

Guidelines for the Presidential Election to be held on 26 October 2018 [Candidates and Election agents]



Coimisiún um Chaighdeáin in Oifigí Poiblí
Standards in Public Office Commission

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Introduction

1. Guidelines for the Presidential Election 2018 have been published by the Standards in Public Office Commission under section 4 of the Electoral Act 1997, as amended (the Act).
2. The Guidelines cover the main requirements of the above legislation relating to:
 - political donations;
 - election spending; and
 - reimbursement of election expenses to qualified candidates.
3. The Standards Commission was established in December 2001 by the Standards in Public Office Act 2001. The members of the Standards Commission are:
 - The Hon. Mr Justice Daniel O’Keeffe, Chairperson of the Standards Commission;
 - Mr Seamus McCarthy, Comptroller and Auditor General;
 - Mr Peter Tyndall, Ombudsman;
 - Mr Peter Finnegan, Clerk of Dáil Éireann;
 - Mr Martin Groves, Clerk of Seanad Éireann; and
 - Mr Jim O’Keeffe, former member of Dáil Éireann.

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

4. Tá leagan Gaeilge de na treoirínte se ar fail.

Useful Information

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
Individual donors	<ul style="list-style-type: none"> • All donations received by a candidate exceeding €600 must be disclosed on the Donation Statement. • €1,000 is the maximum donation that may be accepted by a candidate in a particular year from an individual or 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)
Prohibited donations	<ul style="list-style-type: none"> • An anonymous donation exceeding €100 cannot be accepted • Foreign donations, of any value, cannot be accepted from outside the island of Ireland, other than from an Irish citizen or from a business outside the island of Ireland unless it maintains an office on the island of Ireland from which at least one of its principal activities is directed.

Relevant dates & limits

28 August 2018 to 26 October 2018 (inclusive)	Election period
€750,000	Spending limit for presidential election
10 December 2018 (45 days after polling day 2018)	Claims for payment of election expenses, from suppliers, must be received by the election agent by this date
21 December 2018 (56 days after polling day 2018)	Date by which election expenses statements, presidential election donation statement/certificate of monetary donations/bank statements must be furnished to the Standards Commission
€200,000	Maximum amount of reimbursement of election expenses that a qualifying candidate may claim.

Chapter 1 – Election Agents

1.1 Appointment of a presidential election agent

- 1.1.1 Each candidate shall appoint a presidential election agent (election agent) [*Section 50(1)(a)*]. The election agent, for the purposes of this Act, is the person who will be responsible for accounting for expenditure on the candidate's campaign. The election agent appointed under this Act is not necessarily the same person who will be present on the candidate's behalf for the counting of votes and who acts on the candidate's behalf for other specific purposes set out in the 1992 Electoral Act.
- 1.1.2 Ideally, the appointment of the candidate's election agent should be made before any election expenses are incurred. If election expenses are incurred before the election agent is appointed, the candidate must give the election agent details of any such expenses together with all relevant invoices/receipts [*Section 52(7)*]. It is an offence for a candidate to fail to comply with this requirement [*Section 52(7A)*].
- 1.1.3 The election agent must maintain proper records of all transactions relating to spending on the candidate's election campaign and retain receipts, invoices or vouchers for inspection, and for public display, by the Standards Commission.
- 1.1.4 The candidate must notify the presidential returning officer, in writing, of the name of the election agent and the address of the office of the election agent. This must be done not later than 12 noon on the last day for receiving nominations at the election 26 September 2018 [*Section 50(1)(a)*]. The presidential returning officer will inform the Standards Commission of the name and address of the election agent appointed. Candidates should ensure that the person notified to the presidential returning officer is the person they intend to have as their election agent (i.e., the person who will be responsible for accounting for expenditure on the candidate's campaign). The Standards Commission will accept an election expenses statement only from the person notified to it by the presidential returning officer as the candidate's election agent.
- 1.1.5 An election agent must have an office or place in the State to which claims, notices, writs, summons and other documents relating to the presidential election may be sent [*Section 50(6)*].
- 1.1.6 A candidate may act as his/her own election agent [*Section 50(1)(b)*]. If a candidate does not notify the returning officer of the appointment of an election agent by the last day for receiving nominations he/she will be deemed to be acting as his/her own election agent [*Section 50(2)*]. A candidate who acts as his/her own election agent will also be required to comply with the provisions of the Act applying to election agents [*Section 50(1)(b)*].
- 1.1.7 A candidate's election agent can authorise other people, including the candidate, to incur expenses or make payments in connection with the candidate's campaign. A person who is authorised in this way is entitled to incur expenses or make payments only within the specific financial limit laid down by the election agent [*Section 52(4)*]. The election agent must subsequently account for such expenses or payments.

1.1.8 A candidate may, at any time, revoke the appointment of an election agent (including his/her own appointment as election agent) [Section 50(3)]. Where the appointment of an election agent has been revoked, it is the candidate who must notify the returning officer in writing of the name and address of the new election agent [Section 50(4)(a)] (including the candidate's own details if he/she intends to act as his/her own election agent [Section 50(4)(b)(ii)]). The returning officer must then advise the Standards Commission in writing of the change of election agent and his/her contact details. The Standards Commission cannot accept an election expenses statement if the election agent notified to it by the returning officer does not match the name of the election agent on the election expenses statement.

1.2 Main functions of an election agent

- 1.2.1 The election agent is the key link for the Standards Commission in relation to expenditure incurred on the candidate's behalf at the election. He/she should be comfortable with keeping accounts.
- 1.2.3 The main function of the election agent is to authorise and control spending connected to the candidate's election campaign and to account for such spending.
- 1.2.4 Subject to what is stated at paragraphs 1.2.5 and 1.2.6 below, the election agent is the only person who may incur expenditure or make payments on behalf of the candidate [Section 52(4)]. All invoices, receipts or vouchers must be provided to the election agent and retained by him/her for the purposes of completing his/her election expenses statement.
- 1.2.5 A candidate cannot incur any expenses or make any payments in relation to the election campaign without being authorised to do so by the election agent. It is an offence for a candidate to incur expenses or make payments, other than in respect of "his/her reasonable living expenses", unless authorised to do so by the election agent. Where expenses have been incurred by or on behalf of a candidate before the appointment of an election agent, the candidate must furnish details of such expenses, together with all invoices/receipts, to the election agent once he/she has been appointed [Section 52(7)]. It is an offence for a candidate to fail to comply with this requirement [Section 52(7A)].
- 1.2.6 The election agent may authorise other persons to incur expenditure or make payments within specified financial limits. The election agent must account for spending by all such authorised persons. Expenses incurred or payments made by authorised persons must be within the limit specified by the election agent. An election agent may authorise the candidate to incur election expenses. The name and address of every authorised person must be included in the election expenses statement which the election agent must furnish to the Standards Commission after the election.

Chapter 2 – Donations

2.1 Donations

(a) Keeping a record of donations

- 2.1.1 It is the election agent who is required to comply with the requirements of the Act regarding the recording and disclosure of donations. It is important, therefore, that the election agent keeps a record of donations received in relation to the election for the purposes of furnishing a presidential election donation statement to the Standards Commission after the election (see section 2.4). Candidates or election agents should know the name, description, 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 48(1)*].
- 2.1.2 The election agent is also responsible for ensuring that donations accepted by him/her are not prohibited under the Act (see section 2.3). This is particularly important where donations are received online. Where an election agent is accepting donations through a website he/she must ensure that he/she can properly identify the source of the donation and that he/she is not prohibited from accepting a donation from the donor. It is also important for disclosure purposes and for the purposes of adhering to the maximum acceptance limit that the candidate or election agent has a system in place which will aggregate all donations whether received online from the same donor (by credit card, debit card etc.) and/or received by other means.

(b) What is a donation?

- 2.1.3 A donation is defined in the Act [*Section 46(2)(a)*] as meaning any contribution given for the purpose of promoting the election of the candidate at that election or otherwise affecting the outcome of that election or to a third party for the purpose of promoting the election of a candidate at the presidential election or otherwise affecting the outcome of that election, and includes all or any of the following, namely:
- a donation of money [*Section 46(2)(a)(i)*];
 - a donation of property or goods, i.e., a donation in kind [*Section 46(2)(a)(ii)*];
 - the free use of property or goods [*Section 46(2)(a)(iii)*] (i.e. conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods);
 - a free supply of services [*Section 46(2)(a)(iv)*] (i.e. the supply of services without payment or other consideration);
 - 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 [*Section 46(2)(a)(v)*] (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 [*Section 46(2)(a)(vi)*]. The donation is that proportion of the contribution which is attributable to the net profit, if any, deriving from the event. Donations are deemed to have been received on the date of the actual fund-raiser (and not when actually received). The position with regard to fund-raising events is explained in greater detail in Appendix 2 of these guidelines.

2.1.4 Promoting the election of a candidate at a presidential election or otherwise affecting the outcome of the election means:

- promoting or opposing, directly or indirectly, the election of a candidate or soliciting votes for or against a candidate,
- presenting the policies or a particular policy or 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 candidate in the election or otherwise;
- otherwise influencing the out come of the election

2.1.5 A donation made to a candidate or election agent at a presidential election through any intermediary or other person acting for the candidate shall be deemed to be a donation made to the candidate directly [*Section 46(2)(c)*].

2.1.6 A "person" [*Section 46(1)*] can be:

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

A "corporate donor" is defined [*Section 46(2)(aa)*] 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.

- 2.1.7 Donations with a value, or donations from the same person with an aggregate value, of more than €600 must be disclosed [Section 48(1)]. Where the same person makes more than one donation to a candidate or election agent in relation to the election, the values of the donations must be aggregated and treated as a single donation for disclosure purposes [Section 46(2)(d)].
- 2.1.8 A donation to a candidate or election agent also includes money given to a candidate by his/her political party [Section 46(2)(b)(vi)].
- 2.1.9 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.

(c) What is not a donation

2.1.10 Items that are not regarded as donations to a candidate or election agent include [Section 46(2)(b)]:

- free post service provided to candidates by An Post [Section 46(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 former or the retiring President
 - 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 46(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, stationary, office accommodation, telephones, etc. are provided solely for their own use for public representational purposes and use for electoral purposes must be accounted for in accordance with Chapter 3 of these guidelines.

- 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 46(2)(b)(iii)(I)]. It is important to note that the reference in this particular provision of the Act [Section 46(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 and as election expenses. If a vehicle which is in the ownership of a company, partnership, business etc., is provided to a candidate, it is not regarded as a free service provided by an individual. In such circumstances the use of the vehicle is regarded as a donation and as an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of disclosing its value as a donation and for the purposes of disclosing its use during the election period, as an election expense;

- 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 46(2)(b)(iii)(II)*];
- normal media coverage and the transmission on radio or television of a broadcast on behalf of the candidate [*Section 46(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 46(2)(b)(vi)*];
- the services of an accountant, or other person, who is engaged for the specific purpose of assisting compliance with the requirements of the legislation;
- the services of personation officers on polling day.

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

2.1.11 As stated in paragraph 2.1.10 above, only expenses incurred by a registered political party on behalf of a candidate are not regarded as a donation to the candidate [*Section 46(2)(b)(vi)*]. If an organisation is not registered in the Register of Political Parties, it is not regarded as a political party for the purposes of the Act. In that regard, therefore, expenses incurred by "other persons" on a candidate's behalf are regarded as donations to the candidate and are subject to disclosure limits and to the rules regarding prohibited donations (see paragraphs 2.3 below).

(e) Loans to candidates

2.1.12 Where a loan is provided to a candidate by a financial institution, and the normal rules attaching to such loans apply, the loan is not regarded as a donation to the candidate. However, where a loan is provided to a candidate by a financial institution in circumstances where either the interest charged is less than the lowest rate available from the financial institution or the loan is not repaid in accordance with the terms and conditions under which the loan was issued or is only partially repaid, the benefit to the candidate may be regarded as a donation and may, therefore, be subject to the disclosure and maximum limits applying to the acceptance of donations.

2.1.13 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 Standards Commission may require sight of the terms and conditions, including the interest charge, applying to the loan and may require confirmation that the loan has been repaid in accordance with these terms and conditions. If the loan is not repaid in accordance with the terms and conditions, or is only partly repaid, the benefit of such non-repayment may be regarded as a donation to the candidate.

2.2 Opening and maintaining a political donations account

2.2.1 If a candidate receives, in any particular calendar year, a monetary donation, the value of which exceeds **€100**, there shall be opened and maintained a political donations account in a financial institution in the State [*Section 48B(1)*]. A credit union is not regarded as a "financial institution" for the purposes of the legislation [*Section 46(2)(aa)*]. The candidate must lodge that donation and any further monetary donations, of whatever value, received by him/her to that account. The account should be separate from any other personal account held by the candidate. The name of the account should refer to the candidate's election campaign and the candidate should be an authorised signatory on the account. All monies withdrawn from the account must be used for promoting the election of the candidate or otherwise affecting the outcome of the election [*Section 48B(2)(b)*].

2.2.2 If a candidate already operates a political donations account he/she should not open a separate political donations account specifically for the election.

2.2.3 Where a monetary donation exceeding €100 is received by a candidate before the appointment of an election agent, the candidate must open a political donations account and lodge to the account the first donation and any further monetary donations (of whatever value) received by him/her before the appointment of his/her election agent.

2.2.4 Where a monetary donation exceeding €100 is received by a candidate or his/her election agent after the appointment of the election agent, the election agent must open a political donations account and lodge to that account the first donation and any further monetary donations, of whatever value, received by the candidate or the election agent. [*Section 48B(1)(a)*].

2.2.5 On the basis of the above, it is possible that both the candidate and the election agent will be required to open a political donations account for the presidential election. In

these circumstances, all monetary donations, of whatever value, received by the candidate or the election agent, after the opening of the election agent's political donations account, should be lodged to the election agent's account. Both accounts of the candidate and the election agent must be disclosed in the presidential election donation statement [*Section 48B(1)(b)*].

2.3 Prohibited donations

(a) Anonymous donations

2.3.1 Acceptance of an anonymous donation exceeding a value of €100 is prohibited [*Section 47(1)*]. A donation is anonymous if a candidate or election agent does not know the name and address of the donor. The onus is on the recipient to ensure that the name and address of the donor is known. If a prohibited anonymous donation is received by a candidate or election agent, the Standards Commission must be notified by the candidate or election agent within fourteen days of its receipt. The donation or its value must also be remitted by the candidate or election agent to the Standards Commission [*Section 47(2)*].

(b) Cash donations in excess of €200

2.3.2 Acceptance of a cash donation exceeding €200 in value is prohibited [*Section 48A(1)(c)(iii)*].

2.3.3 If such a donation is received, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor or the part of it exceeding the limit and keep a written record of the return for the purpose of it being furnished to the Standards Commission, if required; or, the recipient must, within fourteen days of receipt, notify the Standards Commission of receipt of the donation and remit the donation or the part of it exceeding the limit to the Standards Commission [*Section 48A(5)*].

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

2.3.4 It is prohibited to accept a donation exceeding €200 in value from a corporate donor [*Section 48AA(1)*] unless the corporate donor is registered in the Register of Corporate Donors maintained by the Commission [*Section 48AA(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 48AA(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 that the person has taken all reasonable action in order to satisfy him/herself as to the accuracy of the statement [*Section 48AA(2)*].

2.3.5 If a donation is received from a non-registered corporate donor, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor, or if it is a monetary donation the part of it exceeding the limit, and keep a written record of the return for the purpose of it being furnished to the Standards Commission, if required; or, the recipient must, within fourteen days of receipt, notify the Standards

Commission of receipt of the donation and remit the donation, or if it is a monetary donation the part of it exceeding the limit, to the Standards Commission [*Section 48AA(6)*].

(d) Foreign donations

- 2.3.6 A candidate or election agent must not accept a "foreign donation" [*Section 48A(2)(a)*]. A foreign donation is a donation of whatever value, given by an individual (other than an Irish citizen) who resides outside the island of Ireland or by a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which the carrying out of one or more of its principal activities is directed. The onus is on the recipient of the donation to satisfy him/herself that the donor fits within the above criteria.
- 2.3.7 A prohibited foreign donation must be notified and remitted to the Standards Commission by the candidate or election agent within 14 days of its receipt. As an alternative, the candidate or election agent may return the donation to the donor [*Section 48A(4)*]. If the donation is returned, the candidate or election agent must keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

(e) Donations in excess of the prescribed limit

- 2.3.8 The maximum value of donation(s) which may be accepted by a candidate or election agent from a particular person in a particular calendar year, either directly or through an intermediary, is €1,000 [*Section 48A(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 48A(3)*].
- 2.3.9 The maximum limit does not apply to a constituency office provided to the candidate by a person or, if more than one such office is provided, to whichever of the offices is nominated in writing by the candidate [*Section 46(2)(b)(ii)*].
- 2.3.10 The maximum limit does, however, apply to monetary donations received by a candidate from his/her political party. Donations of money from any branch of the party (including party headquarters) must be aggregated for the purpose of observing the maximum limit and treated as a single donation from the party [*Section 46(2)(b)(iv)(d)*].
- 2.3.11 If a political party, other than the candidate's own party, donates an amount in excess of €200 to the candidate or agent, they must register as a Corporate Donor.
- 2.3.12 Where a donation is received and is prohibited because its value is over the limit, the candidate or election agent must notify the Standards Commission within 14 days of its receipt and remit the donation, or that part of a monetary donation which is over the limit, to the Standards Commission. As an alternative, the candidate or election agent may return the donation, or that part of a monetary donation which is over the limit, to the donor and keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required [*Section 48A*].

(f) Other prohibited donations

- 2.3.13 In accordance with section 24(1A) of the Act, individual donors who make donations, with a total value in excess of €1,500 in any calendar year, to two or more members of the same political party (or to a political party and one or more of its members), are themselves required to furnish a donation statement and statutory declaration to the Standards Commission disclosing details of the donations. If the donor in question does not intend to comply with this requirement, and if a candidate or election agent is aware of this, the candidate or election agent is prohibited from accepting a donation from the donor [*Section 24A(2)*]
- 2.3.14 If such a prohibited donation is received by a candidate or election agent, the Standards Commission must be notified by the candidate within 14 days of its receipt. The donation, or its value, must also be remitted by the candidate or election agent to the Standards Commission [*Section 24A(3)*]
- 2.3.15 Failure to notify, remit or return, as appropriate, a prohibited donation is an offence [*Section 61(2)(h)*].

2.4 Furnishing the required statutory documentation after the election

- 2.4.1 The election agent must, within 56 days after polling day (i.e., by 21 December 2018), furnish to the Standards Commission a presidential election donation statement and statutory declaration [*Section 48B(2)(a)*]. The presidential election donation statement must give details of all donations received in relation to the election with a value greater than €600. Donations made by the same person to the same candidate in relation to the election must be aggregated and treated as a single donation. It should be noted that "in relation to the election" includes donations received at any time before the date of the order appointing polling day, and is not limited to the year in which the election took place.
- 2.4.2 The presidential election donation statement and statutory declaration must be furnished whether or not the candidate received a donation. If no donation was received, a "nil" return must be made to the Standards Commission.
- 2.4.3 If a monetary donation in excess of €100 was received and the candidate was required to open a political donations account (see paragraph 2.2.1), or if the candidate already had a political donations account, the presidential election donation statement must be accompanied by a statement provided by the financial institution where the account is held (bank statement) [*Section 48B(2)(b)*]. If a new political donations account was opened, the bank statement must specify the transactions (i.e. lodgements and withdrawals) that have taken place in relation to the account during the period beginning on the date of opening of the account and ending on polling day at the election. If an existing political donations account was used, the bank statement must specify the transactions which have taken place on the account since 1 January 2018. The presidential election 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 promoting the election of the candidate [*Section 48B(2)(b)*]. The certificate must be signed by the election agent and accompanied by a statutory declaration.

- 2.4.4 Failure to send a presidential election donation statement and all accompanying documentation to the Standards Commission within 56 days of polling day is an offence [*Section 61(1)(f)*].
- 2.4.5 The Standards Commission Secretariat will contact all election agents and will provide the following forms for completion where relevant:
- Presidential election donation statement
 - Certificate of monetary donations
 - Election expenses statement
 - Statutory declaration

Assistance in completing the forms is available on request.

- 2.4.6 Minor omissions or errors found by the Standards Commission in a presidential election donation statement will be notified to the election agent. If requested to amend his/her presidential election donation statement, the election agent must do so within 14 days [*Section 4(2)*].
- 2.4.7 Copies of presidential election donation statements furnished by election agents will be laid by the Standards Commission before both Houses of the Oireachtas and will be made available for public inspection at the offices of the Standards Commission [*Section 57(1)(a)*]. Details of donations disclosed will be published on the website of the Standards Commission.
- 2.4.8 Certificates of monetary donations/statutory declarations and statements from financial institutions are retained by the Standards Commission and are not put on public display or otherwise disclosed, unless ordered by a court to do so or disclosure is required in connection with an investigation held by the Standards Commission [*Section 57(2)*].
- 2.4.9 The presidential election donation statement/statutory declaration and accompanying documentation submitted by election agents 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.

Chapter 3 – Expenses

3.1 Spending limits for the election

- 3.1.1 The statutory spending limit at presidential elections is €750,000 [Section 53]. This spending limit is inclusive of VAT. All spending by the election agent on a candidate must be within this limit.

3.2 What are election expenses?

- 3.2.1 The legislation provides that election expenses are those and only those, set out in the definition of election expenses in Appendix 1, which are incurred in the provision of property, goods or services for use at the election during the election period [Section 52(1)(a) & Schedule to the Act] (28 August 2018 to 26 October 2018 inclusive) in order to:

- to promote or oppose, directly or indirectly, the election of a candidate or 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 or the comments of a candidate on the policy or policies of another candidate at the presidential election,
or
- otherwise to influence the outcome of the election.

- 3.2.2 Where property, goods or services, which have been provided free or below cost, are used during the election period, they are regarded as election expenses which must be taken into account as election spending by the relevant agent at their commercial price [Section 52(2)]. [An example might be where a printing company agrees to provide, free of charge, election literature which would normally cost €1,500.] This supply of material must be authorised and taken into account at its commercial price less any normal discount which may be available.

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

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

3.3 What are not election expenses?

- 3.3.1 Items which are not election expenses include:

- the cost of purchasing copies of the register of electors [Schedule paragraph 2(e)];

- the payment of the deposit in respect of the candidate or the travelling or other expenses incurred by a candidate in obtaining assentors to secure the nomination of the candidate [*Schedule paragraph 2(d) & (dd)*];
- the reasonable living expenses (including accommodation) of a candidate and volunteers working on his/her behalf [*Schedule paragraph 2(f)*]. Under this heading, in addition to accommodation costs, spending of up to €50 per person per day on refreshments, etc., is permitted and does not have to be accounted for. (This means that accommodation costs plus other costs up to €50 per person per day are not regarded as election expenses.);
- any paid campaign worker who incurs minor expenses, not exceeding €126.97, from their own resources and does not seek a reimbursement from the election agent [*Schedule paragraph 2(g)*].

[**NOTE:** The only persons who may lawfully incur expenses or make payments at an election in relation to a candidate are the election agent of a candidate or a person authorised by said agent to incur election expenses. Accordingly, any other person who incurs expenses or makes payments at an election on behalf of a candidate is committing an offence. Election agents must maintain a record of all minor expenses which are not being accounted for as an election expense in his/her election expenses statement. In order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense in the Election Expenses Statement, a record of all such "minor expenses" (not exceeding €126.97 in any one payment) may be required to be furnished to the Standards Commission. Invoices, receipts and vouchers in respect of minor expenses may also be required and should be retained by the election Agent. Minor expenses are not included in the calculation of the total election expenses incurred.]

- election expenses incurred at a previous Presidential, Dáil, European or local election which were disclosed in an election expenses statement furnished to the Standards Commission or to a local authority [*Schedule paragraph 2(b)*]. There is no need to record these expenses again. [**NOTE:** If a candidate intends to use, or re-use, election material which has previously been recorded in an election expenses statement, his/her election agent must notify the Standards Commission Secretariat and provide details of the materials being re-used and the election expenses statement on which they were previously recorded.]
- free post service provided to candidates by An Post (i.e., Litir Um Thoghcháin) [*Schedule paragraph 2(a); Section 22(2)(b)(i)*]. It should be noted that only the postage costs are not regarded as an election expense. The cost of producing the leaflet/election address/Litir um Thoghcháin is an election expense;
- a free service provided by an individual, including use of the individual's motor vehicle, telephone, etc., where the service is not provided as part of the

individual's work or business [*Schedule paragraph 2(a); Section 22(2)(b)(iii)(I)*]. [NOTE: This provision of the Act refers specifically to an individual and to the use of an individual's motor vehicle (singular). If more than one vehicle is provided by an individual, the use of the additional vehicles may be regarded as election expenses. If a vehicle which is in the ownership of a company, partnership, business etc., is provided to a candidate it is not regarded as a free service provided by an individual. In such circumstances the use of the vehicle during the election period is regarded as an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of calculating the election expense.];

- where a staff member of a holder of elected/public office (e.g. personal assistant, research assistant, etc.) takes annual leave and works on a candidate's election campaign on a voluntary basis during the election period, the work carried out by the member of staff will be deemed to have been carried out as a free service and the cost of his/her salary while working voluntarily will not be regarded as election expenses for the purpose of the Act;
- fines imposed by organs of the State, e.g., parking and litter fines;
- a service provided at an election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit-in-kind other than his or her normal remuneration (including recoupment of expenses) for that service [*Schedule paragraph 2(a); Section 22(2)(b)(iii)(II)*]. 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;
- normal media coverage and the transmission on radio or television of a broadcast on behalf of a candidate or a political party [*Schedule paragraph 2(a); Section 46(2)(b)*]. This does not cover expenses by the candidate or agent on any production, or other, costs associated with a transmission on radio or television;
- the services of an accountant, or other person, (whether paid or not) employed for the specific purpose of ensuring compliance with the requirements of the Act;
- the use of offices which are owned by a political party and are made available to a candidate for use at the election. It is not necessary to attribute a notional rental cost to the use of such offices. The costs of heat, light, telephones, etc., incurred for electoral purposes at such offices during the election period are election expenses.

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

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

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

3.4 "The Election Period" - dates between which the spending limit applies

3.4.1 The spending limits at the presidential election apply to all expenses incurred and payments made in providing property, goods or services which are used for electoral purposes during the period commencing on the date of the order appointing polling day and ending on polling day itself, both dates included. The election period for the 2018 presidential election is from 28 August 2018 to 26 October 2018 inclusive.

3.4.2 Regardless of when expenses are incurred or payments are made, they must be taken into account if they relate to property, goods or services which are used for electoral purposes during the election period. Accordingly, expenses which are incurred or payments which are made at any time before the date of the order appointing polling day on property, goods or services which are used during the election period must be accounted for [Section 51(1)(a)].

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

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

3.4.4 If an advertisement is published in a newspaper or other periodical publication which carries a publication date (i.e., the date printed on the paper) which is during the election period, the advertisement will be regarded as an election expense. If the

publication date is before or after the election period, the advertisement is not regarded as an election expense.

3.4.5 The cost of an opinion poll or other similar survey which is taken within the period of 60 days before polling day will be regarded as an election expense [*Schedule paragraph 1(g)*].

3.5 Persons who may be incurring unauthorised expenditure to promote or oppose candidates at the election

3.5.1 Each candidate is advised to be aware of any such expenditure being incurred on his/her behalf by other persons. If a candidate becomes aware that a person, other than his/her election agent, is incurring expenses on his/her behalf at the election, the candidate should ensure that this has been authorised by his/her agent. If it has not been authorised, if necessary, the candidate should bring the matter to the attention of the Standards Commission and appropriate action will be taken.

(a) Expenditure by "other persons"

- 3.5.2 Expenditure by "other persons", i.e., those not connected to a candidate or a political party, is permitted under the Act provided the other person has notified the Standards Commission of their intent to incur election expenses. If an election agent becomes aware that any person or group is incurring expenses promoting or opposing his/her candidate, or any other candidate, the agent should enquire of the Standards Commission if that person or group has been given a certificate of authorisation by the Standards Commission to incur election expenses in this way. If a certificate has not been issued, the person or group may be committing an offence. [*Section 52(4)*]
- 3.5.3 Notices or advertisements in newspapers, magazines or other periodical publications promoting or opposing the interests of a candidate may only be placed if requested by the candidate, the candidate's election agent or a person authorised in writing by the candidate or either agent. "Other persons" may arrange newspaper advertising if they produce to the publisher a certificate of authorisation from the Standards Commission stating that they have furnished, in writing, the relevant information to the Standards Commission [*Section 52(6)*]. The Standards Commission will notify editors/publishers of the provisions of the Act in this regard.
- 3.5.4 Notices or advertisements in newspapers, magazines or other periodical publications which promote or oppose the interests of a political party or a candidate may be placed only if requested by a candidate, a candidate's election agent or a person authorised in writing by the candidate or election agent [*Section 52(9)*].
- 3.5.5 "Other persons" may place notices or advertisements in newspapers, magazines or periodical publications if they produce to the publisher a certificate of authorisation from the Standards Commission confirming that they have complied with their legal obligations [*Section 52(10)*]. This certificate is issued by the Standards Commission when all the relevant information is received from the other person. The Standards Commission will notify publishers of the requirements of the Act in this regard.

(b) Expenditure by a local party organisation

- 3.5.6 No separate or additional spending by a political party over and above the statutory spending limit is allowed. Any expenditure incurred on behalf of the candidate by the local party organisation should be authorised by the election agent and taken into account in the election agent's election expenses statement.

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

- 3.5.7 Election agents should be aware that if a person or a body, who or which is considered by the Standards Commission to be associated with, connected to, or under the influence or control of a candidate, is incurring expenses at the election to either promote the candidate or to oppose another candidate, such expenses will be regarded as part of the first candidate's election expenses and will have to be taken into account by that candidate's election agent from within the candidate's spending limit (i.e., that part of the limit which has been retained by the candidate). If this expenditure brings spending by the candidate's election agent over the relevant limit, an offence will have been committed.
- 3.5.8 Given that expenditure by certain individuals/groups may ultimately be deemed to be expenditure incurred on behalf of their candidates, it is important that election agents are aware of the activities of such individual/groups and, if necessary bring such matters to the attention of the Standards Commission.

(d) Election Expenses which are met out of public funds

- 3.5.9 Where publicly funded property, services or facilities are used for electoral purposes, the cost of such use must be reimbursed to the relevant provider. Such costs must then be accounted for as an election expense. [*Schedule 2(c) deleted – Kelly v Minister for the Environment & Ors [2002] 4 I.R. 191*]. The use of any such material must be authorised by the candidate's election agent. It will be a matter for the relevant agent and the candidate, in consultation with the provider of the property, services or facilities, to determine the value of the usage for electoral purposes during the election period and to account for same in the election expenses statement. [Examples of this type of expenditure include the use of publicly funded facilities such as prepaid envelopes, telephones, staff time etc.]
- 3.5.10 Candidates at the election who are holders of elected/public office may be required to communicate with the electorate during the election period. Where costs are met from public funds, it is necessary to differentiate between the use of public resources in carrying out their representative business and the use of public resources for electoral purposes. Any use of their publicly funded facilities for their own electoral purposes must be accounted for as an election expense.
- 3.5.11 If, during the election period, publicly funded materials are used by the candidate for the purpose of any form of unsolicited communication to any of the electorate, the materials will be regarded as having been used for electoral purposes and the costs will have to be accounted for as an election expense at their full commercial value.

3.5.12 Where a new enquiry is raised with a candidate in his/her capacity as a candidate (including an enquiry which had not been raised with the candidate prior to the election) while he/she is canvassing and facilities the cost of which are met out of public funds are used for the purposes of responding to the enquiry, these facilities will be regarded as having been used for electoral purposes. This includes time spent by staff in responding to the enquiry (except where such staff are working voluntarily on the candidate's campaign).

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

3.6 Payment of invoices to suppliers

3.6.1 Claims for payment of election expenses, from suppliers, must be received by the election agent within 45 days after polling day (i.e., 10 December 2018). Claims received after this date cannot be paid by the election agent [Section 54]. It is an offence to make a payment if the claim is received after the 45 days have elapsed. To avoid disputes, it is very important that agents advise their suppliers of this requirement when placing orders for property, goods or services. Even though such claims cannot be paid, they are still regarded as election expenses and must be accounted for in the election expenses statement furnished to the Standards Commission.

3.7 Furnishing an Election Expenses Statement after the election

3.7.1 The Standards Commission will send each election agent an election expenses statement and statutory declaration form. Staff of the Standards Commission Secretariat may be contacted at sipo@sipo.ie if assistance is required. The Standards Commission Secretariat will also be available to meet election agents to assist in the completion of the form. The completed form must be received by the Standards Commission within 56 days after polling day (i.e. 21 December 2018).

3.7.2 The following must be included in the election expenses statement:

- details of all expenses incurred and payments made by the election agent and his/her authorised persons, including supplies of property, goods or services free or below cost which were used during the election period;
- details of authorised persons including the amount each authorised person was authorised to spend and the amounts actually spent by them;
- details of any disputed claims for payment [Section 55];

- information concerning late claims for payment (i.e. claims received more than 45 days after polling day) [*Section 54*];
- details of expenses incurred on goods, property or services used during the election period where the costs of the goods, property or services were met out of public funds.

- 3.7.3 A record of minor expenses may also be required to be furnished to the Standards Commission in order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense on the election expenses statement. Minor expenses will not be included in the calculation of the total election expenses incurred (see paragraph 3.3.1 for a definition of "minor expenses").
- 3.7.4 Invoices, receipts or vouchers for every payment of election expenses exceeding €126.97 must be included with the election expenses statement [*Section 52(8)*]. The Standards Commission also reserves the right to request any invoice, receipt or voucher for an item of expenditure valued at less than €126.97 appearing in an election expenses statement or a record of minor expenses.
- 3.7.5 Minor omissions or errors found by the Standards Commission in an election expenses statement will be notified to the election agent. If requested to amend his/her election expenses statement, the election agent must do so within 14 days [*Section 56(2A)*].
- 3.7.6 The election expenses statement forms will be laid by the Standards Commission before both Houses of the Oireachtas [*Section 57(1)*] and will be made available to the public for inspection and copying [*Section 73*]. Summary details of the expenditure incurred will also be included in a report to the Chairman of Dáil Éireann [*Section 4(1)*] and laid before each House of the Oireachtas [*Section 4(5)*]. The Statements and report will be published on the website of the Standards Commission.

3.8 Claiming a reimbursement of election expenses

- 3.8.1 A qualified candidate is entitled to apply for a reimbursement of election expenses. In order to qualify for a reimbursement, a candidate must either:
- be elected [*Section 21A(1)(a)(i)*]; or
 - if not elected, the greatest number of votes credited to him/her at any stage of the counting of votes at the election must exceed one quarter of the quota [*Section 21A(1)(a)(ii)*].
- 3.8.2 The maximum amount which may be reimbursed is the lesser of €200,000 or the actual amount of the election expenses incurred on behalf of the candidate [*Section 21A(1)(b)*]
- 3.8.3 In calculating the amount of the reimbursement it should be noted that account may be taken of expenses incurred on behalf of the candidate, by "other persons" and accounted for by the candidate's election agent.

- 3.8.4 In order to certify a reimbursement of a qualified candidate's election expenses, the Standards Commission must have received the following documentation [*Section 21A(1)(d)*]:
- completed presidential election expenses statement/statutory declaration;
 - supporting invoices, vouchers or receipts;
 - Completed presidential election donation statement, statutory declaration and certificate of monetary donations.
- 3.8.5 When the Standards Commission has received the relevant statutory documentation and is satisfied as to its correct completion, it will issue a reimbursement application to the candidate. The Standards Commission will not issue any application for a reimbursement of election expenses until the correctly completed documentation has been received.
- 3.8.6 On receipt of the completed application, the Standards Commission will certify to the Department of Public Expenditure and Reform the amount which should be reimbursed to the candidate. The Department of Public Expenditure and Reform pays the reimbursement of election expenses by electronic funds transfer. To facilitate this payment to the candidate's bank account, the Department requires the candidate's bank account and contact details. This information is not made available to the public.
- 3.8.7 The reimbursement is made to the candidate by the Department of Public Expenditure and Reform and is not regarded as a donation to the candidate [*Section 21A(1)(a) and Section 21A(1)(c)*].
- 3.8.8 A candidate is not required by the Act to pass on any part of the reimbursement to his/her political party. If a reimbursement is passed on by a candidate to the candidate's political party, it is not required to be disclosed by the party as a donation unless the amount exceeds by more than €1,500 the total amount spent on the candidate by the party at the election.

Chapter 4 Offences and penalties

4.1 Consequences of overspending at the election are as follows:

- it is a criminal offence, punishable by a fine [*Section 61(1)(a) and Section 61(2)(a)*];
- the election may be questioned by a petition to the High Court to set aside the result of the election if it can be shown that the overspend materially affected the result of the election [*Section 62*];
- an election agent's overspend is deducted from the candidate's reimbursement [*Section 40(b)*].

4.2 Offences and penalties applicable to candidates & election agents at the election

- 4.2.1 If a person who is not authorised to do so incurs expenditure or makes a payment in relation to the election, he/she, on conviction, may be fined [*Section 61(1)*]
- 4.2.2 If an election agent is found guilty of the offence of exceeding the expenditure limit, the penalty is a fine [*Section 61(2)(a)*].
- 4.2.3 Payment of claims received after the deadline of 45 days after polling day (i.e., after 10 December 2018) may result in a fine [*Section 61(2)(b)*].
- 4.2.4 Failure to make such enquiries and maintain such records as are necessary for the purpose of furnishing an election expenses statement and making a statutory declaration may result in a fine [*Section 61(2)(e)*].
- 4.2.5 Failure to furnish an election expenses statement and statutory declaration to the Standards Commission by the statutory deadline (i.e., 21 December 2018) can result in a fine and an on-going fine for each day, after a conviction, on which the statement and declaration are still outstanding [*Section 61(2)(c)*].
- 4.2.6 Failure to provide supplemental information relating to an election expenses statement as requested by the Standards Commission can result in a fine [*Section 61(2)(e) & 43(2)(e) & 43(5)(a)*].
- 4.2.7 Knowingly furnishing a false or misleading election expenses statement to the Standards Commission can result in a fine and/or up to three years imprisonment [*Section 61(2)(d)*]
- 4.2.8 Failure to furnish to the Standards Commission, within 7 days after the date of the order, a copy of a court order for the payment of a disputed claim may result in a fine [*Section 61(2)(e)*].

- 4.2.9 Failure to notify the Standards Commission of, or remit, as appropriate to the Standards Commission, or return, as appropriate, a prohibited donation to the donor. This may result in a fine [*Section 61(2)(h) & 61(2)(i)*].
- 4.2.11 Failure to furnish the Standards Commission with a presidential election donation statement/statutory declaration and certificate of monetary donations, and where required, a statement from a financial institution within the statutory deadline may result in a fine. In addition, there may be an on-going fine for each day, after a conviction, where the material is still outstanding. [*Section 61(2)(f)*].
- 4.2.12 Knowingly furnishing the Standards Commission a presidential election donation statement/statutory declaration; a certificate of monetary donations/statutory declaration, or a statement from a financial institution, which is false or misleading may result in a fine and/or up to 3 years imprisonment. [*Section 61(2)(g)*].
- 4.2.13 It is an offence for the candidate to fail to furnish to the election agent, in sufficient time to enable the election agent to carry out his/her duties, details of expenses incurred including invoices, receipts or vouchers before the election agent was appointed. [*Section 52(7)(a)*].
- 4.2.14 After an election agent has been appointed, it is an offence for a candidate to incur election expenses unless authorised to do so by the election agent. The penalty, on conviction, for such an offence is a fine [*Section 61(5)*].

Appendix 1- Definitions

The Electoral Act 1997, as amended, provides the following definitions.

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

'election expenses' – the Schedule to the Act provides that election expenses shall be those, and only those, listed hereunder:

(a) Advertising (whatever the medium used).

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

(b) Publicity.

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

(c) Election posters.

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

(d) Other election material.

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

(e) Office and Stationery.

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

(f) Transport and travel.

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

(g) Market research.

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

(h) Campaign workers.

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

'institution' means:

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

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

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

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

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

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

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

(IV) to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority;
- (ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a

candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;

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

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

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

Appendix 2 - Fund-raising events

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

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

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

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

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

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

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

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

2 Fund-raisers organised by a candidate

Where a fund-raising event is organised by a candidate or election agent for the purposes of raising funds for his/her election campaign, the proportion of the contribution attributable to the contribution to the net profit deriving from the event is deemed to be a donation to the candidate [Sections 22(2)(a)(vi)].

The candidate will not be required to disclose in a Presidential Election Donation Statement the total value of the proceeds of the fund-raising event. The candidate or election agent will be required to disclose any donations from a person contributing to the event which exceed a net value of €600. The maximum limit of €1,000, for acceptance by candidates of donations from any one person in the same year, applies to the net value of contributions to fund-raising events. The limit of €200 on acceptance of donations from non-registered corporate donors also applies. If the net value of any monetary donation to a fund-raising event organised by a candidate or election agent exceeds €100, the candidate or election agent, 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 or election agent will not be required to open a political donations account. If the candidate or election agent already has a political donations account, all monetary donations, of whatever value, received in relation to the event must be lodged to the account.

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

Where a fund-raising event is organised on behalf of a candidate by a person or group other than the candidate or his/her political party (e.g., "Friends of ... groups") and the proceeds of the event are handed over to the candidate or election agent, 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 2 above) are complied with.

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

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

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

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

A - Advertising

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

B - Publicity

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

C - Election Posters

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

D - Other Election Material

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

E - Office and Stationery

Rental costs associated with the use of an office which is owned by a political party. Use of private telephones (including mobile phones) where the expense incurred was not reimbursed to the person.

F - Transport and Travel

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

G - Market Research

Purchase of Register of Electors.

H - Campaign Workers

"Close of poll" party.

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

I - Fines

Litter and parking fines etc.

Appendix 4 – Advice on particular matters

1. Advice on advertising on vehicles ("wrapping" of vehicles)

The adaptation ("wrapping") of cars, jeeps, vans, etc., with a candidate's or a political party's livery is an election expense as it promotes a person's candidacy and/or a political party's interests at the election. If such vehicles are used during the election period the full costs of producing the advertising on the vehicles is an election expense.

The Standards Commission is aware, however, that some public representatives use mobile constituency clinics which are already "wrapped" in the public representative's or political party's livery. The Standards Commission is of the view that where such vehicles have been used on an ongoing basis and are "wrapped" with livery which is of a general nature and is not explicitly seeking to promote a person's candidacy and/or a political party's interests at the election, the costs of adapting these vehicles will not be regarded as an election expense even if the vehicles are used during the election period.

If, however, a mobile office is being used purely for the election or has been "wrapped" with livery which explicitly promotes a person's candidacy, a party's interests or which solicits votes for a candidate and/or a political party at the election, then the cost of adapting the vehicle is regarded as an election expense and, if the vehicle is used during the election period, the full cost of adapting the vehicle must be accounted for.

Where it is intended not to account for advertising / livery on a campaign vehicle on the basis that the advertising / livery is not for electoral purposes the relevant agent should contact the Standards Commission for confirmation that the advertising / livery is not an election expense.

2. Advice on vandalised or damaged posters

The position of the Standards Commission with regard to vandalised or damaged posters is that if a poster is erected during the election period (28 August 2018 to 26 October 2018 inclusive), it is regarded as having been used during the election period and must be accounted for as an election expense even if the poster falls down, is vandalised, etc. before polling day. The cost of replacing vandalised or damaged posters is also an election expense if the replacement posters are used during the election period.

3. Advice on use of staff whose salaries are met out of public funds

The Electoral Act 1997 as amended (the Act) provides that goods, property or services where the costs are met from public funds and which are used for *electoral purposes* during the election period shall be reimbursed and regarded as election expenses.

If a member of staff (e.g. special adviser, constituency secretary, driver, personal assistant, research assistant, etc.) of a holder of elected/public office is engaged in his/her normal duties during the election period and is not providing a service which is for electoral purposes, then the cost of carrying out such activities is not regarded as an election expense. Where such staff are engaged in activities which are for electoral purposes, their costs will be regarded as an election expense. It will be a matter for the holder of public office, in conjunction with his/her election agent and the provider of the services, to determine the extent to which such staff have been engaged for electoral purposes during the election period and to account for it on the election agent's election expenses statement.

Certain holders of public office are provided with State cars and Garda drivers for security reasons. Accordingly, the use of State cars in these cases, including drivers, during the election period, is not an election expense as the cars and drivers are provided as a security measure and these office holders are required to use them at all times.

However, some holders of elected/public office provide their own cars and appoint civilian drivers who are paid out of public funds. The use of cars and drivers by such persons for electoral purposes during the election period is an election expense. While they can claim travel expenses when the car is used for official business, its use for electoral purposes would not qualify as official business for the purposes of such claims.

Where a member of staff of a holder of elected/public office takes annual leave to work on an election campaign on a voluntary basis during the election period, the work carried out by them will 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, the cost of their salaries while working voluntarily will not be regarded as election expenses for the purposes of the Act.

The Standards Commission recommends, however, that, in case there is a challenge to the election expenses statement submitted by a holder of elected/public office, such candidates should ensure that proper records of holidays accrued and taken by staff are maintained. The Standards Commission

may require written confirmation that the staff concerned have taken leave during the election period.

4. Advice on the free use of vehicles

Part 1(f) of the Schedule to the Act provides that election expenses on transport and travel include "*expenses incurred on transport and travel (by any means), petrol and diesel, rental or **use** of campaign vehicles, rental or **use** of vehicles for transport of voters on polling day, accommodation costs, taxi and hackney services and courier services.*"

Section 46(b)(iii)(l) of the Act provides that a service rendered by an **individual**, including the use of the individual's motor **vehicle**, is not regarded as a donation or as an election expense where the service is not provided as part of the individual's work or business. Section 46(b)(iii)(l) specifically refers to an individual and an individual's motor vehicle. Therefore, where an individual provides a candidate with the free use of a single vehicle at the election it is not regarded as either a donation to the candidate or as an election expense. If, however, the individual normally charges for use of the vehicle in question it would be regarded as a donation and an election expense. If more than one vehicle is provided by the individual, the additional vehicles may be regarded as donations and as election expenses.

As stated above the reference in section 46(b)(iii)(l) is specifically to an **individual**. 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, therefore, use of the vehicle is regarded as a donation and as an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of disclosing its value as a donation and for the purposes of disclosing its use during the election period, as an election expense.

5. Advice on accounting for the use of offices during the election period

a) General

In relation to office and stationery, the Act provides that election expenses include "*costs incurred in the rental or use of an office premises or meeting rooms for election purposes (other than for the purposes of annual or other party conferences) and the costs of heating, electricity, insurance, purchase or rental of office equipment, telephones, stationery and postage*".

Accordingly, expenses incurred in the rental of an office are regarded as election expenses. Rental paid in respect of the election period must be accounted for on the election expenses statement.

Where use of an office is provided free or below cost, the full commercial value of the use of the office for election purposes during the election period is regarded as an election expense and must be accounted for. In determining the commercial value, account may be taken of the condition of the office. Allowances may also be made for any discount which is normally given or generally available.

The provision without charge of an office in a person's private dwelling, where the room provided is not available for renting in the normal course, is not an election expense. Any expense incurred, however, in carrying out alterations to facilitate its use for election purposes during the election period is an election expense.

b) Use of public representative offices.

The use by a holder of elected/public office of his/her publicly funded office location for electoral purposes is regarded as an election expense. The extent to which the office has been used for electoral purposes during the election period should be taken into account. Ancillary costs such as salaries, heat, light, phones, fax, copying, printing, stationery, postage, envelopes, etc. where such costs have been incurred for electoral purposes must be taken into account.

The use of publicly funded offices for election purposes during the election period is also an election expense. This includes the costs of salaries and expenses of civil servants or special advisers, where they are engaged in activities for election purposes during the election period, as well as other ancillary costs such as heat, light, phones, fax, copying, printing, stationery, postage, envelopes, etc. where such costs have been incurred for electoral purposes.

c) Accounting for offices which are owned by a candidate or political party

Notional rental costs for the use of an office which is owned by a candidate are not required to be accounted for as election expenses. Similarly where a political party owns an office in a constituency which is used by its candidate(s) during an election campaign, neither the party nor the candidate are required to apply notional rental costs for the use of these offices. Any expenses, however, incurred in carrying out alterations to facilitate its use for election purposes during the election period are required to be accounted for.

d) Notional costs of site rental for posters or other election material

Notional costs of site rental where posters or other material are erected/displayed in or around private properties or commercial premises which are not recognised sites for such purpose are not required to be accounted for as election expenses.