

Standards in Public Office Commission

The Electoral Act 1997 as amended

**Dáil General Election
24 May 2007**

**Donation Statements and Statutory Declarations received from
unsuccessful candidates**

and

**Election Expenses Statements and Statutory Declarations received from
election agents of candidates, national agents of political parties and
"other persons"**

**Report by the Standards in Public Office Commission
to the Chairman of Dáil Éireann (Ceann Comhairle)
in accordance with section 4(1) of the Electoral Acts.**

December 2007

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Foreword

I am pleased to furnish this report to the Chairman of Dáil Éireann (Ceann Comhairle) in accordance with the provisions of section 4(1) of the Electoral Act 1997, as amended. The Donation Statements/Statutory Declarations referred to in the report were furnished to the Standards in Public Office Commission pursuant to section 24 of the Act while the Certificates of Monetary Donations/Statutory Declarations and statements from financial institutions were furnished pursuant to section 23B of the Act. The Election Expenses Statements were furnished pursuant to section 36 of the Act.

As outlined in the report, the Standards Commission will facilitate dissemination of material contained in Donation Statements and Election Expenses Statements by posting a summary of the material on www.sipo.ie and by making the material available at its offices for inspection and copying.

Justice Matthew P. Smith
Chairman
December 2007

Chapter 1 - Introduction

The 29th Dáil was dissolved on 29 April 2007 and polling for the general election to the 30th Dáil took place on 24 May 2007. 466 candidates contested the election. This was the third Dáil general election to have taken place since the introduction of the Electoral Act 1997, as amended and the second Dáil general election to which the full provisions of the Act, relating to the disclosure and limitation of donations and the limitation, disclosure and reimbursement of election expenses, applied.

In accordance with the provisions of Part IV of the Act, unsuccessful candidates at the Dáil general election were required, within 56 days after polling day (i.e., by 19 July 2007), to furnish to the Standards Commission a Donation Statement and accompanying documentation. Details of all donations, with a value greater than €634.87, received by unsuccessful candidates in relation to the election were required to be disclosed. Successful candidates at the election are required, as members of Dáil Éireann, to furnish an annual Donation Statement and accompanying documentation to the Standards Commission by 31 January each year. The Donation Statements furnished to the Standards Commission in respect of 2007 by members of Dáil Éireann must include details of any donations received by them during 2007 in relation to the Dáil general election. These Statements must be furnished to the Standards Commission by 31 January 2008.

Part V of the Act provides that the election agent of each candidate, whether successful or unsuccessful, at a Dáil general election is required to furnish an Election Expenses Statement to the Standards Commission within 56 days after polling day. The Election Expenses Statement must include details of all expenses incurred and payments made by the election agent on behalf of the candidate at the election. An Election Expenses Statement is also required from the national agent of each political party with candidates contesting the election and from "other persons" who incurred election expenses.

Preparatory work for the Dáil general election

The Standards Commission began its preparations for the Dáil general election during 2006. Draft guidelines for the election were prepared and published on its website in September 2006. This was to allow potential candidates, their election agents, the national agents of political parties contesting the elections and other persons engaged in the election to familiarise themselves with the requirements of the Act and, if necessary, to contact the Standards Commission for advice. The final version of the guidelines was published in March 2007 and formally issued to candidates, election and national agents once the election was called. Section 11 of the Act provides that guidelines issued by the Standards Commission are legally binding.

The Standards Commission also met with the main political parties in 2006 and outlined how it intended to supervise the provisions of the Act in relation to donations and election spending at the Dáil general election. The Standards Commission provided a number of briefing sessions to political parties on the requirements of the legislation which would apply at the Dáil general election and responded to a number of requests for advice from potential participants. Once the election was called, representatives of the Standards Commission

secretariat visited constituencies, meeting with candidates' election agents and providing advice and assistance regarding the requirements of the legislation. After the election period, Standards Commission officials made every effort to assist election agents with completion of the required returns.

The Commission regrets the delay in publication of the report. This delay is a direct result of the apparent inability of many candidates and agents to complete properly, relatively simple Donation Statement and Election Expenses forms.

Reporting requirements of the Standards Commission

Section 4(1) of the Act provides that the Standards Commission may, where it considers it appropriate to do so, furnish a report to the Ceann Comhairle on any matter arising in relation to Donation Statements and Election Expenses Statements furnished to it under the Act. In accordance with section 4(5) of the Act the report must be laid before the Houses of the Oireachtas.

Matters dealt with in this report include :

- the disclosure of donations by unsuccessful candidates at the election;
- requirements relating to prohibited donations and the limitation on acceptance by candidates of certain types of donations;
- the opening and maintenance of political donations accounts by candidates;
- the disclosure of expenditure on behalf of candidates and political parties;
- the reimbursement of election expenses to qualified candidates;
- compliance by "other persons" with regard to the incurring of election expenses; and
- compliance by newspapers with regard to the provisions of section 31(10) of the Act concerning the publication of election advertisements.

The Standards Commission does not have a statutory basis on which to review the operation of the Act and to report on its findings. However, in addition to reporting on the information contained in the Donation Statements and Election Expenses Statements furnished to it, the Standards Commission also comments on issues which affected its supervision of the disclosure of donations and election spending at the Dáil general election. The Standards Commission comments in particular on some of the difficulties encountered and makes some suggestions as to how these may be overcome.

After the 2002 Dáil general election, the Standards Commission was invited by the then Minister for the Environment, Heritage and Local Government, Martin Cullen TD to furnish its views on its experience of supervising the Act. These views were set out in a report, *Standards in Public Office Commission Review of the Electoral Acts 1997 to 2002*, which was sent to the Minister in December 2003. That document set out a number of recommendations both general and specific as to how the legislation might be improved including a specific recommendation that as the body with responsibility for supervising the Act, the Standards Commission should have a statutory basis on which to review its operation. The Standards Commission has repeated this recommendation and others in its last two annual reports. Regrettably, none of those recommendations were implemented with the result that the Standards Commission encountered many of the same difficulties with the legislation at the 2007 general election as it had at the 2002 general election. These

difficulties are highlighted once again in this report together with appropriate recommendations.

The Standards Commission considers that the proposed establishment of an Electoral Commission, as set out in the current programme for government, affords an ideal opportunity to carry out a complete review of the legislation and trusts that this review will take account of its recommendations.

Chapter 2 - Disclosure of Donations by unsuccessful candidates

2.1 Legal requirements

(i) Definition of a donation to a candidate at a Dáil election

Section 22(2)(a) of the Act provides that a donation to a candidate at a Dáil general election means any contribution given for **political purposes** by any person, whether or not the person is a member of a political party. A person includes an individual, a body corporate (e.g. a public or private company) or an unincorporated body of persons (e.g., a political party, a partnership, a residents association, etc.) A body corporate and any of its subsidiaries is deemed to be the same person for the purposes of the Act.

Section 22(2)(aa) of the Act specifies that, in relation to a candidate at a Dáil general election, **political purposes** means:

- to promote or oppose, directly or indirectly, the election of a candidate;
- to solicit votes for or against a candidate;
- to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election;
- to present the comments of a candidate with regard to a policy or policies of a political party or a political group or of another candidate at the election;
- to otherwise influence the outcome of the election

A donation to a candidate at a Dáil general election includes all or any of the following:

- a donation of money, property or goods;
- the free use of property, goods or services;
- the difference between the commercial price and the (lower) price charged for the purchase, acquisition or use of property, goods or services; (This may include a loan provided to a candidate by a financial institution at terms and conditions which are more favourable than that provided by the financial institution to other individuals. It may also include a loan provided by a person other than a financial institution where the interest charged is less than the lowest rate available from a financial institution);
- the net value of a contribution made to a fund-raising event organised for the purpose of raising funds for a candidate. Where a fund-raising event is organised by a candidate's political party to raise funds for the party, contributions to the event are considered to be a donation to the party, even if the funds are subsequently used to support the candidate. However, where an event is organised by a party for the purposes of raising funds for a candidate, the party may be regarded as an intermediary accepting donations on the candidate's behalf (see below) and the donations regarded as having been made to the candidate.

Section 22(2)(c) of the Act provides that a donation made to a candidate at a Dáil general election through an intermediary is deemed to be a donation made to the candidate.

Therefore, a fund-raising committee (e.g. "Friends of xxx") is regarded as an intermediary accepting donations on a candidate's behalf. If, however, the funds are retained by the fund raising group and are not passed on to the candidate, the group is regarded as a third party and must register as such with the Standards Commission (see chapter 5).

Section 22(2)(c) also provides that where a donation made to a candidate is passed on by a candidate to his/her political party (whether party headquarters or a local branch) and he/she receives a written acknowledgement of the donation from the party, the donation is deemed to be a donation to the political party and not to the candidate.

Section 22(2)(d) of the Act provides that donations from the same person must be aggregated and treated as a single donation for disclosure purposes and for the purposes of observing the maximum acceptance limit for donations (see 2.1(iv) below).

There are a number of items provided for in section 22(2)(b) of the Act which feature during a Dáil general election and which are not regarded as a donation to a candidate including:

- The free post service provided by An Post to candidates.
- Any payment, service or facility provided to a candidate out of public funds **by virtue of the candidate being** a TD, Senator, MEP or the holder of another elective or public office (e.g. member of a local authority). The judgment of the High Court and Supreme Court in the Desmond Kelly case concerning this particular provision applies only in relation to the accounting for the use of such facilities as election expenses. The judgment did not alter the provisions of the Act with regard to the use of such facilities not being regarded as a donation. It is important to note, however, that this particular provision applies only where the candidate, by virtue of **his/her** position or office, is entitled to use the services/facilities provided. For instance, if a candidate who is not a Member of the Houses of the Oireachtas is provided with the free use of Oireachtas facilities (e.g., envelopes, telephones) this is regarded as a donation to the candidate from the Member who has provided the facilities.
- A free service provided by an **individual**, including use of the individual's motor vehicle, private telephone, etc., where the service provided is not part of the individual's work or business. It should be noted that this does not apply to a free service (including the use of a motor vehicle) which is provided by a company or business.
- A service provided by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit in kind other than his or her normal remuneration (including recoupment of expenses) for that service.
- Expenses incurred or payments made by a political party on behalf of a candidate. It is important to note that money given directly to a candidate by a political party is regarded as a donation to a candidate. Election expenses incurred or payments made by a support group, other than a registered political party, on a candidate's behalf are also regarded as donations to a candidate. In each case the contributions are subject to the disclosure and maximum acceptance limits applying to candidates.

(ii) Disclosure of Donations

Section 24(2)(a) of the Act provides that each unsuccessful candidate at the Dáil general election must furnish a Donation Statement to the Standards Commission, within 56 days of polling day. The Donation Statement shall be in a form directed by the Standards Commission and must be accompanied by a Statutory Declaration. The Statutory Declaration must be witnessed by either a practising Solicitor, a Commissioner for Oaths, a Peace Commissioner or a Notary Public.

Only donations with a value of more than €634.87 are required to be disclosed. If no such donation was received, the candidate furnishes a "nil" return. Where a donation in excess of €634.87 is received, the value and nature of each donation together with the name, a description and the postal address of the donor must be disclosed.

Successful candidates at the election are required, as members of Dáil Éireann, to furnish to the Standards Commission, by 31 January each year, an annual Donation Statement and accompanying documentation. The Donation Statements furnished to the Standards Commission in respect of 2007 by members of Dáil Éireann must include details of any donations received by them during 2007 in relation to the Dáil general election, and must be furnished to the Standards Commission by 31 January 2008.

(iii) Opening and maintenance of political donations accounts

A candidate at a Dáil general election who receives a monetary donation the value of which exceeds €126.97, must open and maintain a political donations account in a financial institution in the State. The candidate must lodge the initial donation and any further monetary donations, of whatever value, received by him/her to this account.

A candidate who opens a political donations account or who already holds a political donations account must furnish a Certificate of Monetary Donations (CMD) when furnishing his/her Donation Statement. On the CMD the candidate certifies that all monetary donations were lodged to the account and all withdrawals from the account were used for political purposes. The Certificate must be signed by the candidate and is accompanied by a separate Statutory Declaration.

The CMD must also be accompanied by a statement provided by the financial institution where the account is held (referred to hereafter as a "bank statement"). The bank statement must specify the transactions that have taken place in relation to the account during the period beginning on the date of opening of the account and ending on polling day at the election. Where candidates already held a political donations account it was not necessary for them to open a separate account specifically for the general election. Such candidates were also only required to furnish a bank statement in respect of the period 1 January 2007 to polling day.

(iv) Prohibited Donations

Anonymous donations

A candidate at a Dáil general election may not accept an anonymous donation exceeding a value of €126.97. For a donation in excess of €126.97 to be accepted the candidate must know or be able to establish the name and address of the donor. If a prohibited anonymous donation is received by a candidate, the candidate must, within fourteen days of its receipt, notify and remit the donation (or its value) to the Standards Commission.

Foreign donations

A foreign donation is a donation, of whatever value, given by an individual (other than an Irish citizen) who resides outside the island of Ireland or a donation given by a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from

which the carrying on of one or more of its principal activities is directed. A candidate at a Dáil general election must not accept a foreign donation.

If a foreign donation is received by a candidate it must, within 14 days of its receipt, be notified and remitted to the Standards Commission. As an alternative, the candidate may return the donation to the donor. If the donation is returned, the candidate must keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

Donations in excess of the maximum prescribed limit

The maximum value of donation(s) which a candidate at the Dáil general election may accept from the same person in the same calendar year is €2,539.48. It should be noted that this maximum limit also applies to monetary donations received by a candidate from his/her political party. The maximum acceptance limit does not apply, however, to a donation of the use of an office to a candidate. (Where more than one office is donated, the candidate must nominate whichever office the maximum acceptance limit will not apply.)

Where a donation in excess of the maximum prescribed limit is received the candidate must notify and remit the excess amount to the Standards Commission within 14 days of its receipt. As an alternative, the candidate may return the excess amount to the donor and keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

2.2 Donation Statements and Certificates of Monetary Donations received from unsuccessful candidates

The Standards Commission produced a Donation Statement/Statutory Declaration form (GE/07/DS) for use by unsuccessful candidates at the Dáil general election. It also produced a Certificate of Monetary Donations/Statutory Declaration form (GE/07/CMD) for use by those unsuccessful candidates who had been required to open a political donations account. Candidates who were not required to open a political donations account were asked to confirm this on the CMD form but were not required to complete the Statutory Declaration which accompanied the CMD form.

On 13 June 2007 a Donation Statement/Statutory Declaration form and Certificate of Monetary Donations/Statutory Declaration form issued to each of the (301) unsuccessful candidates. Two candidates Mr. Colm Callanan (CSP) and Mr. Noel O'Gara contested the election in more than one constituency (Mr. Callanan contested two constituencies while Mr. O'Gara contested four constituencies). Mr. Callanan and Mr. O'Gara were only required to complete one Donation Statement in respect of their candidacies and were not required to complete separate Donation Statements for each of the constituencies they contested the election in. Completed Donation Statements and Certificates of Monetary Donations were required to be returned to the Standards Commission by 19 July 2007.

Receipt of Donation Statements

207 of the 301 unsuccessful candidates returned their Donation Statements by the statutory deadline of 19 July 2007. It is an offence under section 25(1)(c) of the Act to fail to furnish a Donation Statement / Statutory Declaration form and, where required to, a Certificate of

Monetary Donations / Statutory Declaration form and accompanying bank statement by the statutory deadline. It is, however, the practice of the Standards Commission not to refer such matters to the Director of Public Prosecutions (DPP) unless, after a significant period of time and, having issued a number of reminders, the Donation Statement remains outstanding.

In that regard on 27 July, the Standards Commission sent a reminder to 54 candidates whose Donation Statements were still outstanding. A second reminder issued on 3 August 2007 to 44 candidates whose Donation Statements had still not been furnished. Each of these reminders referred to the offence under section 25(1)(c) of the Act for failure to furnish a Donation Statement. A final reminder issued on 13 August to 29 candidates who had yet to furnish a Donation Statement. This reminder informed those candidates that if a Donation Statement was not received within seven days of the date of that letter the Standards Commission would consider referring the matter to the DPP/Gardaí for an investigation of the offence under section 25(1)(c) of the Act.

On 29 August 2007 the Standards Commission sent files to Garda Headquarters concerning the following eight candidates: (Proceedings for an offence under section 25 of the Act may only be taken by, or with the consent of, the DPP. The Standards Commission has previously been advised by the Office of the DPP to correspond directly with Garda Headquarters in relation to such offences).

Mr. Tom Harpur (Green Party, Wexford)
Mr. Gino Kenny (Non Party, Dublin Mid West)
Mr. Thomas King (Non Party, Galway West)
Mr. Gerard Linehan (Non Party, Cork South Central)
Councillor Ann Marie Martin (Fine Gael, Dublin South Central)
Councillor Mags Murray (Progressive Democrats, Dublin West)
Mr. Jim Tallon (Non Party, Wicklow)
Ms. Madeleine Taylor Quinn (Fine Gael, Clare)

On 3 September 2007 the Standards Commission referred a further file to Garda Headquarters in respect of Mr. Raymond Kelly (Non Party, Dublin South West).

Donation Statements and where required Certificates of Monetary Donations and bank statements were subsequently received from Mr. Harpur, Mr. Kenny, Mr. Linehan, Ms. Martin, Ms. Murray, Ms. Taylor Quinn and Mr. Kelly. The Standards Commission notified Garda Headquarters of the receipt of the statutory documentation in each case. Donation Statements have still not been received from either Mr. King or Mr. Tallon.

2.3 Consideration of Donation Statements

In accordance with section 4(1) of the Act, the Standards Commission considered the Donation Statements furnished by each of the unsuccessful candidates at the Dáil general election.

The following seven candidates who furnished Donation Statements disclosed that they had received a donation valued in excess of €2,539.48 in relation to the election:

Siobhán Ambrose (Fianna Fáil, Tipperary South)

Paudie Coffey (Fine Gael, Waterford)
Ben Doyle (Progressive Democrats, Dublin South Central)
Pat Fitzgerald (Fianna Fáil, Wicklow)
Séamus Fitzgerald (Fine Gael, Kerry South)
Cecelia Keaveney (Fianna Fáil, Donegal North East)
Phil Prendergast (Labour, Tipperary South)

In each case, where it was not apparent that the candidates had returned the excess donation, the Standards Commission instructed the candidates concerned to either remit the amounts in excess to the Standards Commission or, alternatively, to confirm that the amounts concerned had been returned to the donors. By failing to return the excess donations to the donors within 14 days of receipt, the above candidates had contravened the provisions of section 23A(1) of the Act and may have committed an offence under section 25(1)(b) of the Act. However, where a person otherwise complies with the Act, i.e. by either returning or remitting the excess donation, it is the practice of the Standards Commission not to take any further action in terms of referring the matter to the DPP. In most cases the candidates complied with the Standards Commission's instructions. However, it was necessary to issue a reminder letter to Mr. Ben Doyle informing him that unless the appropriate action was taken in relation to the prohibited donations, the Standards Commission would consider referring the matter to the DPP. Mr. Doyle subsequently confirmed to the Standards Commission that the excess donations had been returned to the donors.

A number of candidates disclosed donations which they were not required to disclose either by virtue of the fact that the donations were below the disclosure threshold or were the total proceeds of a fund-raising event (only individual contributions to fund-raising events exceeding a net value of €634.87 must be disclosed). In each case the Standards Commission informed the candidates that the donations concerned could be removed from their Donation Statements. Most of the candidates, however, chose not to amend their Donation Statements.

The Standards Commission was not informed of the receipt of any anonymous donations. However, there were a number of instances where the full contact details for donors had not been provided on the Donation Statement. The Standards Commission wrote to the candidates concerned requesting full contact details for the donors concerned. In most cases this information was provided. In one instance, however, the candidate informed the Standards Commission that he was not aware of the donor's address. The Standards Commission advised the candidate that if the donor's address could not be established, the donation, which was in excess of €127 would have to be regarded as a prohibited anonymous donation and as such would have to be remitted to the Standards Commission. An address for the donor was subsequently provided. One candidate disclosed a donation on his Donation Statement the value of which was less than €127.00. The candidate did not provide a name and address for the donor. However, as the value of the donation was less than €127.00, the Standards Commission did not pursue the matter with the candidate.

No candidate informed the Standards Commission of the receipt of a foreign donation. Some of the Donation Statements disclosed donations from persons not resident in the island of Ireland. In each case the Standards Commission received the necessary confirmation from the candidate that the persons concerned were Irish citizens and that the candidates were not prohibited from accepting donations from them.

103 candidates disclosed donations on their Donation Statements. Donations totalling € 531,379.82 were disclosed. (€6,701.60 of this was returned to the donors). 196 candidates furnished a "nil" Donation Statement. Details of the donations disclosed by unsuccessful candidates at the Dáil general election are contained at Appendix 1 to this report. Candidates who furnished "nil" Donation Statements are not included in Appendix 1.

The Standards Commission is still pursuing the correct completion of a Donation Statement/Statutory Declaration with Ms. Evelyn Cawley (non-party, Wicklow). Ms. Cawley's original Donation Statement was returned in order that details of donors who had made donations below the disclosure threshold could be removed. The amended Donation Statement has yet to be received. If an amended Donation Statement is not received, the Standards Commission will have to consider whether to refer Ms. Cawley to the DPP for possible prosecution of the offence of failing to comply with the provisions of section 24(2)(a) of the Act.

2.4 Consideration of Certificates of Monetary Donations and Bank Statements

Despite the fact that the requirement to open a political donations account has been in effect since 1 January 2002 and was explained in great detail in the Standards Commission's Guidelines for the Dáil general election, a number of candidates failed to comply with the requirements of the Act either by

- (a) failing to open a political donations account,
- (b) having opened a political donations account or operated an existing political donations account failed to lodge monetary donations to the account,
- (c) lodging monetary donations to and making payments for political purposes from an existing personal account
- (d) using the local party organisation's account as their political donations account and providing a CMD / Bank Statement in respect of this account. (A party's political donations account should not be used by a candidate as his/her political donations account unless the candidate is passing all monetary donations to the party in which case the donations are regarded as donations to the party and not to the candidate).
- (e) using a credit union account as a political donations account. A credit union is not included in the definition of a "financial institution" contained in the Act.

While it is an offence to fail to furnish, when required, a Certificate of Monetary Donations and Statutory Declaration or a statement from a financial institution, or to knowingly furnish any one of these documents which is false or misleading in a material respect, there is no offence or penalty for failing to open a political donations account in the first place. This is an anomaly which the Standards Commission has referred to in previous reports on the disclosure of donations and in the review of legislation document provided to the Minister for the Environment, Heritage and Local Government in December 2003, and which has yet to be addressed.

The main reason given by unsuccessful candidates for failing to open a political donations account (normally non-party candidates or candidates from the smaller political parties) is that they were not aware of the requirement to do so. Other candidates claimed to have received a small number of donations and to have used these donations immediately to pay for election expenses. In view of the fact that there is no specific offence or penalty in the legislation for failing to open a political donations account, it was not possible for the

Standards Commission to take any further action in relation to these candidates.

In a number of cases the Standards Commission had difficulty in obtaining Certificates of Monetary Donations or bank statements from unsuccessful candidates who had indicated that they had opened political donations accounts. Following protracted correspondence and telephone contact, some such Certificates/statements were eventually received.

The Standards Commission is still seeking a bank statement from one candidate (Councillor Jim McGarry, Labour Party, Sligo / North Leitrim). If the bank statement is not received, the Standards Commission will have to consider whether to refer Cllr. McGarry to the DPP for possible prosecution of the offence of failing to furnish a bank statement by the statutory deadline of 19 July 2007. The Standards Commission has already pointed out in previous reports that it 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 Act. 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.

Chapter 3 - Election Spending by candidates and political parties

3.1 Definition of election expenses

Section 31(1) of the Act provides that election expenses are those and only those set out in paragraph 1 of the Schedule to the Act, which are incurred on the provision of property, goods or services for use at the election during the election period (see paragraph 3.7 for the definition of election period) in order:

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

The provision of property, goods or services free or below cost which are used at the election during the election period is regarded as an election expense and must be accounted for at its full commercial price less any normal or general discount which may be available.

3.2 Matters which are not regarded as election expenses

The following items which may feature during a Dáil general election campaign are not regarded as election expenses:

- (i) the cost of purchasing copies of the register of electors;
- (ii) the reasonable living expenses (including accommodation) of a candidate and volunteers working on his/her behalf. In addition to accommodation costs, spending of up to €50 per person per day on refreshments, etc., was permitted and did not have to be accounted for.
- (iii) "minor expenses" i.e. any sum disbursed by any individual out of his/her own resources which have been "lawfully incurred" and do not exceed €126.97 in any one payment;
- (iv) election expenses incurred at a previous Dáil, European Parliament or local election which were disclosed in an Election Expenses Statement furnished to the Standards Commission or to a local authority.
- (v) the free post service provided by An Post to candidates;

- (vi) a free service provided by an individual, including use of the individual's motor vehicle, private telephone, etc., where the service provided is not part of the individual's work or business. It should be noted that this does not apply to a free service (including the use of a vehicle) which is provided by a company or business;
- (vii) a service provided at an election by an employee of a political party, including use of the individual's motor vehicle, where the employee is not in receipt of any reward or benefit in kind other than his/her normal remuneration (including recoupment of expenses) for that service. Where overtime payments are normally paid to an employee of a political party for working additional hours, this is regarded as "normal remuneration" and is not regarded as an election expense;
- (viii) normal media coverage and the transmission on radio or television of a broadcast on behalf of a candidate or a political party. This does not cover any production or other costs associated with a transmission on radio or television;
- (ix) the use of offices which are owned by a political party and are made available to a candidate for use at the election;
- (x) the services of an accountant, solicitor etc., whether paid or not, which were engaged for the purposes of ensuring compliance with the requirements of the Act;
- (xi) costs incurred to facilitate a person's candidacy at the election i.e. photographs for ballot papers, childcare costs etc..

3.3 Election Expenses the costs of which were originally met out of public funds

Arising from the judgment in *Kelly v. Minister for the Environment & Ors* 2002 (4 I.R. 191), where property, services or facilities were used for electoral purposes during the election period and the costs were originally met out of public funds, such costs must be accounted for as election expenses at their full commercial value. In its annual report for 2006, the Standards Commission noted that the use of public funds for electoral purposes is a major issue which requires to be re-evaluated in consideration of future changes to the electoral law.

The Standards Commission was cognisant of the fact that some candidates at the election who were already public representatives (e.g., MEPs, Senators and local authority members) might be required to communicate with their constituents during the election period. Similarly, outgoing members of the Dáil might also have residual constituency business to conduct.

The Standards Commission was also made aware by the Houses of the Oireachtas Commission that, in accordance with the Houses of the Oireachtas Commission Act 2006, it had introduced statutory guidelines on the use of Oireachtas facilities for outgoing members of the Dáil. The purpose of these guidelines was to:

- a) identify and notify to members the services and facilities which would or would not be available to them following a dissolution of the Dáil; and

- b) set out how members would be required to certify and reimburse the Oireachtas Commission for use of publicly funded services and facilities other than in respect of duties as a public representative.

The guidelines mainly concern those services and facilities which continued post-dissolution, i.e., secretarial staff, use of office and ICT equipment, access to Leinster House offices and use of telephone and copying facilities. The guidelines also cover the use of facilities which ceased to be available on dissolution but which could be retained for use following dissolution, e.g., material printed in the Leinster House printing facility, pre-paid envelopes and stationery.

As noted in its annual report for 2006, the Standards Commission is of the opinion that there is a certain ambiguity as to what constitutes reckonable expenditure for electoral purposes and other public representative activity. In view of this, and having regard to the guidelines issued by the Houses of the Oireachtas Commission, the Standards Commission considered it necessary, therefore, to differentiate between the use of Oireachtas facilities (including staff) in carrying out reasonable constituency business and the use of such facilities for electoral purposes. In its guidelines for the election the Standards Commission advised that during the election period, where facilities the costs of which were met from public funds were used for the purpose of any form of *unsolicited* communication to any of the electorate in the constituency, the facilities would have to be regarded as having been used for electoral purposes and the costs accounted for (at their full commercial value) as an election expense. This would also apply to unsolicited material issued by elected representatives, other than the candidate, where the material either promotes or opposes a candidate or otherwise seeks to influence the outcome of the election.

To address the issue of outgoing Members' residual constituency business, the Standards Commission advised that where a new enquiry was raised with a candidate (i.e., an enquiry which had not been raised with the candidate prior to the election) while he/she was canvassing and Oireachtas facilities (including staff) were used for the purposes of responding to the enquiry, the facilities would be regarded as having been used for electoral purposes.

Prior to the election campaign, the Standards Commission also received a number of enquiries from outgoing Members regarding the use of Members' staff and in particular the taking of leave by staff. The Standards Commission published additional guidelines on its website which dealt specifically with this issue. The Standards Commission advised that if a member of a Minister's/Minister of State's staff or an Oireachtas Member's staff was engaged in his/her normal duties during the election period and was not providing a service which was for electoral purposes, then the cost of carrying out such activities was not regarded as an election expense. The Standards Commission also advised that where a member of staff took annual leave to work on a Ministers'/Members' election campaign on a voluntary basis during the election period, the work carried out by them would be deemed to have been carried out as a free service and, notwithstanding the fact that this work may be similar to their normal work, (which could be regarded as a benefit-in-kind) the cost of their salaries while working voluntarily would not be regarded as election expenses for the purposes of the Act. The Standards Commission recommended that proper records of holidays accrued and taken by staff should be maintained. In providing this advice the Standards Commission was mindful that The High Court, in the Kathy Sinnott petition of 2003, had established that, where a

person paid from public funds chose to take paid annual leave in order to work in an unpaid volunteer capacity that person's salary was not reckonable as an election expense.

It was a matter for the election agent (or the national agent of a political party, if appropriate) and the candidate, in consultation with the provider of the property, services or facilities, to determine the value of such usage for electoral purposes and to account for this in the relevant Election Expenses Statement. While the Standards Commission acknowledges that charging for facilities is a matter between the candidate and the provider concerned in the first instance, it is of the view that there is a need for clarity as to how the electioneering element of the use of these facilities is assessed by the candidates themselves. As suggested in its annual report for 2006, the Standards Commission is of the opinion that providing such clarity within the ambit of the electoral code rather than as part of other legislation which patently has quite a separate purpose (the Houses of the Oireachtas Commission Act 2006) would better ensure a level playing pitch for all candidates.

3.4 Appointment of candidates' election agents

In accordance with section 28 of the Act each candidate at a Dáil general election is required to appoint an election agent for the purposes of incurring election expenses on his/her behalf. A candidate may revoke the appointment of an election agent or an election agent may resign as a candidate's election agent at any time before or after polling day (but not after an Election Expenses Statement has been furnished). A candidate may act as his/her own election agent.

The candidate's election agent is the only person who can incur election expenses on the candidate's behalf at the election. (A political party's national agent may also incur expenses on a candidate's behalf from the amount assigned to the party by the candidate - see paragraph 3.5). The election agent can authorise other persons, including the candidate, to incur election expenses on his/her behalf. In many cases election agents authorised candidates and/or directors of elections to incur a specified amount of election expenses. The election agent must account for all expenses incurred by such "authorised persons". The fact that all election expenses incurred on a candidate's behalf must be authorised by his/her election agent is a fundamental principle underpinning this part of the Act. It allows the election agent to control election expenditure incurred on the candidate's behalf and to ensure that the spending limit available to the election agent is adhered to.

Section 31(8A) of the Act provides that, where a candidate has incurred election expenses before the appointment of an election agent, he/she must provide details of the expenses incurred to the election agent. It is an offence for the candidate to fail to provide such information to an election agent in sufficient time to allow the election agent to furnish an Election Expenses Statement in accordance with the requirements of section 36 of the Act. During and after the election campaign some election agents informed the Standards Commission that they had experienced difficulties in securing details from candidates of election expenses incurred by them. The Standards Commission advised the election agents to inform the candidates of their legal obligations under section 31(8A) of the Act. On one occasion it was necessary for the Standards Commission to write to a particular candidate regarding the requirements of section 31(8A) and ultimately to refer a file on the matter to the Gardaí/DPP (see paragraph 3.14).

The procedures set out in section 28 of the Act require the Returning Officers for each Dáil

constituency to notify the Standards Commission of all candidates contesting the election in the constituency and details of their election agents. Returning Officers are also required to inform the Standards Commission if they are notified by a candidate of a change of election agent. The Standards Commission must accept the information as provided by the Returning Officer and may only accept an Election Expenses Statement which has been completed by the person notified as the candidate's election agent.

At the 2002 general election it was not uncommon for the Standards Commission to receive an Election Expenses Statement which had been completed by someone other than the person notified as the candidate's election agent. While the official nomination papers inform candidates of the requirement to appoint an election agent there is no provision for candidates to include details of their election agents on the nomination papers. Having made enquiries with the Department of the Environment, Heritage and Local Government the Standards Commission was informed that it would not be possible to include the election agents details on the nomination papers. To facilitate the provision of correct election agent details, the Standards Commission decided to produce a form which it issued to each Returning Officer. Returning Officers were requested to ask candidates to complete this form when submitting their nomination papers. Most Returning Officers complied with this request and this ensured that the Standards Commission had a written record of the person notified to the Returning Officer as the candidate's election agent.

The main political parties generally provide the Standards Commission with details of their candidates and election agents in advance of the election. This facilitates the timely provision of guidelines to these candidates and their election agents. However, in the case of candidates of some of the smaller political parties and many of the non-party candidates, the first notification the Standards Commission receives regarding their candidacy, or the appointment of an election agent, is from the Returning Officer. To ensure that its guidelines were circulated as quickly as possible to these candidates and election agents, the Standards Commission wrote to each returning officer on 27 April 2007 asking that he/she fax or e-mail details of each candidate contesting the election in the constituency and their election agents to the Standards Commission as soon as possible after nominations for the election closed (12.00 noon on 8th May 2007). The Standards Commission wishes to thank Returning Officers for complying with its request regarding usage of the above form and the provision of the relevant information in a timely manner.

Despite improvements on the 2002 general election, the Standards Commission continues to have concerns regarding the provisions of section 28 of the Act. In particular the Standards Commission believes that the term "election agent" is causing confusion and needs to be amended in the Act. Section 59 of the Electoral Act 1992 (the 1992 Act) also 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. *The Standards Commission has found that some candidates associate the term "election agent" as set out in the 1997 Act with these functions and notify such "agents" as their election agent even though these persons have no function in relation to controlling expenses incurred on the candidate's behalf at the election.* The Standards Commission may only accept an Election Expenses Statement which has been completed by the person notified to it as the candidate's election agent. When incorrect election agent details are notified to the Returning Officer, the time and expense invested by the Standards Commission and the political parties

themselves, in familiarising election agents with the requirements of the legislation is wasted. The Standards Commission has found that it is election agents who are unfamiliar with the requirements of the legislation who often have most difficulty in correctly completing their Election Expenses Statement forms. *The Standards Commission recommends that the term "election agent" as set out in the Act should be amended to either "election spending accounting officer" or "election spending agent".*

As with the 2002 general election the Standards Commission received a number of Election Expenses Statements which had been completed by someone other than the person notified as the candidate's election agent. As stated above, 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 delays the Standards Commission in finalising these particular Election Expenses Statements. In view of the fact that the election agent's details do not form part of the nomination papers, 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.

3.5 Appointment of political parties' national agents

In accordance with section 28(1) of the Act each of the political parties was required to appoint a national agent for the purposes of incurring expenses on behalf of the party at the election. The Act requires that the Standards Commission be notified of the appointment of a national agent not later than the last day for receiving nominations at the election (8 May 2007). If a political party has not provided the relevant information by the last day for withdrawing nominations (9 May 2007), the party's appropriate officer (appointed under section 71 of the Act) is deemed to have been appointed as the party's national agent. If no appropriate officer stands appointed, the leader of the party is deemed to be the party's appropriate officer and as such to have been appointed as the party's national agent.

Nine political parties had candidates contesting the Dáil general election. Eight of those parties notified the Standards Commission of the appointment of a national agent. As the Christian Solidarity Party did not notify the Standards Commission of the appointment of a national agent, its appropriate officer was deemed to be the party's national agent. In accordance with section 6(a) of the Act, the Standards Commission published in *Iris Oifigiúil*, on 14 May 2007, the names and addresses of the national agents appointed, or deemed to have been appointed, by each of the political parties.

The national agent is the only person who can incur election expenses on behalf of the party out of the spending limit assigned to it by its candidates (see 3.6 below). Where expenses have been incurred by or on behalf of a political party before the appointment of a national agent, the party must furnish details of all such expenses, together with all relevant vouchers, to the national agent. The national agent can authorise other persons to incur expenditure or make payments within specific limits set by the national agent. The national agent must account for spending by all such authorised persons.

Spending by the national agent out of the amount assigned to the party can be either on the candidates or at national level. Spending on a candidate is spending which identifies and promotes a candidate(s) in a constituency. This includes the party's 'team' in a constituency. Where election materials (e.g., posters, billboards) featured a party's leader and its candidates,

the expenditure was deemed to have been incurred on the candidates concerned and not the party leader. Spending by the national agent on a particular candidate cannot exceed the amount assigned to the party by that candidate. No part of a candidate's spending limit can be transferred from one party candidate to another in a constituency.

National spending is not directly related to the promotion of candidates in constituencies. It generally includes a reference to the party, its leadership, its policies or election issues in a national context and by its content and geographic extent is aimed at attracting votes in the country as a whole. Such spending is usually on items like the party manifesto, party political broadcasts, tours by the party leader, etc. Where party political broadcasts featured members of the party leadership or party spokespersons, the expenses incurred were regarded as national spending and not regarded as having been incurred on the individual candidates.

3.6 Spending limits

Section 3(1) of the Act provides that the Minister for the Environment, Heritage and Local Government may by order increase, in line with the Consumer Price Index (CPI), the statutory spending limits at Dáil elections. On 14 March 2007, the Minister, having regard to changes in the CPI since September 2001 (the last time the spending limits were increased) made an order (Electoral Act 1997 (Limitation and Reimbursement of Election Expenses at Dáil Election) Order 2007 (S.I. No. 113 of 2007)) which increased the statutory spending limits as follows:

- 3 seat constituency - increased from €25,394.76 to €30,150.00
- 4 seat constituency - increased from €31,743.45 to €37,650.00
- 5 seat constituency - increased from €38,092.14 to €45,200.00

The statutory spending limit is for each candidate in a constituency and is inclusive of VAT. The statutory limit represents the maximum spending allowed on a candidate in a constituency and includes all spending by the election agent and a political party (both head office and local organisation) on a candidate. No separate or additional spending by a political party on a candidate over and above that which has been assigned to the party by the candidate is allowed.

A candidate contesting the election on behalf of a political party could agree in writing, with his/her political party, an amount of his/her spending limit which would be assigned to the party for spending by the party's national agent. This could be up to 100% of the candidate's limit. There is, however, no legal obligation on a candidate make any assignment to the party. If a candidate refused to assign any part of the statutory spending limit to the party, the party could not incur any expenses on that candidate at the election (unless authorised to do so by the candidate's election agent). The candidate's election agent can only spend the amount of the statutory limit for that candidate which remains after the assignment to the party has been made.

The Act does not specify when the assignment must be made or preclude a renegotiation of the assignment at any stage during or indeed after the election campaign. The Standards Commission advised in its guidelines that assignments should be agreed before any expenses are incurred. While this was generally the practice, in many cases assignments were re-negotiated during or after the election campaign. It is not clear to the Standards Commission whether the ability to renegotiate an assignment is intended as part of the Act. The Standards

Commission is satisfied, however, that legally it is not in a position to refuse to accept a renegotiation of an assignment even after an Election Expenses Statement has been furnished to it. There were a number of instances where the assignment was renegotiated after the statutory deadline for receipt of Election Expenses Statements. In most cases the renegotiation was required because the election agent had exceeded the spending limit available to him/her after the assignment had been made to the party.

The Act specifically provides, however, that the agreed assignment must be made in writing between a candidate and the party. Where assignments were renegotiated a new written agreement had to be drawn up and election agents were required to furnish a copy of the written agreement with their Election Expenses Statements.

3.7 The Election period

The spending limit at a Dáil general election applies to all expenses incurred and payments made in providing property, goods or services which are used for electoral purposes during the "election period". Section 31(3)(a) of the Act provides that the election period at a Dáil general election is from the date of the dissolution of the Dáil (29 April 2007) up until polling day at the election (24 May 2007), both dates included.

Expenses which are incurred or payments which are made at any time before the date of dissolution of the Dáil on property, goods or services which are used during the election period must be accounted for. The exception to this is the cost of an opinion poll or other similar survey which is taken within the period of **60 days** before polling day. Such cost is regarded as an election expense and must be accounted for.

If expenses were incurred or payments were made on property, goods or services which were intended to be used but were not used, or only partly used, during the election period it was not necessary to account for the unused part. Similarly, it was not necessary to account for expenses incurred or payments made in respect of property, goods or services which were used before or after the election period. Some examples of this might be:

- promotional material circulated by candidates/political parties before the election period commenced;
- insurance or rental costs applying to a campaign premises or vehicles in so far as the costs related to a period before and/or after the election period;
- "Thank you" notices circulated after the election;
- The costs of removing posters after the election.

In its guidelines for the general election the Standards Commission advised that advertisements which appeared in newspapers, magazines or other publications and which carried a publication date which was during the election period would be regarded as election expenses. If the publication date was before or after the election period, the advertisements would not be regarded as election expenses. The reason for this advice is that many local newspapers are available for purchase before their date of publication. It is not possible for the Standards Commission to ascertain the date of availability of every local newspaper. The publication date of the paper, therefore, is taken as the basis for determining whether an advertisement is used during the election period or not. It was suggested to the Standards Commission that a particular newspaper, which had altered its publication date, may have

done so to ensure that advertisements it carried during the final week of the election campaign would not be regarded as election expenses. It was not possible for the Standards Commission to take any action in this regard. It may, however, prompt the Standards Commission to re-consider its advice in relation to newspaper advertisements.

During the election there was considerable evidence of and much comment about pre-election spending by parties and candidates. Such expenditure was not required to be accounted for if the materials concerned were not used during the election period. Legitimate concerns were expressed that the "front-loading" of campaign expenditure diminished the effectiveness of the expenditure limits.

The Standards Commission has repeatedly called for a review of "the election period" at Dáil and European elections. This is particularly important where a Dáil general election is held after a government has run its full term of office. (Where a "snap" election is called the "frontloading" of expenditure is unlikely to arise). In its review of the Act in 2003, the Standards Commission stated that *"Given the level of debate and comment around this issue (the election period) and the potential for such to fundamentally undermine the perceived effectiveness of the legislation, the Standards Commission is of the view that consideration should be given to whether, in respect of a specified period prior to commencement of the legally defined election period, there is a case for imposing some accountability in the context of the spending limits."* This view has been reinforced by the Standards Commission's experience of the 2007 election campaign.

The purpose of expenditure limits is to create a level playing field for all candidates and to prevent a "free for all" in terms of election spending. The Standards Commission considers this to be a fundamental principle of the Act. Limiting election expenditure reduces the dependence of candidates and political parties on political contributions to fund election campaigns and is recognised by the Council of Europe and the Group of Member States against Corruption (GRECO) as an effective tool in combating corruption. It is now clear that the public perception of the legislation is that it is not achieving its stated aim of limiting expenditure at elections by political parties and candidates. The Standards Commission is in no doubt that the lack of an effective election period at a Dáil general election undermines the purpose of having expenditure limits in place and runs the risk of bringing the provisions of the Act governing election expenditure into disrepute. There is the danger that if the issue of the election period at Dáil and European elections is not satisfactorily addressed the accounting for expenditure at such elections will be perceived as little more than a paper exercise.

The key issue in determining the duration of the election period is to decide at what point does expenditure on activity of an electioneering nature which occurs prior to dissolution have an impact in terms of voter awareness and should, therefore, be regarded as election spending. The Standards Commission, while recognising a need for new candidates to build a profile in a constituency, considers that expenditure on goods, property or services used for electoral purposes during a period of 2/3 months prior to polling day could reasonably be construed as intended to elicit support at the election for a candidate or political party. A record of expenditure would have to be maintained so that, if necessary, it could be accounted for by the relevant agent after the election. Once the three month period had expired in relation to a particular item of expenditure and the Dáil had still not been dissolved, the record in respect of that item would no longer require to be retained. Candidates would,

therefore be required to have their election agents in place well in advance of the election. The Standards Commission is aware that this may be more onerous on candidates and election agents but is of the opinion, nevertheless, that this approach merits consideration and would generally be welcomed if it was to help achieve the intended purpose of this part of the Act - the limitation of election expenditure.

3.8 Issuing of Election Expenses Statements forms

An Election Expenses Statement form was required from the election agent of each candidate who contested the general election. A number of election agents acted for more than one candidate. In such cases, the election agent was required to furnish a separate Election Expenses Statement form in respect of each candidate. 466 individual candidates contested the election. Mr. Colm Callanan (CSP) contested the election in two constituencies and Mr. Noel O'Gara (Non Party) contested the election in four constituencies. Mr. Callanan and Mr. O'Gara were required to complete an Election Expenses Statement form for each constituency in which they contested the election. In all, 470 election agent Election Expenses Statement forms were required to be furnished to the Standards Commission. An Election Expenses Statement form was also required in respect of the nine political parties which had candidates contesting the election. A total of 479 Election Expenses Statement forms, therefore, were required to be furnished to the Standards Commission.

Section 36(2) of the Act provides that an Election Expenses Statement shall be in a form directed by the Standards Commission. A sample election agent Election Expenses Statement form was included as an Appendix to the published guidelines. The form which subsequently issued to election agents (GE/07/EES/EA) contained some minor changes to the sample form. The Standards Commission also produced Election Expenses Statement forms for use by the national agents of political parties. The form in each case was tailored to include the name, and other details, of each candidate of the party who had contested the election.

The Election Expenses Statement forms for both election agents and national agents, required election expenses, where the costs were originally met out of public funds, to be accounted for separately. The purpose of this was to allow the Standards Commission to provide details of such costs and, if necessary, to reconcile these amounts with the reimbursements made by outgoing Members to the Houses of the Oireachtas Commission for use of such facilities for electoral purposes.

An Election Expenses Statement Form was issued by registered post to each election agent between 8th and 12th June 2007 and to the national agents of political parties on 18th June 2007. An explanatory note providing contact details for staff of the Standards Commission secretariat accompanied each form. Agents were advised to contact the secretariat if they were unsure about any aspect of the form. Staff of the secretariat also available to meet with election agents who required advice on the completion of the form. The forms were required to be furnished by the statutory deadline of 19 July 2007.

3.9 Receipt of Election Agents' Election Expenses Statements forms

354 election agent Election Expenses Statement forms were received by the statutory deadline of 19 July 2007. As of 26 July 2007, 64 Election Expenses Statements had still not been received. On that date the Standards Commission wrote to the agents concerned

advising them that it is an offence under section 43(2)(c) of the Act to fail to furnish an Election Expenses Statement by the statutory deadline.

By 3 August 2007, there were 37 Election Expenses Statements outstanding. The Standards Commission sent a further reminder on that date to the agents concerned. On 14 August 2007 with 28 Election Expenses Statements still outstanding a final reminder issued to the agents concerned. The agents were advised that if an Election Expenses Statement was not received within seven days, the Standards Commission would consider referring the matter to the Gardaí. (The Standards Commission has previously been advised by the Office of the DPP to deal directly with the Garda authorities in relation to such offences under the Act.) On 28 August 2007, the Standards Commission requested the Gardaí to investigate the following election agents for failure to furnish an Election Expenses Statement:

Mr. Thomas King who acted as his own election agent (Non-party, Galway West);
Ms. Margaret Murphy who acted as election agent for Mr. Thomas Harpur (Green Party, Wexford); and
Mr. Jim Tallon who acted as his own election agent (Non-party, Wicklow).

An Election Expenses Statement was subsequently received from Ms. Murphy. At the time of publication of this report, an Election Expenses Statement form has still not been received from either Mr. King or Mr. Tallon. As stated in Chapter 2 of the report the Standards Commission also referred Mr. King and Mr. Tallon to the Gardaí for investigation of an offence under section 25 of the Act for failure to furnish a Donation Statement. While the Standards Commission understands that the Gardaí are investigating the offences committed by Mr. King, it is not aware of what action, if any, has been taken in relation to Mr. Tallon.

3.10 Consideration of Election Agents' Election Expenses Statements

468 election agent Election Expenses Statement forms have now been received. *As required by section 4(1) of the Act, the Standards Commission has considered these Election Expenses Statements and has found approximately 60% of them to have been incorrectly completed.* In addition a similar percentage of election agents failed to comply with the requirements under section 31(9) and 36(1)(a) of the Act to provide invoices, receipts or vouchers for all election expenses exceeding €126.97 in value.

To avoid returning every Election Expenses Statement which contained an error, the Standards Commission secretariat contacted election agents by telephone or by e-mail, to clarify errors or request outstanding invoices/receipts. Where it was possible to do so, the Standards Commission clarified the error by means of an explanatory note which it has included with the Election Expenses Statement. The Standards Commission has also attached a Summary Sheet to each Election Expenses Statement. The summary sheet gives details of the total expenses incurred by the election agent under the relevant headings (set out in the Schedule to the Act).

Notwithstanding this approach, approximately 100 forms still had to be returned to the agents concerned. The Act provides that where the Standards Commission considers that there may be a minor error or omission in an Election Expenses Statement, it may afford the election agent 14 days to rectify the error or make good the omission. It is an offence under section 43(2)(e) of the Act for an election agent to fail to comply with this requirement. In some

instances the Standards Commission experienced considerable difficulties in getting election agents to amend and return their Election Expenses Statements or to furnish relevant invoices/receipts. At the end of October the Standards Commission issued a letter to approximately 30 election agents whose Election Expenses Statement had not been finalised or from whom relevant outstanding invoices/receipts had not been received. The letter informed election agents that the Standards Commission intended presenting its report on the election to the Ceann Comhairle. Election agents were advised of the offence above under section 43(2)(e) of the Act and were informed that if a correctly completed Election Expenses Statement or the relevant invoices/receipts had not been received by the time the report went to print, they would be cited in the report as having failed to comply with section 36 of the Act.

At the time of publication of this report - over four months after the statutory deadline for receipt of Election Expenses Statements and almost six months after the forms were originally issued - correctly completed Election Expenses Statements have still not been received from the following three election agents:

Ms. Trish Forde-Brennan acted as own agent (Green Party, Limerick East) - original form returned in order that items which were not election expenses could be removed. Amended Election Expenses Statement form yet to be received. **The Standards Commission subsequently discovered that an amended Election Expenses Statement form had been received from Ms. Forde-Brennan and had been misfiled. The amended Election Expenses Statement has been laid before the Houses of the Oireachtas.**

Mr. Felim McDonnell - election agent for Ms. Margaret Cox (Non-party, Galway West) - amended Election Expenses Statement not received.

Mr. David Williams - election agent for Ms. Madeleine Taylor Quinn (Fine Gael, Clare) - clarification required.

In addition the following election agents have yet to furnish invoices/receipts relevant to their Election Expenses Statements:

Dr. John F. Corish - acted as own agent (non-party, Kildare North) - clarification and outstanding receipt/invoice required.

Mr. Niall Kelleher - election agent for Mr. Tom Fleming (Fianna Fáil, Kerry South).

Mr. Barry Kennedy - election agent for Mr. Paudie Coffey, Jim D'Arcy and John Deasy (Fine Gael, Waterford).

Failure on the part of agents to correctly complete their Election Expenses Statements and delays in returning amended statements create a difficulty for the Standards Commission in terms of making its report to the Ceann Comhairle and putting the material on public display in a timely manner. The Standards Commission is conscious of the desirability of having Donation Statements and Election Expenses Statements on public display as soon as possible after the statutory deadline for their receipt. It is of the view, however, that before the material can be laid before the Houses of the Oireachtas and put on public display, it must be satisfied that the information contained therein is correct. To avoid a delay in making the material available, the Standards Commission could allow what it believed to be incorrectly completed returns to be put into the public domain. This is not considered to be a satisfactory manner in which to discharge a statutory duty to the Houses of the Oireachtas and the general public. Consequently those Election Expenses Statements which have not been finalised are not

being laid before the Houses of the Oireachtas. The Standards Commission will continue to pursue the correct completion of an Election Expenses Statement form and the furnishing of relevant invoices/receipts with these agents. Reimbursements of election expenses which may be due to the candidates concerned will not be processed until such time as the Standards Commission is satisfied that the election agent's Election Expenses Statement is correct and all relevant invoices/receipts received. If necessary the Standards Commission will refer a file on the agents concerned to the Gardaí for an investigation of the offence under section 43(2)(e) of the Act.

3.11 Receipt of National Agents' Election Expenses Statements forms

Five of the nine Election Expenses Statements furnished by national agents were received within the statutory deadline of 19 July 2007. Election Expenses Statements from the Labour Party and the Progressive Democrats were received on 20 July 2007. On 31 July 2007, the Standards Commission wrote to the national agents of Fine Gael and The Workers Party drawing their attention to the fact that an Election Expenses Statement had not been received and advising them that it is an offence to fail to furnish an Election Expenses Statement by the statutory deadline. An Election Expenses Statement was received from the national agent of Fine Gael on 1 August 2007. On 8 and 27 August 2007 the Standards Commission sent reminders to the national agent of the Workers Party, Mr. John Lowry, regarding his Election Expenses Statement which was still outstanding. The reminder of 27 August informed Mr. Lowry that if an Election Expenses Statement was not received within seven days, the Standards Commission would consider referring the matter to the DPP. The Election Expenses Statement was subsequently received on 27 August (after the Standards Commission's letter had issued).

In accordance with section 4(1) of the Act, the Standards Commission considered these Election Expenses Statements. National agents were required to account for national spending and spending on individual candidates. While there were queries raised and some corrections required the Standards Commission received good co-operation from the national agents in amending and returning their Election Expenses Statements.

Election Expenses totalling €11,082,313.10 were disclosed by candidates' election agents and the national agents of political parties. "Nil" Election Expenses Statements were furnished in respect of 11 (nine Non Party, one CSP and one GP). Details of the expenditure incurred by candidates and political parties is contained in Appendices 2 to 4 of this report.

3.12 Overspending

There are a number of consequences arising from an overspend by an election agent or national agent of a political party at a Dáil general election. It is a criminal offence on the part of the agent concerned, punishable by a fine of up to €1,269.74. A person may also petition the High Court to set aside the result of the election. Rule 3A of the Third Schedule to the Electoral Act 1992 (as introduced by section 44 of the Electoral Act 1997) provides that leave of the High Court to present such a petition must be applied for within 14 days of the Standards Commission having laid a copy of the Election Expenses Statement before the Houses of the Oireachtas. Aside from this, the Standards Commission has no other function in relation to an election petition.

The amount of any overspend by an election agent is deducted from the reimbursement of election expenses which may be due to the candidate while any overspend by the national agent of a political party is deducted from the annual payment received by the party from the Exchequer under the Act.

The Act provides that an election agent will have overspent at the election if he/she exceeds the statutory expenditure limit applicable to the candidate at the election. There was no evidence of any election agent having exceeded the statutory spending limit applying to the candidate.

In the case of an election agent of a candidate contesting the election of behalf of a political party the election agent is also deemed to have overspent if he/she exceeds the amount of the expenditure limit available to the candidate after the assignment was made to the party (see paragraph 3.6). It was evident from the Election Expenses Statements received that the total expenditure accounted for by some election agents exceeded the amount of the expenditure limit retained by the candidate. However, the Act does not specify when the written assignment must be made and does not preclude a renegotiation of the agreed assignment at any stage during or indeed after the election campaign. The Standards Commission's view is that it cannot legally refuse to accept a renegotiation of an assignment even after an Election Expenses Statement has been furnished. There were a number of instances where the assignment was renegotiated after the statutory deadline for receipt of Election Expenses Statements. It was evident to the Standards Commission that in most if not all of these cases the purpose of the reassignment was to ensure that the election agent did not overspend by exceeding the amount of the expenditure limit retained by the candidate.

The Act provides that the national agent of a political party will have overspent if he/she incurs expenditure which exceeds the total amount assigned to the party by its candidates. There was no evidence of a national agent having exceeded the total amount assigned by the party's candidates.

The national agent will also be deemed to have overspent if he/she incurs expenditure on a particular candidate which exceeds the amount assigned by the candidate to the party. In considering the Election Expenses Statement furnished by the national agent of the Green Party the Standards Commission found that the party had incurred election expenses on candidates who had not made any assignment to the party. The party subsequently provided written agreements from these candidates which made an assignment to the party which was sufficient to cover the expenses incurred by the party on the candidates' behalf. As previously stated, the Standards Commission has taken the view that it cannot legally refuse to accept such an assignment even after an Election Expenses Statement has been furnished.

The Standards Commission did not, therefore, refer any instances of overspending to the DPP/Gardaí.

3.13 Late Claims and Disputed Expenses

Late Claims

The legislation provides that all claims for payment of election expenses must be delivered to the election agent or national agent concerned within 45 days after polling day which, in the case of the Dáil general election, was 8 July 2007. Claims for payment received after this date

may not be paid by the election agent or national agent concerned. It is an offence under section 43(2)(b) of the Act for an agent to pay a claim for election expenses which was not received by 8 July 2007. Although late claims may not be paid, they must be accounted for as election expenses by the agent concerned in his/her Election Expenses Statement.

Some election agents and national agents identified late claims on their Election Expenses Statement forms. In each case the agents were informed by the Standards Commission that they could not pay the expense concerned and that it was an offence to do otherwise.

Disputed claims

The legislation provides that where a claim for payment of election expenses is disputed by an election agent or national agent, details of the disputed claim should be provided in the Election Expenses Statement. The agent is not required to account for the amount which is in dispute when calculating the total amount of election expenses incurred. If and when the dispute is resolved, the agent is required to notify the Standards Commission of the amount agreed as payable by him/her and, if necessary, amend his/her Election Expenses Statement accordingly. If the dispute is resolved by means of a court order, a copy of the court order must be furnished to the Standards Commission.

Some election agents and national agents identified disputed claims on their Election Expenses Statement forms. In each case the agents were informed by the Standards Commission that they must notify the Standards Commission when the dispute has been resolved and, if necessary, amend their Election Expenses Statement.

3.14 Contravention of section 31(8A) of the Act

Section 31(8A) of the Act provides that where a candidate has incurred election expenses before the appointment of his/her election agent, he/she must provide details of the expenses incurred to the election agent. It is an offence for the candidate to fail to provide such information to an election agent in sufficient time to allow the election agent to furnish an Election Expenses Statement in accordance with the requirements of section 36 of the Act.

When furnishing his Election Expenses Statement to the Standards Commission the election agent for Ms. Madeleine Taylor Quinn (FG), Mr. David Williams, stated that he had not received "*invoices from M T Quinn*" but had decided to furnish her Election Expenses Statement pending receipt of these. The Standards Commission wrote to Ms Taylor Quinn on 3 August informing her of the provisions of section 31(1)(8A) of the Act and requesting her to forward the original vouchers to Mr. Williams. She was advised that failure to comply with section 31(1)(8A) of the Act was an offence (under section 43(2)(e) of the Act). A further letter issued to Ms. Taylor Quinn on 21 August requesting her to forward the relevant vouchers to her election agent or to the Standards Commission by 31 August. Ms Taylor Quinn was advised that if the vouchers were not received by 31 August the Standards Commission would consider referring the matter to the Gardaí.

A file on the matter was sent to the Gardaí on 12 September 2007. This was the second file to be sent to the Gardaí concerning Ms. Taylor Quinn's candidacy at the general election. As stated in Chapter 2, a file on Ms Taylor Quinn was already referred to the Gardaí for prosecution of the offence under section 25(1)(c) of the Act (failure to furnish a Donation Statement by the statutory deadline of 19 July). While some invoices / receipts were

subsequently received from Ms. Taylor Quinn on 21 September, not all of the relevant invoices were received. The remaining invoices/receipts were received on 4 December 2007. As stated in paragraph 3.10 above, clarification of one particular matter is still required from Mr. Williams. The Standards Commission will not certify a reimbursement of election expenses to Ms. Taylor Quinn until such time as all outstanding issues in relation to Mr. Williams' Election Expenses Statement have been resolved.

Chapter 4 - Reimbursement of candidates' election expenses

Section 21(1) of the Act provides for the reimbursement of election expenses to qualified candidates at a Dáil general election. In order to qualify for a reimbursement, a candidate must either:

- (i) have been elected at the election, or
- (ii) if not elected, have exceeded one quarter of the quota in the constituency at any stage of the counting of votes.

Section 3(1) of the Act provides that the Minister for the Environment, Heritage and Local Government may, by order, and in line with the CPI, increase the maximum amount which may be reimbursed to qualified candidates at Dáil elections. The amount had not been increased since the introduction of the Act (15 May 1997). The Minister, having regard to changes in the CPI since 15 May 1997 made an order (Electoral Act 1997 (Limitation and Reimbursement of Election Expenses at Dáil Election) Order 2007 (S.I. No. 113 of 2007)) which increased the maximum amount which may be reimbursed from €6,348.69 to €8,700.

Candidates who qualified for a reimbursement were eligible, therefore, to receive the lesser of €8,700 or the actual amount of election expenses incurred on their behalf at the election. In calculating the amount of election expenses incurred on a candidate's behalf, account may be taken of the expenses incurred on the candidate as accounted for by the candidate's election agent and expenses incurred by the party on the candidate in the constituency, as accounted for by the party's national agent.

The Standards Commission is required under section 21(d) of the Act to certify to the Minister for Finance that a candidate is eligible for a reimbursement of his/her election expenses. The Standards Commission is also required to certify that a correctly completed Election Expenses Statement has been furnished to the Standards Commission by the candidate's election agent and, in the case of unsuccessful candidates, to certify that a correctly completed Donation Statement has been received from the candidate. The Standards Commission is also required to notify the Minister for Finance of the expenditure incurred by each candidate and of the reimbursement amount due to each candidate.

It is the practice of the Standards Commission not to issue an Application for Reimbursement of Election Expenses form to a qualified candidate until such time as all matters relating to the completion of his/her statutory returns have been finalised. In addition to the election agent's Election Expenses Statement and an unsuccessful candidate's Donation Statement this also includes the correct completion of the national agent's Election Expenses Statement (insofar as it applies to the particular candidate) and where required the furnishing by unsuccessful candidates of a correctly completed CMD and bank statement.

When the Standards Commission has received the relevant statutory documentation and is satisfied as to its correct completion, it issues a reimbursement application form to the candidate. On receipt of the completed application form, the Standards Commission certifies to the Department of Finance the amount which should be reimbursed to the candidate. The Standards Commission will not certify a reimbursement of election expenses to a candidate if

statutory and supporting documentation has not been furnished.

The reimbursement is made directly to a candidate by the Department of Finance and is not regarded as a donation to the candidate. A candidate is not required by the legislation to pass on any part of the reimbursement to his/her political party although in most cases candidates of the main political parties are required by the party to pass on some or all of their reimbursement to the party.

There is an issue in relation to the reimbursement of expenses due to some non-party candidates or candidates of the smaller political parties who may not be eligible to claim the maximum amount of €8,700. Items such as meals for canvassers and candidate's petrol and telephone expenses are excluded from the definition of what constitutes election expenses (see section 3.2 - items (ii) and (vi)). The exclusion of these items from the definition of election expenses is welcomed by most candidates and election agents as a means of allowing them to remain within their spending limits. However for some non-party candidates or candidates of the smaller parties whose spending will not come close to the statutory spending limit, these items represent real costs for which they cannot be reimbursed should they qualify for a reimbursement of their election expenses. The Standards Commission suggests that where such instances arise and the candidates can provide evidence of such expenses having been incurred, the Standards Commission might be allowed to exercise some discretion and include such items in the total election expenses which may be reimbursed to these candidates.

A total of 304 candidates qualified for a reimbursement of their election expenses. 300 candidates were eligible to receive the maximum amount of €8,700 while four candidates were eligible to receive the total amount of election expenses incurred on their behalf (including expenses incurred on their behalf by the party). The total amount due to be reimbursed to qualified candidates is €2,638,013.47. At the time of publication, almost 220 reimbursement applications have been received and processed. The qualified candidates and the amounts of the reimbursements due to them are outlined in Appendix 5 to this report.

Chapter 5 - "Other person"/"third party" activity at the election

5.1 Legal requirements

Section 31(7) of the Act provides that any person who intends to incur election expenses at a Dáil general election and who has not been authorised to do so by either the election agent of a candidate or the national agent of a political party, must, before incurring any such expenses, provide the following information to the Standards Commission:

- (a) the name, address and description of the person proposing to incur the expenses,
- (b) a statement of the nature, purpose and estimated amount of such expenses, and
- (c) an indication of the person's connection, if any, with any party or candidate at the election.

It is an offence under section 43(3)(a) of the Act for a person to whom section 31(7) applies to fail to comply with the above requirements.

The requirements of section 31(7) apply to an individual, body corporate or unincorporated body of persons who intend to incur election expenses (referred to hereafter as "other persons"). Once an "other person" has complied with the requirements of section 31(7), there is no statutory limit to the amount of expenses which may be incurred by that person at the election.

Section 31(6) of the Act, however, provides that where election expenses are incurred at a Dáil general election by a body which -

- i) was established by or on behalf of a political party or candidate for the purposes of incurring election expenses or making payments in respect of election expenses, or
- ii) is a member of or is a branch or subsidiary organisation of a political party, or
- iii) is effectively controlled by a political party or candidate or is or appears to be so connected with or associated with a political party or candidate that a reasonable person would believe that it is controlled or substantially influenced by that political party or candidate,

the expenses will be deemed to have been incurred on behalf of the candidate or party concerned and must be accounted for by the relevant election agent or national agent. Effectively this means that where a person incurs election expenses and the Standards Commission considers the person to be connected to a candidate or party it can require the candidate's election agent or the party's national agent to account for the expenditure.

Where a donation exceeding €126.97 has been received for political purposes the "other person" would also be required to register as a "third party" under section 23(C) of the Act. ("Political purposes" as defined in the Act includes to incur election expenses.) The requirement to register as a third party is separate and additional to the requirement to notify the Standards Commission of an intent to incur election expenses.

Once registered as a "third party" an individual/organisation is also subject to the requirements of the Act concerning the opening and maintenance of political donations accounts and the acceptance of prohibited donations (anonymous donations, foreign donations and donations in excess of the maximum prescribed limit). The maximum donation which can be accepted by a third party from the same donor in any given year is €6,348.69.

5.2 Correspondence with "other persons"/"third parties"

The Standards Commission published a notice regarding the requirements of section 31(7) of the Act, and the requirement to register as a "third party", in the national and local newspapers. The notice appeared in the main national newspapers on Thursday 3 May 2007 and in the Sunday newspapers and a number of other relevant magazines on 6 May 2007. The Standards Commission also produced explanatory notes which set out the requirements attaching to "other persons" and "third parties" at the Dáil general election. The public notice and explanatory notes were also published on the website of the Standards Commission. The explanatory notes were issued to anyone whom the Standards Commission considered may have been incurring expenses at the Dáil general election.

As required under section 31(7) of the Act the following people notified the Standards Commission in advance of their intention to incur election expenses:

- 1) Cork Harbour for a Safe Environment (CHASE)
- 2) Rescue Seamount (Seamount College, Kinvara)
- 3) Ennis General Hospital Development Committee (EGHDC)
- 4) Union of Students in Ireland (USI)
- 5) Donal O'Driscoll, 33 Dargle Road, Blackrock, Co. Dublin
- 6) Pro Life Campaign
- 7) The Campaign to Save Tara
- 8) Mr. John McDaid, Lough Swilly Marina

Every person who incurred election expenses pursuant to section 31(7) of the Act was required to furnish an Election Expenses Statement to the Standards Commission by 19 July 2007. EGHDC, The Pro Life Campaign and Mr. Donal O'Driscoll each completed and returned Election Expenses Statement forms within the statutory deadline. Having been issued with reminder letters Rescue Seamount and CHASE furnished Election Expenses Statements on 15 and 31 October 2007 respectively. Mr. McDaid informed the Standards Commission that he had not incurred the intended expenditure. He was not, therefore, required to complete an Election Expenses Statement (Mr. McDaid did, however, furnish a "nil" Election Expenses Statement).

An Election Expenses Statement has still not been received from either USI or from the

Campaign to Save Tara. It is an offence under section 43(3)(b) of the Act for a person to whom section 31(7) of the Act applies to fail to furnish an Election Expenses Statement. If an Election Expenses Statement is not received, the Standards Commission will refer files on these organisations to the Gardaí for investigation.

From its monitoring of advertisements and reports in local newspapers, the Standards Commission became aware of activity by the following groups at the election:

- 1) Keep Ireland Open,
- 2) Kildare Town Chamber of Commerce (KTCC)
- 3) Roscommon Hospital Action Committee (RHAG)
- 4) National Womens Council of Ireland (NWCI)
- 5) Mr. Declan Waugh, 11 Riverview, Bandon, Co. Cork
- 6) Galway for Life
- 7) Citizens for a better Health Service
- 8) Turn the Tide - Action on Suicide Alliance
- 9) AdVIC (Advocates for Victims of Homicide)
- 10) The Gay Vote
- 11) Mallow General Hospital Action Committee (MGHAC)
- 12) Mr. Barry Feely, Feelystone Boyle Ltd., Boyle, Co. Roscommon

The Standards Commission wrote to each of the above groups/individuals drawing their attention to the requirements of section 31(7) of the Act and to the requirement under section 23C of the Act to register as a third party. Having considered the responses of NWCI, Turn the Tide, AdVIC, The Gay Vote, MGHAC and Mr. Feely the Standards Commission was satisfied that these persons had not incurred election expenses at the Dáil general election.

The Standards Commission considered that advertisements placed by Keep Ireland Open, KTCC, Galway for Life and Mr. Declan Waugh, which were published during the election period, constituted election expenses in that they sought to influence the outcome of the election. The Standards Commission wrote to these "other persons" informing them that it was of the opinion that they had incurred election expenses as defined in the Act. They were informed of the requirements of section 31(7) of the Act and of the offence (under section 43(3)(a) of the Act) for failing to comply with these requirements. Each was requested to complete an Election Expenses Statement. It has been the practice of the Standards Commission at previous elections not to seek a prosecution of the offence under section 43(3)(a) of the Act where a person otherwise complies with the Act by furnishing an Election Expenses Statement. As these "other persons" otherwise completed an Election Expenses

Statement the matter of their non-compliance with section 31(7) of the Act was not referred to the Gardaí.

The expenditure incurred by Roscommon Hospital Action Committee (RHAG) consisted of a newspaper advertisement which endorsed the candidacy of Mr. John Kelly a Non Party candidate in Roscommon/South Leitrim. Having contacted Mr. Kelly on the matter the Standards Commission was satisfied that he was not connected (as defined by section 31(6) above) to RHAG. His election agent was, however, prepared to account for the expenses incurred by RHAG (€2,187.73) and to include the organisation as an authorised person on his Election Expenses Statement.

Citizens for a better Health Service incurred expenses on a leaflet opposing the candidacy of Minister Mary Harney. The leaflet was distributed in Dublin Mid-West constituency and was brought to the attention of the Standards Commission by Minister Harney's election agent. The Standards Commission could not establish any contact details for this organisation other than an e-mail address provided on the leaflet (irishhealthservices@hotmail.com). The Standards Commission sent a number of e-mails regarding the requirements of section 31(7) to this e-mail address without reply. In the absence of any other contact details, it has not been possible for the Standards Commission to take any further action in relation to this organisation including a referral of the offence committed by it to the Gardaí.

It is possible that other individuals and groups incurred expenditure at the election and did not notify, or otherwise come to the attention of, the Standards Commission. If evidence of any such group or individual becomes available, the Standards Commission will take the appropriate action.

Expenses totalling €64,994.78 were disclosed by those "other persons" who furnished an Election Expenses Statement. Details of the expenses incurred are provided in Appendix 5 to this report.

Chapter 6 - Correspondence with newspapers, magazines, etc.

Section 31(10) of the Act provides that the publisher of a newspaper, magazine or other periodical publication shall not publish any advertisement or notice in relation to the Dáil general election purporting to promote or oppose, directly or indirectly, the interests of a political party or a candidate at the election, unless requested to do so by one of the following people:

- the national agent of a political party, or a person authorised in writing by such agent.
- a candidate at the election, a candidate's election agent or a person authorised in writing by such candidate or agent.
- an "other person" who produces to the publisher a certificate from the Standards Commission confirming that the person has complied with section 31(7) of the Act (see Chapter 5).

It is an offence under section 43(4) of the Act for the publisher of a newspaper, magazine or other periodical publication to fail to comply with the requirements of section 31(10).

On 2 May 2007 the Standards Commission wrote to the editors and advertising managers of over 120 national and local newspapers and other informing them of the provisions of section 31(10) of the Act and requesting them to bring this provision to the attention of any person in their organisation who has responsibility for publication of advertisements or public notices.

The Standards Commission monitored newspaper advertising at the election and as a result of this became aware of the following advertisements which appeared to have been accepted in contravention of section 31(10) of the Act:

1 Advertisements in The Kerryman newspaper in support of Tom Sheahan (Fine Gael candidate).

Five advertisements were placed, four from brothers of the candidate and one from a local councillor. The advertisements were deemed to be connected to the Mr. Sheahan's candidacy. His election agent subsequently authorised and accounted for the advertisements on her Election Expenses Statement. On that basis the Standards Commission decided that no further action would be taken with regard to the possible contravention of section 31(10) of the Act by The Kerryman.

2(a) Advertisements in the Roscommon Champion newspaper in support of Denis Naughten TD.

Five advertisements from Fine Gael Councillors Gerry Garvey, John Naughten, Dominick Connolly, Ollie Moore and Charlie Hopkins supporting Deputy Naughten's candidacy were published during the election period. The Roscommon Champion confirmed to the Standards Commission that four of the advertisements each cost less than €126.97. As these advertisements constituted "minor expenses" as defined in Part 2(g) of the Schedule to the Act and as such are not regarded as election expenses under the Act the persons placing the advertisements would not have had to comply with section 31(7) of the Act (see Chapter 5 above) and as such would not have been able to produce a certificate of compliance to the newspaper. The Standards Commission considered, therefore, that it would not be possible to take any further action in relation

to the possible contravention of section 31(10) of the Act by The Roscommon Champion.

The fifth advertisement which was placed by Councillor John Naughten exceeded € 126.97. This is regarded as an election expense which is deemed to be connected to Deputy Naughten's campaign. The newspaper informed the Standards Commission that it received verbal authorisation from an employee of Deputy Naughten to publish this advertisement. The national agent of Fine Gael subsequently authorised and accounted for the advertisement on his Election Expenses Statement.

2(b) Advertisements placed by Roscommon Hospital Action Committee (RHAC) in Roscommon Champion in support of candidacy of John Kelly (Non Party)

As stated in Chapter 5, RHAC did not comply with section 31(7) of the Act. Mr. Kelly's election agent, however, subsequently accounted for the advertisements as an election expense and included RHAC as an authorised person on his Election Expenses Statement. In view of the fact that the advertisements were subsequently authorised the Standards Commission did not take any further with regard to the possible contravention of section 31(10) of the Act by the Roscommon Champion.

3 Advertisement by Mr. Declan Waugh in the Irish Times and the Irish Examiner.

As stated in Chapter 5, Mr. Waugh did not comply with section 31(7) of the Act. While the Standards Commission was of the opinion that the advertisements could be regarded as indirectly promoting the election of "green" candidates and could, therefore, be regarded as contravening section 31(10) of the Act, it also recognised that the advertisements did not specifically refer to any particular party or candidate and were sufficiently ambiguous for it to decline to refer the matter to the Gardaí for a prosecution of an offence under section 43(4) of the Act.

4 Advertisement by Kildare Town Chamber of Commerce (KTCC) in Leinster Leader newspaper.

As stated in Chapter 5, KTCC did not comply with section 31(7) of the Act. While the Standards Commission was of the opinion that the advertisement could be regarded as indirectly promoting candidates from Kildare Town and could, therefore, be regarded as contravening section 31(10) of the Act, it also recognised that the advertisements did not specifically refer to any particular party or candidate and were sufficiently ambiguous for it to decline to refer the matter to the Gardaí for a prosecution of an offence under section 43(4) of the Act. In forming this opinion the Standards Commission had regard to the organisation's claims that the purpose of the advertisement was to encourage people to use their vote and was not intended to influence the outcome of the election.

5 Advertisement by Keep Ireland Open (KIO) in The Irish Times and The Irish Independent newspapers.

As stated in Chapter 5, KIO did not comply with section 31(7) of the Act. While the Standards Commission considered that this advertisement sought to influence the outcome of the election and as such constituted an election expense for which KIO should have complied with section 31(7) of the Act it decided that the advertisement did not sufficiently oppose the interests of FF, FG and the PDs to warrant a referral of the matter to the Gardaí for a prosecution of an offence under section 43(4) of the Act.

6 Advertisement by Galway for Life in The Tuam Herald.

As stated in Chapter 5, Galway for Life did not comply with section 31(7) of the Act. While the Standards Commission was of the opinion that the advertisement sought to influence the outcome of the election and as such constituted an election expense for which Galway for Life should have complied with section 31(7) of the Act, it took the view that the advertisements did not specifically refer to any particular party or candidate and were sufficiently ambiguous for it to decline to refer the matter to the Gardaí for a prosecution of an offence under section 43(4) of the Act. In forming this opinion the Standards Commission had regard to the organisation's claims that it did not support any particular candidate or party during the election but was merely urging a pro-life vote.

The Standards Commission wrote to the newspapers concerned in relation to the above advertisements and in most cases received good co-operation and assurances from the newspapers concerned that there was not a deliberate attempt to contravene section 31(10) of the Act. However, despite a number of reminders, the Standards Commission received no reply or co-operation from either the Irish Independent or The Kerryman.

When informing each of the above newspapers that it would not be taking any further action in terms of a referral of the matter to the Gardaí, the Standards Commission recommended that procedures should be put in place to ensure that the provisions of section 31(10) of the Act are strictly complied with in future. It also recommended that as part of those procedures the advice of the Standards Commission should be sought if there is a doubt as to whether the content of an advertisement might be regarded as contravening the provisions of section 31(10).

The Standards Commission has encountered a difficulty in supervising these provisions of the Act insofar as the provisions of section 31(10) refer to advertisements which **directly or indirectly promote or oppose** candidates or political parties while the provisions of section 31(7) refer to incurring election expenses which includes **seeking to influence the outcome of an election**. Therefore, while an advertisement may seek to influence the outcome of an election, it may not necessarily promote or oppose a particular candidate or party, or may be sufficiently ambiguous for a newspaper to justify accepting the advertisement and use this in a defence to any prosecution of an offence under section 43(4) of the Act. The Standards Commission considers, therefore, that some consistency might be brought to this part of the Act by including the term "seeking to influence the outcome of an election" as part of the provisions of section 31(10) of the Act.

Chapter 7 - Publishing of Donation Statements and Election Expenses Statements furnished to the Standards Commission

In accordance with section 24(7)(a) of the Act a copy of each Donation Statement received by the Standards Commission from unsuccessful candidates at the Dáil general election has been laid today before each House of the Oireachtas. As stated in section 2.3, the Standards Commission is still pursuing one candidate for a correctly completed Donation Statement and will lay the correctly completed Donation Statement before the Houses and make it available for public inspection as soon as it is received.

In accordance with section 37(1) of the Act a copy of each Election Expenses Statement which was furnished to the Standards Commission in relation to the Dáil general election and which the Standards Commission is satisfied has been correctly completed has been laid today before each House of the Oireachtas.

In accordance with section 73 of the Act, the Donation Statements and Election Expenses Statements received by the Standards Commission, together with any relevant invoices, receipts or vouchers, are being made available today for public inspection and copying at the offices of the Standards Commission.

The Standards Commission is still pursuing three election agents who have yet to furnish a correctly completed Election Expenses Statement. In the interests of publishing this report and ensuring that details of election expenditure are put into the public domain, the Standards Commission is including the original, albeit incorrect, information provided by these election agents in its report. It is not, however, laying the incorrect returns before the Houses or making them available for public inspection. The Standards Commission will continue to pursue the agents concerned for a correctly completed Election Expenses Statement and will lay the correctly completed statements before the Houses and make them available for public inspection as soon as they are received.

A copy of this report and its accompanying Press Release, together with a summary account of the donations received and election expenses incurred, will be available on the website of the Standards Commission www.sipo.gov.ie.

Chapter 8 - Summary of the Standards Commission's suggested amendments to the legislation

1. As the body with responsibility for supervising the Act the Standards Commission should have a statutory role to review the operation of the Act and report on its findings.
(Chapter 1 - Introduction)
2. The proposed establishment of an Electoral Commission, as set out in the current programme for government, should prompt a complete review of the legislation.
(Chapter 1 - Introduction)
3. The Standards Commission is required to consider whether to refer certain candidates to the Gardaí for failure to furnish a Certificate of Monetary Donations or bank statement by the statutory deadline of 19 July 2007. 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 Act. 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.
(Section 2.4 - Consideration of Certificates of Monetary Donations and Bank Statements)
4. The use of public funds for electoral purposes is a major issue which requires to be re-evaluated in consideration of future changes to the electoral law. The provision of such clarity within the ambit of the electoral code rather than as part of other legislation which patently has quite a separate purpose (the Houses of the Oireachtas Commission Act 2006) would better ensure a level playing pitch for all candidates.
(Section 3.3 - Election Expenses the costs of which were originally met out of public funds)
5. 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".
(Section 3.4 - Appointment of candidates' election agents)
6. 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.

(Section 3.4 - Appointment of candidates' election agents)

7. During the election there was considerable evidence of and much comment about pre-election spending by parties and candidates. This expenditure was not required to be accounted for if the materials were not used during the election period. This raises legitimate concerns that such "front-loading" of campaign expenditure undermines the effectiveness of the expenditure limits and may create the perception that accounting for expenditure at elections is little more than a paper exercise. The Standards Commission recommends an election period of 2/3 months duration and considers that expenditure on goods, property or services used for electoral purposes during this period could reasonably be construed as intended to elicit support at the election for a candidate or political party.
(Section 3.7 - The Election Period)
8. 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.
(Chapter 4 - Reimbursement of candidates' election expenses)
9. The Standards Commission has encountered a difficulty in supervising the provisions section 31(10) of the 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 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 Act (for failure to comply with section 31(10) of the Act). The Standards Commission considers, therefore, that some consistency might be brought to this part of the Act by including the term "seeks to influence the outcome of an election" as part of the provisions of section 31(10) of the Act.
(Chapter 6 - Correspondence with newspapers, magazines etc. re section 31(10) of the Act)