

*Guidelines for the Carlow Kilkenny Bye-Election of  
22 May 2015.*

*[Candidates and Election agents]*



**Coimisiún um Chaighdeán in Oifigí Poiblí**  
**Standards in Public Office Commission**

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## Introduction

1. Guidelines for the Carlow Kilkenny bye-election have been published by the Standards in Public Office Commission (Standards Commission) under section 4 of the Electoral Act 1997, as amended (the Act).
2. The Guidelines cover the main requirements of the above legislation relating to:
  - disclosure of political donations;
  - limits on the value of donations which may be accepted;
  - prohibited donations;
  - limits on election spending;
  - reimbursement of election expenses to qualified candidates.
3. The Standards Commission was established in December 2001 by the Standards in Public Office Act 2001. The members of the Standards Commission are:
  - The Hon. Mr. Justice Daniel O’Keeffe, former Judge of the High Court, Chairman of the Standards Commission;
  - Mr Seamus McCarthy, Comptroller and Auditor General;
  - Mr Peter Tyndall, Ombudsman;
  - Mr Peter Finnegan, Clerk Assistant of Dáil Éireann;
  - Ms Deirdre Lane, Clerk of Seanad Éireann; and
  - Mr Jim O’Keeffe, former member of Dáil Éireann.

The Standards Commission has a permanent Secretariat which is located at 18 Lower Leeson Street, Dublin 2.

## Useful Information

Value of donation	Net Valuation of donation, including from fundraising events, etc., determines whether a donation needs to be disclosed. <b>Section 22(2)(vi)</b>
€100	An anonymous donation exceeding this amount cannot be accepted in any calendar year. <b>Section 23(1)</b>
€100	On receipt of a donation of this value, a political donations account must be opened (if one has not already been opened) by a candidate at the Dáil bye election. <b>Section 23B(1)</b>
€200	Maximum cash donation that may be accepted by a candidate or his/her political party at the Dáil bye election. <b>Section 23A(1)(iii)</b>
€200	Maximum donation that may be accepted by a candidate or his/her political party at the Dáil bye election from a corporate donor <u>unless</u> the corporate donor is registered in the Register of Corporate Donors maintained by the Commission <u>and</u> a statement, on behalf of the corporate donor confirming that the making of the donation was approved by the corporate donor, is furnished with the donation to the donee. <b>Section 23AA(1)(i) &amp; (ii)</b>
€200	Maximum aggregate donation that a company, trade union, society or building society can give before reporting it in annual returns made under the Companies Act 1963, or to the Registrar of Friendly Societies or the report of a building society (under the Building Societies Act 1989). <b>Section 26</b>
€600	All donations received by a candidate at the Dáil bye election exceeding this amount must be disclosed on the Donation Statement. <b>Section 24(4)</b>
€1,000	Maximum donation that may be accepted by a candidate at the Dáil bye election in any calendar year from an individual or a registered corporate donor. <b>Section 23A(1)(i)</b>
€1,500	All donations received by a political party exceeding this amount must be disclosed on the Donation Statement. <b>Section 24(4)</b>
€1,500	Reporting threshold/maximum aggregate amount in any calendar year that a donor can give to multiple candidates of the same party or to the party itself before the donor is required to submit a donation statement. <b>Section 24(1A)(a)</b>
€2,500	Maximum donation that may be accepted by a political party, sub-unit of a political party, or a third party from an individual or a registered corporate donor in any calendar year. <b>Section 23A(1)(ii)</b>

## Relevant dates

<b>29 April 2015 to 22 May 2015</b>	Election Period
<b>€45,200</b>	Spending Limit for a 5 seat Constituency
<b>6 July 2015</b>	Claims for payment of election expenses, from suppliers, must be received by the election agent by this date
<b>17 July 2015</b>	Date by which Election Statements, unsuccessful candidates' Donation Statements/Certificate of Monetary Donations/Bank Statements must be furnished to the Standards Commission

## Tax Clearance

<p>The successful candidates will be required to provide:</p> <p>a Tax Clearance Certificate (or Application Statement) issued not more than <b>nine</b> months either side of the election date (i.e., the date on which the returning officer declares the person elected),</p> <p style="text-align: center;">and</p> <p>a Statutory Declaration, made not more than <b>one</b> month either side of the election date, to the effect that, to the best of their knowledge, their tax affairs are in order and that nothing prevents the issue of a Tax Clearance Certificate.</p>
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## **Chapter 1 - Candidates**

The following are the key issues of which candidates should be aware in order to ensure compliance with the requirements of the legislation.

- 1.1. Appointment of an election agent
- 1.2. Assignment of a portion of spending limit to his/her political party
- 1.3. Donations
- 1.4. Opening and maintaining a political donations account
- 1.5. Prohibited Donations
- 1.6. Persons who may be incurring unauthorised expenditure
- 1.7. Furnishing the required statutory documentation
- 1.8. Claiming a reimbursement of election expenses
- 1.9. Offences and penalties



## 1.1 Appointment of an election agent

- 1.1.1 Each candidate shall appoint an election agent. The election agent, for the purposes of this Act, is the person who will be responsible for accounting for expenditure on the candidate's campaign. The election agent appointed under this Act is not necessarily the same person who will be present on the candidate's behalf for the counting of votes and who acts on the candidate's behalf for other specific purposes set out in the 1992 Electoral Act.
- 1.1.2 Ideally, the appointment of the candidate's election agent should be made before any election expenses are incurred. If election expenses are incurred before the election agent is appointed, the candidate must give the election agent details of any such expenses together with all relevant invoices/receipts. It is an offence for a candidate to fail to comply with this requirement.
- 1.1.3 Candidates should give careful consideration to the appointment of an election agent. The election agent should be comfortable with keeping accounts. He/she must maintain proper records of all transactions relating to spending on the candidate's election campaign and retain receipts, invoices or vouchers for inspection, and for public display, by the Standards Commission.
- 1.1.4 The candidate must notify the Returning Officer for the constituency, in writing, of the name of the election agent and the address of the office of the agent. This must be done not later than the last day for receiving nominations at the election, 12 noon, Friday 8 May 2015. There is no provision on the nomination papers for the candidate to give details of his/her election agent. The Standards Commission has issued a form to the Returning Officer which a candidate may use to give details of his/her election agent. The Returning Officer will inform the Standards Commission of the name and address of the election agent appointed. It is very important that candidates ensure that the person notified to the Returning Officer is the person they intend having as their election agent (i.e., the person who will be responsible for accounting for expenditure on the candidate's campaign). The Standards Commission will accept an Election Expenses Statement only from the person notified to it by the Returning Officer as the candidate's election agent.
- 1.1.5 A candidate may act as his/her own election agent. If a candidate does not notify the Returning Officer of the appointment of an election agent by the last day for receiving nominations he/she will be deemed to be acting as his/her own election agent. A candidate who acts as his/her own election agent will also be required to comply with the provisions of the Act applying to election agents (see Chapter 2).
- 1.1.6 A candidate's election agent can authorise other people, including the candidate, to incur expenses or make payments in connection with the candidate's campaign. A person who is authorised in this way is entitled to incur expenses or make payments only within the specific financial limit laid down by the election agent. The national agent of a candidate's political party, the candidate's election agent or a person authorised by the candidate's election agent are the only persons who can incur expenses or make payments in connection with the candidate's election campaign. The election agent must subsequently account for such expenses or payments.
- 1.1.7 A candidate may, at any time, revoke the appointment of an election agent (including his/her own appointment as election agent). Where the appointment of an election agent has been revoked, **it is the candidate who must notify the Returning Officer in writing** of the name and address of the new election agent (including the candidate's own details if he/she intends to act as his/her own election agent). **The Returning Officer must then advise the Standards Commission in writing of the change of election agent and his/her contact details. The Standards Commission cannot**

accept an Election Expenses Statement (EES) if the Election Agent notified to it by the Returning Officer does not match the name of the Election Agent on the EES.

## Non-party candidates may proceed to Paragraph 1.3

### 1.2 Assignment of a portion of a candidate's statutory spending limit to his/her political party

- 1.2.1 If a candidate is contesting the election on behalf of a political party he/she must agree, in writing, with the party, the amount of the candidate's spending limit which the candidate is assigning to the party. The candidate is not legally required to make any assignment to the party. If, however, an assignment is made by a candidate to the party, the spending limit of the candidate's own election agent is reduced by that amount. The national agent of the candidate's political party can, out of the amount which has been assigned by the candidate to the party, incur expenses or make payments on behalf of the candidate. Under no circumstances can total spending on a candidate exceed the statutory spending limit for the candidate.

The following is an example of how the spending limit is calculated following assignment by the candidate to the party:

Statutory Spending Limit	<b>€45,200 (5 seat Constituency)</b>
Amount Assigned by Candidate	<b><u>€10,000</u></b>
Amount Election Agent Can Spend	<b>€35,200</b>

- 1.2.2 The Act does not specify when the agreed assignment between the candidate and the political party should be made. Similarly, the Act does not preclude a re-negotiation of the agreed assignment. The Standards Commission strongly advises, however, that the agreed assignment should be finalised before any expenses are incurred by either the candidate's election agent or the party's national agent.
- 1.2.3 The Act provides that the amount assigned to a political party must be agreed **in writing** between the candidate and the party. The written agreement, therefore, should clearly state the amount assigned to the party and should be signed by the candidate and the appropriate party official. Where assignments are re-negotiated, a new written agreement must be made. A copy of the written agreement should be given to the candidate's election agent. The election agent will be required to furnish a copy of the written agreement with his/her Election Expenses Statement.

### 1.3 Donations

#### (a) Keeping a record of donations

- 1.3.1 It is the candidate who is required to comply with the requirements of the Act regarding the recording and disclosure of donations. It is important, therefore, that candidates keep a record of donations received in relation to the election for the purposes of furnishing a Donation Statement to the Standards Commission after the election (see section 1.7). Candidates should know the name, address, description and postal address of the donor.

1.3.2 The candidate is also responsible for ensuring that donations accepted by him/her are not prohibited under the Act (see section 1.5). This is particularly important where donations are received online. Where a candidate is accepting donations through a website he/she must ensure that he/she can properly identify the source of the donation and that he/she is not prohibited from accepting a donation from the donor. It is also important for disclosure purposes and for the purposes of adhering to the maximum acceptance limit that the candidate has a system in place which will aggregate all donations whether received online from the same donor (by credit card, laser card etc.) and/or received by other means.

### 1.3.3 **Limits and Thresholds**

The Electoral (Amendment) (Political Funding) Act 2012 reduced the maximum donation that can be accepted by individuals and political parties and it also reduced the disclosure thresholds. See "[Useful Information](#)" at page 6. [Section 1.5](#) below provides further details regarding donations which cannot be accepted while [section 1.7](#) provides further details concerning candidates' disclosure requirements.

#### **(b) What is a donation?**

1.3.4 A donation is defined in the Act as meaning any contribution given for political purposes to any member of either House of the Oireachtas; a member of the European Parliament; a candidate at a Dáil, Seanad, European or Presidential election; a presidential election agent; a third party; a political party or a sub-unit of a political party (e.g. all branches, accounting units, cumann, a Comhairle Dáil Ceantair or any other sub-unit of a party, etc.), and includes all or any of the following, namely:

- i. a donation of money;
- ii. a donation of property or goods;
- iii. the free use of property or goods (i.e. conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods);
- iv. a free supply of services (i.e. the supply of services without payment or other consideration);
- v. the difference between the usual commercial price and the (lower) price charged for the purchase, acquisition or use of property or goods, or the supply of any service, where the price, fee or other consideration is less than the usual commercial price (this can include a loan provided by a third party or by a financial institution at terms and conditions which are more favourable than that provided by a financial institution to other individuals in the normal course of business);
- vi. a contribution made by a person to a fund-raising event organised for the purpose of raising funds for a political purpose. The donation is that proportion of the contribution which is attributable to the net profit, if any, deriving from the event. Donations are deemed to have been received on the date of the actual fund-raiser (and not when actually received). The position with regard to fund-raising events is explained in greater detail in Appendix 2 of these guidelines;

- vii. a payment by the person on their own behalf, or on behalf of one or more than one other person, of a fee or subscription for membership or continued membership of a political party (membership fees include any membership fees/levies/subscriptions paid to any sub-unit of a political party);
- viii. a notional donation/donation in kind. This means that where a person/organisation pays for work/expenses from its own resources (i.e. not party funds) then this is considered a donation of the notional value/cost of the work/expenses to the donee. Donations in kind or notional donations are to be valued at the usual commercial price charged for the purchase, use or acquisition of the property or goods or the supply of any service donated.

- 1.3.5 A donation made to a member of either House of the Oireachtas; a member of the European Parliament; a candidate at a Dáil, Seanad, European or Presidential election; a presidential election agent; a third party; a political party or a sub-unit of a political party (e.g. all branches, accounting units, cumainn, Comhairle Dáil Ceantair or any other sub-unit of a party, etc.), through an intermediary, agent or other person acting for the donee shall be deemed to be a donation made to the donee directly.
- 1.3.6 If the same person makes more than one donation to a Member, candidate, sub-unit or political party the values of the donations must be aggregated and treated as a single donation for the purpose of observing both the disclosure and the maximum acceptance limits applying to donations.
- 1.3.7 If more than one member of the same family, or other group, make donations to the same Member, candidate or presidential election agent, sub-unit or political party, including where donations of money are made from a joint account in a financial institution, it must be clear that these are separate donations from each of the individuals/party concerned. Otherwise, the values of the donations must be aggregated and treated as a single donation for disclosure purposes and for the purpose of observing the maximum limit applying to the acceptance of donations. Similarly, if a company and any of its directors make a donation to the same Member, candidate or presidential election agent, sub-unit or political party it must be clear that these are separate donations. In such circumstances the Standards Commission may look for evidence that the donations are from separate legal entities. In each case, the election agent and/or candidate/presidential election agent, sub-unit or political party must make whatever enquiries are necessary in order to be satisfied as to the position with regard to the donation.
- 1.3.8 A donation made to a political party, whether made directly or through an intermediary, is deemed to be a donation to the party if it is made to party headquarters or to any branch or subsidiary of the party or if it is made to any officer, member or agent of the party or of any branch or subsidiary thereof.
- 1.3.9 A donation made to a TD, Senator or MEP of a political party or to a candidate of a political party to a Dáil, Seanad or European election is deemed to be a donation made to the party, if the donation is passed on to the party by the recipient and he/she receives a written acknowledgement of the donation from the party.

1.3.10 A "person" can be:

- (i) an individual;
- (ii) a body corporate (e.g., a public or private company) and any subsidiary thereof. In this regard section 155 of the Companies Act should be applied when determining whether a company is a subsidiary of another company. Where donations are received from associated companies the candidate should enquire from the donors whether, under section 155 of the Companies Act, one or other of the companies is a subsidiary of the other;
- (iii) an unincorporated body of persons, e.g., a political party, a partnership, a residents association, a lobby group.

A "corporate donor" is defined as including:

- (i) a body corporate;
- (ii) an unincorporated body of persons; or
- (iii) a trust

which makes a donation. A body corporate and any subsidiary thereof are deemed to be one person.

1.3.11 Donations with a value, or donations from the same person with an aggregate value of more than **€600** must be disclosed. Where the same person makes more than one donation to a candidate in relation to the election, the values of the donations must be aggregated and treated as a single donation for disclosure purposes.

1.3.12 A donation to a candidate also includes money given to a candidate by his/her political party.

1.3.13 Where expenses are incurred on a candidate's behalf by an individual or body other than a political party as defined in the Act and the expenses are borne by the individual/body, the expenses may be regarded as a donation to the candidate.

**(c) What is not a donation**

1.3.14 Items that are not regarded as donations to a candidate include:

- (i) free post service provided to candidates by An Post;
- (ii) any payment, service or facility provided to the candidate out of public funds or moneys provided by an institution of the European Communities or other intergovernmental organisation to which the State is a party, pursuant to specified legislation, by virtue of the candidate being:
  - *a representative in the European Parliament;*
  - *a member of the Seanad;*
  - *the holder of a qualifying office or position;*
  - *the holder of an elective or other public office; or*

- *a member of, delegate to, or representative in a body established by or under an agreement or arrangement to which the State is a party;*

It is important to note that this provision only applies where the candidate by virtue of his/her position or office, is entitled to use the services/facilities provided out of public funds. For instance, if a candidate who is not a Member of the Houses of the Oireachtas is provided with the free use of Oireachtas facilities (e.g., telephones), it is regarded as a donation from the Member allowing the candidate to avail of the facilities.

- (iii) a free service provided by an individual, including use of the individual's motor vehicle, private telephone, etc., where the service provided is not part of the individual's work or business. It is important to note that the reference in this particular provision of the Act (section 22(b)(iii)(I) is specific to an individual and to the use of an individual's motor vehicle (singular). If more than one vehicle is provided by an individual, the additional vehicles may be regarded as donations and as election expenses. If a vehicle which is in the ownership of a company, partnership, business etc., is provided to a candidate, it is not regarded as a free service provided by an individual. In such circumstances the use of the vehicle is regarded as a donation and as an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of disclosing its value as a donation and for the purposes of disclosing its use during the election period, as an election expense;
- (iv) a service provided at an election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit-in-kind other than his/her normal remuneration (including recoupment of expenses) for that service;
- (v) normal media coverage and the transmission on radio or television of a broadcast on behalf of the candidate; [This does not cover any production, or other costs associated with such a broadcast.];
- (vi) expenses incurred or payments made by a political party on behalf of the candidate;
- (vii) the services of an accountant, or other person, who is engaged for the specific purpose of assisting compliance with the requirements of the legislation;
- (viii) the services of personation officers on polling day.

**(d) Expenses incurred by an organisation or body (other than a registered political party)**

- 1.3.15 As stated in paragraph 1.3.14(vi) above, expenses incurred by a political party on behalf of a candidate are not regarded as a donation to the candidate. A political party is defined in the Act as a party registered in the Register of Political Parties (in accordance with section 25 of the Electoral Act 1992) as a party organised to contest a Dáil or European election or both such elections. Only expenses incurred by a registered political party are not regarded as a donation to a candidate. If an organisation is not registered in the Register of Political Parties as a party organised to contest a Dáil or European election it is not regarded as a political party for the purposes of the Act. In that regard, therefore, expenses incurred by "third parties" on a candidate are regarded as donations to the candidate and are subject to disclosure limits and to the rules regarding prohibited donations (see paragraphs 1.5 below).

### **(e) Loans to candidates**

- 1.3.16 Where a loan is provided to a candidate by a financial institution and the normal rules attaching to such loans apply, the loan is not regarded as a donation to the candidate. However, where a loan is provided to a candidate by a financial institution in circumstances where either the interest charged is less than the lowest rate available from the financial institution or the loan is not repaid in accordance with the terms and conditions under which the loan was issued or is only partially repaid, the benefit to the candidate may be regarded as a donation and may, therefore, be subject to the disclosure and maximum limits applying to the acceptance of donations.
- 1.3.17 Where an individual or body, who or which is not a financial institution, gives a loan to a candidate, it must be evident that the loan offered is a bona fide loan. In that regard the following would apply:
- (i) as with a loan from a financial institution, the terms and conditions applying to the loan and its repayment must be stated clearly in writing;
  - (ii) interest is chargeable on the loan at a rate (whether fixed or variable) which reflects the interest charged by financial institutions on loans of a similar amount and duration. Where the interest charged is less than the lowest rate available from a financial institution, the benefit accruing from the difference in rates is regarded as a donation to the candidate;
  - (iii) the Standards Commission may require sight of the terms and conditions, including the interest charge, applying to the loan and may require confirmation that the loan has been repaid in accordance with these terms and conditions. If the loan is not repaid in accordance with the terms and conditions, or is only partly repaid, the benefit of such non-repayment may be regarded as a donation to the candidate.

## **1.4 Opening and maintaining a political donations account**

- 1.4.1 If a candidate receives, in any particular calendar year, a monetary donation, the value of which exceeds **€100** he/she must open and maintain a political donations account in a financial institution in the State. [A credit union is not regarded as a "financial institution" for the purposes of the legislation]. The candidate must lodge that donation and any further monetary donations, of whatever value, received by him/her to that account. The account should be separate from any other personal account held by the candidate. The account should be in the candidate's name and he/she should be the authorised signatory on the account. All monies withdrawn from the account must be used for political purposes.
- 1.4.2 If a candidate already operates a political donations account he/she should not open a separate political donations account specifically for the election. The candidate should ensure, instead, that all monetary donations, of whatever value, received in relation to the election are lodged to his/her existing political donations account. If the candidate wishes to open a specific "election account" he/she can transfer money from his/her political donations account to the election account. Monies transferred to an election account could be regarded as having been used for electoral purposes.
- 1.4.3 It should be noted that a candidate who is elected will have an ongoing requirement as a member of Dáil Éireann to maintain his/her political donations account and will be required, on an annual basis, to furnish documentation relating to the account to the Standards Commission.

## 1.5 Prohibited donations

### (a) Anonymous donations

- 1.5.1 Acceptance of an anonymous donation exceeding a value of **€100** is prohibited. A donation is anonymous if a candidate does not know the name **and** address of the donor. The onus is on the recipient to ensure that the name and address of the donor is known. If a prohibited anonymous donation is received by a candidate, the Standards Commission must be notified by the candidate within fourteen days of its receipt. The donation or its value must also be remitted by the candidate to the Standards Commission.

### (b) Cash donations in excess of €200

- 1.5.2 Acceptance of a cash donation exceeding **€200** in value is prohibited.
- 1.5.3 If such a donation is received, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor or the part of it exceeding the limit and keep a written record of the return for the purpose of it being furnished to the Standards Commission, if required; or, the recipient must, within fourteen days of receipt, notify the Standards Commission of receipt of the donation and remit the donation or the part of it exceeding the limit to the Standards Commission.

### (c) Donations by non-registered corporate donor in excess of €200

- 1.5.4 It is prohibited to accept a donation exceeding **€200** in value from a corporate donor unless the corporate donor is registered in the Register of Corporate Donors maintained by the Commission and a statement is made on behalf of the corporate donor (and furnished with the donation to the donee) confirming that the making of the donation was approved by the corporate donor. The statement must be accompanied by a statutory declaration that to the best of the knowledge and belief of the person concerned, the statement is correct in every material respect and that the person has taken all reasonable action in order to satisfy him/herself as to the accuracy of the statement.
- 1.5.5 If a donation is received from a non-registered corporate donor, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor or, if it is a monetary donation, the part of it exceeding the limit and keep a written record of the return for the purpose of it being furnished to the Standards Commission, if required; or, the recipient must, within fourteen days of receipt, notify the Standards Commission of receipt of the donation and remit the donation or, if it is a monetary donation the part of it exceeding the limit to the Standards Commission.

### (d) Foreign donations

- 1.5.6 A candidate must not accept a "foreign donation". A foreign donation is a donation of whatever value, given by an individual (other than an Irish citizen) who resides outside the island of Ireland or by a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which the carrying out of one or more of its principal activities is directed. The onus is on the recipient of the donation to satisfy him/herself that the donor is an Irish citizen.
- 1.5.7 A foreign donation must be notified and remitted to the Standards Commission by the candidate within 14 days of its receipt. As an alternative, the candidate may return the donation to the donor. If the donation is returned, the candidate must keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.



**(e) Donations in excess of the prescribed limit**

- 1.5.8 The maximum value of donation(s) which may be accepted by a candidate from a particular person in a particular calendar year, either directly or through an intermediary, is **€1,000**. Where a person makes more than one donation to a candidate in a particular year the values of the donations must be aggregated for the purpose of observing the maximum limit.
- 1.5.9 The maximum limit does not apply to a constituency office provided to the candidate by a person or, if more than one such office is provided, to whichever of the offices is nominated in writing by the candidate. It is important to note that although the maximum limit may not apply to a donation of a constituency office, such a donation must be disclosed if the value exceeds **€600**.
- 1.5.10 The maximum limit does, however, apply to **monetary** donations received by a candidate from his/her political party. Donations of money from any branch of the party (including party headquarters) must be aggregated for the purpose of observing the maximum limit and treated as a single donation from the party.
- 1.5.11 Where a donation is received and is prohibited because its value is over the limit, the candidate must notify the Standards Commission within 14 days of its receipt and remit the donation, or that part of a monetary donation which is over the limit, to the Standards Commission. As an alternative, the candidate may return the donation, or that part of a monetary donation which is over the limit, to the donor and keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

**(f) Other prohibited donations**

- 1.5.12 There is another type of donation which a candidate is prohibited from accepting. To explain this it is necessary to say that, in accordance with section 24(1A) of the Act, individual donors who make donations, with a total value in excess of **€1,500** in any calendar year, to two or more members of the same political party (or to a political party and one or more of its members), are themselves required to furnish a Donation Statement and Statutory Declaration to the Standards Commission disclosing details of the donations. If the donor in question does not intend to comply with this requirement, and if a candidate is aware of this, the candidate is prohibited from accepting a donation from the donor.
- 1.5.13 If such a prohibited donation is received by a candidate, the Standards Commission must be notified by the candidate within 14 days of its receipt. The donation, or its value, must also be remitted by the candidate to the Standards Commission.
- 1.5.14 *Failure to notify, remit or return, as appropriate, a prohibited donation is an offence.*

**1.6 Persons who may be incurring unauthorised expenditure to promote/oppose candidates at the election**

- 1.6.1 It is an offence for a candidate, or anybody else, including, for example, a local branch of a political party, to incur expenses or make payments in connection with a candidate's campaign if this is not authorised by the candidate's election agent or the national agent of the candidate's political party. This includes accepting a donation of election material or a service, e.g., leaflets or advertising, either free or below commercial price.

- 1.6.2 Notices or advertisements in newspapers, magazines or other periodical publications which promote or oppose the interests of a political party or a candidate may be placed only if requested by a candidate, a candidate's election agent, a national agent of a political party or a person authorised in writing by the candidate or either agent.
- 1.6.3 "Third parties" or "other persons" may place notices or advertisements in newspapers, magazines or periodical publications if they produce to the publisher a Certificate of Authorisation from the Standards Commission confirming that they have complied with their legal obligations. This Certificate is issued by the Standards Commission when all the relevant information is received from the third party/other person. The Standards Commission will notify publishers of the requirements of the Act in this regard.
- 1.6.4 Each candidate is advised to be aware of any such expenditure being incurred on his/her behalf by directors of elections or other persons. If a candidate becomes aware that a person, other than his/her election agent or the national agent of the political party, is incurring expenses on his/her behalf at the election, the candidate should ensure that this has been authorised by either such agent. If it has not been authorised, the person incurring the expenses would be committing an offence unless a certificate to incur the expenses has been issued to the person by the Standards Commission. If necessary, the candidate should bring the matter to the attention of the Standards Commission and appropriate action will be taken.

## 1.7 Furnishing the required statutory documentation after the election

### (a) Unsuccessful candidates

- 1.7.1 If a candidate is **unsuccessful** at the election, he/she must, **within 56 days** after polling day (i.e., by 17 July 2015), furnish to the Standards Commission a Donation Statement and Statutory Declaration. The Donation Statement must give details of all donations received **in relation to the election** with a value greater than **€600**. Donations made by the same person to the same candidate in relation to the election must be aggregated and treated as a single donation. It should be noted that "in relation to the election" means donations received at any time in relation to the election and is not limited to the year in which the election took place.
- 1.7.2 The Donation Statement and Statutory Declaration must be furnished whether or not the candidate received a donation. If no donation was received, a "nil" return **must** be made to the Standards Commission.
- 1.7.3 If a monetary donation in excess of **€100** was received and the candidate was required to open a political donations account (see paragraph 1.4.1), or if the candidate already had a political donations account, the Donation Statement must be accompanied by a statement provided by the financial institution where the account is held (bank statement). If a new political donations account was opened the bank statement must specify the transactions (i.e. lodgements and withdrawals) that have taken place in relation to the account during the period beginning on the date of opening of the account and ending on polling day at the election. If an existing political donations account was used the bank statement must specify the transactions which have taken place on the account since 1 January 2015. The Donation Statement must also be accompanied by a Certificate of Monetary Donations certifying that all monetary donations received after the account was opened were lodged to the account and all amounts debited from the account were used for political purposes. The Certificate must be signed by the candidate and accompanied by a Statutory Declaration.

- 1.7.4 Failure to send a Donation Statement and all accompanying documentation to the Standards Commission within 56 days of polling day is an offence.
- 1.7.5 The Standards Commission Secretariat will contact all candidates before the election and will provide the following forms for completion where relevant:

- Donation Statement
- Certificate of Monetary Donation
- Election Expenses Statement
- Statutory Declaration

Assistance in completing the forms, including advice in relation to what is or is not a donation in any particular case, will also be available on request.

- 1.7.6 Copies of Donation Statements and Statutory Declarations furnished by unsuccessful candidates will be laid by the Standards Commission before both Houses of the Oireachtas and will be made available for public inspection at the offices of the Standards Commission. Details of donations disclosed will be published on the website of the Standards Commission.
- 1.7.7 Certificates of Monetary Donations/Statutory Declarations and statements from financial institutions are retained by the Standards Commission and are not put on public display or otherwise disclosed, unless ordered by a court to do so or disclosure is required in connection with an investigation held by the Standards Commission.

**(b) Successful candidates**

- 1.7.8 If a candidate is **elected** at the election, he/she will **not** be required to submit a Donation Statement, Statutory Declaration and Certificate of Monetary Donation within 56 days after polling day. Instead, he/she will be required, as a member of Dáil Éireann, to furnish an annual Donation Statement, Statutory Declaration and Certificate of Monetary Donation to the Standards Commission by 31 January each year. Forms for this purpose will be provided to TDs by the Standards Commission in early January each year.
- 1.7.9 The Donation Statement/Statutory Declaration and accompanying documentation submitted by TDs must include donations with a value, or aggregate value from the same person, greater than **€600** received during the previous calendar year. The statement from the financial institution must specify the transactions that have taken place on the account during the previous calendar year.

**(c) Tax Clearance Requirements**

- 1.7.10 Pursuant to section 21 of the Standards in Public Office Act 2001, successful candidates must provide the following to the Standards Commission within nine months of their election:
- a Tax Clearance Certificate (or Application Statement) issued not more than **nine** months either side of the election date, and
  - a Statutory Declaration, made not more than **one** month either side of the election date, to the effect that, to the best of their knowledge, their tax affairs are in order and that nothing prevents the issue of a Tax Clearance Certificate.

A Tax Clearance Certificate/Application Statement is issued by the Collector General, Office of the Revenue Commissioners. More detailed instructions will be provided by the Standards Commission to the successful candidate after the election.

## 1.8 Claiming a reimbursement of election expenses

- 1.8.1 A qualified candidate is entitled to apply for a reimbursement of election expenses. In order to qualify for a reimbursement, a candidate must either:
- be elected; or
  - if not elected, have exceeded one quarter of what would have been the quota in that constituency were the full number of members of the Dáil for the constituency to be elected.
- 1.8.2 The maximum amount which may be reimbursed is the lesser of **€8,700** or the actual amount of the election expenses incurred on behalf of the candidate.
- 1.8.3 In calculating the amount of the reimbursement it should be noted that account may be taken of:
- expenses incurred on behalf of the candidate and accounted for by the candidate's election agent; and
  - expenses incurred on behalf of the candidate by the candidate's political party and accounted for by the national agent.
- 1.8.4 In order to certify a reimbursement of a qualified candidate's election expenses, the Standards Commission must have received the following documentation:
- completed election agent's Election Expenses Statement/Statutory Declaration;
  - completed national agent's Election Expenses Statement/Statutory Declaration;
  - supporting invoices, vouchers or receipts;
  - in the case of an unsuccessful candidate, the candidate's completed Donation Statement, Statutory Declaration and Certificate of Monetary Donation.
- 1.8.5 When the Standards Commission has received the relevant statutory documentation and is satisfied as to its correct completion, it will issue a reimbursement application to the candidate. **The Standards Commission will not issue any application for a reimbursement of election expenses until the correctly completed documentation has been received.**
- 1.8.6 On receipt of the completed application, the Standards Commission will certify to the Department of Public Expenditure and Reform the amount which should be reimbursed to the candidate. The Department of Public Expenditure and Reform pays the reimbursement of election expenses by electronic funds transfer. To facilitate this payment to the candidate's bank account, the Department requires the candidate's bank account and contact details. This information is not made available to the public.
- 1.8.7 The reimbursement is made to the candidate by the Department of Public Expenditure and Reform and is not regarded as a donation to the candidate.

- 1.8.8 A candidate is not required by the Act to pass on any part of the reimbursement to his/her political party. If a reimbursement is passed on by a candidate to the candidate's political party, it is not required to be disclosed by the party as a donation unless the amount passed on exceeds by more than **€1,500** the total amount spent on the candidate by the party at the election.

## **1.9 Offences and penalties applicable to candidates at the election**

- 1.9.1 It is an offence for the candidate to fail to furnish to the election agent relevant details of expenses incurred before the appointment of an election agent, in sufficient time to enable the agent to carry out his/her duties.
- 1.9.2 After an election agent has been appointed, it is an offence for a candidate to incur election expenses unless authorised to do so by his/her election agent or the national agent of his/her political party.
- 1.9.3 Knowingly accepting a prohibited donation, referred to in paragraph 1.5.4 above, may result in a fine of up to **€1,269.74**
- 1.9.4 Failure to take the appropriate action in relation to a prohibited donation as specified in paragraph 1.5.1 (anonymous donations), paragraph 1.5.2 (cash donations), paragraph 1.5.6 (foreign donations) or paragraph 1.5.8 (donations in excess of the prescribed limit) may result in a fine of **€1,269.74**
- 1.9.5 Failure to furnish to the Standards Commission a Donation Statement, Certificate of Monetary Donations or a statement from a financial institution, within the statutory deadline (17 July 2015, for unsuccessful candidates) may result in a fine of up to **€1,269.74** In addition, there can be an on-going fine of up to **€126.97** per day for each day, after a conviction, on which the above statutory documentation is still outstanding.
- 1.9.6 Knowingly furnishing to the Standards Commission a Donation Statement or Statutory Declaration, Certificate of Monetary Donations, or a statement of a financial institution, which is false or misleading may result in a fine of up to **€25,394.76** and/or up to 3 years imprisonment.

## Chapter 2 - Candidates' Election Agents

The key issues of which the election agent of a candidate at the election should be aware in order to ensure compliance with the requirements of the legislation are as follows:

- 2.1 Appointment as an election agent
- 2.2 Main functions of an election agent
- 2.3 Spending limits for the election
- 2.4 Assignment by a candidate of a portion of his/her statutory spending limit to his/her political party (if contesting the election as a party candidate)
- 2.5 "The Election Period" - dates between which the spending limit applies
- 2.6 Persons who may be incurring unauthorised expenditure to promote or oppose candidates at the election
- 2.7 What are election expenses?
- 2.8 What are not election expenses?
- 2.9 Payment of invoices to suppliers
- 2.10 Furnishing an Election Expenses Statement after the election
- 2.11 Consequences of overspending by an election agent
- 2.12 Offences and penalties applicable to election agents at the election

## 2.1 Appointment as an election agent

- 2.1.1 Each candidate must appoint an election agent. For the purposes of the Act the election agent is the person who is responsible for accounting for expenses incurred on the candidate's behalf during the election campaign. The election agent must have an office or place in or convenient to the constituency to which claims, notices, writs, summonses and other documents may be sent.
- 2.1.2 The candidate must supply the name and office address of the election agent, in writing, to the Returning Officer for the constituency in which the candidate is standing. This must be done not later than the last day for receiving nominations at the election, 12 noon, Friday 8 May 2015. The Returning Officer will subsequently provide the election agent's details to the Standards Commission.
- 2.1.3 There is no provision on the nomination papers for the candidate to give details of his/her election agent. The candidate must, therefore, provide such details separately to the Returning Officer. The Standards Commission has issued a form to Returning Officers which a candidate may use to give details of his/her election agent. It is very important that the correct details of the person appointed as election agent (i.e., the person who will account for expenditure on the candidate's campaign) are notified to the Returning Officer on this form. The Standards Commission will accept an Election Expenses Statement only from the person notified to it by the Returning Officer as the candidate's election agent. The election agent should ensure that the candidate has notified his/her correct details to the Returning Officer.
- 2.1.4 A candidate may act as his/her own election agent. A candidate who does not notify the Returning Officer of the appointment of an election agent by the last day for receiving nominations is deemed to be acting as his/her own election agent. A candidate acting as his/her own election agent is required to comply with the requirements of the Act both as a candidate and as an election agent. The candidate can revoke the appointment of his/her Election Agent at any time. If this situation arises, it is the **candidate only who MUST notify the Returning Officer, in writing, of the revocation of one Election Agent and the appointment of another, along with contact details. Following notification of a change of Election Agent, the Returning Officer must notify the Standards Commission, in writing, of the revocation of one election agent and the appointment of another, along with the new contact details. The Standards Commission cannot accept an Election Expenses Statement (EES) if the Election Agent notified to it by the Returning Officer does not match the name of the Election Agent on the EES.**

## 2.2 Main functions of an election agent

- 2.2.1 The election agent is the key link for the Standards Commission in relation to expenditure incurred on the candidate's behalf at the election. He/she should be comfortable with keeping accounts.
- 2.2.2 The main function of the election agent is to authorise and control spending connected to the candidate's election campaign and to account for such spending.
- 2.2.3 Subject to what is stated at paragraphs 2.2.4 and 2.2.5 below, the election agent is the only person who may incur expenditure or make payments on behalf of the candidate. All invoices, receipts or vouchers must be provided to the election agent and retained by him/her for the purposes of completing his/her Election Expenses Statement.

- 2.2.4 A candidate cannot incur any expenses or make any payments in relation to the election campaign without being authorised to do so by the election agent. It is an offence for a candidate to incur expenses or make payments, other than in respect of "his/her reasonable living expenses", unless authorised to do so by the election agent. Where expenses have been incurred by or on behalf of a candidate before the appointment of an election agent, the candidate must furnish details of such expenses, together with all invoices/receipts, to the election agent once he/she has been appointed. It is an offence for a candidate to fail to comply with this requirement.
- 2.2.5 The election agent may authorise other persons to incur expenditure or make payments within specified financial limits. The election agent must account for spending by all such authorised persons. Expenses incurred or payments made by authorised persons must be within the limit specified by the election agent. An election agent may authorise the candidate or the national agent of the candidate's political party (if applicable) to incur election expenses. The name and address of every authorised person must be included in the Election Expenses Statement, which the election agent must furnish to the Standards Commission after the election.

## 2.3 Spending limits for the election

- 2.3.1 The statutory spending limit at Dáil elections for the five seat constituency (Carlow/Kilkenny) is **€45,200**. This spending limit is **inclusive of VAT**. All spending by the election agent and a political party (both head office and local organisation) on a candidate must be within this limit.
- 2.3.2 The statutory limit is for each individual candidate in a constituency.
- 2.3.3 It should be understood that no separate or additional spending by a political party on a candidate over and above that which has been assigned to the party by the candidate is allowed (see paragraph 2.4.1 below). If a candidate of a political party does not assign any part of the statutory spending limit to the party, the party cannot incur any expenses on behalf of the candidate at the election, unless authorised to do so by the candidate's election agent.

## Non-party candidates may proceed to Paragraph 2.5

## 2.4 Assignment by a candidate of a portion of his/her statutory spending limit to his/her political party

- 2.4.1 If a candidate is contesting the election on behalf of a political party, he/she may agree, in writing, with his/her political party, the amount of his/her spending limit which is being assigned to the party for spending by the party's national agent. This could be up to 100% of the candidate's limit. There is, however, no legal obligation on a candidate to assign any amount to the party. The candidate's election agent can spend, or authorise to be spent, only the amount of the statutory limit for that candidate which remains after the assignment has been made. In other words, whatever amount is assigned to the party by a candidate is not available for spending by the candidate's election agent.



### **For Example:**

Statutory Spending Limit	<b>€45,200</b>
Amount Assigned by Candidate	<b><u>€10,000</u></b>
Amount Election Agent Can Spend	<b>€35,200</b>

- 2.4.2 The Act does not specify when the written assignment must be made. Similarly, the Act does not preclude a re-negotiation of the agreed assignment. The Standards Commission strongly advises that, if an assignment to a political party is being made, it should be made and notified to the election agent before any expenses are incurred by either the election agent or the national agent of the candidate's political party.
- 2.4.3 The Act requires that the agreed assignment must be made in writing between the candidate and the party. Where assignments are re-negotiated a new written agreement must be made between the candidate and the party. A copy of the written agreement should be provided to the candidate's election agent as he/she will be required to furnish a copy of the written agreement to the Standards Commission with his/her Election Expenses Statement.
- 2.4.4 The combined expenditure on behalf of the candidate by the candidate's election agent (including authorised persons) and the national agent of the party (including authorised persons) must remain within the statutory spending limit for the candidate.

## **2.5 "The Election Period" - dates between which the spending limit applies**

- 2.5.1 The spending limits at the bye-election apply to all expenses incurred and payments made in providing property, goods or services which are used for electoral purposes during the period commencing on the date of the issue of the writ for the bye-election and ending on polling day itself, both dates included. The election period for the Carlow Kilkenny bye-election is from 29 April 2015 to 22 May 2015.
- 2.5.2 Regardless of when the expenses are incurred or the payments are made, they must be taken into account if they relate to property, goods or services which are used for electoral purposes during the election period. Accordingly, expenses which are incurred or payments which are made at any time before the date of the issue of the writ on property, goods or services which are used during the election period must be accounted for.
- 2.5.3 If expenses are incurred or payments are made on property, goods or services which were not used, or only a part was used, during the election period it will not be necessary to account for the unused part. Similarly, it will not be necessary to account for expenses incurred or payments made in respect of property, goods or services which were used before the commencement of the election period or which were used after the election period. Some examples of this might be:
- promotional material circulated by candidates/political parties before the election period commenced;
  - insurance or rent costs applying to a campaign premises in so far as the costs relate to a period before and/or after the election period;
  - "Thank you" notices circulated after the election.
  - Taking down of posters

- 2.5.4 If an advertisement is published in a newspaper or other periodical publication which carries a publication date (i.e., the date printed on the paper) which is during the election period, the advertisement will be regarded as an election expense. If the publication date is before or after the election period, the advertisement is not regarded as an election expense.
- 2.5.5 The cost of an opinion poll or other similar survey which is taken within the period of 60 days before polling day **will** be regarded as an election expense.

## **2.6 Persons who may be incurring unauthorised expenditure to promote or oppose candidates at the election**

### **(a) Expenditure by "third parties"/"other persons"**

- 2.6.1 Expenditure by **"third parties"** and **"other persons"**, i.e., those not connected to a candidate or a political party, is permitted under the Act provided the third party/other person has notified the Standards Commission of their intent to incur election expenses. If an election agent becomes aware that any person or group is incurring expenses promoting or opposing his/her candidate, or any other candidate, the agent should enquire of the Standards Commission if that person or group has been given a Certificate of Authorisation by the Standards Commission to incur election expenses in this way. If a Certificate has not been issued, the person or group may be committing an offence and the Standards Commission will enquire into the matter.
- 2.6.2 Notices or advertisements in newspapers, magazines or other periodical publications promoting or opposing the interests of a candidate may only be placed if requested by the candidate, the candidate's election agent, the national agent of the candidate's political party or a person authorised in writing by the candidate or either agent. "Third parties" and "other persons" may arrange newspaper advertising if they produce to the publisher a Certificate of Authorisation from the Standards Commission stating that they have furnished, in writing, the relevant information to the Standards Commission. The Standards Commission will notify editors/publishers of the provisions of the Act in this regard.
- 2.6.3 "Third parties"/"Other Persons" who incur election expenses will also have to account for their election expenses in an Election Expenses Statement.

### **(b) Expenditure by a local party organisation**

- 2.6.4 No separate or additional spending by a political party over and above the statutory spending limit is allowed. Any expenditure incurred on behalf of the candidate by the local party organisation should either be:
- authorised by the national agent and taken into account in the national agent's Election Expenses Statement; or
  - authorised by the election agent and taken into account in the election agent's Election Expenses Statement.

### **(c) Expenditure by persons/bodies deemed to be connected to a candidate**

- 2.6.5 Election agents should be aware that if a person or a body, who or which is considered by the Standards Commission to be associated with, connected to, or under the influence or control of a candidate, is incurring expenses at the election to either promote the candidate or to oppose another candidate, such expenses will be regarded as part of the first candidate's election expenses and will have to be taken into account by that candidate's election agent from within the candidate's

spending limit (i.e., that part of the limit which has been retained by the candidate). If this expenditure brings spending by the candidate's election agent over the relevant limit, an offence will have been committed.

- 2.6.6 Given that expenditure by certain individuals/groups may ultimately be deemed to be expenditure incurred on behalf of their candidates, it is important that election agents are aware of the activities of such individual/groups and, if necessary bring such matters to the attention of the Standards Commission.

## 2.7 What are election expenses?

- 2.7.1 The legislation provides that election expenses are those and only those, set out in the definition of election expenses in Appendix 1, which are incurred in the provision of property, goods or services for use at the election during the election period (29 April 2015 to 22 May 2015) in order to:

- (i) promote or oppose the interests of a political party or the election of a candidate; or
- (ii) present the policies of a political party or the comments of a political party on the policies of another political party or of a candidate at the election; or
- (iii) solicit votes for or against a candidate; or
- (iv) present the policies of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate on the policies of a political party or of another candidate at the election; or
- (v) otherwise to influence the outcome of the election.

- 2.7.2 Where property, goods or services, which have been provided free or below cost, are used during the election period, they are regarded as election expenses which must be taken into account as election spending by the relevant agent at their commercial price. [An example might be where a printing company agrees to provide, free of charge, election literature which would normally cost €1,500.] This supply of material must be authorised and taken into account at its commercial price less any normal discount which may be available.

- 2.7.3 Election expenses could include payments to paid campaign workers where receipted.

- 2.7.4 It is not possible to give definitive examples in these guidelines of all types of election expenses. If you are unsure as to whether an expense item should be accounted for as an election expense you should contact the Standards Commission Secretariat for advice.

### **Election Expenses which are met out of public funds**

- 2.7.5 Arising from the judgement in *Kelly v. Minister for the Environment and Ors.* (2002) 4 I.R. 191, where property, services or facilities are used for electoral purposes during the election period and the costs are met out of public funds, such costs must be accounted for as an election expense. The use of the material must be authorised by the candidate's election agent. It will be a matter for the relevant agent and the candidate, in consultation with the provider of the property, services or facilities, to determine the value of the usage for

electoral purposes during the election period and to account for same in the Election Expenses Statement.

2.7.6 The Standards Commission is aware that some candidates at the election who are already public representatives may be required to communicate with their constituents during the election period. It is necessary, therefore, where costs are met from public funds to differentiate between the use of property, services (including staff) and/or facilities in carrying out reasonable constituency business and the use of such material for electoral purposes. The following is relevant in this regard.

- If, during the election period, such materials are used by the candidate for the purpose of any form of unsolicited communication to any of the electorate in the constituency, the materials will be regarded as having been used for electoral purposes and the costs will have to be accounted for as an election expense at their full commercial value. This also applies to unsolicited material issued by other elected representatives where the material either promotes or opposes a candidate or otherwise seeks to influence the outcome of the election.
- Where a new enquiry is raised with a candidate (i.e., an enquiry which had not been raised with the candidate prior to the election) while he/she is canvassing and facilities the cost of which are met out of public funds are used for the purposes of responding to the enquiry, these facilities will be regarded as having been used for electoral purposes. This includes time spent by staff in responding to the enquiry (except where such staff are working voluntarily on the candidate's campaign - see 2.8.1 (vi) & (vii) below).

## 2.8 What are not election expenses?

2.8.1 Items which are not election expenses include:

- (i) the cost of purchasing copies of the register of electors;
- (ii) the **reasonable living expenses** (including accommodation) of a candidate and volunteers working on his/her behalf. Under this heading, in addition to accommodation costs, spending of up to **€50per person per day** on refreshments, etc., is permitted and does not have to be accounted for. (This means that accommodation costs plus other costs up to **€50per person per day** are not regarded as election expenses.);
- (iii) any paid campaign worker who incurs **expenses** from their own resources and does not seek a reimbursement from the election agent.

[NOTE: The only persons who may **lawfully** incur expenses or make payments at an election in relation to a candidate are the election agent of a candidate, the national agent of a political party, or a person authorised by either agent to incur election expenses. Accordingly, any other person who incurs expenses or makes payments at an election on behalf of a candidate is committing an offence. Election agents must maintain a record of all minor expenses which are not being accounted for as an election expense in his/her Election Expenses Statement. In order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense in the Election Expenses Statement, a record of all such "**minor expenses**"(**not exceeding €100 in any one payment**) may be required to be furnished to the Standards Commission. Invoices, receipts and vouchers in respect of minor expenses may also be

required and should be retained by the Election Agent. **Minor expenses are not included in the calculation of the total election expenses incurred.]**

- (iv) election expenses incurred at a previous Dáil, European or local election which were disclosed in an Election Expenses Statement furnished to the Standards Commission or to a local authority. There is no need to record these expenses again. This does not apply to material used in relation to a referendum. **[NOTE:** If a candidate intends to use, or re-use, election material which has previously been recorded in an Election Expenses Statement, his/her election agent must notify the Standards Commission Secretariat and provide details of the materials being re-used and the Election Expenses Statement on which they were previously recorded.]
- (v) free post service provided to candidates by An Post (i.e., Litir Um Thoghcháin). It should be noted that only the postage costs are not regarded as an election expense. The cost of producing the leaflet/election address/Litir um Thoghcháin is an election expense;
- (vi) a free service provided by an individual, including use of the individual's motor vehicle, telephone, etc., where the service is not provided as part of the individual's work or business. **[NOTE:** This provision of the Act refers specifically to an individual and to the use of an individual's motor vehicle (singular). If more than one vehicle is provided by an individual, the use of the additional vehicles may be regarded as election expenses. If a vehicle which is in the ownership of a company, partnership, business etc., is provided to a candidate it is not regarded as a free service provided by an individual. In such circumstances the use of the vehicle during the election period is regarded as an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of calculating the election expense.];
- (vii) where an outgoing MEP's staff or Oireachtas Member's staff (e.g. personal assistant, research assistant, etc.) takes annual leave and works on a candidate's election campaign on a voluntary basis during the election period, the work carried out by the member of staff will be deemed to have been carried out as a free service and the cost of his/her salary while working voluntarily will not be regarded as election expenses for the purpose of the Act;
- (viii) fines imposed by organs of the State, e.g., parking and litter fines;
- (ix) a service provided at an election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit-in-kind other than his or her normal remuneration (including recoupment of expenses) for that service. Where overtime payments are normally paid to an employee of a political party for working additional hours, this is regarded as "normal remuneration" and is not regarded as an election expense;
- (x) normal media coverage and the **transmission** on radio or television of a broadcast on behalf of a candidate or a political party. This does not cover any production, or other, costs associated with a transmission on radio or television;
- (xi) the services of an accountant, or other person, (whether paid or not) employed for the **specific purpose** of ensuring compliance with the requirements of the Act;

- (xii) the use of offices which are owned by a political party and are made available to a candidate for use at the election. It is not necessary to attribute a notional rental cost to the use of such offices. The costs of heat, light, telephones, etc., incurred for electoral purposes at such offices during the election period **are election expenses**.

2.8.2 Examples of some of the more common items which are not election expenses and which were recorded as election expenses at previous elections are set out in Appendix 3.

### **Expenses incurred in order to facilitate a person's candidacy at the election**

2.8.3 Certain expenses may have to be incurred on behalf of the candidate in order to facilitate his/her participation in the election process or an understanding of the relevant legislation. The Standards Commission does **not** regard such expenses as being part of a candidate's or a political party's election spending. Examples might include:

- i) additional child care costs;
- ii) cost of work replacements;
- iii) leave of absence with pay;
- iv) loan interest and bank charges;
- v) costs associated with meetings convened to familiarise election participants with the requirements of the electoral legislation (e.g., room hire, documents, refreshments, travel).

## **2.9 Payment of invoices to suppliers**

2.9.1 Claims for payment of election expenses, from suppliers, must be received by the election agent within 45 days after polling day (i.e., 6 July 2015). **Claims received after this date cannot be paid by the election agent.** It is an offence to make a payment if the claim is received after the 45 days have elapsed. To avoid disputes, it is very important that agents advise their suppliers of this requirement when placing orders for property, goods or services. Even though such claims cannot be paid, they are still regarded as election expenses and must be accounted for in the Election Expenses Statement furnished to the Standards Commission.

## **2.10 Furnishing an Election Expenses Statement after the election**

2.10.1 The Standards Commission will send each election agent an **Election Expenses Statement and Statutory Declaration** form. On this form, the election agent must disclose details of all expenses incurred and payments made by, or on behalf of, the agent on property, goods or services used by the candidate during the election period. Staff of the Standards Commission Secretariat may be contacted at [sipo@sipo.gov.ie](mailto:sipo@sipo.gov.ie) if assistance is required. The completed form must be received by the Standards Commission within 56 days after polling day (i.e. 17 July 2015).

2.10.2 The following must be included in the Election Expenses Statement:

- i) details of all expenses incurred and payments made by the election agent and his/her authorised persons, including supplies of property, goods or services free or below cost which were used during the election period;
- ii) details of authorised persons (which may include the candidate; a director of elections or the party's national agent) including the amount each authorised person was authorised to spend and the amounts actually spent by them;
- iii) details of the amount of the candidate's spending limit which was assigned by the candidate to his/her political party. As stated at paragraph 2.4.3 a copy of the written agreement between the candidate and the political party must be furnished by the election agent with his/her Election Expenses Statement;
- iv) details of any disputed claims for payment;
- v) information concerning late claims for payment (i.e., claims received more than 45 days after polling day);
- vi) details of expenses incurred on goods, property or services used during the election period where the costs of the goods, property or services were met out of public funds.

2.10.3 A record of minor expenses may also be required to be furnished to the Standards Commission in order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense on the Election Expenses Statement. Minor expenses will not be included in the calculation of the total election expenses incurred (see paragraph 2.8.1(iii) for a definition of "minor expenses").

2.10.4 Invoices, receipts or vouchers for every payment of election expenses exceeding **€100** must be included with the Election Expenses Statement. The Standards Commission also reserves the right to request any invoice, receipt or voucher for an item of expenditure valued at less than **€100** appearing in an Election Expenses Statement or a record of minor expenses.

2.10.5 Minor omissions or errors found by the Standards Commission in an Election Expenses Statement will be notified to the election agent. If requested to amend his/her Election Expenses Statement, **the election agent must do so within 14 days.**

2.10.6 The Standards Commission can request additional information from an election agent in relation to his/her Election Expenses Statement. Where such additional information is requested, it must be provided in a form determined by the Standards Commission and may have to be accompanied by a Statutory Declaration.

2.10.7 The Election Expenses Statement and Statutory Declaration forms will be laid by the Standards Commission before both Houses of the Oireachtas and will be made available to the public for inspection and copying. Summary details of the expenditure incurred will also be included in a report to the Chairman of Dáil Éireann and will be published on the website of the Standards Commission.

## 2.11 Consequences of overspending by an election agent

2.11.1 There are a number of consequences arising from an overspend by an election agent at the election, as follows:

- (i) it is a criminal offence, punishable by a fine of up to **€1,269.74**
- (ii) a person can petition the High Court to set aside the result of the election;
- (iii) an election agent's overspend is deducted from the candidate's reimbursement.

## 2.12 Offences and penalties applicable to election agents at the election

2.12.1 If a person who is not authorised to do so, incurs expenditure or makes a payment in relation to the election, he/she, on conviction, may be fined up to **€1,269.74**.

2.12.2 If an election agent is found guilty of the offence of exceeding the expenditure limit, the penalty is a fine of up to **€1,269.74**

2.12.3 Payment of claims received more than 45 days after polling day (i.e., after 6 July 2015) can result in a fine of up to **€1,269.74**

2.12.4 Failure to make such enquiries and maintain such records as are necessary for the purpose of furnishing an Election Expenses Statement and making a Statutory Declaration may result in a fine of up to **€1,269.74**

2.12.5 Failure to furnish an Election Expenses Statement and Statutory Declaration to the Standards Commission by the statutory deadline (i.e., 17 July 2015) can result in a fine of up to **€1,269.74** and an on-going fine of up to **€126.97** for each day, after a conviction, on which the Statement and Declaration are still outstanding.

2.12.6 Failure to provide supplemental information relating to an Election Expenses Statement as requested by the Standards Commission on request can result in a fine of up to **€1,269.74**

2.12.7 Knowingly furnishing a false or misleading Election Expenses Statement to the Standards Commission can result in a fine of up to **€25,394.76** and/or up to three years imprisonment.

2.12.8 Failure to furnish to the Standards Commission, within 7 days after the date of the order, a copy of a court order for the payment of a disputed claim may result in a fine of up to **€1,269.74**



## Appendix 1- Definitions

Section 22 of the Electoral Act 1997, as amended, provides the following definitions.

*'account'* means an account in an institution in the State for the purpose of crediting and debiting money received in respect of donations;

**'corporate donor'** is defined as including:

- (i) a body corporate;
- (ii) an unincorporated body of persons; or
- (iii) a trust

which makes a donation. A body corporate and any subsidiary thereof are deemed to be one person.

*'donation'* means any contribution given for political purposes by any person, whether or not a member of a political party, to a political party, a member of either House of the Oireachtas, a representative in the European Parliament **or a third party** or a candidate at a Dáil election and includes all or any of the following, namely -

- (i) a donation of money;
- (ii) a donation of property or goods;
- (iii) the free use of property or goods (i.e. conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods);
- (iv) a free supply of services (i.e. the supply of services without payment or other consideration);
- (v) the difference between the usual commercial price and the (lower) price charged for the purchase, acquisition or use of property or goods, or the supply of any service, where the price, fee or other consideration is less than the usual commercial price (this can include a loan provided by a third party or by a financial institution at terms and conditions which are more favourable than that provided by a financial institution to other individuals in the normal course of business);
- (vi) a contribution made by a person to a fund-raising event organised for the purpose of raising funds for a political purpose. The donation is that proportion of the contribution which is attributable to the net profit, if any, deriving from the event. Donations are deemed to have been received on the date of the actual fund-raiser (and not when actually received). The position with regard to fund-raising events is explained in greater detail in Appendix 2 of these guidelines;
- (vi) a payment by the person on their own behalf, or on behalf of one or more than one other person, of a fee or subscription for membership or continued

membership of a political party (membership fees include any membership fees/levies/subscriptions paid to any sub-unit of a political party);

- (viii) a notional donation/donation in kind. This means that where a person/organisation pays for work/expenses from its own resources (i.e. not party funds) then this is considered a donation of the notional value/cost of the work/expenses to the donee. Donations in kind or notional donations are to be valued at the usual commercial price charged for the purchase, use or acquisition of the property or goods or the supply of any service donated.

*'election expenses' - section 31 of the Act provides that election expenses shall be those, and only those, listed hereunder:*

**(a) Advertising (whatever the medium used).**

*Expenses in respect of such advertising include agency fees, design costs and other costs incurred in connection with the preparing, producing, distributing or otherwise disseminating such advertising.*

**(b) Publicity.**

*Expenses in respect of that matter include expenses incurred in respect of party political broadcasts, the provision of any services or facilities in connection with press conferences or other dealings with the media, media advice and training and photography.*

**(c) Election posters.**

*Expenses in respect of such material include the costs of the design, production, printing, erection and removal of election posters - (must be during the election period)*

**(d) Other election material.**

*Expenses in respect of such material include the design, production, printing and dissemination of such material (other than posters), including canvas cards, election leaflets, election manifestos, newsletters and other promotional election material.*

**(e) Office and Stationery.**

*Expenses in respect of those matters include costs incurred in the rental or use of an office premises or meeting rooms for election purposes (other than for the purposes of annual or other party conferences) and the costs of heating, electricity, insurance, purchase or rental of office equipment, telephones, stationery and postage.*

**(f) Transport and travel.**

*Expenses in respect of those matters include expenses incurred on transport and travel (by any means), petrol and diesel, rental or use of campaign vehicles, rental or use of vehicles for transport of voters on polling day, accommodation costs (for paid campaign workers), taxi and hackney services and courier services.*

**(g) Market research.**

*Expenses in respect of that matter include expenses incurred in the taking of an opinion poll or other similar survey relating to an election within the period of 60 days before polling day at the election by or on behalf of a political party, a political group or a candidate at the election.*

**(h) Campaign workers.**

*Expenses in respect of that matter include payments to paid campaign workers, insurance and other costs.*

**'institution'** means:

- (a) *the holder of a licence under section 9 of the Central Bank Act 1971,*
- (b) *a building society incorporated or deemed to be incorporated under the Building Societies Act 1989, or a body incorporated in a corresponding manner under the law of any other member State of the European Communities.*
- (c) *a trustee savings bank within the meaning of the Trustees Savings Bank Act 1989,*
- (d) *ACC Bank plc,*
- (e) *An Post, or*
- (f) *a person authorised in accordance with the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992) to carry on business in the State;*

(Note: this definition does not include a credit union.)

**'responsible person'** *in relation to an accounting unit, means the treasurer or any other person responsible for dealing with donations to the unit, or, in relation to a third party, the person or persons responsible for the organisation, management or financial affairs of the third party;*

**'third party'** *means any person, other than a registered political party or a candidate at an election, who accepts, in a particular year, a donation for political purposes, the value of which exceeds €100.*

**“person”** can be:

- i) *an individual;*
- ii) *a body corporate (e.g., a public or private company) and any subsidiary thereof. In this regard section 155 of the Companies Act should be applied when determining whether a company is a subsidiary of another company. Where donations are received from associated companies the candidate should enquire from the donors whether, under section 155 of the Companies Act, one or other of the companies is a subsidiary of the other;*
- iii) *an unincorporated body of persons, e.g., a political party, a partnership, a residents association, a lobby group.*

**'political purposes'** *means any of the following purposes namely;*

- (i) *(I) to promote or oppose directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or*

*(II) to present, directly or indirectly the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party, or*

*(III) to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party with regard to the policy or policies of another political party, political group, a member of either House of the Oireachtas, representative in the European Parliament, third party or candidate at an election or referendum or otherwise, or*

*(IV) to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority;*

- (ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;*
- (iii) otherwise to influence the outcome of the election or a referendum or campaign referred to in paragraph (i)(IV) of this definition.*

**'political group'** means a group formed in accordance with the rules of procedure of the European Parliament;

**'political party'** means a political party registered in the Register of Political Parties in accordance with section 25 of the Electoral Act 1992 as a party organised to contest a Dáil election or a European election or both such elections;

## Appendix 2 - Fund-raising events

### **Determining the net value of a contribution to a fund-raising event**

In accordance with the provisions of sections 22(2)(a)(vi) & (vii) of the Act, a donation includes the net value of a contribution to a fund-raising event. A contribution to a fund-raising event is deemed to have been made on the date the fund-raising event is held (and not the date on which the contribution is actually received).

The net value of a contribution to an event is arrived at by first calculating the net profit from the event (i.e., by deducting the cost of running the event from the total amount raised by the event). The net profit is then attributed to the number of people contributing to the event in proportion to the contribution made by each person. This gives the net value of each person's contribution to the fund-raising event.

If, for example, in relation to a fund-raising event, a person had paid €1,000 in respect of the entry fee for 10 people, his/her gross contribution to the event would be €1,000. If the cost of running the event was €20 per person attending, a sum of €200 would be deducted from his/her gross contribution, leaving a net contribution of €800. If the person made other contributions to the event (e.g., buying horses at a race night, sponsoring a hole at a golf classic) it would be necessary to add the value of such contributions to the net contribution of €800 for the purposes of determining the aggregate net value of his/her contribution to the fund-raising event.

The following paragraphs set out the legislative requirements in relation to different types of fund-raising events which may be organised in the context of an election.

### **Fund-raisers organised by a political party for the purposes of raising funds for the party**

Where a fund-raising event is organised by a political party for the purposes of raising funds for the party, the net contribution made by a person to the fund-raising event is regarded as a donation to the party. This applies even if the funds are subsequently used by the party for the purposes of supporting one or more of its candidates at an election.

If some or all of the proceedings of the event are given in the form of money to the party's candidate(s) it is regarded as a donation by the party to the candidate(s). If the proceeds are used by the party to pay election expenses incurred on the candidate's behalf, it is not regarded as a donation by the party to the candidate(s). The party will not be required to disclose in a Donation Statement the total value of the proceeds of the fund-raising event. The party will be required to disclose any donation(s) from a person which exceeds a net value of €1,500. The maximum limit of €2,500 (€200 cash) for acceptance by political parties of donations from the same person in the same year applies to the net value of contributions to fund-raising events. The limit of €200 on acceptance of donations from non-registered corporate donors also applies. Where the net value of any individual monetary donation to the fund-raising event exceeds €100, the accounting unit of the party, (i.e., branch or head office) which organised the event will, if it does not already have one, be required to open a political donations account. If the net value of any individual monetary donation to the event does not exceed €100, the accounting unit of the party will not be required to open a political donations account. If the accounting unit already has a political donations account, all monetary donations, of whatever value, received in relation to the event must be lodged to the political donations account.

### **Fund-raisers organised by a political party for the purposes of raising funds for its candidate(s) at the election**

Where a fund raising event is organised by a political party for the purposes of raising funds for its candidate(s) at the election and proceeds of the event are passed to the candidate(s), the party is regarded as an intermediary accepting donations on behalf of the candidate(s). The net contribution made by a person to the fund-raising event is regarded as a donation to the candidate(s). The candidate(s) (i.e., not the party) is responsible for ensuring that the legislative requirements (set out at 3 below) are in compliance with the legislation.

If it is the case, however, that the party retains control of the proceeds, the donations may be regarded as having been made to the party and the party will be responsible for ensuring that the legislative requirements (set out at 1 above) are complied with.

### **Fund-raisers organised by a candidate**

Where a fund-raising event is organised by a candidate for the purposes of raising funds for his/her election campaign, contributions to the event are deemed to be donations to the candidate.

The candidate will not be required to disclose in a Donation Statement the total value of the proceeds of the fund-raising event. The candidate will be required to disclose any donations from a person contributing to the event which exceed a net value of €600. The maximum limit of €1,000, for acceptance by candidates of donations from any one person in the same year, applies to the net value of contributions to fund-raising events. If the net value of any monetary donation to a fund-raising event organised by a candidate exceeds €100 the candidate, if he/she does not already have one, will be required to open a political donations account and lodge the donation and all subsequent monetary donations to the account. If the net value of an individual monetary donation to the event does not exceed €100, the candidate will not be required to open a political donations account. If the candidate already has a political donations account, all monetary donations, of whatever value, received in relation to the event must be lodged to the account.

### **Fund-raisers organised on behalf of a candidate by a person or group other than the candidate or his/her political party**

Where a fund-raising event is organised on behalf of a candidate by a person or group other than the candidate or his/her political party (e.g., "Friends of ... groups") and the proceeds of the event are handed over to the candidate, the fund-raising person/group is regarded as an intermediary accepting donations on the candidate's behalf. The donations are deemed to have been received by the candidate and he/she is responsible for ensuring that the legislative requirements (set out at 3 above) are complied with.

If the proceeds of the event are not handed over to the candidate and are retained by the fund-raising group, the following applies:

- if the net value of any donation to the fund-raising event exceeds €100, the person/group will be required to register as a "third party" with the Standards Commission. The person/group will be required to comply with the provisions of the Act applying to third parties with regard to the opening of a political donations account and the acceptance of certain donations,

- all money subsequently given to the candidate and all election expenses incurred or payments made by the fund-raising group on behalf of the candidate are regarded as donations to the candidate;
- if the aggregate value of donations from the fund-raising group to the candidate exceeds €600, the candidate will be required to disclose details of same in his/her Donation Statement;
- the maximum value of donations which the candidate can accept in any year from a fund-raising person/group which is regarded as a third party (and not as an intermediary accepting donations on the candidate's behalf) is €1,000.

## **Appendix 3 - Items which are NOT election expenses and which were included in Election Expenses Statements at previous elections**

The following are examples of the more common items which are not regarded as election expenses and which were accounted for, incorrectly, as election expenses at previous elections. The list is not exhaustive. If you have any queries relating to expense items which you may incur during the election period, the Standards Commission Secretariat is available to assist when completing the Election Expenses Statement.

### **A - Advertising**

Advertisements which appeared in a newspaper which had a publication date which was outside the election period e.g., "Thank you" advertisements in newspapers after polling day.

### **B - Publicity**

Free post service provided to candidates in respect of "Litir um Thoghcháin". (It should be noted that only the postage costs are not regarded as an election expense. The cost of producing the leaflet/election address/Litir um Thoghcháin is an election expense.)

### **C - Election Posters**

Removal of Election Posters (if removed after polling day).

### **D - Other Election Material**

"Thank you" Cards, Leaflets, Newsletters, etc., which were distributed outside of the election period.

### **E - Office and Stationery**

Rental costs associated with the use of an office which is owned by a political party.

Use of private telephones (including mobile phones) where the expense incurred was not reimbursed to the person.

### **F - Transport and Travel**

Diesel/Petrol costs which were not reimbursed to the person, the cost of servicing a vehicle, repairs and additional costs in respect of a vehicle.

### **G - Market Research**

Purchase of Register of Electors.

### **H - Campaign Workers**

"Close of poll" party.

Expenses incurred on refreshments for the candidate and volunteer campaign workers.

### **I - Fines**

Litter and parking fines etc.



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