

STANDARDS IN PUBLIC OFFICE COMMISSION
Annual Report 2008



Standards in Public Office Commission
Coimisiún um Chaighdeán in Oifigí Poiblí

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Foreword

In accordance with the provisions of section 27(2)(a) of the Ethics in Public Office Act 1995, I am pleased to furnish the Annual Report of the Standards in Public Office Commission for 2008 to the Minister for Finance.



Justice M. P. Smith

Chairman

Standards in Public Office Commission

June 2009

The Members



Justice M. P. Smith
Chairman



Deirdre Lane
Clerk of Seanad Éireann



Michael Smith
Former member of Dáil Éireann



John Buckley
Comptroller and Auditor
General (from May 2008)



John Purcell
Comptroller and
Auditor General
(until May 2008)



Kieran Coughlan
Clerk of Dáil Éireann



Emily O'Reilly
Ombudsman



Introduction by the Chairman

For some years now, the Standards Commission has been highlighting the changes which it believes must be made to our Ethics and Electoral legislation in order to ensure that Ireland maintains and enhances its reputation as a country which is serious about promoting integrity and preventing corruption in public life. Ireland's existing anti-corruption mechanisms are recognised as being strong by international standards, but a continuing effort is required to ensure that this remains the case. The trust of citizens in our public institutions is essential for a healthy democracy. International perceptions are also crucially important - research at Harvard and at the World Bank Institute points to a link between the level of foreign direct investment and a country's ranking in, for example, Transparency International's Corruption Perception Index.

The table shows Ireland's performance in the index since 1995; the scores demonstrate that there is no room for complacency as far as our international reputation is concerned.

Corruption Perception Index - Ireland's Score 1995 to 2008

Year	95	96	97	98	99	00	01	02	03	04	05	06	07	08
Ranking	11	11	12	14	15	19	18	23	18	17	19	18	17	16
Score	8.57	8.45	8.28	8.2	7.7	7.2	7.5	6.9	7.5	7.5	7.4	7.4	7.5	7.7
No. of Countries	41	54	52	85	99	90	91	102	133	145	159	163	180	180
Surveys Used	6	6	6	10	10	8	7	8	9	10	10	7	6	6

Once again this year, the Standards Commission has devoted a separate chapter of this report to the necessary changes in the statutory framework which governs ethical and electoral matters. Both sets of legislation are concerned with ensuring high standards of probity in public life - whether the public servant concerned is an elected or an appointed official. The link between the two is that all participants in Irish public life - whether citizens, public service employees, candidates at elections, or public representatives are assured that the law requires public servants and elected representatives to perform their functions in the public interest rather than in any personal or connected interest, to declare and manage any possible conflicts of interest and that donations, gifts and election expenditure are subject to transparent controls. The Standards Commission does an important job in supervising the law in these areas and the Commission believes that the connection between the ethics and electoral areas ought to be maintained and that supervision be vested in a single independent body. The independent Electoral Commission proposed in the Programme for Government 2007 - 2012 should, in addition to a comprehensive supervisory role under electoral law, also have a supervisory role in relation to ethics legislation, including the ethical framework for local government.

The Standards Commission welcomes the proposed changes to the electoral laws - many of them first suggested by the Commission itself - which are designed to enhance openness and transparency in the funding of political parties. The introduction of expenditure limits for local elections for the first time in 2009, as well as promised changes to the rules governing campaigning at referendums, are also very welcome developments. Details of campaign expenditure - whether by candidates or by campaign groups - ought to be available to the public and the sources of those funds must also be disclosed.

Governance standards in both the private and public sectors became very topical during 2008. As far as the public sector is concerned, the Standards in Public Office Act 2001 provided for the development of statutory codes of conduct for various categories of persons covered by the legislation. In Chapter 2 of this report, the Standards Commission again highlights its concerns about the lack of a statutory code of conduct for directors and employees of state agencies. To date, codes have been published for office holders, TDs, Senators and civil servants. Separate codes for

local authority members and employees have been published by the Minister for the Environment, Heritage and Local Government. It remains the case that there is no statutory code of conduct for directors and employees of agencies in the wider public service, despite the fact that more than seven years have elapsed since the enactment of the 2001 Act which provided for their introduction.

Rightly, there is public expectation that the highest standards be demonstrated by all public servants in the exercise of their functions and in the use of public resources. The clearly expressed intention of the Oireachtas in the 2001 Act was that codes of conduct be introduced across the public service to provide clarity about the standards of ethical conduct required. It is in the public interest that there be no further delay in introducing these statutory codes. The Standards Act provides that persons governed by such codes must have regard to and be guided by the code in the performance of their functions. A non-statutory code is no substitute for a statutory code of conduct. The Act also provides that the Standards Commission be consulted as the codes are being drawn up. As well as providing useful guidance to directors and employees of the many state agencies, such a code also becomes part of the terms and conditions on which a person holds a directorship or occupies a position in a state agency and due notice may be taken of the code in the event of a complaint to the Commission or in court proceedings.

As the Standards Commission begins its seventh year of operation, I would like to thank my fellow Commissioners for their contribution during 2008. In particular, I would like to extend special thanks to Mr John Purcell who retired as Comptroller and Auditor General in May 2008. John served as a member of the Public Offices Commission from 1995 and then as a member of the Standards in Public Offices Commission when it was established in 2001. John's contribution to both commissions was invaluable and, on behalf of the Commission, I would like to wish him a lengthy and a happy retirement. Mr John Buckley was appointed by the President as Comptroller and Auditor General on 15 May 2008 following his nomination by Dáil Éireann. I welcome him as a member of the Standards Commission. I would also like to thank the staff of the secretariat and the Commission Secretary David Waddell for their total commitment and dedication to the work of the office during the year.

01

Ethics Acts

Complaints

The Ethics Acts 1995 and 2001 (the Ethics Acts) provide for a complaint to the Standards Commission where a contravention of the legislation may have occurred.

Complaints may be made under the Ethics Acts to the Standards Commission about office holders¹, ministerial special advisers, and directors and employees of public bodies. Complaints against members of Dáil Éireann and Seanad Éireann, who are not office holders, must be made to the Committee on Members' Interests of Dáil Éireann or Seanad Éireann, via the Clerk of the Dáil or Seanad, as appropriate. The Clerk passes the complaint to the relevant Committee if there is sufficient evidence to establish a *prima facie* case in relation to the complaint.

Complaints under the Ethics Acts may concern an alleged contravention of a provision of the Ethics Acts or a 'specified act' (i.e., an act or omission which is inconsistent with the proper performance of public functions and which is of significant public importance).

Complaints may also be made to the Standards Commission about an alleged contravention of a provision of Part 15 of the Local Government Act 2001 - the Ethical Framework for Local Government - or about a specified act by a member or an employee of a local authority. It should be noted that the Local Government Act 2001 provides for consideration of contraventions of Part 15 by the manager and/or the Cathaoirleach of the local authority, where such contraventions have been brought to their attention by the council's ethics registrar. Where matters relating to alleged

¹ i.e. Ministers, Ministers of State, Chairpersons and Deputy Chairpersons of Dáil Éireann and Seanad Éireann

contraventions by a member or employee of a local authority are raised, these should be dealt with in the first instance by the local authority itself, insofar as is possible. Accordingly, the Standards Commission advises persons wishing to complain about a councillor or council employee to raise the matter with the ethics registrar in the first place. As referred to later in this report, the Standards Commission has had discussions with the Department of the Environment, Heritage and Local Government with a view to legislating for an explicit procedure for complaints about local authority members and employees.

Statistics

In 2008, the Standards Commission received 38 complaints, 18 of which were deemed to be invalid. Complaints were considered invalid for a variety of reasons. In some cases, there was no *prima facie* evidence of a contravention by a person of a provision of the Ethics Acts, such as a failure to disclose an interest where required to do so, or an alleged specified act by a specified person. In a number of cases, the complaint concerned the actions of a public body rather than a 'specified person'. In others, the complaint was made against a 'specified person', e.g., the head of a public body, but provided no evidence that the act complained of was done by that individual personally, in which case the complaint is more appropriately considered as being against a public body. Such complaints cannot be accepted under the Ethics Acts, which provides for complaints about actions taken personally by individuals.

While the level of complaint remains low, the proportion of those received which had to be considered to be invalid reinforces the view of the Standards Commission set out in previous annual reports that the complaints provisions of the Ethics Acts, especially those relating to a 'specified act' by a 'specified person', are difficult for potential complainants to understand.

Former Taoiseach Bertie Ahern TD

The Standards Commission received a complaint in early 2008 from Senator Eugene Regan concerning the making of a statutory declaration by former Taoiseach Bertie Ahern TD in accordance with his obligations as a member elected to Dáil Éireann in 2002. The declarations made stated that, to the best of his knowledge and belief, Mr Ahern was in compliance with the obligations specified in section 25(1) of the

Standards in Public Office Act 2001 and that nothing in section 25(2) of the Standards in Public Office Act 2001 prevented the issue to him of a tax clearance certificate. Senator Regan noted that in a statement issued on 6 January 2008, Mr Ahern had stated that, following contact initiated by the Revenue Commissioners, he had paid them money on account in recent months in respect of his tax liability and that he had also confirmed that he did not expect to be furnishing a Tax Clearance Certificate to the Standards Commission, but would be furnishing an Application Statement, pending the resolution of his discussions with the Revenue Commissioners. The complainant asserted that this raised an important issue about the circumstances in which Mr Ahern was able to meet the same requirements as a member of the 29th Dáil and furnished evidence or declarations to this effect at that time. A number of similar complaints about Mr Ahern were also received.

The Standards Commission decided it would not be appropriate for it to pursue the matter until the Revenue Commissioners had completed their consideration of Mr Ahern's tax liabilities. It is a matter solely for the Revenue Commissioners to determine whether a person is tax compliant. Consequently, any question as to whether a person may have made a false declaration as to his or her own tax compliance can only be addressed once the Revenue Commissioners had made a determination that the person was not in compliance with his or her obligations under the relevant tax legislation.

The Standards Commission wrote to Mr Ahern informing him of the complaint and of its decision as set out above. It also informed him that in the event that the Revenue Commissioners make a determination in his case that he was not in compliance with his obligations, the Standards Commission may decide to consider the matter again at that stage.

Killarney Town Council

Following an investigation hearing in 2007, the Standards Commission referred a report to the Director of Public Prosecutions about alleged breaches of the Local Government Ethical Framework by Councillor Patrick O'Donoghue. He was subsequently charged with offences under the Local Government Act 2001 and at a hearing in the Circuit Criminal Court in Tralee on 12 March 2009, Councillor

O'Donoghue pleaded guilty to a charge that he "being a member of Killarney Town Council and being a person with actual knowledge of his beneficial interest in certain lands at Killarney on dates between January 1, 2006 and March 6, 2006, at Killarney - sought to influence a decision of Killarney Town Council in respect of a matter regarding the performance by that authority of its functions under the Planning Act 2000, namely the rezoning of those lands". A charge that he failed to withdraw from the Council meeting on the night of March 6, 2006, when the motion was considered, was withdrawn. The matter was then adjourned to 30 June 2009.

Shannon Town Council

The Standards Commission considered a complaint about the alleged failure of Councillor Patricia McCarthy to disclose an interest, as a director of Shannon Swimming and Leisure Centre Ltd., in the course of meetings of Shannon Town Council in which community funding was discussed. She was also alleged to have participated in such meetings.

The Standards Commission appointed an Inquiry Officer under section 6(1) of the Standards in Public Office Act 2001. The Inquiry Officer conducted a preliminary inquiry of the complaint by obtaining statements from relevant witnesses, by presenting these statements to Councillor McCarthy and by obtaining a statement from her. The Inquiry Officer provided a report to the Standards Commission in which he reported that Councillor McCarthy confirmed that she is a Director of the Leisure Centre. She also stated that as she had never benefited financially from her involvement with the centre and, as it is a Community facility, she had never understood this to mean that it was a beneficial or pecuniary interest and declarable under the Local Government Act 2001. Councillor McCarthy's statement acknowledged that she was fully aware of the requirements of the Local Government Act 2001 and the Code of Conduct for Councillors. She said, however, that the *de minimis* provisions of section 176 of the Local Government Act 2001 apply in this case, in that section 176(3) provides that "a person shall not be regarded as having a beneficial interest which has to be disclosed ... because of - (a) an interest which is so remote or insignificant that it cannot be reasonably regarded as likely to influence a person in considering or discussing, or in voting on, any question with respect to the matter or in performing any function in relation to that matter".

The Standards Commission considered the question of whether an investigation under the Ethics Acts was warranted in the light of the Inquiry Officer's report. It considered that as the complaint was made under section 4 of the Standards in Public Office Act 2001, it had to consider not only whether Councillor McCarthy had contravened the provisions of the Local Government Act 2001, but whether any or all of those contraventions was a "specified act", i.e., an act or omission which is inconsistent with the proper performance of the functions of, in this case, membership of a local authority or which is inconsistent with the maintenance of confidence in such performance and which is of significant public importance.

The Standards Commission decided that it did not accept Councillor McCarthy's contention that section 176(3)(a) of the Local Government Act applied. However, it decided that, while there may have been contraventions by Councillor McCarthy of the Local Government Act 2001, none of the alleged acts could be considered to fall within section 4(1)(a) of the Standards in Public Office Act 2001, as those acts were not of significant public importance. The Standards Commission accordingly found that there was no basis on which to initiate an investigation under the Ethics Acts. In reaching this decision, the Standards Commission took into account the fact that no benefit was received by Councillor McCarthy or by a "connected person" as set out in section 4(6)(b) of the Standards in Public Office Act 2001.

Local Government Ethical Framework

The Standards Commission noted in its annual report for 2007 that it had written to each local authority manager and to the Minister for the Environment, Heritage and Local Government setting out its role in relation to the Ethical Framework for the Local Government Service and in particular its view that all local avenues provided for by the Local Government Act 2001 should be pursued prior to considering making a complaint to the Standards Commission. It stressed the need for the ethics registrar to pursue minor errors and corrections and to administer properly the receipt of annual declarations by members and employees with a view to ensuring that such persons are fully aware of their statutory obligations and that the incidence of contraventions is kept to a minimum. The provisions concerning the bringing of possible contraventions to the attention of the Manager and/or the Cathaoirleach as appropriate was emphasised. The Standards Commission reminded local authorities of its view that, as

the register of interests is a public document of significant importance, it should be made available by each local authority on the internet in order to ensure widespread public awareness of the interests of local authority members and to enhance the standards of integrity and conduct required in the performance of local authority functions.

A local authority and the Office of the Data Protection Commissioner contacted the Standards Commission about its view in relation to the register of interests. The Office of the Data Protection Commissioner had been asked to consider whether the publication of the register on the internet would be inconsistent with data protection legislation. That Office set out its view that such publication should only take place either where there is a specific statutory basis for doing so or where the consent of the individuals involved has been obtained. It said that there was not an appropriate legislative basis in section 172 of the Local Government Act 2001 for publication without consent.

Following discussions with the Office of the Data Protection Commissioner, that office subsequently informed the Standards Commission that it had written to the local authority which raised the initial query to say that it was happy to confirm that it could see no particular data protection difficulty with the publication of details in relation to councillors where there exists in its view a valid public interest-type basis to conclude that the requirement to make such information available in local authority offices during office hours can be extended to incorporate publication on the local authority's website. It also stated that appropriate measures should be taken to ensure that the publication of this type of information was not automatically available to search engines.

The Standards Commission wrote to the Minister and each City and County Manager again in November 2008 to advise them of the clarification obtained from the Office of the Data Protection Commissioner. The Standards Commission also formally requested each City and County Manager to make the necessary arrangements to publish the register of interests on the internet. The Standards Commission remains firmly of the view that the register of public interests of members of local authorities should be available on the internet in the same way as are the registers of members' interests for members of Dáil Éireann and Seanad Éireann.

Local Government Reform

In April 2008, the Minister for the Environment, Heritage and Local Government published a Green Paper, *Stronger Local Democracy - Options for Change*, which included several suggestions for reform in the ethical area. These were:

- clearer oversight by the Standards in Public Office Commission. Local authorities should still take the lead role in ensuring compliance with ethics obligations. However, the Standards in Public Office Commission could be given a specific role to check on local compliance. For example, in relation to disclosures of donations or of election expenditure, allegations of non-compliance by candidates could be investigated by the Standards Commission. The Standards Commission could also be given the authority to investigate on its own initiative;
- more ready access to declarations of interest could also be provided (for example, publication on-line, but perhaps with protection for the family home);
- at present the chairperson and manager of a local authority have a role in investigating complaints against members. This can put the chairperson, in particular, in a difficult position. An alternative mechanism may be required to deal with complaints, where these are considered to be of serious nature, perhaps by way of a referral to the Standards in Public Office Commission. It would be important to design a mechanism that does not result in the Commission becoming swamped in complaints which are of a trivial nature, or of dubious motivation. Greater guidance could also be provided to local authorities as to how complaints regarding ethical breaches should be processed together with suggested remedies/sanctions where breaches are found;
- the introduction of a directly elected mayor may also be of benefit. Such an office holder, directly elected by the people, should be conscious of upholding high standards in the council over which he or she presides. Such an office holder would also be conscious that criticism of unethical behaviour at council level is likely to be channelled through the office of mayor;
- compliance with other codes and policies, including health and safety, equality and

disability requirements, employment protection and entitlement rights, as well as many important “process” requirements in areas such as financial accountability, procurement, official languages, etc.

The Green Paper stated that these issues would be discussed further with the Standards Commission. The Green Paper also noted that the Department was committed to introducing legislation at the earliest possible opportunity to provide protection for persons who complain about inappropriate behaviour in local government matters. The Standards Commission had proposed such a provision in its observations in 2004 on the draft codes of conduct for local authority members and employees.

The Department subsequently confirmed to the Standards Commission that its view was that the implementation of the ethical framework should be kept within local authorities as much as possible and that the role of the Standards Commission would be restricted to matters of significant concern. The Standards Commission’s view is that there should be an explicit complaints procedure in the ethical framework clearly setting out the responsibilities at local level and those of the Standards Commission. It was noted that there is provision under the Ethics Acts for statutory guidelines and advice to be given by the Standards Commission, which could usefully be applied under the ethical framework.

Codes of Conduct

Code of Conduct for the Wider Public Service

In previous annual reports, the Standards Commission highlighted its concerns about the lack of a statutory code of conduct for directors and employees of state agencies. The 2001 Act provides for the drafting and publication of codes of conduct for different categories of persons including directors and employees of public bodies. To date, codes have been published for office holders, TDs, Senators and civil servants. Separate codes for local authority members and employees have been published by the Minister for the Environment, Heritage and Local Government. It remains the case that there is no statutory code of conduct for directors and employees of agencies in the wider public service, despite the fact that more than seven years have elapsed since the enactment of the 2001 Act which provided for its introduction.

The absence of such a code could lead to serious difficulties in the event of a complaint against an employee or a director of a state agency under the Standards in Public Office Act 2001. Notwithstanding the Standards Commission's view that the Minister for Finance should address this issue as a matter of urgency, there have been no developments in this area in the past year. The Minister for Finance has issued a Code of Practice for the Governance of State Bodies, most recently revised in 2001. That code includes the elements of a draft code of ethics for adoption by state bodies. However, that code applies on an administrative basis only and does not have the statutory status that a code of conduct under the 2001 Act would enjoy. The Standards Commission understands that the Department has been engaged in drafting a further revision of the code. However, it has not sought any observations on the code from the Standards Commission.

The question of the standard of governance of state agencies has been the subject of much public comment in the recent past; allegations have also been made about impropriety on the part of certain persons in state agencies. Rightly, there is public expectation that high standards be demonstrated by all public servants in the exercise of their functions and in the use of public resources. The clearly expressed intention of the Oireachtas in the 2001 Act was that codes of conduct be introduced across the public service to provide clarity about the standards of ethical conduct required. It is in the public interest that there is no further delay in introducing these codes.

Code of Ethics for An Garda Síochána

The Garda Síochána Act 2005 provides for the drafting by the Garda Commissioner of a code of ethics for An Garda Síochána. The Act also provides that the Commissioner must consult with a number of persons and bodies, including the Standards Commission, about the draft. Having been consulted in November 2007, the Standards Commission provided the following observations:

1. it would be appropriate to make reference in the code to statutory protections afforded to members of an Garda Síochána who report corruption and malpractice;
2. the provisions in the draft code concerning disclosure of conflicts of interests

would be strengthened by the inclusion of a statement to the effect that a member of An Garda Síochána should not use his or her official position to benefit him/herself or others with whom he or she has personal, family, business or other ties. In addition, as a general rule the code should provide that a Garda must disclose any matter in which he or she has a commercial interest to the Commissioner and should not be involved professionally in that matter;

3. the code should make specific reference to the obligations on designated members of An Garda Síochána to comply with the provisions of the Ethics Acts;
4. the code should provide that a member of An Garda Síochána should not engage in, or be connected to, any outside business or activity which would be inconsistent with his or her official position or which would weaken public confidence in An Garda Síochána;
5. the code should also contain a statement of general principle to the effect that a member of An Garda Síochána should not receive a gift or other benefit from a third party which might reasonably be seen to compromise his or her personal judgement or integrity. It would also be appropriate to include a statement of the general principles in relation to the acceptance of hospitality;
6. the code should provide that members of An Garda Síochána must inform the Garda Commissioner of any intention to leave the force and to take up a position with any outside business with which he or she has had official dealings or which might gain an unfair advantage over its competitors by employing him or her. This would protect against members taking up employment in the private sector to which they would bring access/information/contacts gained in the course of their membership of the force. The Standards Commission also suggested that it would be appropriate to consider the imposition of a moratorium of perhaps one year on members occupying designated positions in An Garda Síochána prior to taking up another position after leaving the force.

The Standards Commission's observations were informed by similar provisions which apply to the civil service under the Civil Service Code of Standards and Behaviour. The

arrangements in relation to post-resignation/retirement employment suggested at point 6. apply both under the civil service code and in the code of conduct for employees of local authorities.

The Standards Commission is pleased to report that An Garda Síochána accepted all of its observations. At the time of writing, the draft code had yet to be published.

Inappropriate use of Oireachtas Envelopes

The Standards Commission has indicated in previous reports that it is inappropriate for TDs and Senators to provide Oireachtas envelopes to other persons such as election candidates. In its Annual Report for 2007 the Standards Commission noted that, while envelopes provided to members of Dáil Éireann were bar-coded so as to be traceable to the TD to whom they were issued, the Seanad Committee on Procedure and Privileges had decided not to implement this measure. The Standards Commission stated that it was regrettable that the procedure had not been adopted for members of Seanad Éireann, as this could have deterred Senators from supplying Oireachtas envelopes to persons not entitled to avail of them. The Committee on Members' Interests for Seanad Éireann replied saying that it had decided to bring the matter to the attention of the Seanad Committee on Procedures and Privileges to consider again the matter of bar-coding. It had also written to all members of Seanad Éireann informing them of its view that pre-paid envelopes should not be handed over to any third party for use in an election campaign and to remind members of the provisions of the code of conduct for members of Seanad Éireann requiring them to apply public resources prudently and only for the purposes for which they are intended.

Since the publication of the 2007 Annual Report, the Standards Commission has been informed that the Seanad Committee on Procedures and Privileges had again decided against traceability and that following this, the Dáil Committee reversed its earlier decision. Accordingly, pre-paid Oireachtas envelopes are no longer bar-coded. The Standards Commission regrets these decisions which mean that there can be no assurance that €2.7m of public resources provided to members of the Oireachtas are being used for the purposes for which they have been authorised.

In March 2009, the Chairman of the Standards Commission wrote to the Taoiseach

again setting out its view that resources, such as Oireachtas envelopes, provided to TDs and Senators at public expense in order to facilitate the performance of their functions as public representatives should not be passed on to others who have no entitlement to use them. Such a practice is an abuse of public resources and is entirely inappropriate. The Chairman requested the Taoiseach to bring the Standards Commission's concerns to the attention of office holders. The Chairman also provided a copy of that letter to the Chairpersons of the Committees on Members' Interests of Dáil Éireann and of Seanad Éireann. The Taoiseach replied stating that he had brought the letter to the attention of all office holders. The Committees on Members' Interests of Dáil and Seanad Éireann also replied stating that the letter would be circulated to all members who are not office holders. The Standards Commission issued a press release in April 2009 setting out its views on the matter in advance of the local and European elections.

Tax Clearance

Tax Clearance Provisions - Elected Members

Members elected to Dáil and Seanad Éireann during 2007 were obliged under the 2001 Act to provide evidence of tax compliance to the Standards Commission within nine months of the date on which they were declared elected. In the event of a member failing to comply with the legislation and failing to produce the required evidence (a statutory declaration and either a tax clearance certificate or an application statement), it is up to the Standards Commission to decide whether to investigate the matter and to provide any subsequent report to the Committee on Members' Interests.

In the event, some members were in breach of the legislation in that they failed either to make their statutory declaration, to have a tax clearance certificate/application statement issued to them by the Collector General, or to furnish the necessary evidence within the time frames set down in the legislation. All outstanding documents were subsequently received from members. Accordingly, the Standards Commission has a complete set of the required documentation from each member elected during 2007 and there were no substantive contraventions of the legislation.

The Standards Commission decided that as the contraventions were technical in nature, rather than substantive, it would be disproportionate to investigate and report on the matter. The Standards Commission wrote to the Committees on Members'

Interests of Dáil Éireann and of Seanad Éireann informing them of its decision in this matter and the basis on which it took the decision.

Scope of the Ethics Acts

Since 1994, the Minister for Finance has annually updated the regulations prescribing designated positions in Civil Service Departments and Offices and designated directorships and designated positions in organisations in the wider public service. This has greatly widened the scope of the Ethics Acts. The number of public bodies in the civil and public service in which directorships and/or positions have been prescribed for the purposes of the Ethics Acts has increased from less than 150 in 2004 to around 530 in 2007. The Standards Commission has welcomed these developments in previous annual reports.

In its Annual Report for 2007, the Standards Commission stated that regulations extending the scope of the regulations prescribing designated positions in Civil Service Departments and Offices and designated directorships and designated positions in organisations in the wider public service had not been made to take effect on 1 January 2008 as intended and in accordance with practice in previous years. The regulations were subsequently made with effect from 25 April 2008. Further regulations were made in December 2008 and took effect from 1 January 2009. The consequence of these regulations was to extend the scope of the disclosure provisions of the Ethics Acts from around 530 in 2007 to over 670 in 2009.

The Standards Commission wishes to re-emphasise the necessity for public bodies to ensure that persons who have obligations under the Ethics Acts in relation to disclosure of interests, or in relation to the provision of evidence of compliance with taxation legislation, are notified of their responsibilities in good time to allow for compliance. All designated directors and designated employees should be briefed on their obligations as part of induction training and there should be structured follow-up, at least once a year, to remind them of the steps which are required to be taken to ensure compliance with the legislation. The Standards Commission is available to assist in this process and to provide direct guidance and advice on any specific issue relating to the provisions of the Ethics Acts as they may apply to individual designated directors and employees.

Electoral Acts

Role of the Standards Commission

The Standards Commission has a supervisory role under the Electoral Act 1997 (the 1997 Act) as amended (Electoral Acts) in relation to:

1. the acceptance and disclosure of donations received by political parties, TDs, Senators, MEPs and candidates at Dáil, Seanad, European Parliament and presidential elections;
2. the opening and maintenance of political donations accounts;
3. the limitation, disclosure and reimbursement of election expenses;
4. State financing of qualified political parties (see Chapter 3);
5. the registration of “third parties” (i.e., campaign/lobby groups or individuals that accept a donation for political purposes that exceeds €126.97 in value) and “other persons” (persons not connected to a political party or candidate who incur election expenses pursuant to section 31(7) of the 1997 Act);
6. the publication of guidelines and the provision of advice on these requirements.

During 2008, the Standards Commission supervised compliance with the Electoral Acts by political parties and their accounting units and by TDs, Senators and MEPs. It also supervised compliance with the Electoral Acts by “third parties” campaigning at the referendum on the Treaty of Lisbon.

Issues arising from the Dáil general election of 2007

In its annual report for 2007, the Standards Commission referred to a number of participants at the election whose statutory documentation had not been finalised. The position in relation to these people is as follows:

- in relation to Mr Michael Canney who had incurred election expenses pursuant to section 31(7) of the 1997 Act on behalf of the Campaign to Save Tara, the Standards Commission had reported that an Election Expenses Statement had still not been received from Mr Canney. The matter had been referred to the Gardaí for an investigation of an offence under section 43(3)(b) of the 1997 Act. At the time of printing the 2007 Annual Report, the Garda investigation of this offence had not yet been completed. Mr Canney's Election Expenses Statement was received on 18 June 2008 and laid before the Houses of the Oireachtas on 24 June 2008. The Standards Commission was informed by the Gardaí that it would not be recommending a prosecution of this matter to the DPP.
- the Standards Commission had reported that receipts/invoices were still required in relation to the Election Expenses Statements of Mr Barry Kennedy (election agent for Senator Paudie Coffey) and Mr Niall Kelleher (election agent for Mr Tom Fleming). The election agents and candidates had been informed that a reimbursement of the candidates' election expenses would not be processed until these invoices/receipts were received. All outstanding invoices/receipts were subsequently received. The reimbursement application for Senator Coffey was certified for payment by the Standards Commission on 25 August 2008 while the reimbursement application for Cllr Fleming was certified on 30 March 2009.

Disclosure of Donations

Donations disclosed by TDs, Senators and MEPs

A person who was a TD, Senator or MEP during 2008 was required to furnish a Donation Statement to the Standards Commission by 31 January 2009. Donations received during 2008 which exceeded a value of €634.87 were required to be disclosed. Donations from the same person in the same year must be aggregated for the purposes of observing the disclosure threshold and the maximum acceptance limit (€2,539.48). 237 Donation Statements were received for 2008. This total comprised 164 Donation

Statements from TDs (Donation Statements were not required to be received in respect of the late Deputies Brennan and Gregory), 60 from Senators and 13 from MEPs. Donations totalling €163,394 [of which €5,000 was returned to the donors (€2,500 was returned to a donor because the donation concerned was in excess of the maximum prescribed limit)] were disclosed. Donations disclosed included money and the free use of property or services. The amount disclosed represents a decrease of €692,601 on the figure of €855,995.05 (€764,222.55 net of donations returned) disclosed for 2007 and reflects the fact that 2007 was an election year.

Details of the donations disclosed in respect of 2008 are available in a report to the Ceann Comhairle which was published on 29 April 2009. The report is also available on the Standards Commission's website.

Political Donations Accounts

Members and MEPs are required to open and **maintain** a political donations account if a monetary donation of €126.97 is received. All subsequent monetary donations must be lodged to the account and all monies from the account must be used for political purposes. The Standards Commission considers that it is implicit in the legislation that the person receiving donations should have control over the political donations account. The account should be in the person's name and he/she should be a signatory on the account. He/She should also be provided with documentation relating to the account. Responsibility for the account should not be assigned to other persons (i.e., a political party, director of elections, fund-raising group, etc.).

If there were transactions on the political donations account during 2008, a Member/MEP was required to furnish with the Donation Statement a statement from the bank in which the account was held. The statement must show all of the transactions on the account during 2008. The Member/MEP was also required to furnish a Certificate of Monetary Donations on which he/she certified that all monetary donations were lodged to the account and that all monies from the account were used for political purposes. A Member/MEP whose political donations account was not active during 2008 was required only to state this on the Certificate of Monetary Donations and was not required to complete the Statutory Declaration or to forward a copy of a bank statement. 34 TDs, 25 Senators and six MEPs stated that they did not have a political

donations account. 79 TDs, 23 Senators and 2 MEPs submitted bank statements to the Standards Commission in respect of 2008. 51 TDs, 12 Senators and 5 MEPs stated that there were no transactions on their political donations account during 2008 and were not required to submit a bank statement.

Definition of “subsidiary companies” for the purposes of the Electoral Acts

An issue which the Standards Commission had to consider during 2008 was whether the definition of “subsidiary”, provided for in section 155 of the Companies Act, should be applied to the Electoral Acts or whether the “ordinary” meaning of the word should be applied. This followed a request for advice from a Member of the Houses of the Oireachtas who had received donations from connected companies. The Member had been informed that the companies were not subsidiaries of each other. In view of the connection between the companies, however, the Member sought advice as to whether the companies should be regarded as the same donor for the purposes of the Electoral Acts.

A donation is defined in the Electoral Acts as a contribution given for political purposes by any person. “A person” is defined in section 2 of the 1997 Act as including an individual, a body corporate or an unincorporated body of persons. A body corporate and any of its subsidiaries are deemed to be the one person. The Electoral Acts do not provide a definition of “a subsidiary” of a body corporate. The Standards Commission sought legal advice on the matter and was advised that the word “subsidiary” as used in the definition of the term “person” in section 2 of the 1997 Act should be construed by reference to the definition given to that word by section 155 of the Companies Act 1963.

The Member was advised accordingly. The Standards Commission also wrote to each TD, Senator and MEP and to the appropriate officers of each political party informing them of the advice received by the Standards Commission and the meaning which should now be applied to the word “subsidiary” for the purposes of the Electoral Acts. The Standards Commission also informed the Minister for the Environment, Heritage and Local Government of the advice it had received and suggested that a specific reference to section 155 of the Companies Act might be provided at section 2 of the 1997 Act.

Donations disclosed by individual donors

Section 24(1A) of the 1997 Act as amended provides that any individual, who in a particular year, makes donations exceeding €5,078.95 in aggregate value to:

1. two or more persons who were members of the same political party when the donations were made, or
2. a political party, and to one or more of its members,

must furnish a Donation Statement to the Standards Commission. The Donation Statement, which is accompanied by a statutory declaration, must give details of the donations and the persons to whom they were made and must be furnished by 31 January of the following year. The Donation Statement must be furnished irrespective of whether the person receiving the donation has an obligation to disclose the donation.

The Standards Commission was aware from Donation Statements furnished by unsuccessful candidates at the Dáil and Seanad general elections and Donation Statements furnished by TDs, Senators and MEPs in respect of 2007 that a Mr Patrick O'Meara, Thurles, Co Tipperary had made donations exceeding €5,078.95 to members of Fianna Fáil during 2007.

The Standards Commission wrote to Mr O'Meara on 3 April 2008 setting out the requirements of the Act. He was requested to furnish a Donation Statement in respect of all donations made by him during 2007 to Fianna Fáil or any of its members. A Donation Statement was received from Mr O'Meara on 2 May 2008. Although he had contravened the provisions of section 24(1A) by failing to furnish his Donation Statement by the statutory deadline of 31 January 2008, the Standards Commission decided that, as Mr O'Meara had otherwise complied with the provisions of the Act by furnishing a Donation Statement, it would not refer the matter to the DPP/Gardaí.

Mr O'Meara's Donation Statement disclosed 18 separate donations totalling €17,635 made to Fianna Fáil and its members during 2007. (Two further donations of €500 each made to non-party candidates at the Dáil general election were also disclosed.)

Eleven of these donations were above the disclosure threshold of €634.87 and had been made to persons who had been required to furnish a Donation Statement to the Standards Commission (either as an elected Member or as an unsuccessful candidate at the general elections). Six of the 11 donations had already been disclosed by the recipients on their Donation Statements.

The following five donations disclosed by Mr O'Meara as having been made during 2007 had not been disclosed by the recipients:

- €1,000 cheque to Senator Cecelia Keaveney
- €1,000 cheque to Senator Lisa McDonald
- €2,000 cheque to Cllr Tom Fleming
- €1,000 cheque to Deputy Michael Fitzpatrick
- €1,000 cheque to Patrick Boshell MCC for the election fund for Deputy Thomas Byrne.

The Standards Commission wrote to each of these persons asking them to explain why the donation from Mr O'Meara had not been disclosed.

Details of the donations disclosed by Mr O'Meara and the enquiries made by the Standards Commission are set out in a report which the Standards Commission furnished to the Ceann Comhairle on 29 March 2009. This report is also available on the website of the Standards Commission. Mr O'Meara's Donation Statement/Statutory Declaration was laid before the Houses of the Oireachtas on the same day and is available for public inspection.

Donations disclosed by political parties for 2008

Fourteen political parties were registered in the Register of Political Parties during 2008 to contest a Dáil or European election. Each of these parties was required to furnish a Donation Statement to the Standards Commission by 31 March 2009.

Donations received during 2008 which exceeded an aggregate value of €5,078.95 were required to be disclosed. The maximum value of donations which a political party can accept from the same person in the same calendar year is €6,348.69. Donations received from the same donor in the same calendar year must be aggregated for the purposes of observing the disclosure and maximum acceptance limits. The total value of donations disclosed by parties in respect of 2008 was €94,700.60. Details of the donations disclosed by political parties in respect of 2008 are available in a report which the Standards Commission furnished to the Ceann Comhairle on May 2009. The report is also available on the Standards Commission website.

Accounting Units of political parties

The Standards Commission continues to experience difficulties in supervising these provisions of the legislation. Essentially the Standards Commission finds itself pursuing accounting units and responsible persons for bank statements which in the Standards Commission's opinion achieve little, if any, purpose.

An "accounting unit" of a political party is a branch or other subsidiary organisation of the party which, in any particular year, receives a donation the value of which exceeds €126.97. The appropriate officer of a political party is required to provide the Standards Commission with the name and address of each accounting unit of the party, including the name of its "responsible person". (The responsible person is the treasurer or any other person responsible for dealing with donations to the unit.)

During 2008, the Standards Commission wrote to 202 accounting units which were identified by the relevant political parties (158 accounting units had been contacted in 2007). 62 accounting units furnished the required statutory documentation by the statutory deadline of 31 March 2008. 78 accounting units failed to furnish their statutory documentation on time. 12 branches of political parties informed the Standards Commission that they have never been an accounting unit or are no longer active. 15 accounting units did not reply.

The Standard Commission considers that branches and other organs of a political party should maintain a political donations account and that donations should be lodged to this account and should only be used for political purposes. In its guidelines

for political parties on donations and prohibited donations, the Standards Commission recommends that all donations exceeding €100 in value which are received by a branch or subsidiary organisation of the party must be recorded and notified to the party's appropriate officer for the purposes of observing the maximum prescribed limit.

The Council of Europe Recommendations (see below) provide that States should require political parties to keep proper books and accounts; that such accounts should specify all donations received by the party and to identify donations over a certain value (including donations received by branches or other entities of the party) and that States should require political parties regularly, and at least annually, to make public such accounts. The Standards Commission considers that this approach should be followed. Accounting units of political parties should be required to provide details of donations received by the unit to the party's appropriate officer for the purposes of compiling such accounts. The treasurer or responsible person of an accounting unit would be required to confirm to the party's appropriate officer the amount of donations received by the branch; to provide details of any donations exceeding €100 in value and to confirm that all donations were lodged to the political donations account and were used for political purposes. It would be an offence for the treasurer or responsible person to fail to comply with this requirement. If it considered it necessary to do so, the Standards Commission could (under section 4(4) of the 1997 Act (see page 43)) request an accounting unit to provide bank statements relating to its political donations account.

GRECO Evaluation of transparency of funding of political parties

Ireland became a member of GRECO (*Council of Europe Groups of States Against Corruption*) in May 1999. GRECO is responsible for monitoring observance of the Guiding Principles for the Fight against Corruption and implementation of the international legal instruments adopted in pursuit of the Programme of Action against Corruption. A key fundamental of the operation of GRECO is that its States accept the requirement to be subject to evaluation in relation to the putting in place of measures to combat corruption. At its 24th Plenary meeting, GRECO decided that one of the provisions to be evaluated in the framework of the third evaluation round of GRECO is the transparency of party funding.

The GRECO Third Evaluation Round is currently underway. A questionnaire on the transparency of party funding which GRECO has asked to be completed as a basis for its evaluation, has been issued by the Department of Justice, Equality and Law Reform (the Criminal Law Division of that Department participates in GRECO) to the Standards Commission and a number of other Government Departments and State bodies. The Standards Commission has completed the questionnaire having regard to its supervisory role under the Electoral Acts and the Party Leaders Allowance legislation.

Article 11 of Recommendation (2003) 4 on Common Rules against Corruption and Funding of Political Parties and Electoral Campaigns provides that States should require political parties to keep proper books and accounts. Article 12 provides that States should require such accounts to specify all donations received by the party and to identify donations over a certain value. Article 13 provides that States should require political parties regularly, and at least annually, to make public such accounts, or as a minimum a summary of those accounts. Political parties are not required, under the Electoral Acts, to keep proper books and accounts or to make public their accounts. Neither are they required to specify all donations received by them. The Standards Commission has stated on a number of occasions that political parties should be required to adhere to Articles 11, 12 and 13.

Following examination by GRECO of Ireland's response to the questionnaire, a team of evaluators will visit Ireland during 2009 to examine our legislation, practices and procedures. As part of this process the evaluators may meet with the Standards Commission. It is likely that Ireland's failure to adhere to Articles 11, 12 and 13 will be noted in the GRECO evaluation report on the transparency of party funding.

Enquiry regarding donations disclosed pursuant to section 26 of the 1997 Act

Section 26 of the 1997 Act provides that a company must include in its annual report/return to the Companies Registration Office (CRO) details of all donations made by the company during the year which exceeded €5,078.95 in value. The report/return must identify the value of each such donation, and the person to whom the donation was made.

It was brought to the attention of the Standards Commission that the following donations disclosed by Gannons City Recovery & Recycling Services Limited (Gannons) on its annual report/return for 2005 were not disclosed by the recipients:

- Donation of €9,600 to Fianna Fáil
- Donation of €2,500 to Senator Ivor Callely (Senator Callely was a TD in 2005)
- Donation of €1,500 to “Jim Glennon fund” (Mr. Glennon was a TD in 2005)

Fianna Fáil

The Standards Commission wrote to the appropriate officer of Fianna Fáil asking him to explain why the donation from Gannons was not included on the party's Donation Statement for 2005. The Standards Commission was informed by Fianna Fáil that the donation from Gannons represented payments of €7,800 and €1,800 respectively to attend two separate fund-raising events. These events yielded profits of 47% and 39% respectively. The net value of the contributions from Gannons in each case was €3,666 and €702. The total net value of these contributions was €4,368. This was below the disclosure threshold of €5,078.95 and was not required to be disclosed. (Whereas a company must disclose the gross value of donations to fund-raising events on its annual report/return, the recipient is only required to disclose the net value of such contributions.)

Senator Ivor Callely

On his Donation Statement for 2005, Senator Callely had disclosed a donation of €1,500 (gross value) from Mr Anthony Gannon for a fund-raising event. The Standards Commission wrote to Senator Callely asking him to explain why the amount disclosed on his Donation Statement differed from the amount disclosed by Gannons on its return to the CRO. Senator Callely informed the Standards Commission that a donation of €1,500 had been received from Mr Anthony Gannon in 2005. He suggested that a donation of €2,500 may have been made by Gannons to a Dublin North Central fund-raising event for the European election campaign.

On his return for 2005 the “responsible person” of the Fianna Fáil Dublin North Central accounting unit, Mr Thomas Loomes, had informed the Standards Commission that no donations had been received by the accounting unit during 2005. The Standards Commission wrote to Mr Loomes asking him to clarify whether a donation from Gannons had been received in 2005. Mr Loomes confirmed again in writing to the Standards Commission that no donations were received by the branch from Gannons.

The Standards Commission subsequently wrote to Gannons asking the company to confirm the donations made to Senator Callely. (Senator Callely informed the Standards Commission that he had also asked Gannons to clarify the amount of the donation made to him.) Gannons subsequently clarified that the company’s annual report/return had incorrectly attributed a donation of €1,000 which was given to Mr Callely for Fianna Fáil on 8 April 2005 as a donation to Mr Callely. The report/return should have indicated donations of €10,600 for Fianna Fáil and €1,500 for Mr. Callely. Gannons confirmed that the only donation made to Senator Callely was the donation of €1,500 which he had disclosed.

A further letter issued to Senator Callely informing him of the clarification provided by Gannons. In view of the fact that neither Fianna Fáil’s appropriate officer nor Mr Loomes had referred to the donation of €1,000 given to Senator Callely for Fianna Fáil in their correspondence with the Standards Commission, Senator Callely was asked to confirm whether he had received the donation of €1,000 from Gannons for Fianna Fáil, and if so, whether he had passed it to Fianna Fáil HQ or to a branch of the party.

Senator Callely subsequently informed the Standards Commission that he understood from his enquiries that a donation of €1,000 was presented to his office by Gannons. He further stated that in view of the admission of error by Gannons in its annual report/return, and in order to bring closure to the matter, he had forwarded a cheque for €1,000 to Mr Loomes. He stated that he had no record of receiving the donation of €1,000 from Gannons and that his Donation Statement for 2005 had been made in good faith.

The Standards Commission wrote to the appropriate officer of Fianna Fáil informing him of its enquiries with Senator Callely and with Gannons. In view of the information

provided by Gannons and the payment subsequently made to Fianna Fáil Dublin North Central by Senator Callely, the total value of donations received by the party from Gannons in 2005 was deemed to be €5,368 (€4,368 for fund-raising events and €1,000 given to Senator Callely for Fianna Fáil). This was above the disclosure threshold of €5,078.95. While the Standards Commission did not consider that Fianna Fáil's then appropriate officer had contravened the legislation by failing to disclose the donations from Gannons, it was of the view that the party should now furnish a supplementary Donation Statement for 2005. This supplementary Donation Statement was received and laid before the Houses of the Oireachtas on 16 October 2008.

Mr Jim Glennon

Mr Glennon had furnished a "nil" Donation Statement for 2005. He had included with his Donation Statement details of a fund-raising lunch held during 2005. The Standards Commission wrote to Mr Glennon asking him to explain why the donation from Gannons had not been disclosed on his Donation Statement. If it was the case that the donation was a contribution to a fund-raising event, Mr Glennon was asked to advise what the net value of that contribution was and how that figure was arrived at.

A reply was received from Mr Glennon in which he confirmed that a contribution of €1,500 for a fund-raising lunch was received from Gannons in 2005. This was in respect of ten paying guests. He had calculated the net value of this contribution at €610.30. As this was below the disclosure threshold of €634.87 he had not disclosed the contribution. In reviewing how the net value of an individual contribution to this particular event was calculated, the Standards Commission considered that the correct net contribution was €75.65 per paying guest. The net value of the contribution from Gannons, therefore, was €756.50.

Mr Glennon was advised of the correct calculation of the net value of Gannon's contribution and was requested to amend his Donation Statement. A supplementary Donation Statement was received from Mr Glennon and laid before the Houses of the Oireachtas on 3 November 2008. The Standards Commission was satisfied that Mr Glennon had not knowingly furnished a false or misleading Donation Statement.

Third Parties

Third Parties - General Correspondence in 2007

A “third party” is defined as any person, other than a political party or a candidate at an election, who accepts, in a particular year, a donation (i.e., a contribution given for political purposes) the value of which exceeds €126.97. A contribution given in support of a campaign at a referendum is regarded as a contribution for political purposes.

On receipt of a donation exceeding €126.97 in value a third party must register with the Standards Commission. Third parties are prohibited from accepting anonymous donations exceeding €126.97 in value and are prohibited from accepting “foreign donations”. The maximum donation which a third party may accept from the same person in the same calendar year is €6,348.69. A third party must open and maintain a political donations account if it receives a monetary donation in excess of €126.97. It must furnish certain statutory documentation relating to that account to the Standards Commission; that documentation comprises a bank statement detailing transactions on the political donations account and a certificate of monetary donations confirming that all donations were lodged to the account and that payments from the account were used for political purposes.

Aside from those individuals/organisations which registered as third parties on account of campaigns at the referendum on the Treaty of Lisbon, no other third parties registered with the Standards Commission during 2008.

In early 2008, the Standards Commission wrote to the seven third parties that had been registered with it during 2007 and requested a Certificate of Monetary Donations and bank statement in relation to their political donations accounts. Three third parties provided a bank statement and Certificate of Monetary Donations. The four other third parties confirmed in writing to the Standards Commission that there had been no activity on their political donations account during 2007. Three registered third parties informed the Standards Commission that they would not be operating as a third party during 2008.

Third Parties - Referendum on the Treaty of Lisbon

The Standards Commission received a number of enquiries prior to the referendum

campaign as to how the third party provisions of the Electoral Acts would apply at the referendum. The Standards Commission received legal advice that the provisions of the legislation relating to third parties would not apply to individuals or groups from outside the state which did not have a presence in this jurisdiction and who intended to campaign or fund campaigns at the referendum. The Standards Commission was also advised that an individual or group would only be required to register as a third party if a contribution, given for political purposes, was received. Individuals or groups that used their own resources to fund their referendum campaigns, and did not receive a donation, were not required to register as a third party. The Standards Commission informed the Minister for the Environment, Heritage and Local Government of the advice it had received and how it intended to apply the third party provisions of the Electoral Acts at the referendum.

The Standards Commission published a notice in the main national newspapers and other relevant magazines, and produced an explanatory note, explaining the provisions of the legislation as they affect third parties campaigning at the referendum. The Standards Commission contacted a number of individuals and groups who were campaigning at the referendum. All were given a copy of the Standards Commission's explanatory note and were requested to consider if they were required to register as a third party. Eight groups registered as a third party.

The Standards Commission also received legal advice on the use of funding provided to Irish MEPs and political parties by their **political groups** in the European Parliament. Section 22(2)(b)(ii) of the 1997 Act provides that any payment, service or facility provided to a **person** out of monies provided by an institution of the European Union by virtue of the person being an MEP or a political group is not regarded as a donation. Political groups are funded by the European Parliament. They make funds available to MEPs or political parties that are members of the group. The Standards Commission was advised that, in accordance with section 22(2)(b)(ii) of the 1997 Act, funding provided to an Irish MEP or political party by their political groups would not be regarded as a donation.

During the referendum campaign, concerns were expressed about the expenditure of certain groups and how this expenditure was being funded. Concerns were also

expressed that third parties campaigning at the referendum were not required to disclose details of donations received by them. *At the outset of the campaign the Standards Commission clarified that, unlike political parties, elected representatives or candidates at elections, third parties are not required to disclose their donations. The Standards Commission also clarified that information contained on the Certificates of Monetary Donations and bank statements furnished to the Standards Commission by third parties would not be made available for public inspection.*

Section 4(4) of the 1997 Act provides that the Standards Commission may make whatever enquiries it considers necessary and can request any document, information or thing from a person for the purposes of *carrying out its duties under the Act*. The requirements attaching to third parties are set above. The Standards Commission is responsible for ensuring that third parties comply with these requirements.

The Standards Commission wrote to four registered third parties regarding the provision of loans (Libertas, C  IR, Campaign Against EU Constitution and Irish Alliance for Europe). These groups were selected on the basis that they intended to incur expenditure of   10,000 or above at the referendum. A *bona fide* loan is not regarded as a donation. A loan, however, provided to a third party by a financial institution or other person at preferential terms and conditions might be regarded as a donation. The Irish Alliance for Europe, C  IR and Campaign Against EU Constitution informed the Standards Commission that they had not received any loans to finance their referendum campaigns. Libertas had already informed the Standards Commission of a loan provided by Mr Declan Ganley. The letter to Libertas asked whether other loans had been provided to fund the referendum campaign. Following a number of written reminders to Libertas, their solicitors finally provided, on 30 March 2009, a copy of the loan agreement between Libertas and Mr Declan Ganley. The loan agreement would seem to indicate that the loan from Mr Ganley to Libertas is a *bona fide* loan. The solicitors also confirmed that no other loans were provided to Libertas.

The “responsible person” of Libertas, Mr Naoise Nunn, informed the Standards Commission on 30 September 2008 that he had resigned from Libertas with effect from 19 September 2008. In addition to furnishing a Certificate and bank statement in respect of the third party’s political donations account, the responsible person must

also ensure that any prohibited donations which might be received by the third party are returned to the donor or remitted to the Standards Commission. The Standards Commission, therefore, wrote to Libertas on 3 October 2008 requesting it to provide details of the person who had replaced Mr Nunn as responsible person for Libertas. This information was not provided to the Standards Commission until 30 March 2009.

Following media reports, the Standards Commission decided to make the following other enquiries with Libertas in order to ensure that it complied with its obligations under the Act regarding the non-acceptance of prohibited donations:

a) Employees of Rivada Networks Ltd

It had been suggested that persons employed by Rivada may have been paid by that company while working for Libertas on its referendum campaign. If this was the case it could be regarded as a donation to Libertas from Rivada. If the total value of the services provided exceeded €6,348.69 in any year, Libertas would be required to refund the excess donation to Rivada.

Libertas confirmed, in a letter dated 7 July 2008, that Rivada employees “who worked on the Libertas project did so in their spare time and on a voluntary basis.” On 11 September 2008, the Standards Commission asked Libertas to provide further details of the employees who worked on the referendum campaign. On 30 March 2009, solicitors for Libertas informed the Commission that three employees of Rivada Networks worked voluntarily on the Libertas campaign - Naoise Nunn, David Cochrane and Norrie Keane. They were not engaged full-time on the Libertas campaign while working for Rivada. The solicitors confirmed that these people had spent no part of the time they were contracted to work for Rivada Networks on the Lisbon campaign. They may have taken paid leave in accordance with their statutory entitlements but did not take unpaid leave to work on the Lisbon campaign. From 1 May 2008 Mr Nunn and Mr Cochrane were employed by Libertas and ceased working for Rivada. Another person, John McGuirk, was employed by Libertas from 18 March. He had no connection with Rivada.

b) Use of “The Lisbon Treaty: the Readable Version”

The Standards Commission was aware that Libertas had distributed a book - “The

Lisbon Treaty: the Readable Version” - as part of its referendum campaign. It had been reported that the book had a certain retail value and that 35,000 copies of the book had been given to Libertas by another organisation, the Foundation for European Democracy. A donation is defined in the Act as a contribution given for political purposes. This includes the free or below cost provision of goods, property or services. If the books were given for the purpose of assisting Libertas in its referendum campaign, and if the total value of the books provided to Libertas exceeded €6,348.69 in any year, Libertas would be required to refund the excess donation to the Foundation for European Democracy. The Standards Commission requested Libertas to clarify the position with regard to the use of these books, whether they were provided free or below commercial cost, and queried why the provision of these books should not be regarded as a donation to Libertas.

In a letter dated 7 July 2008, Libertas confirmed that it had received a number of copies of this book from “the EU Democrats”. Libertas stated that the books did not contain any political messaging and that they were distributed free of charge. The Standards Commission considered that this response was not entirely relevant in determining whether provision of the books constituted a donation to Libertas. The Standards Commission wrote again to Libertas on 22 August 2008 advising it that if the books were provided free of charge (where a charge normally applies), and were given for the purposes of seeking to influence the outcome of the referendum, it would be regarded as a donation to Libertas. Libertas was asked for its further comments as to why the provision of these books should not be regarded as a donation.

Libertas solicitors informed the Standards Commission on 30 March 2009 that the book claims to be a “ consolidated reader-friendly Edition of the Treaty on European Union and Treaty on the Functioning of the European Union as amended by the Treaty of Lisbon”. They stated that the book is a document prepared by the Foundation for EU Democracy and does not advocate any position on the Lisbon Treaty. The book was not published with a view to sale. Mr Ganley regards the book as being “neutral” on the issue that was presented to referendum and, as a consequence, is not captured by the definition of “political purposes”.

Enquiries were also made with EU Bookshop as to whether the book was ever for sale on eubookshop.com and if so, what the retail price of the book was. A reply was received from Mr Jens Peter Bonde on 1 April 2009. He stated that the book is simply about “the treaty you were voting about and we made it available for everyone”. Mr Bonde stated that The Foundation for EU Democracy printed 2,000 copies of the book and distributed them for free to those who asked. Libertas received 1,000 copies for free. He further stated that the Foundation allowed EUBookshop to promote their books. There was no real sale. EU Bookshop have the books for free or for a symbolic amount and finance the posting for the official sales price. Mr Bonde claimed that the books cannot be sold commercially.

The 2008 referendum highlighted significant weaknesses in the provisions of the Electoral Acts concerning third parties. In its Review of the Electoral Acts in 2003 and in its Annual Report for 2005, the Standards Commission suggested that, instead of the acceptance of a donation determining whether an individual or group is required to register as a third party, the focus of these provisions of the legislation should concentrate on the amount spent on a particular campaign by individuals or groups. If that amount exceeded a certain threshold (e.g., €5,000) then individuals/groups might be required to show how their campaign was funded. Limits on the type and amount of donations which could be accepted to fund the campaign would apply.

In January 2009, the Minister for the Environment, Heritage and Local Government requested the Standards Commission to prepare and submit to him a report setting out its experience of operating the third party provisions of the legislation as they applied at recent referendums. This report was furnished to the Minister on 10 March 2009. In addition to setting out its experience in relation to the Treaty of Lisbon, the report also gives a general account of the difficulties which it has encountered in the supervision of these provisions and the concerns which have been expressed by some voluntary and other groups whose activities have been affected by the legislation. It also makes suggestions as to how the provisions of the legislation applying to third parties might be improved. Details of individuals/groups contacted by the Standards Commission in relation to the referendum are provided in the report. The report is available on the website of the Standards Commission.

The Standards Commission welcomes the stated intention of the Taoiseach and the Minister to review the disclosure requirements attaching to third parties. *The Standards Commission suggests, however, that this review might encompass all provisions of the Electoral Acts relating to third parties and should take into account previous recommendations made by the Standards Commission in this regard and the recommendations contained in its recent report to the Minister.*

Powers of enquiry under section 4(4) of the 1997 Act

Unlike the Ethics Acts, the Electoral Acts do not provide a formal complaints and investigative procedure for the Standards Commission to examine instances of non-compliance with the Acts. The Standards Commission may, under section 4(4) of the 1997 Act, make such enquiries as it considers appropriate and may require any person to furnish any information, document or thing in the possession or procurement of the person for the purposes of carrying out its duties under the Electoral Acts.

Section 4(4) gives the Standards Commission very wide scope to request information which it may need for the purposes of carrying out its supervisory role under the Electoral Acts. Generally, however, the Standards Commission carries out its enquiries under the Electoral Acts in a relatively informal manner and will only resort to making a request for information under section 4(4) of the 1997 Act when previous requests for such information have not been replied to.

As shown earlier in this report, the Standards Commission conducted a number of enquiries under the Electoral Acts during 2008. In most cases the information requested was provided in a timely manner. In some cases, however, there were significant delays in providing all of the information requested by the Standards Commission.

There is no sanction in the Electoral Acts for a failure to comply with a request for information made under section 4(4) of the 1997 Act. While negative publicity, which might attach to being mentioned in a report by the Standards Commission as having failed to comply with a request for information, might be regarded as a sanction, the Standards Commission requests that consideration be given to providing for an offence for failing to comply with a request for information under section 4(4).

Expenditure limits at local elections

In its annual report for 2007, the Standards Commission referred to a submission it had made to the Minister for the Environment, Heritage and Local Government in relation to a proposal to introduce spending limits at local elections. In March of this year, legislation to give effect to this proposal (the Electoral (Amendment) Act 2009) was enacted. The Standards Commission is pleased to note that the Act includes some of the recommendations made by the Standards Commission in its submission to the Minister namely - different spending limits for elections to county councils and elections to town councils; a statutory requirement on local authorities to publish details of donations disclosed and expenses incurred; and an election period with a set number of days (between 50 and 60) prior to polling day.

Exchequer funding of political parties

The Electoral Acts and the Ministerial and Parliamentary Officers Act 1938 (the 1938 Act) as amended by the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 provide for the Exchequer funding of qualified political parties. The funding under the latter is known as the Party Leaders Allowance. In 2008, total funding of **€13,742,202** was paid to qualified political parties under the Electoral Acts and the Party Leaders Allowance.

Funding under the Electoral Acts

In order to qualify for funding under the Electoral Acts, a political party must be included in the Register of Political Parties and must have obtained at least 2% of the first preference votes at the last Dáil general election. Funding was paid to six qualified parties during 2008 on the basis of the results of the 2007 general election. The funding is not subject to income tax.

Each qualified political party is paid a basic amount of €126,973 annually. In addition each qualified political party is also entitled to a share of an annual sum which was originally set at €3.8m and which increases in line with general pay increases in the civil service. The share of the fund payable to a qualified political party is determined by expressing the first preference votes of the qualified party as a percentage of the total first preference votes received by all qualified political parties.

During 2008, an increase of 2.5% under Towards 2016 was applied to the fund with effect from 1 March 2008. A further increase of 2.5% under Towards 2016 was applied from 1 September 2008. At 31 December 2008, the fund stood at €4,948,201. When the basic payments of €126,973 payable to each of the six qualified parties are added

to the fund, the total amount payable to qualified political parties under the Electoral Acts at 31 December 2008 is €5,710,044. The total funding actually received by qualified political parties under the Electoral Acts for 2008 was €5,609,961. The difference is accounted for by the fact that the increased amounts were payable for part of 2008 only.

The Electoral Acts require that funding received by a qualified political party must be applied to “ *the general conduct and management of the party’s affairs and the lawful pursuit by it of any of its objectives and, without prejudice to the generality of the foregoing, any or all of the following purposes -*

- *general administration of the party;*
- *research, education and training;*
- *policy formulation;*
- *co-ordination of the activities of branches and party members.”*

The funding is also deemed to include provision in respect of the participation of women and young persons in political activity. The funding cannot be used to recoup election or referendum expenses.

Each qualified political party is required to account annually to the Standards Commission in respect of its expenditure of funding received during the preceding year. The Exchequer Expenditure Statement must be audited by a public auditor and a copy of the auditor’s report must be furnished to the Standards Commission with the Statement. The Standards Commission requests that Exchequer Expenditure Statements and auditors’ reports should be furnished by 31 March each year. Where a qualified political party has not, by 30 April in any year, furnished an Exchequer Expenditure Statement and auditor’s report to the Standards Commission in respect of the preceding year, further payments of the funding will be suspended until such time as the Statement and auditor’s report are received.

The Exchequer Expenditure Statements for 2008 detail the amount of funding received by each qualified political party in respect of 2008 as well as any funding unspent and brought forward from 2007. The Exchequer Expenditure Statements also give details under the above headings of how the funding was spent. The Standards Commission furnished a report to the Chairman of Dáil Éireann in June 2009 providing details of the funding received under the Electoral Acts by qualified political parties in respect of 2008 and how this funding was applied. The Exchequer Expenditure Statements and auditors' reports were laid before the Houses of the Oireachtas on the same day and were made available for public inspection and copying. The report is available on the website of the Standards Commission.

Funding under the Party Leaders Allowance legislation

The Party Leaders Allowance legislation provides for the payment of an annual allowance to the parliamentary leader of a qualified political party in relation to expenses arising from the parliamentary activities, including research, of the party. The legislation prescribes 11 different categories of expenditure which are regarded as expenses arising from the parliamentary activities, including research, of the party. The Allowance is not subject to income tax. The Allowance must not be used for, or to recoup, election or poll expenses.

A qualified political party under the legislation is defined as a party which is registered in the Register of Political Parties and which has had at least one member of the party elected to Dáil Éireann or elected or nominated to Seanad Éireann. The same six political parties which are qualified to receive Exchequer funding under the Electoral Acts are also qualified for payment of the Allowance. The Allowance payable to a qualified political party is based on the number of members of the party who are members of Dáil Éireann or Seanad Éireann. If a qualified political party forms part of the Government, the combined allowances in respect of its members of the Dáil only, are reduced by one third. Accordingly, the Allowance payable to Fianna Fáil, the Green Party and the Progressive Democrats is reduced by one third.

The allowances are increased in line with civil service general pay increases. During 2008, an increase of 2.5% under Towards 2016 was applied to the fund with effect from

1 March 2008. A further increase of 2.5% under Towards 2016 was applied with effect from 1 September 2008.

The Allowance can also be increased by an order of the Government. Such an increase would be in line with increases awarded under Reports of the Review Body on Higher Remuneration in the Public Sector. During 2008 no such increases were made to the Allowance.

As at 31 December 2008, the allowances for Members of Dáil Éireann were as follows:

	2008 (Per Member)
First 10 Members	€71,520
From 11 to 30 Members	€57,214
Over 30 Members	€28,616
Non Party Members	€41,152

As at 31 December 2008, the allowances for members of Seanad Éireann are as follows:

	2008 (Per Member)
First 5 Members	€46,766
Over 5 Members	€23,383
Non Party Senators	€23,383

For 2008, the total amount paid to the parliamentary leaders of qualified political parties was €8,132,241. The total amount paid to Non Party TDs and Senators was €361,936.

Each parliamentary party leader is required to prepare an annual statement of expenditure of the Allowance. The statement must be audited by a public auditor and a copy of the auditor's report must be furnished to the Standards Commission with the statement. The statement must be furnished to the Standards Commission within 120 days of the end of the financial year in which the Allowance has been paid.

This date is usually 30 April. (The Standards Commission requests, however, that the statement be furnished by 31 March each year.) If the statement of expenditure and auditor's report are not received by the Standards Commission within the 120 day period, payment of the Allowance is suspended until such time as the statement and auditor's report have been received. The statements furnished for 2008 provide details of the funding received for that year and the amount, if any, carried forward from 2007. The statements give details, under the 11 categories of expenditure (prescribed in the legislation), of the matters on which the funding was spent during 2008.

During 2008, An Taoiseach, Brian Cowen TD replaced Mr Bertie Ahern TD as parliamentary leader of Fianna Fáil. In accordance with the legislation, it was agreed that a single statement of expenditure in respect of the Allowance paid to the party during 2008, would be furnished by An Taoiseach.

The Standards Commission must furnish a report annually to the Minister for Finance indicating whether the statements and auditors' reports have been submitted by the statutory deadline, whether any unauthorised expenditure was disclosed and whether the statement is adequate or whether the statement is inappropriate. A report concerning expenditure of the Allowance in 2008 was furnished to the Minister for Finance in June 2009 and laid before the Houses of the Oireachtas. The Standards Commission's report contains details of the funding received by the parliamentary leaders of qualified political parties and how it was spent. The report is available on the website of the Standards Commission. Copies of the statements and auditors' reports are available for public inspection and copying at the offices of the Standards Commission.

In its annual report for 2007, the Standards Commission highlighted a difficulty with regard to giving advice to political parties in relation to the use of the Allowance. Whereas advice given by the Standards Commission under the Ethics Acts and the Electoral Acts is legally binding, advice given in relation to the Party Leaders Allowance has no legal basis. In its report to the Minister for Finance concerning expenditure of the Allowance by qualified political parties in 2007, the Standards Commission made a recommendation that either the Standards Commission or the Minister for Finance should be able to publish guidelines or give advice on the appropriate use of the

Allowance and for such guidelines and advice to be legally binding on the persons to whom they apply. The Standards Commission recommended that any such guidelines would be prepared in consultation with the parliamentary leaders of qualified political parties. In considering such a provision, the Standards Commission recommended that the Minister might have regard to the provisions of section 25 of the Ethics in Public Office Act 1995 and section 4(6) of the Electoral Act 1997.

During 2008, the Standards Commission continued to receive requests from political parties for advice as to whether use of the Allowance for a particular purpose was appropriate or not. The Standards Commission gave its advice having regard to the provisions of section 10(1) and 10(14) of the 1938 Act, as amended, or if it considered such use to be prohibited under section 10(5) of the 1938 Act, as amended. The Standards Commission forwarded to the Minister for Finance, for information, an anonymised copy of such requests for advice and the advice given.

Recommendations for change

In its 2006 and 2007 Annual Reports, the Standards Commission summarised its recommendations for changes to ethics and electoral legislation. These proposals, along with additional recommendations arising from its deliberations during 2008, are set out again in this chapter, along with updates on any progress which may have taken place in the meantime.

Proposed amendments to the Ethics Acts

In its last three Annual Reports, the Standards Commission set out its suggested amendments to the ethics legislation. In addition, it wrote to the Minister for Finance setting out the amendments to the Ethics Acts which it considered necessary. There have been indications that some of the Standards Commission's proposed amendments may be taken in the context of the Ethics in Public Office (Amendment) Bill 2007 (the 2007 Bill).

The 2007 Bill was published in April 2007. It was subsequently passed by Seanad Éireann in July 2007. The Bill, as passed by Seanad Éireann, addresses issues relating to gifts to office holders and members of the Oireachtas and raises the thresholds for disclosure of registrable interests. In its 2006 Annual Report, the Standards Commission expressed regret that the amendments to the Ethics Acts which it had previously recommended had not been adopted. It requested that urgent consideration be given to its suggested amendments and, in view of the complexity of the Ethics Acts generally, to the drafting of a consolidation Bill which would be more user-friendly.

The Standards Commission's 2007 Annual Report noted that the Minister for Finance indicated in Dáil Éireann on 31 January 2008 that he intended to bring in amendments

to the Bill, along the lines of some of the proposals made by the Standards Commission but that he did not propose to amend the definition of the term “specified act” used in the legislation, or to legislate for a complaint concerning failure to abide by certain defined ethical standards. He also stated that he had no plans to amend the law to enable the Standards Commission to appoint an inquiry officer without having received a complaint. At the time of writing, the 2007 Bill had yet to be considered by Dáil Éireann and there have been no developments in relation to either of these proposals.

During 2008, the Standards Commission wrote to the Minister for Finance proposing two further amendments to the ethics legislation. It suggested a revision of the definition of ‘senior office’ in the Standards in Public Office Act 2001 to exclude temporary, acting or locum positions where the term of such a position is intended to be less than three months. The 2001 Act provides that persons appointed to ‘senior office’ are required to furnish a statutory declaration and either a tax clearance certificate or an application statement within 9 months of their appointment. The definition encompasses persons who are appointed either to designated positions of employment or designated directorships where the remuneration is not less than that of a Deputy Secretary in the Civil Service (currently €177,547 per annum).

This has given rise to an issue in relation to appointments of short duration. It is often the case that a hospital doctor may move from one locum position to another in order to gain experience in the hope of ultimately obtaining a permanent position as a consultant. On each occasion that the person is appointed to a locum position, he or she has to furnish the required evidence of compliance within the statutory deadlines. This may give rise to a person having to comply with these obligations on a significant number of occasions within a relatively short period of time. The fact that a tax clearance certificate must have been issued within nine months either side of the date of appointment may mean that a single tax clearance certificate may meet the obligations arising from a number of appointments to senior office within a nine month period. However, it is likely that a separate statutory declaration would have to be made in respect of each appointment. Were a person to be appointed to a series of three or four week locum positions over a nine month period, that person would be required to make a statutory declaration up to nine times during that period. The Standards Commission considers that the strict application of these provisions in such

circumstances places an undue administrative burden on such appointees. In view of the likely revision of the deadlines for the making of statutory declarations to three months either side of the date of appointment, the Standards Commission proposed that temporary, acting or locum positions should be excluded from the definition of 'senior office' where the term of such a position is intended to be less than three months. The Minister for Finance indicated that he would have the proposal examined by officials of his Department.

The Standards Commission also proposed to the Minister for Finance that a quorum of not less than three members (including in all cases, the Chairman) be provided for the hearing of an investigation under the Ethics Acts. At present, the Ethics Acts require that all members of the Standards Commission be present for investigations. In the case of a complex and/or lengthy investigation, this would involve attendance for a significant period of time on the part of all six members of the Standards Commission. Some members have other substantial duties to perform outside their role as Commissioners. The Standards Commission considers that the present requirement for all Commission members to attend at an investigation should be reconsidered. The number of Commissioners would be determined by the Standards Commission in light of the particular circumstances of the investigation to be heard. The Minister for Finance indicated that he would have the proposal examined by officials of his Department.

The Standards Commission reported in its Annual Report for 2003 that it had recommended revision of the timescale for the taking of proceedings concerning possible offences regarding the making of false statutory declarations in the context of providing evidence of compliance with taxation legislation. The existing provision was that proceedings must have been taken within 6 months of the offence being committed. The Civil Law (Miscellaneous Provisions) Act 2008 revised the Statutory Declarations Act 1938 to provide that summary proceedings in relation to an offence under that Act may be commenced at any time within 12 months from the date on which the offence was committed or any time within 6 months from the date on which the evidence that, in the opinion of the person by whom such proceedings are brought, is sufficient to justify the bringing of such proceedings, comes to such person's knowledge, whichever is the later, but no proceedings shall be commenced later than

three years from the date on which the offence concerned was committed.

The Act also raised the penalty for the offence of making a false or misleading statutory declaration, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or both. The Standards Commission welcomes these amendments.

In its Annual Reports for 2005 and 2006, the Standards Commission noted that the Minister for Finance had not initiated the appropriate motion in the Houses of the Oireachtas to designate the Chairpersons of Oireachtas Committees as office holders for the purposes of the Ethics Acts, thereby making them subject to the Ethics Acts in respect of those positions. In the Annual Report for 2007, the Standards Commission stated that it was understood that the Minister had been consulting with the Committee Chairpersons in relation to this proposal. The Secretary General (PSMD) of the Department of Finance subsequently informed the Standards Commission that the then Tánaiste and Minister for Finance, Brian Cowen TD, having consulted the Chairpersons and having considered the circumstances, had decided not to move the resolutions to designate chairpersons as office holders. The Standards Commission regrets this decision.

In its 2006 Annual Report, the Standards Commission recommended that where a public body is being set up, consideration should be given by the Minister for Finance to the introduction of Regulations which, if he considers it to be in the public interest to do so, would prescribe directorships and/or positions of employment within the body for the purposes of the Ethics Acts with effect from the date of the body's establishment. In its 2006 Annual Report, the Standards Commission stated that it understood that this proposal, which would require the co-operation of each Government Department establishing a new body, was being given active consideration. At the time of writing, regulations have not been made on foot of the establishment of new public bodies. However, it is understood that this proposal is still being considered. The Standards Commission considers that this approach is of increased relevance given the programme of rationalisation of state agencies currently being undertaken and given the importance of ensuring that persons who are currently subject to the provisions of the Ethics Acts should not have those obligations removed from them for technical reasons.

Summary of other proposed amendments to the Ethics Acts

1. Provision in regulations amending Section 5(2) of the 1995 Act requiring members to furnish statements of 'nil' interests to the Standards Commission (rather than to the relevant Clerk) to be made in primary legislation in order to remove any doubt as to its constitutionality (the Standards Commission notes that the Ethics in Public Office (Amendment) Bill 2007, as passed by Seanad Éireann, contains a provision to this effect).
2. Provision that, where an elected member or an appointee to a senior office in a public body furnishes an application statement to the Standards Commission, which indicates that the person has applied to the Office of the Collector General for the issue to him or her of a tax clearance certificate and that a decision has not been made, that person shall be required to furnish a tax clearance certificate to the Standards Commission where such a certificate is subsequently issued to him or her.
3. Provision for the application by the Standards Commission of discretion as to whether an investigation is warranted into a contravention of the requirements on elected members and appointees to senior office to provide evidence of compliance with specified taxation legislation.
4. Amendments to the time limits within which statutory declarations, tax clearance certificates and application statements are to be made or issued and furnished to the Standards Commission - for example, tax clearance certificates could be issued and furnished to the Standards Commission within six months rather than nine months as at present and statutory declarations could be made and furnished within three months rather than made within one month and furnished within nine months as at present. The Standards Commission notes that the Civil Law (Miscellaneous Provisions) Act 2008 amends the deadline for the making of a statutory declaration by a person recommended for appointment to judicial office from one month to three.
5. Provision for the date of first assembly of the relevant House of the Oireachtas be used as the election date for the purposes of determining the time limits by which

an elected member must make his or her statutory declaration and furnish to the Standards Commission a tax clearance certificate or an application statement.

6. The amendment of Section 24(2)(b)(ii) of the Standards in Public Office Act 2001 to provide that a report by the Standards Commission concerning the contravention of the tax clearance provisions by an Attorney General who is not a member of the Oireachtas, and who subsequently complied, should be sent to both Houses of the Oireachtas rather than to 'the House' as is currently provided.

Proposed amendments to the Electoral Acts

The Standards Commission published a review of the Electoral Acts in December 2003 and suggested a range of amendments at that time. These included:

1. As the body with responsibility for supervising the Electoral Acts, the Standards Commission should have a statutory basis on which to review the legislation and report on its findings.
2. Certain sections of the Act need to be amended to take account of the fact that members of local authorities and candidates at local elections have their own reporting requirements under the Local Elections (Disclosure of Donations and Expenditure) Act 1999, as amended.
3. Provision for offences and penalties for failure to comply generally with the provisions of Parts IV, V and VI of the 1997 Act - these parts relate to disclosure of donations, expenditure by candidates and political parties at Dáil and European Parliament elections, and donations and election expenses at presidential elections, respectively.
4. Provision for an offence and penalty for failing to comply with a request from the Standards Commission (under section 4(4) of the 1997 Act) to provide information or documentation.
5. The definition of a "financial institution" for the purposes of opening political donations accounts should be amended to include credit unions.

6. Provision for the disposal of surplus donations in situations where a person is no longer required to maintain a political donations account and there are funds remaining in the account which have not been used.
7. Consideration should be given to imposing some accountability, in the context of the spending limits, in respect of a specified period prior to commencement of the legally defined election period (i.e. that the election period might be extended to include a period prior to the dissolution of the Dáil or moving of the writ at an election).
8. The definition of “minor expenses” should be limited to €126.97 per candidate per election.
9. Provide that a candidate (or other person) shall be guilty of an offence if, at any time before, during or after the election he/she fails to provide the necessary information to an election agent or national agent for the purposes of facilitating the completion of the agent’s Election Expenses Statement. Provide a penalty for this offence.
10. The definition of what constitutes a “third party” should not be determined on the basis of whether an individual/group has received a donation but should focus on spending by individuals/groups and to regard them as third parties if they intend to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes as defined in the legislation.
11. The registration process for “third parties” and for “other persons” (who intend to incur election expenses) should be amalgamated. (There should be no need for a individual/group to register as a “third party” and to also register as an “other person”.)
12. The legislation suggests that once an individual/group has registered as a third party, it is required to furnish documentation to the Standards Commission on an annual basis even though it is no longer active for political purposes. The approach taken by the Standards Commission in this matter has been to ask third parties to

confirm whether or not they intend to continue in existence. If they do not, there will be no further contact made with them. This situation might be addressed and clarified.

13. Consideration should be given to imposing a limit on the amount of expenditure which may be incurred by a “third party”/“other person” at an election. For example if a “third party”/“other person” is opposing a particular candidate at an election the amount of expenditure which can be incurred by the “third party”/“other person” should not exceed the statutory spending limit applicable to that candidate.

Summary of other proposed amendments to the Electoral Acts

In its report on the Dáil general election of 2007 the Standards Commission also recommended the following amendments to the Electoral Acts, which it hoped might be considered in the context of a review of the Electoral Acts with the establishment of an Electoral Commission as set out in the current programme for government.

1. The Standards Commission is required to consider whether to refer persons to the Gardaí for failure to furnish a Certificate of Monetary Donations or bank statement by the appropriate statutory deadline. The Standards Commission is of the view that it does not seem reasonable that a person who opened a political donations account but who failed to furnish the necessary supporting documentation to the Standards Commission, should be prosecuted, whereas a person who did not open a political donations account in the first place is not liable to prosecution under the Electoral Acts. In that regard the Standards Commission considers it imperative that an offence be provided for failure to open a political donations account when required to do so.
2. To ensure a level playing field between candidates, and a degree of transparency, the use of public funds for electoral purposes should form part of the electoral code rather than other legislation which patently has quite a separate purpose. This would involve a consequential repeal of the provisions dealing with the provision of services and facilities following a dissolution of Dáil Éireann by the Houses of the Oireachtas Commission [Section 4(4A) of the Houses of the

Oireachtas Commission Act 2003 (as inserted by the Houses of the Oireachtas Commission Act 2006)].

3. Section 59 of the Electoral Act 1992 provides for the appointment of “election agents” to assist the candidate generally in relation to a Dáil general election and for the appointment of deputy agents to be present on the candidate’s behalf for the counting of votes and for other specific purposes set out in the 1992 Act. This has caused confusion as some candidates notified these “agents” as their election agent for the general election even though these persons had little or no function or knowledge in relation to controlling expenses incurred on the candidate’s behalf at the election. The Standards Commission recommends that the term “election agent” should be amended to either “election spending accounting officer” or “election spending agent”.
4. Notification of a change of election agent must be routed through the Returning Officer for the constituency. This causes an unnecessary level of bureaucracy for all concerned and can delay the Standards Commission in finalising Election Expenses Statements which have not been completed by the notified election agent. The Standards Commission considers that it would be preferable if candidates were required to notify the Standards Commission directly of the appointment or change of an election agent.
5. The exclusion of items such as refreshments for volunteer campaign workers and candidates’ petrol costs from the definition of election expenses can create a difficulty for some non-party candidates or for candidates of the smaller political parties. These items represent real costs for which these candidates cannot be reimbursed should they qualify for a reimbursement and their total election expenses are less than €8,700. The Standards Commission might be allowed to exercise some discretion and include such items (if properly receipted) in the total election expenses which may be reimbursed to these candidates.
6. The Standards Commission has also encountered a difficulty in supervising the provisions of section 31(10) of the 1997 Act insofar as these provisions refer to the publication of advertisements which directly or indirectly promote or

oppose candidates or political parties. The provisions of section 31(7) of the 1997 Act which are relevant to “other persons” placing such advertisements refer to incurring election expenses and includes the term “seeking to influence the outcome of an election”. The Standards Commission is conscious that this ambiguity in the Act which could be used as a defence or construed against the prosecution of an offence under section 43(4) of the 1997 Act (for failure to comply with section 31(10) of the 1997 Act). The Standards Commission considers, therefore, that some consistency might be brought to this part of the 1997 Act by including the term “seeks to influence the outcome of an election” as part of the provisions of section 31(10) of the 1997 Act.

The Standards Commission has also recommended in its annual report for 2006 and in a report to the Ceann Comhairle in June 2007 (on the annual disclosure of donations by political parties) that political parties should be required to adhere to the recommendations contained in Articles 11, 12 and 13 of the Council of Europe recommendation (see Chapter 3).

The Standards Commission notes that the recent Preliminary Study on the Establishment of an Electoral Commission in Ireland (commissioned by the Department of the Environment, Heritage and Local Government and carried out by the Geary Institute of UCD) suggests that *“the proposals which SIPO made in its Review of the Electoral Acts (December 2003) and its report on the Dáil general election and the re-iteration of these recommendations in its most recent Annual Report provide an agenda for reform which our research and consultations strongly suggest ought to be pursued by a new Electoral Commission.”*

Proposed amendments to the Electoral Acts relating to third parties

The Standards Commission has also recently published a report on its supervision of the “third party” provisions of the electoral legislation at the Referendum on the Treaty of Lisbon in 2008. This report was prepared at the request of the Minister for the Environment, Heritage and Local Government. The report points to deficiencies in the Electoral Acts and suggests 4 main areas for improvement:

1. Criteria for registration as a third party - if the activities of third parties are to be regulated effectively, then registration should be based on intention to incur expenditure in a particular election or referendum campaign rather than on the motivation of actual or potential donors.
2. Registration for a particular campaign - the legislation should allow for registration for a particular campaign or on an on-going basis.
3. Transparency in funding and expenditure on campaigns - third parties and political parties should be required to disclose details of expenditure on referendum campaigns. Similarly, information should be made available on the sources of funding available to both third parties and political parties.
4. Sanctions for non-cooperation with the Standards Commission - the sanctions provided for under the legislation should be reviewed. In particular, failure to cooperate with enquiries made by the Standards Commission under section 4(4) of the Act should constitute an offence.

The Standards Commission notes recent announcements by An Taoiseach and the Minister for the Environment, Heritage and Local Government on greater controls on donations and spending at elections and referendums. The Standards Commission trusts that the suggestions it has made in its various reports and which are summarised in this chapter will assist in any review of the current legislation.

Proposed amendment to the Party Leaders Allowance legislation

In its annual report for 2007, the Standards Commission highlighted a difficulty with regard to giving advice to political parties in relation to the use of the Allowance. Whereas advice given by the Standards Commission under the Ethics Acts and the Electoral Acts is legally binding, advice given in relation to the Party Leaders Allowance has no legal basis.

In its report to the Minister for Finance concerning expenditure of the Allowance by qualified political parties in 2007, the Standards Commission made a recommendation

that either the Standards Commission or the Minister for Finance should be able to publish guidelines or give advice on the appropriate use of the Allowance and for such guidelines and advice to be legally binding on the persons to whom they apply. The Standards Commission recommended that any such guidelines would be prepared in consultation with the parliamentary leaders of qualified political parties. In considering such a provision the Standards Commission recommended that the Minister might have regard to the provisions of section 25 of the Ethics in Public Office Act 1995 and section 4(6) of the Electoral Act 1997.

Costs in 2008

The table below outlines the expenditure attributed to the Standards Commission in 2008. The figures for 2007 are also shown for comparison purposes. The expenditure is provided for in Subhead B of Vote 18 [Ombudsman].

	2008	2007
	€ '000	€ '000
Staff Salaries	691	737
Travel and Expenses	5	14
Incidental Expenses	132	141
Postal Telecommunications	21	25
Office Machinery and Other Office Supplies	86	31
Office Premises	61	39
Consultancy & Legal Fees	37	107
Total	1,033	1,094

Appendix - Standards Commission Publications in 2008

1. Guidelines for TDs, Senators and MEPs on donations and prohibited donations (January 2008)
2. Report on disclosure of donations by unsuccessful candidates at the Seanad General Election of 23 and 24 July 2007 (February 2008)
3. Explanatory note for third parties campaigning at the referendum on the Treaty of Lisbon (March 2008)
4. Report on disclosure of donations by TDs, Senators, MEPs and former members of the Houses of the Oireachtas (April 2008)
5. Report on disclosure of donations by Political Parties for 2007 (June 2008)
6. Annual Report 2007 (July 2008)
7. Explanatory note for Companies, Trades Unions, etc. re. requirements of section 26 of the Electoral Act 1997 (August 2008)
8. Guidelines on compliance with the provisions of the Ethics in Public Office Acts 1995 and 2001 Public Servants (6th Edition) (November 2008)
9. Explanatory note for individuals who made donations in 2008 (November 2008)
10. Report on expenditure of the Party Leaders Allowance 2007 (December 2008)
11. Report on Exchequer Funding received by Political Parties for 2007 (December 2008)

