

Guidelines for the Seanad Bye-Elections April 2021 [Candidates]



Coimisiún um Chaighdeáin in Oifigí Poiblí
Standards in Public Office Commission

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Introduction

1. These guidelines for the Seanad Bye-Elections, 21 April 2021 have been published by the Commission in accordance with section 4(6)(a) of the Electoral Act 1997, as amended (the Act).
2. The guidelines cover the main requirements of the above legislation relating to:
 - disclosure of political donations;
 - limits on the value which may be accepted
 - prohibited donations
3. The Standards in Public Office Commission (the Commission) was established in December 2001 by the Standards in Public Office Act 2001. The members of the Commission are:
 - The Hon. Mr. Justice Garrett Sheehan, Chairperson of the Standards Commission;
 - Mr Peter Tyndall, Ombudsman;
 - Mr Peter Finnegan, Clerk of Dáil Éireann;
 - Mr Martin Groves, Clerk of Seanad Éireann;
 - Mr Seamus McCarthy, Comptroller and Auditor General; and
 - Ms Geraldine Feeney, former member of Dáil Éireann.

The Commission has a permanent Secretariat, which is located at 6 Earlsfort Terrace, Dublin 2.

Useful information about donations

Political donations account	On receipt of a donation of €100 , a political donations account must be opened (if one has not already been opened) by a candidate.
Cash donations	€200 is the maximum cash donation that may be accepted by a candidate in any calendar year from a donor.
Corporate donors	€200 is the maximum donation that may be accepted by a candidate in any calendar year from a corporate donor unless the corporate donor is registered in the Register of Corporate Donors maintained by the Commission and the donation is accompanied by a statement of approval made by the corporate donor. A political party that wishes to make a donation for political purposes in excess of €200 in a calendar year must register as a corporate donor with the Commission before making such a donation.
Individual donors	<ul style="list-style-type: none"> • All donations received by a candidate exceeding €600 must be disclosed on the Donation Statement.
Donation limits	<ul style="list-style-type: none"> • €1,000 is the maximum donation that may be accepted by a candidate in a particular year from an individual or a registered corporate donor.
Multiple donations	Where a donor makes a donation to two or more recipients (multiple members of the same party or to one or more party members and the party itself), the aggregate value of which exceeds €1,500 , he/she is required to submit a donation form to the Commission under section 24(1)(a). Donation limits still apply.
Prohibited donations	<ul style="list-style-type: none"> • Any donation that exceeds the above noted limits • An anonymous donation exceeding €100 cannot be accepted • Foreign donations, of any value, cannot be accepted, other than from an Irish citizen or from a business that maintains an office on the island of Ireland from which at least one of its principal activities is directed.

Relevant dates & spending limits

16 June 2021	Date by which unsuccessful candidates must furnish to the Commission their donation statements, certificate of monetary donations and bank statements.
31 January 2022	Date by which all Senators (i.e. successful candidates in the Bye-Elections) must furnish to the Commission their annual returns, including donation statements, certificate of monetary donations, and bank statements.

Tax clearance requirements

Successful candidates will be required to provide:

a Tax Clearance Certificate* (or Application Statement) issued not more than nine months either side of the Bye-Elections date (i.e., the date on which the returning officer declares the person elected),

and

a Statutory Declaration, made not more than one month either side of the Bye-Elections date, to the effect that, to the best of their knowledge, their tax affairs are in order and that nothing prevents the issue of a Tax Clearance Certificate.

****Please note:** there is a specific application form that must be used for tax clearance for the Commission. Please ensure the correct form has been used so that you are issued with the appropriate clearance by Revenue.*

Use of public resources

Where publicly funded property, services or facilities are used for electoral purposes, the cost of such use must be reimbursed to the relevant provider. [Examples of this type of expenditure include the use of publicly funded facilities such as prepaid envelopes, telephones, staff time etc.]

Members of the Oireachtas are reminded that publicly funded facilities are provided to them solely for their own use as public representatives. These facilities should not be provided to other candidates for electoral purposes. To do so may have serious consequences under the Ethics in Public Office Acts 1995 and 2001.

1. What is a donation?

- 1.1 A donation as defined in the Act [*Section 22(2)(a)*] includes any contribution given for political purposes by any person, whether or not a member of a political party, to, among others, a candidate at a Seanad Bye-Election and includes all or any of the following, namely:
- a donation of money;
 - a donation of property or goods, e.g. a donation in kind;
 - the free use of property or goods without payment in money or in kind;
 - a free supply of services without payment in money or in kind;
 - the difference between the usual commercial price and the (lower) price charged for the purchase, acquisition or use of property or goods, or the supply of any service, where the price, fee or other consideration is less than the usual commercial price (this can include a loan provided by a third party or by a financial institution at terms and conditions which are more favourable than that provided by a financial institution to other individuals in the normal course of business);
 - a contribution made by a person to a fund-raising event organised for the purpose of raising funds for a candidate or a political party. The donation is the net profit from the event. Donations are deemed to have been received on the date of the actual fund-raiser (and not when actually received). A detailed explanation of this is in Appendix 1;
 - a payment by the person on their own behalf, or on behalf of one or more than one other person, of a fee or subscription for membership or continued membership of a political party (membership fees include any membership fees/levies/subscriptions paid to any sub-unit of a political party and should be accounted for when aggregating donations);
- 1.3 If more than one member of the same family, or group, makes donations to the same candidate or political party, including where donations of money are made from a joint account in a financial institution, it must be clear that these are separate donations from each of the individuals involved. Otherwise, the donations must be aggregated and treated as a single donation for disclosure purposes and for the purposes of observing the maximum limit applying to the acceptance of donations (see paragraphs 5.7 to 5.10 in relation to donations in excess of the prescribed limit).
- 1.4 Similarly, if a company and any of its directors makes a donation to the same candidate, it must be clear that these are separate donations. In such circumstances, the Commission may look for evidence that the donations are from separate legal entities. In each case, the candidate must make whatever enquiries are necessary in order to be

satisfied as to the position with regard to the donation. The onus is on the candidate to ensure that prohibited donations are not received.

- 1.5 Donations include **money** given to the candidate by a political party [*Section 22(2)(b)(vi)*]. Donations from a political party to a candidate are subject to the same thresholds as those from other corporate donors. Donations in excess of €200 are prohibited unless the political party is registered as a corporate donor.
- 1.6. A donation made to a candidate at Seanad Bye-Elections through an intermediary or other person acting for the candidate shall be deemed to be a donation made to the candidate directly, unless the donation is passed on to the political party of which he/she is a member and a written acknowledgement is received by the candidate, in which case the donation is deemed to be a donation to the political party [*Section 22(2)(c)(ii)*].
- 1.7 Donations with a value, or donations from the same person with an aggregate value, of more than **€600** must be disclosed [*Section 24(4)*]. Where the same person makes more than one donation to a candidate in relation to the Bye-Elections, the values of the donations must be aggregated and treated as a single donation for disclosure purposes [*Section 22(2)(d)*].
- 1.8 Notional donations or donations in kind are where a person/organisation pays for work/expenses from its own resources (i.e. not party funds). This is considered a donation of the notional value/cost of the work/expenses. Donations in kind or notional donations are to be valued at the usual commercial price charged for the purchase, use or acquisition of the property or goods or the supply of any service donated.
- 1.9 Where expenses are incurred on a candidate's behalf by an individual or body other than a political party as defined in the Act and the expenses are borne by the individual/body, the expenses may be regarded as a donation to the candidate.

2. What is not a donation?

2.1 Items that are not regarded as donations to a candidate include [*Section 22(2)(b)*]:

- free post service provided to candidates by An Post [*Section 22(2)(b)(i)*];
- any payment, service or facility provided to the candidate out of public funds or moneys provided by an institution of the European Communities or other intergovernmental organisation to which the State is a party, pursuant to specified legislation, by virtue of the candidate being:
 - a representative in the European Parliament;
 - a member of Dáil or Seanad Éireann;
 - the holder of a qualifying office or position;
 - the holder of an elective or other public office; or

- a member of, delegate to, or representative in a body established by or under an agreement or arrangement to which the State is a party; (*Section 22(2)(b)(ii)*)

It is important to note that this provision only applies where the candidate, by virtue of his/her position or office, is entitled to use the services/facilities provided out of public funds. Holders of elected/public office are reminded that facilities provided to them e.g. prepaid envelopes, stationery, office accommodation, telephones, etc. are provided solely for their own use for representational purposes.

- 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 [*Section 22(2)(b)(iii)(I)*].

It is important to note that the reference in this particular provision of the Act [*Section 22(2)(b)(iii)(I)*] is specific to an individual and to the use of an individual's motor vehicle (singular). If more than one vehicle is provided by an individual, the additional vehicles may be regarded as donations. If a vehicle which is in the ownership of a company, partnership, business etc., is provided to a candidate, it is not regarded as a free service provided by an individual. In such circumstances the use of the vehicle is regarded as both a donation and an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of disclosing its value.

- a service provided at an election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit-in-kind other than his/her normal remuneration (including recoupment of expenses) for that service [*Section 22(2)(b)(iii)(II)*];
- normal media coverage and the transmission on radio or television of a broadcast on behalf of the candidate [*Section 22(2)(b)(iv)&(v)*]; [This does not cover any production, or other costs associated with such a broadcast.];
- expenses incurred or payments made by a political party on behalf of the candidate, other than a donation of money [*Section 22(2)(b)(vi)*];

3. Keeping a record of donations received in relation to the Bye-Elections

- 3.1 All candidates must comply with the requirements of the Act regarding the recording and disclosure of donations. It is important, therefore, that candidates keep a record of donations received in relation to the Bye-Elections for the purposes of furnishing a donation statement to the Commission after the Bye-Elections (see section 8).

Candidates should know the name, description, citizenship, and postal address of the donor, date on which donation was received, whether the donation was requested (and if

so name and address of person who requested it) and whether a receipt issued in respect of the donation (and if so date of receipt and name of receipt issuer) [*Section 24(2)(a)*].

- 3.2 All candidates must ensure that donations accepted are not prohibited under the Act (see section 5). This is particularly important where donations are received online. Where a candidate is accepting donations through a website, he/she must be able to properly identify the source of the donation and ensure that the donation is not prohibited. It is also important for disclosure purposes and for the purposes of adhering to the maximum acceptance limit that the candidate has a system in place which will aggregate all donations from the same donor, whether received online (by credit card, debit card etc.) and/or by other means.
- 3.3 The Commission advises that, if a candidate is using a crowd funding service, they should make it clear to donors that the acceptance of prohibited donations is not permitted. The candidate may seek to work with the service to put in place measures to support this.

4. Opening and maintaining a political donations account

- 4.1 If a candidate receives a donation in excess of €100 in any particular calendar year for political purposes, he/she must open and maintain an account in a financial institution in the State, i.e., a political donations account [*Section 23B(1)*]. **A credit union is not a "financial institution" for the purposes of the Act** [*Section 22(2)(aa)(a)*].
- 4.2 The candidate must lodge any such monetary donations, of whatever value, received by him/her to that account. The account should be separate from any other personal account held by the candidate. The account should be in the candidate's name and he/she should be an authorised signatory on the account. All monies withdrawn from the account must be used for political purposes [*Section 23B(3)(b)*].
- 4.3 If a candidate already operates a political donations account, he/she should not open a separate account specifically for the Seanad Bye-Elections. All monetary donations, of whatever value, received in relation to the Bye-Elections must be lodged to his/her existing political donations account. If a candidate, with an existing political donations account wishes to open a specific "election account", he/she can transfer money from the political donations account to the election account. Monies transferred to an election account could be regarded as having been used for electoral purposes.
- 4.4 It should be noted that a candidate who is elected or a person who is nominated to the Seanad will have an on-going requirement as a Member of Seanad Éireann to maintain his/her political donations account and will be required, on an annual basis, to furnish documentation relating to the account to the Commission.
- 4.5 The Commission recommends that, where possible, you should obtain and keep a record of the names and addresses of all donors even where the donation does not exceed €100, regardless of the value of the donation made. This will assist you in

complying with the donation limit from a single donor of aggregate donations of no more than €1,000 in a calendar year, and also will assist if there are queries in respect of the source of donations.

The Commission reviews statutory documentation submitted to it and will make enquiries in relation to statements received should clarification be required.

5. Prohibited donations

(a) Anonymous donations

- 5.1 Acceptance of an anonymous donation exceeding a value of €100 is prohibited [*Section 23(1)*].

A donation is anonymous if a candidate does not know the name and address of the donor. The onus is on the recipient to ensure that the name and address of the donor are known. If a prohibited anonymous donation is received by a candidate, the Commission must be notified by the candidate within fourteen days of its receipt. The donation or its value must also be remitted by the candidate to the Commission [*Section 23(2)*].

(b) Cash donations in excess of €200

- 5.2 Acceptance of a cash donation exceeding €200 in value is prohibited [*Section 23A(1)(c)(iii)*].
- 5.3 If a cash donation exceeding that amount is received, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor (or the part of it exceeding the limit) and keep a written record of the return to furnish to the Standards Commission, if required;

or,

the recipient must, within fourteen days of receipt, notify the Commission of receipt of the donation and remit the donation (or the amount over the limit) to the Commission [*Section 23A(5)*].

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

- 5.4 It is prohibited to accept a donation exceeding €200 in value from a corporate donor [*Section 23AA(1)(c)*] **unless**
- the corporate donor is registered in the Register of Corporate Donors maintained by the Commission [*Section 23AA(1)(i)*] **and**
 - a statement is made on behalf of the corporate donor (and furnished with the donation to the donee) confirming that the making of the donation was approved by the corporate donor [*Section 23AA(1)(ii)*].

The statement must be accompanied by a statutory declaration that, to the best of the knowledge and belief of the person concerned, the statement is correct in every material respect and the person has taken all reasonable action in order to satisfy him/herself as to the accuracy of the statement [*Section 23AA(2)*].

It should be noted that a political party that wishes to make a donation for political purposes in excess of €200 in a calendar year must register as a corporate donor with the Commission before making such a donation. Political parties are not excluded from the requirements to register with the Commission as a corporate donor.

- 5.5 If a donation is received from a non-registered corporate donor, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor, or, if it is a monetary donation, the amount over the limit, and keep a written record of the return to furnish to the Commission, if required;

or,

the recipient must, within fourteen days of receipt, notify the Commission of receipt of the donation and remit the donation, or, if it is a monetary donation, the amount over the limit, to the Commission [*Section 23AA(6)*].

(d) Donations from outside of Ireland

- 5.6 A candidate must not accept a donation of whatever value, given by an individual (other than an Irish citizen) who resides outside the island of Ireland or by a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which the carrying out of one or more of its principal activities is directed [*Section 23A(2)*].

The onus is on the recipient of the donation to satisfy him/herself that the donation is acceptable.

- 5.7 A prohibited donation from outside of Ireland must be notified and remitted to the Commission by the candidate within 14 days of its receipt.

As an alternative, the candidate may return the donation to the donor [*Section 23A(5)*]. If the donation is returned, the candidate must keep a written record of that return to furnish to the Commission, if required.

(e) Donations in excess of the prescribed limit

- 5.8 The maximum value of donation(s) which may be accepted by a candidate from a particular person in a particular calendar year, either directly or through an intermediary, is €1,000 [*Section 23A(1)(i)*].

Where a person makes more than one donation to a candidate in a particular year the values of the donations must be aggregated for the purpose of observing the maximum limit [*Section 23A(3)*].

- 5.9 The maximum limit of €1,000 does not apply to an office provided to the candidate by a person or, if more than one such office is provided, to whichever of the offices is nominated in writing by the candidate [*Section 23A(4)*].

It is important to note that although the maximum limit may not apply to a donation of a constituency office, such a donation must be disclosed if the value exceeds €600 [*Section 24(4)*].

- 5.10 The maximum limit does, however, apply to monetary donations received by a candidate from his/her political party [*Section 22(2)(b)(vi)*].

Donations of money from any branch of the party (including party headquarters) must be aggregated for the purpose of observing the maximum limit and treated as a single donation from the party [*Section 22(2)(c)* and *22(2)(d)(ii)*].

- 5.11 Where a donation exceeds the allowable limit, the candidate must notify the Commission within 14 days of its receipt and remit the donation, or the amount over the limit, to the Commission [*Section 23A(5)(b)*].

As an alternative, the candidate may return the donation, or the amount over the limit, to the donor and keep a written record of that return for the purpose of its being furnished to the Commission, if required [*Section 23A(5)(a)*].

(f) Other prohibited donations

- 5.12 A candidate is prohibited from accepting a donation if he or she knows or has reason to believe that the person making the donation does not intend to comply with his/her obligations under the Electoral Act.

Section 24(1A) of the Act provides that individual donors who make donations with a total value in excess of €1,500 in any calendar year to two or more members of the same political party (or to a political party and one or more of its members), are themselves required to furnish a donation statement and statutory declaration to the Commission disclosing details of the donations. If the donor in question does not intend to comply with this requirement, and if a candidate is aware of this, the candidate is prohibited from accepting a donation from the donor [*Section 24A(2)*].

- 5.13 If such a prohibited donation is received by a candidate, the Commission must be notified by the candidate within 14 days of its receipt. The donation, or its value, must also be remitted by the candidate to the Commission [*Section 24A(3)*].

- 5.14 **Failure to notify, remit or return, as appropriate, a prohibited donation is an offence** [*Section 25(1)*].

6. Loans to candidates

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

7. Expenses incurred by an organisation or body (other than a political party)

- 7.1 As stated in paragraph 1.10 above, expenses incurred by a registered political party on behalf of a candidate are not regarded as a donation to the candidate [*Section 22(2)(b)(vii)*]. Only expenses incurred by a registered political party are not regarded as a donation to a candidate. If an organisation is not registered in the Register of Political Parties as a party organised to contest a Dáil or European election it is not regarded as a political party for the purposes of the Act. In that regard, therefore, expenses incurred by "third parties" for a candidate are regarded as donations to the candidate and are subject to disclosure limits and to the rules regarding prohibited donations (see paragraph 5 below). Third parties may also have an obligation to register with the Commission.

8 Furnishing the required statutory documentation after the Bye-Elections

(a) Unsuccessful candidates

- 8.1 If a candidate is unsuccessful at the Bye-Elections, he/she must, within 56 days after polling day (i.e., by **16 June 2021**), furnish to the Commission a donation statement and statutory declaration. This is a statutory requirement and must be returned in the form provided by the Commission [*Section 24(2)(a)* and *Section 24(3)*].

The donation statement must give details of all donations received in relation to the bye-elections with a value greater than €600 [*Section 24(4)*]. Donations made by the same person to the same candidate in relation to the election must be aggregated and treated as a single donation [*Section 22(d)*]. It should be noted that "in relation to the election" means donations received at any time before the issue of the writ [*Section 24(2)(a)*], and is not limited to the year in which the election took place.

- 8.2 The donation statement and statutory declaration must be furnished whether or not the candidate received a donation. If no donation was received, a "nil" return must be made to the Commission.
- 8.3 If a monetary donation in excess of €100 was received and the candidate was required to open a political donations account (see paragraph 4), or if the candidate already had a political donations account, the donation statement must be accompanied by a statement provided by the financial institution where the account is held (bank statement) [*Section 23B(4)(a)*].

If a new political donations account was opened, the bank statement must specify the transactions (i.e. lodgements and withdrawals) that have taken place during the period beginning on the date of opening of the account and ending on polling day at the Bye-Elections. If an existing political donations account was used, the bank statement must specify the transactions that have taken place on the account since the candidate accepted a donation in relation to the campaign or since 1 January 2021. The donation statement must also be accompanied by a certificate of monetary donations certifying that all monetary donations received after the account was opened were lodged to the account and all amounts debited from the account were used for political purposes [*Section 23B(4)(b)*]. The certificate must be signed by the candidate and accompanied by a statutory declaration [*Section 23B(6)*].

- 8.4 Failure to send a donation statement and all accompanying documentation to the Commission within 56 days of polling day is an offence [*Section 25(1)(c)*].
- 8.5 The Commission Secretariat will contact unsuccessful candidates after the Bye-Elections and will make available the relevant forms, which include the following:
- a donation statement,
 - a certificate of monetary donation, and

- a statutory declaration.

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

- 8.6 Minor omissions or errors found by the Commission in a donation statement will be notified to the candidate. If requested to amend his/her donation statement, the candidate must do so within 14 days [Section 4(2)].
- 8.7 The Commission can request additional information from a candidate in relation to his/her donation statement. Where such additional information is requested, it must be provided in a form determined by the Commission and may have to be accompanied by a statutory declaration [Section 24(6A)].
- 8.8 Copies of donation statements and statutory declarations furnished by unsuccessful candidates will be laid by the Commission before both Houses of the Oireachtas and will be made available for a period of three years for public inspection at the offices of the Commission [Section 24(7)(a) and Section 73]. Summary details of the donations disclosed are also included in a report to the Chairman of Dáil Éireann [Section 4(1)], laid before each House of the Oireachtas [Section 4(5)] and published on the website of the Commission.
- 8.9 Certificates of monetary donations/statutory declarations and statements from financial institutions are retained by the Commission and are not put on public display or otherwise disclosed, unless ordered by a court to do so or disclosure is required in connection with an investigation held by the Commission [Section 23B(8)].

(b) Successful candidates

- 8.10 If a candidate is elected at the Bye-Elections, he/she will not be required to submit a donation statement, statutory declaration and certificate of monetary donation within 56 days after polling day. Instead, he/she will be required, as a member of Seanad Éireann, to furnish an annual donation statement, statutory declaration and certificate of monetary donation to the Commission by 31 January of the year following the Bye-Elections, covering the previous year and annually thereafter. [Section 24(1)(a)]. Forms for this purpose will be provided to Senators by the Commission in early January each year.
- 8.11 The donation statement submitted by Senators must include donations with a value, or aggregate value from the same person, greater than €600 received during the previous calendar year. The statement from the financial institution must specify the transactions that have taken place on the account during the previous calendar year. Supporting documentation may be required.

(c) Tax clearance requirements

8.12 Pursuant to section 21 of the Standards in Public Office Act 2001, successful candidates must provide the following to the Commission within nine months of the date in which the returning officer declares their election:

- a Tax Clearance Certificate (or Application Statement) issued not more than nine months either side of the Bye-Elections date, and
- a Statutory Declaration, made not more than one month either side of the Bye-Elections date, to the effect that, to the best of their knowledge, their tax affairs are in order and that nothing prevents the issue of a Tax Clearance Certificate.

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

If there are possible contraventions of the Act, the Commission may investigate the matter and draw up a report of the result of the investigation. Investigation reports are provided to the Committee on Members' Interests of Seanad Éireann, and laid before Seanad Éireann.

9 Offences and penalties applicable to candidates at the Bye-Elections

9.1 If found guilty of an offence under the Act, the candidate may be liable, on summary conviction, to a fine, or on conviction by indictment, to a fine or imprisonment.

The following are offences under the Act:

- Knowingly accepting a prohibited donation referred to in paragraph 7 above. If convicted, a fine may be levied [*Section 25(2)*].
- Failure to take the appropriate action in relation to a prohibited donation as specified in paragraph 7.1 (anonymous donations), or paragraph 7.6 (donations from outside Ireland), or paragraph 7.12 (donations in excess of the prescribed limit). If convicted, a fine may be levied [*Section 25(1)(a & b) & 25(2)(a) and Section 6 of Fines Act 2010*].
- Failure to furnish to the Commission a donation statement, certificate of monetary donations or a statement from a financial institution, within the statutory deadline (16 June 2021, for unsuccessful candidates). If convicted, a fine may be levied. Ongoing fines may be levied for each day, after a conviction, on which the above statutory documentation is still outstanding [*Section 25(1)(c); Section 25(2)(c) & Sections 6 and 8 of Fines Act 2010*].

- Knowingly furnishing to the Commission a donation statement, or statutory declaration, certificate of monetary donations, or a statement of a financial institution, which is false or misleading. If convicted, consequences may include a fine and/or up to 3 years imprisonment [*Section 25(1)(d)* and *Section 25(2)(b)*].

If the Commission is of the view that an offence under the Electoral Acts may have been committed, it will refer the matter to An Garda Síochana.

Appendix 1: Fundraisers

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

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

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

Donations cannot exceed the maximum allowable limit per person i.e. €1,000.

For example, if a person had paid €1,000 in respect of the entry fee for 10 people, his/her gross contribution to the event would be €1,000. If the cost of running the event was €20 per person attending, a sum of €200 would be deducted from his/her gross contribution, leaving a net donation of €800. If the person made other contributions to the event (e.g., buying horses at a race night, sponsoring a hole at a golf classic), it would be necessary to add the value of such contributions to the net donation of €800 for the purposes of determining the aggregate net value of his/her donation to the fund-raising event, and ensure it does not exceed €1,000.

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

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

Where a fund-raising event is organised by a political party for the purpose of raising funds for the party, the net value of a contribution made by a person to the fund-raising event is regarded as a donation to the party. This applies even if the funds are subsequently used by the party for the purposes of supporting one or more candidates at an election [Sections 22(2)(a)(vii)].

If some or all of the proceedings of the event are given in the form of money to the candidate(s), it is regarded as a donation by the party to the candidate(s). If the proceeds are used by the party to pay election expenses incurred on the candidate's behalf, it is not regarded as a donation by the party to the candidate(s). The party will not be required to disclose in a Donation Statement the total value of the proceeds of the fund-raising event. The party will be required to disclose any donation(s) from a person which exceeds a net value of €1,500. The maximum limit of €2,500 for acceptance by political parties of donations from the same person in the same year applies to the net value of contributions to fund-raising events. The limit of €200 on acceptance of donations from non-registered corporate donors

also applies. Where the net value of any individual monetary donation to the fund-raising event exceeds €100, the accounting unit of the party, (i.e., branch of head office) which organised the event will, if it does not already have one, be required to open a political donations account. If the net value of any individual monetary donation to the event does not exceed €100, the accounting unit of the party will not be required to open a political donations account. If the accounting unit already has a political donations account, all monetary donations, of whatever value, received in relation to the event must be lodged to the political donations account.

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

Where a fund raising event is organised by a political party for the purposes of raising funds for its candidate(s) at the election and proceeds of the event are passed to the candidate(s), the party is regarded as an intermediary accepting donations on behalf of the candidate(s). The net contribution made by a person to the fund-raising event is regarded as a donation to the candidate(s). The candidate(s) (i.e., not the party) is responsible for the donation and must ensure that he/she complies with the legislative requirements (set out at 3.1.4 below).

If it is the case, however, that the party retains control of the proceeds, the donations may be regarded as having been made to the party and the party will be responsible for ensuring that the legislative requirements (set out at 3.1.2 above) are complied with.

Fund-raisers organised by a candidate

Where a fund-raising event is organised by a candidate for the purposes of raising funds for his/her election campaign, contributions to the event are deemed to be donations to the candidate [*Sections 22(2)(a)(vi)*].

The candidate will not be required to disclose in a Donation Statement the total value of the proceeds of the fund-raising event.

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

Fund-raisers organised on behalf of a candidate by a person or group other than the candidate or a political party

Where a fund-raising event is organised on behalf of a candidate by a person or group other than the candidate or a political party (e.g., "Friends of ... groups") and the proceeds of the event are handed over to the candidate, the fund-raising person/group is regarded as an

intermediary accepting donations on the candidate's behalf. The donations are deemed to have been received by the candidate and he/she is responsible for ensuring that the legislative requirements (set out at 3.1.4 above) are complied with.

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

- if the net value of any donation to the fund-raising event exceeds €100, the person/group will be required to register as a "third party" with the Commission. The person/group will be required to comply with the provisions of the Act applying to third parties with regard to the opening of a political donations account and the acceptance of certain donations,
- all money subsequently given to the candidate and all election expenses incurred or payments made by the fund-raising group on behalf of the candidate are regarded as donations to the candidate,
- if the aggregate value of donations from the fund-raising group to the candidate exceeds €600, the candidate will be required to disclose details of same in his/her Donation Statement;
- the maximum value of donations that the candidate can accept in any year from a fund-raising person/group that is regarded as a third party (and not as an intermediary accepting donations on the candidate's behalf) is €1,000.

Appendix 2 Definitions

'**account**' means an account in an institution in the State for the purpose of crediting and debiting money received in respect of donations [*Section 22(2)(aa)*];

'**candidate**' means a person who on or before the date of movement of a writ in relation to a Dáil general election or bye-election or the date of the making of the order appointing polling day in relation to a Seanad election or an election to the European Parliament is declared by himself or herself or by others to be a candidate at the election concerned [*Section 22(2)(aa)*];

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

- a body corporate;
- an unincorporated body of persons; or
- a trust

which makes a donation. A body corporate and any subsidiary thereof are deemed to be one person [*Section 22(2)(aa)*].

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

- a donation of money [*Section 22(2)(a)(i)*];
- a donation of property or goods [*Section 22(2)(a)(ii)*];
- conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods [*Section 22(2)(a)(iii)*];
- the supply of services without payment or other consideration therefor [*Section 22(2)(a)(iv)*];
- the difference between the commercial price and the price charged for the purchase, acquisition or use of property or goods, or the supply of any service, where the price, fee or other consideration is less than the usual commercial price [*Section 22(2)(a)(v)*];
- In the case of a contribution made by a person in connection with an event organised for the purpose of raising funds for a member of either House of the Oireachtas, a representative in the European Parliament or a third party or a candidate at a Dáil, Seanad or European election, the proportion attributable to

that contribution of the net profit, if any, deriving from the event [*Section 22(2)(a)(vi)*];

- in the case of a contribution made by a person in connection with an event organised for the purpose of raising funds for a political party, the proportion attributable to that contribution of the net profit, if any, that is derived from the event and that, although not specifically raised for the purpose of supporting one or more of the political party's candidates at a Dáil, Seanad or European election, is used for the latter purpose [*Section 22(2)(a)(vii)*], or
- a payment by the person on their own behalf, or on behalf of one or more than one other person, of a fee or subscription for membership or continued membership of a political party [*Section 22(2)(a)(viii)*];

'institution' means [*Section 22(2)(aa)*]:

a) the holder of a licence under section 9 of the Central Bank Act 1971,

b) a building society incorporated or deemed to be incorporated under the Building Societies Act 1989, or a body incorporated in a corresponding manner under the law of any other member State of the European Communities,

c) a trustee savings bank within the meaning of the Trustees Savings Bank Act 1989,

d) ACC Bank plc,

e) An Post, or

f) a person authorised in accordance with the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992) to carry on business in the State;

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

“person” can be [*Section 2(1)*]:

- an individual;
- a body corporate (e.g., a public or private company) and any subsidiary thereof.

Where donations are received from associated companies the candidate should ask the donors to clarify any relationship between the companies;

- an unincorporated body of persons, e.g., a political party, a partnership, a residents association, a lobby group.

'political group' means a group formed in accordance with the rules of procedure of the European Parliament [*Section 22(2)(aa)*];

'political party' means a political party registered in the Register of Political Parties in accordance with section 25 of the Electoral Act 1992 as a party organised to contest a Dáil election or a European election or both such elections [*Section 2(1)*];

'political purposes' means any of the following purposes namely [*Section 22(2)(aa)*];

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

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

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

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

(ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;

(iii) otherwise to influence the outcome of the election or a referendum or campaign referred to in paragraph (i)(IV) of this definition.

'responsible person' in relation to an accounting unit, means the treasurer or any other person responsible for dealing with donations to the unit, or, in relation to a third party, the person or persons responsible for the organisation, management or financial affairs of the third party [*Section 22(2)(aa)*];

'third party' means any person, other than a political party registered in the Register of Political Parties under Part III of the Electoral Act, 1992, or a candidate at an election, who accepts, in a particular year, a donation the value of which exceeds €100 [*Section 22(2)(aa)*].

Appendix 3 Checklist

Before and during the election period:

- Have you received a donation in excess of €100? If yes, have you opened a political donations account?

- Have you checked the guidelines to ensure you do not accept prohibited donations?

- Have you put in place measures to verify whether a donation is allowed?

- If you have received a prohibited donation, have you notified the Commission and/or returned this donation?

After the election period:

- Have you checked the deadline to file your returns with the Commission?
 - ___If not elected: you are required to furnish a donation statement by 16 June 2021.
 - ___If elected: you are required to submit a donation statement for all of 2021 by the deadline for Senators of 31 January 2022.

- If a bank account was opened, have you included the relevant statements?

- When completing the forms have you and your qualified witness signed in the proper places (where highlighted)?

- Have you taken note that 16 June 2021 is the last day for completed forms and supporting documentation to reach the Commission?

If you have any queries, please refer to the guidelines and/or contact the Commission. We will be pleased to assist you.