in demonstrating that proper ethical standards have been observed. Therefore, appropriate records should be maintained throughout the purchasing process. These records should provide an audit trail of the reasons for making a particular procurement decision. The type and detail of information that is recorded should be specified in local procedural guidelines and will depend on the complexity or sensitivity of the particular purchasing issue.

#### **5.0 Confidentiality of Information**

The basic rule is that commercially sensitive information must be kept secure and never used for personal gain or to prejudice fair competition. Information on individual contracts must not be given to the media or any other enquirer (except the individual contractor concerned), without the authority of line management. Disclosure of supplier and tender information relating to the tender process prior to contract award, and in particular to another interested party, is strictly prohibited.

After the award of contract, information may be provided in accordance with the detailed guidance on *"Notifying Tenderers and Disclosure of Information"* outlined in the booklet *"Public Procurement Guidelines – Competitive Process"* and published in the general procurement guidance section of [www.etenders.gov.ie](http://www.etenders.gov.ie). Some information on the tendering process may be disclosable under FOI legislation where invoked.

*National Public Procurement Policy Unit / Government Contracts Committee*  
*June 2005*