

**Guidelines for
European Parliament Election
2004**

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under Section 4, as amended, of the Electoral Act, 1997.

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Introduction

1. These Guidelines, for the European Parliament election (the European election) on 11 June 2004, have been published by the Standards in Public Office Commission (the Standards Commission) under section 4, as amended, of the Electoral Act, 1997. The other relevant Acts of the Oireachtas are the Electoral (Amendment) Acts, 1998, 2001 and 2002.

2. The Guidelines cover the main requirements of the above legislation relating to:
 - disclosure of political donations;
 - limits on the value of donations which may be accepted;
 - prohibited donations;
 - limits on election spending;
 - reimbursement to qualified candidates of up to €38,092.14 of their election expenses.

3. The Standards Commission was established in December 2001 by the Standards in Public Office Act, 2001. [It replaced the Public Offices Commission which was established in November 1995 by the Ethics in Public Office Act, 1995.] The members of the Standards Commission are:

The Hon. Mr. Justice M. P. Smith, Judge of the High Court, Chairman of the Standards Commission,

Mr. John Purcell, Comptroller and Auditor General,

Ms. Emily O'Reilly, Ombudsman,

Mr. Kieran Coughlan, Clerk of Dáil Éireann,

Ms. Deirdre Lane, Clerk of Seanad Éireann, and

Mr. Liam Kavanaugh, a former member of Dáil Éireann.

The Standards Commission has a permanent Secretariat which is located at 18 Lower

Leeson Street, Dublin 2.

4. Under the legislation, there are three main categories of persons who have duties and obligations at the European election. These are:
 - candidates
 - election agents of candidates
 - national agents of political parties.

The legislation also imposes obligations on publishers of newspapers and magazines, etc., "third parties" receiving political donations and "other persons" who incur expenditure in promoting or opposing a political party or a candidate at the European election.

5. The legislation is quite technical and complex. The Standards Commission is required to publish guidelines and give advice on how it works in practice. The legislation requires that a person must act in accordance with guidelines or advice published or given by the Standards Commission unless, by so doing, they would be contravening another provision of the legislation. Advice is given either in writing, including by electronic mail, or by responding to telephone enquiries. The advice function also involves staff of the Standards Commission Secretariat participating in briefing sessions throughout the country which are attended by candidates, agents and other persons who are involved in the European election such as directors of elections, local party activists, etc.
6. If a person is in any doubt about any aspect of the legislation, he or she should contact the Standards Commission Secretariat. The Standards Commission recommends that advice should be sought immediately if a matter arises about which there is uncertainty. By doing so, it is less likely that the issue will cause a difficulty later. The Standards Commission Secretariat will be available before, during and after the European election

to help resolve any difficulties that may arise.

7. The Standards Commission Secretariat can be contacted at the phone numbers listed on the inside cover page. Their mobile numbers have been included in order that they may be contacted outside normal office hours to answer any urgent queries. Please use this outside hours facility sparingly.
8. The Standards Commission will monitor election spending in a number of different ways. This will include visits to constituencies, inspecting campaign premises, collecting samples of election material, recording details of advertisements in newspapers and periodicals, etc.
9. The Standards Commission recommends that all parts of the Guidelines should be read by each person who has duties and obligations under the legislation, or who is otherwise involved in the European election. The Guidelines have been written in the clearest possible terms to assist understanding.
10. Failure to comply with certain provisions of the legislation is a criminal offence. The most serious offence (knowingly furnishing a false or misleading post-election donation or spending statement) is punishable by a fine of up to €25,394.76 and/or imprisonment for up to 3 years.
11. The Guidelines reflect the legal position as it applies at the time of going to print, i.e. March 2004.
12. Tá leagan Gaeilge de na treoirínte seo ar fáil.

Chapter 1

Candidates

Candidates

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

- (A) Appointment of an election agent
- (B) Assignment of a portion of a candidate's statutory spending limit to his/her political party (if contesting the European election as a party candidate)
- (C) Keeping a record of donations received in relation to the European election
- (D) What is a donation?
- (E) What is not a donation?
- (F) Opening and maintaining a political donations account when required to do so
- (G) Awareness, and treatment, of prohibited donations
- (H) Awareness of persons who may be incurring expenditure, without proper authorisation, to promote or oppose a candidate at the European election
- (I) Furnishing the required statutory documentation after the European election
- (J) Claiming a reimbursement of election expenses where eligible to do so
- (K) Offences and penalties applicable to candidates at the European election

A. Appointment of an election agent

- 1.1 Each candidate must appoint an election agent. Ideally, this appointment 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.
- 1.2 The candidate must notify the Returning Officer for the constituency, in writing, of the name of the election agent and the address of the office of the agent. This must be done not later than the last day for receiving nominations at the European election. The Returning Officer will inform the Standards Commission of the names and addresses of the election agents appointed. It is very important that candidates ensure that the person notified to the Returning Officer is the person they intend having as their election agent. The Standards Commission will only accept an Election Expenses Statement from the person notified to it by the Returning Officer as the candidate's election agent.
- 1.3 Candidates should give careful consideration to the appointment of an election agent. The agent should be comfortable with the handling of money and keeping of accounts. He/she must maintain proper records of all transactions relating to spending on the candidate's European election campaign and retain receipts, invoices or vouchers for inspection, and for public display, by the Standards Commission.
- 1.4 A candidate may act as his/her own election agent. If a candidate does not notify the Returning Officer of the appointment of an election agent within the specified period, he/she will be deemed to be acting as his/her own election agent. A candidate who acts as his/her own election agent will also be required to comply with the provisions of the legislation applying to election agents (see Chapter 2).
- 1.5 The same person may act as election agent for more than one candidate. In such circumstances the election agent is separately responsible for each candidate. Great care must be taken to ensure that separate records and accounts are kept for each candidate

and that it is possible to apportion expenses between the different candidates where this is necessary.

1.6 Apart from the national agent of the candidate's political party, the candidate's election agent is the only person who can incur expenses or make payments in connection with the candidate's European election campaign. The 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 only to incur expenses or make payments within the specific financial limit laid down by the election agent. The election agent must subsequently account for such expenses or payments.

1.7 A candidate may, at any time, revoke the appointment of an election agent (including his/her own appointment as election agent). Where the appointment of an election agent has been revoked, the candidate must notify the Returning Officer in writing of the name and address of the new election agent (including the candidate's own details if he/she intends to act as his/her own election agent).

B. Assignment of a portion of a candidate's statutory spending limit to his/her political party (if contesting the European election as a party candidate)

1.8 If a candidate is contesting the European election on behalf of a political party he/she must agree, in writing, with the party, the amount of the candidate's spending limit which the candidate is assigning to the party. The candidate is not legally required to make any assignment to the party. If, however, an assignment is made by a candidate to the party, the spending limit of the candidate's own election agent is reduced by that amount. The national agent of the candidate's political party can, out of the amount which has been

assigned by the candidate to the party, incur expenses or make payments on behalf of the candidate or on the party's national campaign. Under no circumstances can total spending on a candidate exceed the statutory spending limit for the candidate. The role of the national agent is described in more detail in Chapter 3.

Example:	Statutory spending limit for candidate	= €230,000
	Amount assigned by candidate to the party	= <u>€ 50,000</u>
	Amount which election agent can spend	= €180,000

1.9 The legislation does not specify when the agreed assignment between the candidate and the political party should be made. Similarly, the legislation does not preclude a re-negotiation of the agreed assignment. The Standards Commission strongly advises, however, that the agreed assignment should be finalised before any expenses are incurred by either the candidate's election agent or the party's national agent.

1.10 The legislation does require that the amount assigned to a political party must be agreed **in writing** between the candidate and the party. The written agreement, therefore, should clearly state the amount assigned to the party and should be signed by the candidate and the appropriate party official. Where assignments are re-negotiated, a new written agreement must be made. A copy of the written agreement should be given to the candidate's election agent. The election agent will be required to furnish a copy of the written agreement with his/her Election Expenses Statement.

C. Keeping a record of donations received in relation to the European election

1.11 It is the candidate who is required to comply with the requirements of the legislation regarding the disclosure of donations. It is important, therefore, that candidates keep a record of donations received in relation to the European election for the purposes of

furnishing a Donation Statement to the Standards Commission after the European election.

D. What is a donation?

1.12 A donation is defined in the legislation as meaning any contribution given for political purposes by any person, whether or not the person is a member of a political party.

There are a number of important words in the definition of a donation given above.

(a) Donation.

This includes:

- (i)** a donation of money;
- (ii)** a donation of property or goods;
- (iii)** the free use of property or goods;
- (iv)** a free supply of services;
- (v)** the difference between the commercial price and the (lower) price charged for property, goods or services;
- (vi)** a donation received by way of a contribution made to the net profit from a fund-raising event organised for the benefit of a candidate. (This is explained in greater detail in Appendix 2.)

(b) Political purposes.

The contribution must be given for political purposes. The definition of political purposes is given in Appendix 1. Gifts from family members or from friends, which are given for purely personal reasons, are not donations for political purposes.

(c) Person.

This can be:

- (i) an individual;
- (ii) a body corporate (and any subsidiary thereof), e.g. a public or private company;
- (iii) an unincorporated body of persons, e.g. a political party, a partnership, a residents association, a lobby group.

1.13 Only donations with a value, or an aggregate value from the same person, of more than €634.87 are required to be disclosed. If the same person makes more than one donation to a candidate in relation to the European election, the values of the donations must be aggregated and treated as a single donation for disclosure purposes.

1.14 If more than one member of the same family, or other group, make donations to the same candidate, 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 values of the donations must be aggregated and treated as a single donation for disclosure purposes and for the purpose of observing the maximum limit applying to the acceptance of donations (see paragraphs 1.24 to 1.27 in relation to prohibited donations). The candidate must make whatever enquiries are necessary in order to be satisfied as to the position in this regard.

1.15 A donation to a candidate also includes the following:

- (i) expenses incurred or payments made on behalf of the candidate by the election agent(s) of the candidate's running mate(s). [In this regard see paragraph 2.10 on cross canvassing];

- (ii) money given to the candidate by his/her political party.

1.16 A donation passed on to a party by a candidate is deemed to be a donation made to the party and not to the candidate if a written receipt is issued by the party to the candidate.

1.17 A donation made to a candidate through an intermediary is deemed to be a donation made to the candidate.

E. What is not a donation?

1.18 Items not regarded as donations to a candidate include:

- (i) free post service provided by An Post to candidates under rule 22 of the Second Schedule to the European Parliament Elections Act, 1997;
- (ii) any payment, service or facility provided to the candidate out of public funds or moneys provided by an institution of the European Communities or other intergovernmental organisation to which the State is a party, pursuant to specified legislation, by virtue of the candidate being:

a representative in the European Parliament;

a member of the Dáil or Senate;

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;

- (iii) a free service provided by an individual, including use of the individual's motor vehicle, private telephone, etc., where the service provided is not part of the

- individual's work or business;
- (iv) a service provided at a European 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;
 - (v) normal media coverage and the transmission on radio or television of a broadcast on behalf of the candidate; [This does not cover any production, or other, costs associated with such a broadcast.]
 - (vi) expenses incurred or payments made by a political party on behalf of the candidate;
 - (vii) the services of an accountant, or other person, who is engaged for the specific purpose of assisting compliance with the requirements of the legislation;
 - (viii) the services of personation officers on polling day.

F. Opening and maintaining a political donations account when required to do so

1.19 If a candidate receives, in any particular calendar year, a monetary donation for political purposes, the value of which exceeds €126.97, he/she must open and maintain an account in a financial institution in the State. The candidate must lodge that donation and any further 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. [A credit union is not regarded as a "financial institution" for the purposes of the legislation].

- 1.20 If a candidate already operates a political donations account it is not necessary to open a separate account specifically for the European election. All monetary donations however, of whatever value, received in relation to the European election must be lodged to the account.

G. Awareness, and treatment, of prohibited donations

Anonymous donations

- 1.21 Acceptance of an anonymous donation exceeding a value of €126.97 is prohibited. A donation is anonymous if a candidate does not know the name and address of the donor. If a prohibited anonymous donation is received by a candidate, the Standards Commission must be notified by the candidate within fourteen days of its receipt. The donation or its value must also be remitted by the candidate to the Standards Commission.

Foreign donations

- 1.22 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 on of one or more of its principal activities is directed (hereafter referred to as a foreign donation).

- 1.23 A foreign donation must be notified by the candidate to the Standards Commission

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

Donations in excess of the prescribed limit

- 1.24 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 €2,539.48. Where a person makes more than one donation to a candidate in a particular year the values of the donations must be aggregated for the purpose of observing the maximum limit.
- 1.25 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.
- 1.26 The maximum limit does, however, apply to monetary donations received by a candidate from his/her political party. Donations of money from any branch of the party (including party headquarters) must be aggregated for the purpose of observing the maximum limit and treated as a single donation from the party.
- 1.27 Where a donation is received and is prohibited because its value is over the limit, the candidate must notify the Standards Commission within 14 days of its receipt and remit that donation, or that part of a monetary donation which is over the limit, to the Standards Commission. As an alternative, the candidate may return the donation, or that part of a monetary donation which is over the limit, to the donor and keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

Other prohibited donations

1.28 There is another type of donation which a candidate is prohibited from accepting. To explain this it is necessary to say that, under the legislation, individual donors who make donations, with a total value in excess of €5,078.95 in any calendar year, to two or more members of the same political party (or to a political party and one or more of its members) are themselves required to furnish a Donation Statement and Statutory Declaration to the Standards Commission disclosing details of the donations. If the donor in question does not intend to comply with this requirement, and if a candidate is aware of this, the candidate is prohibited from accepting a donation from the donor.

1.29 If such a prohibited donation is received by a candidate, the Standards Commission must be notified by the candidate within 14 days of its receipt. The donation, or its value, must also be remitted by the candidate to the Standards Commission.

1.30 **Failure to notify, remit or return, as appropriate, a prohibited donation is an offence.**

H. Awareness of persons who may be incurring expenditure, without proper authorisation, to promote or oppose a candidate at the European election

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

1.32 Notices or advertisements in newspapers, magazines or other periodical publications

which promote or oppose the interests of a political party or a candidate may be placed only if requested by a candidate, a candidate's election agent, a national agent of a political party or a person authorised in writing by the candidate or either agent.

- 1.33 "Third parties" or "other persons" (see Chapter 4) may place notices or advertisements in newspapers, magazines or periodical publications if they produce to the publisher a certificate from the Standards Commission confirming that they have complied with their legal obligations as outlined in paragraph 4.18 below. This certificate is issued by the Standards Commission when all the relevant information is received from the third party/other person. The Standards Commission will notify publishers of the requirements of the legislation in this regard.

Expenditure by Local Election candidates

- 1.34 As the 2004 local elections will be held on the same day as the European election, European election candidates will need to be particularly aware of local election candidates who may be including a reference to the **European election candidate** in their local election promotional material and advertising. Where such references are included, it is regarded as promoting the candidacy of the **European election candidate** and as expenditure incurred on behalf of that candidate.
- 1.35 A local election candidate, director of elections, etc., who intends to include a reference to a European election candidate in local election promotional material, advertising, etc., must be authorised to do so by the **European election candidate's election agent** or the national agent of the European election candidate's political party. A person who incurs such expenditure on behalf of a European election candidate without being authorised to do so, may be guilty of an offence.

- 1.36 Where a European election candidate is featured in local election material or advertising, the extent to which the European election candidate is featured should be used as a basis for calculating the amount to be accounted for in the Election Expenses Statement furnished to the Standards Commission by the election agent or national agent who authorised the election expense.
- 1.37 Where such expenses are incurred by a political party, they are not regarded as a donation to the European election candidate.
- 1.38 Where such expenses are incurred by a local election candidate, without any charge to the European election candidate, it is regarded as a donation to the European election candidate. If the value of the expense exceeds €634.87 it must be disclosed by the European election candidate in his/her Donation Statement.
- 1.39 Each European election candidate is advised to be aware of any such expenditure being incurred on his/her behalf by local election candidates, directors of elections or other persons. If a candidate becomes aware that a person, other than a candidate's election agent or the national agent of a political party, is incurring expenses on his/her behalf at the European election, the candidate should ensure that this has been authorised by either such agent. If it has not been authorised, the person incurring the expenses would be committing an offence unless a certificate to incur the expenses has been issued to the person by the Standards Commission [See Chapter 4 relating to third parties, other persons and publishers]. If necessary, the candidate should bring the matter to the attention of the Standards Commission and appropriate action will be taken.

Expenditure incurred in relation to a referendum

- 1.40 In the event that the proposed referendum on Irish citizenship takes place at the same time as the European election, candidates should note that where material relating to the

referendum mentions a person's candidacy at the European election, this will be regarded as promoting the candidate. If such material is used during the European election period (see paragraph 2.20), the cost involved will be regarded as an election expense incurred on the candidate's behalf which must be authorised by the candidate's election agent and accounted for by him/her. This also applies to material circulated by, or on behalf of, a candidate, or a person or body deemed to be connected to a candidate, which refers to another candidate's European election campaign.

I. Furnishing the required statutory documentation after the European election

Unsuccessful candidates

- 1.41 If a candidate is **unsuccessful** at the European election, he or she must, **within 56 days** after polling day (which in the case of the European election is **6 August 2004**), furnish to the Standards Commission a Donation Statement and Statutory Declaration giving details of all donations received **in relation to the European election** with a value greater than €634.87. Donations made by the same person to the same candidate in relation to the European election must be aggregated and treated as a single donation. This requirement covers donations received at any time in relation to the European election.
- 1.42 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.
- 1.43 If a monetary donation in excess of €126.97 was received and the candidate was required to open a political donations account (see paragraph 1.19), 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. The statement

must specify the transactions that have taken place in relation to the account during the period beginning on the date of opening of the account and ending on polling day at the European election. The Donation Statement must also be accompanied by a Certificate of Monetary Donations certifying that all monetary donations received after the account was opened were lodged to the account and all amounts debited from the account were used for political purposes. The Certificate must be signed by the candidate and must be accompanied by a separate Statutory Declaration.

1.44 Failure to send a Donation Statement and all accompanying documentation to the Standards Commission within the statutory time period is an offence.

1.45 The Standards Commission Secretariat will contact unsuccessful candidates after the European election and will provide the relevant Donation Statement/Statutory Declaration form and the Certificate of Monetary Donation/Statutory Declaration form for completion. Help 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.

Successful candidates

1.46 If a candidate is **elected** at the European election, he or she will **not** be required to submit a Donation Statement and Statutory Declaration and accompanying documentation within 56 days after polling day. Instead, an annual Donation Statement and Statutory Declaration and accompanying documentation is required from all members of the European Parliament. This Donation Statement/Statutory Declaration covers the previous calendar year and must be submitted by 31 January each year. Forms for this purpose will be provided to MEPs by the Standards Commission in early January each year.

1.47 The first Donation Statement/Statutory Declaration and accompanying documentation submitted by members of the European Parliament after the European election must include donations with a value, or aggregate value from the same person, greater than

€634.87 received during the previous calendar year. In this case, the statement from the financial institution must specify the transactions that have taken place in relation to the account in the relevant calendar year.

1.48 Copies of Donation Statements and Statutory Declarations furnished by both unsuccessful candidates and by members of the European Parliament 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 and, in summary format, on the website of the Standards Commission.

1.49 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 required by court order or an enquiry by the Standards Commission.

J. Claiming a reimbursement of election expenses where eligible to do so

1.50 If qualified, a candidate is entitled to apply for a reimbursement of their European election expenses. In order to qualify for a reimbursement, a candidate must either:

be elected, or

if not elected, have exceeded one quarter of the quota in the constituency at any stage of the counting of votes.

1.51 The maximum amount which may be reimbursed is the lesser of €38,092.14 or the actual amount of the election expenses incurred on the candidate.

1.52 In calculating the amount of the reimbursement it should be noted that account may be

taken of:

- expenses incurred on the candidate as accounted for by the candidate's election agent, and
- expenses incurred on the candidate in the constituency by the candidate's political party and accounted for by the national agent.

1.53 In order to certify a reimbursement of a qualified candidate's election expenses, the Standards Commission must have received the following documentation:

- completed application form for reimbursement of election expenses;
- completed election agent's Election Expenses Statement/Statutory Declaration;
- completed national agent's Election Expenses Statement/Statutory Declaration;
- supporting invoices, vouchers or receipts;
- in the case of an unsuccessful candidate, the candidate's completed Donation Statement/Statutory Declaration and accompanying documentation must also be received before the reimbursement application form can be issued.

1.54 When the Standards Commission has received the relevant statutory documentation and is satisfied as to its correct completion, it will issue a reimbursement application form to the candidate. **The Standards Commission will not certify a reimbursement of election expenses where statutory and supporting documentation has not been furnished.**

1.55 On receipt of the completed application form, the Standards Commission will certify to the Department of Finance the amount which should be reimbursed to the candidate.

1.56 The reimbursement is made directly to a candidate by the Department of Finance and is not regarded as a donation to the candidate.

1.57 A candidate is not required by the legislation to pass on any part of the reimbursement to his/her political party. If a reimbursement is passed on by a candidate to the candidate's political party, it is not required to be disclosed by the party as a donation unless the amount passed on exceeds by more than €5,078.95 the total amount spent on the candidate by the party at the European election.

K. Offences and penalties applicable to candidates at the European election

1.58 It is an offence by the candidate to fail to furnish to the election agent relevant details of expenses incurred before the appointment of an election agent, in sufficient time to enable the agent to carry out his or her duties.

1.59 After an election agent has been appointed, it is an offence for a candidate to incur election expenses unless authorised to do so by his/her election agent or the national agent of his/her political party.

1.60 Failure to notify the Standards Commission of, or remit to the Standards Commission, an anonymous donation, referred to in paragraph 1.21 above, may result in a fine of up to €1,269.74.

1.61 Knowingly accepting a prohibited donation, referred to in paragraph 1.28 above, may result in a fine of up to €1,269.74.

1.62 Failure to notify the Standards Commission of, or remit, as appropriate, to the Standards Commission, or return, as appropriate, to the donor, a prohibited donation referred to in paragraphs 1.22 or 1.24 above, may result in a fine of up to €1,269.74.

1.63 Failure to furnish to the Standards Commission a Donation Statement and accompanying

documentation within the statutory deadline may result in a fine of up to €1,269.74. In addition, there can be an on-going fine of up to €126.97 per day for each day, after a conviction, on which the Donation Statement or accompanying documentation are still outstanding.

- 1.64 Knowingly furnishing to the Standards Commission a Donation Statement or Statutory Declaration, or a statement of a financial institution, Certificate or Statutory Declaration which is false or misleading may result in a fine of up to €25,394.76 and/or up to 3 years imprisonment.

Chapter 2

Candidates' Election Agents

Candidates' Election Agents

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

- (A) Appointment as an election agent
- (B) Main functions of an election agent
- (C) Spending limits for the European election
- (D) Assignment by a candidate of a portion of his/her statutory spending limit to his/her political party (if contesting the European election as a party candidate)
- (E) "The Election Period" - Dates between which the spending limit applies
- (F) Awareness of persons who may be incurring election expenses on behalf of a candidate

without being authorised to do so

- (G) What are election expenses?
- (H) What are not election expenses?
- (I) Payment of invoices to suppliers
- (J) Furnishing an Election Expenses Statement after the European election
- (K) Consequences of overspending by an election agent
- (L) Offences and penalties applicable to election agents at the European election

A. Appointment as an election agent

- 2.1 Each candidate must appoint an election agent. The election agent must have an office or place in or convenient to the constituency to which claims, notices, writs, summonses and other documents may be sent. The candidate must supply the name and office address of the election agent in writing to the Returning Officer for the constituency in which the candidate is standing. This must be done not later than the last day for receiving nominations at the European election. The Returning Officer will subsequently provide the election agent's details to the Standards Commission.
- 2.2 It is very important that the correct details regarding the appointment of an election agent are notified to the Returning Officer. The Standards Commission will only accept an Election Expenses Statement from the person notified to it by the Returning Officer as the candidate's election agent. The election agent should ensure, therefore, that the candidate has notified his/her correct details to the Returning Officer.
- 2.3 A candidate may act as his or her own election agent. A candidate who does not notify the Returning Officer of the appointment of an election agent within the required time is deemed to be acting as his/her own election agent. A candidate acting as his/her own election agent is required to comply with the requirements of the legislation both as a

candidate and as an election agent.

B. Main functions of an election agent

- 2.4 The election agent is the key link for the Standards Commission at the European election in relation to expenditure incurred on the candidate's behalf at the European election. He/she should be comfortable with the handling of money and the keeping of accounts.
- 2.5 The same person may act as election agent for more than one candidate. In such circumstances the election agent is separately responsible for each candidate. Great care must be taken to ensure that separate records and accounts are kept for each candidate and that it is possible to apportion expenses between the different candidates where this is necessary.
- 2.6 The main function of the election agent is to authorise and control spending connected to the candidate's European election campaign. The agent may also assist the candidate generally in relation to the European election.
- 2.7 The election agent is the only person who may incur expenditure or make payments on behalf of the candidate. All invoices, receipts or vouchers should be retained by the election agent and not the candidate.
- 2.8 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 set by the election agent. There is nothing to prevent an election agent from nominating the candidate or the national agent of the candidate's political party (if applicable) as authorised persons. Details of every authorised person, including the amount he/she was permitted to spend and actually spent, will have to be included in the election agent's Election Expenses Statement, which is furnished to the Standards

Commission after the European election (see paragraph 2.51 and 2.52).

- 2.9 A candidate cannot incur any expenses or make any payments in relation to the European 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 or her reasonable living expenses", unless authorised to do so by the election agent. (See paragraph 2.41(ii) below for an explanation of what is meant by "reasonable living expenses".) 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 relevant vouchers, to the election agent.
- 2.10 Where appropriate, agreements and authorisations should be put in place between the **election agents of running mates** in a constituency to cover the cost of promotion by running mates of each other. Promotion of a running mate in a candidate's election material, by, for example, the inclusion in the material of an endorsement which solicits votes for the running mate, constitutes election expenditure incurred by the candidate's election agent on behalf of the running mate. This is known as cross canvassing or strip promotion. A proportion of the cost, which should be calculated on the basis of the extent to which the running mate is featured, must be met from within the running mate's expenditure limit and must be authorised and accounted for by his/her election agent.
- 2.11 It is important to be aware that the procedure outlined above must be followed even if the instruction to engage in cross canvassing or strip promotion was received from a party head office or other organ of a party. As stated, the cost of producing and distributing the material should be apportioned between the candidates being promoted in a manner that reasonably reflects the extent to which each of them is featured in the material.

C. Spending limits for the European election

- 2.12 The statutory spending limit for the European election is set out in Statutory Instrument Number 87 of 2004. The limit per candidate, **inclusive of VAT**, is **€230,000**.
- 2.13 This limit represents the maximum spending allowed on a candidate in a constituency and includes all spending by the election agent and a political party (both head office and local organisation) on a candidate. Also included, at its commercial price, is the value of any property, goods or services which are supplied free or below cost.
- 2.14 The limit is for **each individual candidate** in a constituency. No part of one candidate's limit can be transferred to another candidate.
- 2.15 It should be understood that no separate or additional spending by a political party on a candidate over and above that which has been assigned to the party by the candidate is allowed (see paragraph 2.16 below). If a candidate of a political party refused to assign any part of the statutory spending limit to the party, the party could not incur any expenses on that candidate at the European election, unless authorised to do so by the candidate's election agent.

D. Assignment by a candidate of a portion of his/her statutory spending limit to his/her political party (if contesting the European election as a party candidate)

- 2.16 If a candidate is contesting the European election on behalf of a political party, he/she may agree, in writing, with his or her political party, the amount of his/her spending limit which is being assigned by the candidate to the party for spending by the party's national agent. This could be up to 100% of the candidate's limit. There is, however, no legal obligation on a candidate to assign any amount to the party. The candidate's election

agent can only spend, or authorise to be spent, the amount of the limit for that candidate which remains after the assignment has been made. In other words, whatever amount is assigned to the party by a candidate is not available for spending by the candidate's election agent.

Example:	Statutory spending limit for candidate	= €230,000
	Amount assigned by candidate to the party	= <u>€ 50,000</u>
	Amount which election agent can spend	= €180,000

2.17 The legislation does not specify when the written assignment must be made. Similarly the legislation does not preclude a re-negotiation of the agreed assignment. The Standards Commission strongly advises that, if an assignment to a political party is being made, it should be made and notified to the election agent before any expenses are incurred by either the election agent or the national agent of the candidate's political party.

2.18 The legislation does require that the agreed assignment be made in writing between the candidate and the party. Where assignments are re-negotiated a new written agreement must be made between the candidate and the party. A copy of the written agreement should be provided to the candidate's election agent. The election agent will be required to furnish a copy of the written agreement to the Standards Commission with his/her Election Expenses Statement.

2.19 The combined expenditure on the candidate by the candidate's election agent (including authorised persons) and the national agent of the party (including authorised persons) must remain within the statutory spending limit for the candidate. [The spending limit is outlined in paragraph 2.12 above]

E. "The Election Period" - Dates between which the spending limit

applies

2.20 The spending limit at the European election applies to all expenses incurred and payments made in providing property, goods or services which are used for electoral purposes during the period from the date of the order appointing polling day up until polling day itself, both dates included. This is known as **the election period**.

2.21 Regardless of when the expenses are incurred or the payments are made, they must be accounted for 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.

2.22 If expenses are incurred or payments are made on property, goods or services which were intended to be used but 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 date of the order appointing polling day or which were used after polling day. Some examples of this might be:

- promotional material circulated by candidates/political parties before the election period commenced;
- posters which were erected and removed 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.

2.23 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.

2.24 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.

F. Awareness of persons who may be incurring election expenses on behalf of a candidate without being authorised to do so

2.25 If an election agent becomes aware that a person or body, who or which is not authorised to do so, is incurring expenses or making payments in relation to the candidate at the European election, the election agent should advise the person to desist and should inform the Standards Commission.

2.26 Expenditure by "**third parties**" and "**other persons**", i.e. those not connected to a candidate or a political party, is permitted under the legislation (see Chapter 4). 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 is committing an offence and the Standards Commission will take appropriate action. (See paragraph 4.36)

2.27 Notices or advertisements in newspapers, magazines or other periodical publications promoting or opposing the interests of a candidate may be placed only if requested by the candidate, the candidate's election agent, the national agent of the candidate's political party or a person authorised in writing by the candidate or either agent. "Third parties" and "other persons" may arrange newspaper advertising if they produce to the publisher a certificate from the Standards Commission stating that they have complied with the requirements outlined in paragraph 4.18 below. The Standards Commission will notify editors/publishers of the provisions of the legislation in this regard.

Expenditure by Local Election candidates

2.28 As the 2004 local elections will be held on the same day as the European election, there is the possibility that European election candidates will be mentioned in local election candidates' promotional material and advertising. This will be regarded as promoting the candidacy of the European election candidate and also as expenditure incurred on behalf of that candidate.

2.29 A local election candidate, director of elections, etc., who intends to include a reference to a European election candidate in local election promotional material, advertising, etc., must be authorised to do so by the **European election candidate's election agent** or the national agent of the European election candidate's political party. A person who incurs such expenditure on behalf of a European election candidate without being authorised to do so, may be guilty of an offence.

2.30 Where a European election candidate is featured in local election material or advertising, the extent to which the European election candidate is featured should be used as a basis for calculating the amount to be accounted for in the Election Expenses Statement furnished to the Standards Commission by the election agent or national agent who authorised the election expense.

2.31 Election agents are advised to be aware of any such unauthorised expenditure being incurred by local election candidates.

Expenditure by Local Party Organisation

2.32 It should be understood that no separate or additional spending by a political party over

and above the statutory spending limit is allowed. Any expenditure incurred on the candidate by the local party organisation should either be:

- authorised by the national agent and accounted for in the national agent's Election Expenses Statement; or
- authorised by the election agent and accounted for in the election agent's Election Expenses Statement.

Expenditure by persons/bodies deemed to be connected to a candidate

2.33 The election agent 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 European election to either promote the candidate or to oppose another candidate at the European election, such expenses will be regarded as part of the first candidate's election expenses and will have to be accounted for 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. It is important, therefore, that election agents are aware of the activities of groups or individuals where expenditure is being incurred given that such expenditure may ultimately be deemed to be expenditure incurred on behalf of a candidate. The Standards Commission should be notified immediately of the activities of any such person or body.

Expenditure incurred in relation to a referendum

2.34 In the event that the proposed referendum on Irish citizenship takes place at the same time as the European election, election agents should note that where material relating to the referendum mentions a person's candidacy at the European election, this will be

regarded as promoting the candidate. If such material is used during the election period, the cost involved will be regarded as an election expense incurred on the candidate's behalf which must be authorised by the candidate's election agent and accounted for by him/her. This also applies to material circulated by, or on behalf of, a candidate, or a person or body deemed to be connected to a candidate, which refers to another candidate's European election campaign.

G. What are election expenses?

2.35 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 European election during the election period in order :

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

2.36 Election agents should note that supplies of property, goods or services free or below cost, as well as being donations to the candidate, are also election expenses which must

be authorised by the election agent or the national agent, and must be accounted for as election spending by the relevant agent at their commercial price. An example might be where a printer agrees to provide, for no charge, election literature which would normally cost €1,500. This supply of material must be authorised and accounted for at its commercial price less any normal discount which may be available.

2.37 Examples of some of the more common items which were accounted for as election expenses at the Dáil general election of 2002 are set out in Appendix 3.

Election Expenses which are met out of public funds

2.38 Arising from the judgment in the Desmond Kelly case (which was delivered in the High Court on 16 May 2002 and subsequently affirmed in the Supreme Court on 29 November 2002) where property, services or facilities are used for electoral purposes during the election period and the costs are met out of public funds, such costs must be accounted for as an election expense. The use of the material must be authorised by the candidate's election agent. It will be a matter for the relevant agent and the candidate, in consultation with the provider of the property, services or facilities, to determine the value of the usage for electoral purposes during the election period and to account for same in the Election Expenses Statement.

2.39 The Standards Commission is aware that candidates at the European election who are already public representatives, either as members of the European Parliament, members of the Houses of the Oireachtas or members of local authorities, may be required during the election period to communicate with constituents on matters connected with their role as public representatives. It is necessary in that regard to differentiate between use, in carrying out normal constituency business, of property, services or facilities where the costs are met out of public funds and use of such material for electoral purposes.

2.40 The position is that if, during the election period, property, services or facilities, where

the costs are met out of public funds, are used by a candidate for the purpose of sending **unsolicited material** to any one of the electorate in the constituency, the costs will be regarded as having been for electoral purposes and, as such, must be accounted for as an election expense. This would also apply to unsolicited material issued by elected representatives, other than the candidate, where the material either promotes or opposes a candidate at the European election or otherwise brings attention to his/her candidacy.

H. What are not election expenses?

2.41 Items which are not election expenses include:

- (i) the cost of purchasing copies of the register of electors;
- (ii) the reasonable living expenses (including accommodation) of a candidate and volunteers working on his/her behalf. Under this heading, in addition to accommodation costs, spending of up to **€50 per person per day** on refreshments, etc., is permitted and does not have to be accounted for. It is expected that election agents will exercise reasonable control over this expenditure and will take steps to ensure that participants are aware of the position;
- (iii) any sum disbursed by any individual out of the individual's own resources for any minor expenses (not exceeding €126.97 in any one payment) lawfully incurred in relation to the European election if the said sum is not repaid to the person. See paragraph 2.43 below for further elaboration on this;

- (iv) election expenses incurred at a previous Dáil, European or local election which were disclosed in an Election Expenses Statement furnished to the Standards Commission or to a local authority. See paragraphs 2.45 to 2.48 below for further information relating to this;
- (v) free post service provided by An Post to candidates under rule 22 of the Second Schedule to the European Parliament Elections Act, 1997;
- (vi) a free service provided by an individual, including use of the individual's motor vehicle, telephone, etc., where the service is not provided as part of the individual's work or business;
- (vii) a service provided at an European election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit in kind other than his or her normal remuneration (including recoupment of expenses) for that service. Where overtime payments are normally paid to an employee of a political party for working additional hours, this is regarded as "normal remuneration" and is not regarded as an election expense;
- (viii) normal media coverage and the **transmission** on radio or television of a broadcast on behalf of a candidate or a political party. This does not cover any production, or other, costs associated with a transmission on radio or television;
- (ix) the services of an accountant, or other person, (whether paid or not) employed for the **specific purpose** of ensuring compliance with the requirements of the legislation;

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

2.42 Examples of some of the more common items which are **not** election expenses and which were accounted for as election expenses at the Dáil general election of 2002 are set out in Appendix 4.

Minor expenses

2.43 With regard to paragraph 2.41(iii) above, it should be noted that the only persons who may **lawfully** incur expenses or make payments at a European election in relation to a candidate are the election agent of a candidate, the national agent of a political party, or a person authorised by either agent to incur election expenses. Accordingly, any other person who incurs expenses or makes payments at a European election on behalf of a candidate is committing an offence. The election agents of candidates and the national agents of political parties must maintain a record of any sum disbursed by an individual pursuant to paragraph 2.41(iii) above, where it is not intended to account for the expense as an election expense in the Election Expenses Statement to be furnished to the Standards Commission.

A record of all such "minor expenses" may require to be furnished to the Standards Commission. **Any such minor expenses will not be included in the calculation of the total election expenses incurred.**

2.44 A record of minor expenses is required 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.

Re-using election material

- 2.45 Election material acquired prior to 1 January 1998 and used at the European election need not be accounted for. Proof of such acquisition prior to that date may be requested by the Standards Commission.
- 2.46 If expenses incurred on material which is used at the European election have previously been accounted for in an Election Expenses Statement furnished to the Standards Commission in relation to a previous Dáil or European election or to a local authority in relation to a local election, the expenses will not need to be accounted for again. This does not apply to material used in relation to a referendum.
- 2.47 It will be necessary to account for material used, or re-used, at the European election which was acquired after **1 January 1998** where the cost **has not previously been included in an Election Expenses Statement** furnished to the Standards Commission or to a local authority. The Standards Commission is of the view that it might not be reasonable to apply current values to "older" material and that cognisance should be taken of the possibility that the material was not in original condition.
- 2.48 **If a candidate intends to use, or re-use, election material which is not to be accounted for at its full cost, his/her election agent should contact the Standards Commission Secretariat to ascertain what costs (if any) should be attributed to the use of such material.**

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

- 2.49 Certain expenses may have to be incurred on the candidate's behalf in order to facilitate his/her participation in the European 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 European election spending. The list below is indicative of what is envisaged in this regard:

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

I. Payment of invoices to suppliers

2.50 Claims for payment of election expenses, from suppliers, must be received by the election agent within 45 days after polling day (i.e. by 26 July 2004 in the case of the European election). **Claims received after this date cannot be paid by the election agent.** It is an offence to make a payment if the claim is received after the 45 days have elapsed. This is specifically provided for in the legislation. To avoid disputes, it is very important that agents should 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.

J. Furnishing an Election Expenses Statement after the European election

2.51 Shortly after the European election, the Standards Commission will send to election agents an **Election Expenses Statement and Statutory Declaration** form. On this form, the election agent must disclose to the Standards Commission details of all expenses incurred and payments made by, or on behalf of, the agent in relation to the candidate at the European election. Staff of the Standards Commission Secretariat will be available to provide advice to election agents to help them in completing the form. The completed form must be received by the Standards Commission within 56 days after polling day, which in the case of the European election is **6 August 2004**.

2.52 The following must be included in the election agent's Election Expenses Statement:

- i) details of all expenses incurred and payments made by the election agent and his/her authorised persons, including supplies of property, goods or services free or below cost;
- ii) details of authorised persons (which may include the candidate, the election agent of a candidate's running mate, or a local election candidate);
- iii) details of the amount of the candidate's spending limit which was assigned by the candidate to his/her political party. As stated at paragraph 2.18 a copy of the written agreement between the candidate and the political party must be furnished by the election agent with his/her Election Expenses Statement;

- iv) details of any disputed claims for payment;
- v) information concerning late claims for payment (i.e. claims received more than 45 days after polling day i.e. 26 July 2004);

A sample Election Expenses Statement Form is provided at Appendix 5.

Note: Details of minor expenses lawfully incurred, not exceeding €126.97 in any one payment, may also be required. (Such expenses must be recorded but are not included in the calculation of the total election expenses incurred.)

2.53 Invoices, receipts or vouchers for every payment of election expenses exceeding **€126.97** must be included with the Election Expenses Statement. The Standards Commission also reserves the right to request any invoice, receipt or voucher for an item of expenditure valued at less than €126.97 appearing in an Election Expenses Statement.

2.54 Minor omissions or errors found by the Standards Commission in an Election Expenses Statement may be corrected within 14 days.

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

K. Consequences of overspending by an election agent

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

- (i) it is a criminal offence, punishable by a fine of up to €1,269.74;

- (ii) a person can petition the High Court to set aside the result of the election;
- (iii) an election agent's overspend is deducted from the candidate's reimbursement.

L. Offences and penalties applicable to election agents at the European election

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

2.58 The penalty if an election agent is found guilty of the offence of breaching the expenditure limit is a fine of up to €1,269.74.

2.59 Payment of claims received more than 45 days after polling day can result in a fine of up to €1,269.74.

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

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

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

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

Chapter 3

National Agents

National Agents

The key issues which national agents of political parties with candidates contesting the European election should be aware of in order to ensure compliance with the requirements of the legislation are as follows:

- (A) Appointment of a national agent
- (B) Assignments by candidates to a political party
- (C) Spending by the national agent
- (D) Awareness of persons who may be incurring expenditure on behalf of a political party without being authorised to do so
- (E) "The Election Period" - Dates between which the spending limit applies
- (F) What are election expenses?
- (G) What are not election expenses?
- (H) Payment of invoices to suppliers
- (I) Furnishing an Election Expenses Statement after the European election
- (J) Consequences of overspending by the national agent
- (K) Offences and penalties applicable to a national agent at the European election

A. Appointment of a national agent

3.1 Each political party with one or more candidates contesting the European election must appoint a national agent. The national agent must have an office or place in the State to which claims, notices, writs, summonses and other documents may be sent.

3.2 Not later than the last day for receiving nominations at the European election the political party must notify the Standards Commission, in writing, of the name of the national agent and of the address of the office of the agent. If a political party has not notified the Standards Commission of the name of the national agent by this time, the "appropriate officer" (as defined by the legislation) will be deemed to be the national agent. If an appropriate officer has not been appointed, the party leader will be deemed

to be the national agent.

3.3 The Standards Commission will publish in *Iris Oifigiúil* the names of the national agents appointed or deemed to have been appointed.

3.4 A political party may, at any time, revoke the appointment of a national agent, and appoint another national agent in his/her place. Where this occurs, details of the new national agent must be provided to the Standards Commission.

B. Assignments by candidates to a political party

3.5 Where a candidate is contesting the European election on behalf of a political party, he/she may assign a portion of his/her statutory spending limit (see paragraph 3.14) to the party for spending at the European election by its national agent.

3.6 There is no obligation on a candidate under the legislation to assign any portion of his or her spending limit to the party. If all of a party's candidates at the European election refused to assign any of their spending limit to the party, the national agent would not be allowed to incur any expenditure at the European election, except as a person authorised to do so by a candidate's election agent. However, it is likely that parties will come to some arrangement in this regard with candidates. The only spending by a party which is allowed is the sum of the amounts which have been assigned to the party by its candidates from within the candidates' individual limit.

Example: If a party had 10 candidates each of whom assigned €50,000 to the party from within their individual spending limit, the national agent of the party would be entitled to spend a total of €500,000 at the European election. The amount of the limit available to be spent by each candidate's election agent would, as a result, be reduced by €50,000.

3.7 The legislation is not specific as to when the agreed assignments should be made to the party. Similarly, the legislation does not preclude a re-negotiation of agreed

assignments. The Standards Commission strongly advises national agents to ensure that assignments are agreed with each candidate before any expenses are incurred by either the national agent or the candidate's election agent.

3.8 The legislation requires that the assignment to the party must be agreed in writing. The written agreement, therefore, should clearly state the amount assigned to the party. It should be signed by both the candidate and an appropriate party official. Where assignments are subsequently re-negotiated, a new written agreement should be drawn up.

3.9 The candidate will be required to give his/her election agent a copy of the written agreement for furnishing to the Standards Commission with the election agent's Election Expenses Statement. National agents will not be required to furnish copies of the written agreements with their Election Expenses Statements. National agents should, however, retain copies of the written agreements.

C. Spending by the national agent

3.10 The national agent is the only person who can incur expenditure or make payments on behalf of the party out of the spending limit assigned to it by its candidates. It should be understood that no separate or additional spending on a candidate at individual level by a political party over and above the limits is allowed. Where expenses have been incurred by or on behalf of a political party before the appointment of a national agent, the party must furnish details of all such expenses, together with all relevant vouchers, to the national agent.

3.11 The national agent can authorise other persons to incur expenditure or make payments within specific limits set by the national agent. The national agent must account for spending by all such authorised persons.

- 3.12 Spending by the national agent out of the amount assigned to the party by its candidates can be either **on a candidate or at national level**.
- 3.13 Spending on a candidate is spending which identifies and promotes a candidate(s) in a constituency. This includes the party's 'team' in a constituency (i.e. candidate and running mate(s)).
- 3.14 The national agent can spend up to **100%** of each candidate's spending limit, if the candidate assigns this to the party. If the national agent decides to incur expenditure on a candidate, great care must be taken to ensure that the total spend on the candidate by his/her election agent and by the national agent does not exceed the statutory limit for that candidate [i.e. €230,000] in the constituency.
- 3.15 The national agent cannot incur expenditure or make payments out of the amount of the spending limit retained by the candidate **unless** the national agent is authorised to do so by the candidate's election agent. In this situation, the national agent would be an authorised person of the election agent and any such expenditure would have to be accounted for by the election agent.
- 3.16 No part of a candidate's spending limit can be transferred from one candidate to another in a constituency.
- 3.17 National spending is spending which by its content and geographic extent is clearly aimed at attracting votes in the country as a whole. It is not directly related to the promotion of a candidate, or a number of candidates, in a constituency. Reference should be to the party, its leadership, its policies or election issues in a national context. It should be reasonably evenly spread throughout the country having regard to the extent to which advertising media are available. Such spending is usually on items like the

party manifesto, party political broadcasts, tours by the party leader, etc.

D. Awareness of persons who may be incurring expenditure on behalf of a political party without being authorised to do so

3.18 As stated in paragraph 3.10 above, the national agent is the only person who can incur expenditure or make payments on behalf of a political party at the European election. National agents should be aware that if a person or body is incurring expenses at the European election to promote the party or its candidates, such expenses will be regarded as expenditure incurred by the political party, if the Standards Commission considers the person or body to have been:

- established by, or on behalf of, a political party for the purposes of incurring election expenses;
- is a member of, or is a branch or subsidiary organisation of, a political party; or
- is associated with, connected to, or under the influence or control of, a political party.

In such circumstances the expenses incurred must be accounted for by the national agent from within his/her expenditure limit. If such expenditure brings spending by the party over the relevant limit, an offence will have been committed. It is important, therefore, that national agents are aware of the activities of groups or individuals incurring expenditure, given that such expenditure may be deemed to be expenditure incurred on behalf of the party. The Standards Commission should be notified immediately of the activities of any such person or body.

- 3.19 A local party organisation (e.g. constituency or branch) cannot incur expenditure or make a payment in relation to the party's European election campaign, e.g. pay bills, without the authority of the national agent.
- 3.20 Bodies, such as trade unions or interest groups, which are **affiliated** to a political party will be regarded as connected to or associated with that political party. By extension, these bodies will be regarded as being connected to or associated with a candidate of a political party for the purposes of election expenses incurred on behalf of that candidate at the European election. If such expenditure is authorised by the candidate's election agent it must be accounted for by that agent. Otherwise it should be accounted for by the national agent.
- 3.21 Newspaper notices or advertisements promoting or opposing the interests of a party or candidate may only be placed if requested by a candidate, an election agent, a national agent or a person authorised by a candidate or either agent. "Third parties" or "other persons" may arrange newspaper advertising if they produce to the publisher a certificate from the Standards Commission that they have complied with the legal requirements outlined in paragraph 4.18 below. The Standards Commission will notify editors/publishers of the provisions of the legislation in this regard. [The provisions in question also apply to magazines and other periodical publications.]
- 3.22 National agents should notify the Standards Commission if they become aware of third parties or other persons incurring election expenditure either promoting or opposing a political party or a candidate. (See Chapter 4 relating to third parties and other persons.)

Expenditure by Local Election Candidates

- 3.23 As the 2004 local elections will be held on the same day as the European election, there is the possibility that local election promotional material and advertising may refer to the

party's European election campaign or its European election candidates. This will be regarded as promoting the interests of a political party or candidate(s) at the European election and also as expenditure incurred on behalf of the party or the European election candidate(s) concerned.

3.24 A local branch of a political party, a local election candidate or a director of elections, etc., who intends to include a reference to the party's European election campaign in local election promotional material, advertising, etc., must be authorised to do so by the party's national agent.

3.25 A local branch of a political party, a local election candidate or a director of elections, etc., who intends to include a reference to a European election candidate in local election promotional material, advertising, etc., must be authorised to do so by either the candidate's election agent or by the national agent of the candidate's political party.

3.26 A person who incurs such expenditure on behalf of a political party or European election candidate at a European election without being properly authorised to do so, may be guilty of an offence. National agents are advised to be aware of any such unauthorised expenditure being incurred.

3.27 Where a political party's European election campaign is referred to in local election material or advertising, the proportion of the cost attributable to the European election campaign will be regarded as an election expense incurred by the party in relation to the European election and must be accounted for in the Election Expenses Statement furnished to the Standards Commission by the national agent.

3.28 Where a European election candidate is featured in local election material or advertising, the extent to which the European election candidate is featured is regarded as an election expense incurred on the candidate's behalf at the European election and must be

accounted for in the Election Expenses Statement furnished to the Standards Commission by the election agent or national agent who authorised the election expense.

Expenditure incurred in relation to a referendum

3.29 In the event that the proposed referendum on Irish citizenship takes place at the same time as the European election, national agents should note that where material relating to the referendum mentions the involvement of the national agent's political party and/or any of its candidates at the European election, this will be regarded as promoting the party and/or the candidate(s) concerned. If such material is used during the election period, the cost involved will be regarded as an election expense incurred on behalf of the party and/or the candidate(s) which must be authorised by the party's national agent or the candidate(s)' election agent(s) and accounted for by that agent. This also applies to material circulated by, or on behalf of, a political party, or a person/body deemed to be connected to a political party, which refers to the European election campaign of any other party or candidate.

E. "The Election Period" - Dates between which the spending limit applies

3.30 See paragraphs 2.20 to 2.24 of Chapter 2 "*Candidates' Election Agents*"

F. What are election expenses?

3.31 An outline of what needs to be considered in accounting for election expenses is provided in paragraphs 2.35 to 2.40 of Chapter 2 "*Candidates' Election Agents*" and in the definition of election expenses in Appendix 1.

G. What are not election expenses?

3.32 An outline of what are not election expenses is provided in paragraphs 2.41 to 2.49 of Chapter 2 "*Candidates' Election Agents*".

H. Payment of invoices to suppliers

3.33 Claims for payment of election expenses, from suppliers, must be received by the national agent within 45 days after polling day (i.e. by 26 July 2004 in the case of the European election). **Claims received after this date cannot be paid by the agent.** It is an offence to make a payment if the claim is received after the 45 days have elapsed. This is specifically provided for in the legislation. To avoid disputes, it is very important that agents should 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 European election expenditure and must be accounted for in the Election Expenses Statement furnished to the Standards Commission.

I. Furnishing an Election Expenses Statement after the European election

3.34 Shortly after the European election, the Standards Commission will send to national agents an Election Expenses Statement/Statutory Declaration form. On this form, the national agent must disclose to the Standards Commission details of all expenses incurred and payments made by, or on behalf of, the agent in relation to the European election. Staff of the Standards Commission Secretariat will be available to assist national agents in completing the form. The completed form must be received by the Standards Commission within 56 days after polling day, which in the case of the

European election is **6 August 2004**.

3.35 The Election Expenses Statement form to be sent to each national agent will be tailored to reflect the number of candidates of the party standing at the European election. In each case, however, the following must be included on the form:

- i) details of all expenses incurred and payments made by the national agent and his or her authorised persons, including supplies of property, goods or services free or below cost;
- ii) details of authorised persons;
- iii) confirmation of the portion of each candidate's spending limit which was assigned by the candidates to the national agent's political party;
- iv) a breakdown of spending by the agent on the national campaign and on each individual candidate;
- v) details of any disputed claims for payment;
- vi) information concerning late claims for payment (i.e. claims received more than 45 days after polling day, i.e. after 26 July 2004);

Note: Details of minor expenses lawfully incurred, not exceeding €126.97 in any one payment, may also be required. (Such expenses must be recorded but are not included in the calculation of the total election expenses incurred.)

3.36 Invoices, receipts or vouchers for every payment of election expenses exceeding **€126.97** must be included with the Election Expenses Statement. The Standards Commission also reserves the right to request any invoice, receipt or voucher for an item

of expenditure valued at less than €126.97 appearing in an Election Expenses Statement.

3.37 Minor omissions or errors found by the Standards Commission in an Election Expenses Statement may be corrected within 14 days.

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

J. Consequences of overspending by the national agent

3.39 The consequences of an overspend by a national agent at the European election are:

- i) it is offence punishable by a fine of up to €1,269.74;
- ii) a person can petition the High Court to set aside the result of the election;
- iii) the amount of the overspend is deducted from the annual payment received by the party from the Exchequer.

K. Offences and penalties applicable to a national agent at the European election

3.40 It is an offence for a political party to fail to furnish to the national agent, in sufficient time to enable the agent to carry out his/her duties, relevant details of expenses incurred before the appointment of the national agent.

- 3.41 If a person who is not authorised to do so incurs expenditure or makes a payment in relation to the European election, he/she, on conviction, can be fined up to €1,269.74.
- 3.42 Payment of claims received more than 45 days after polling day can result in a fine of up to €1,269.74.
- 3.43 Failure to make such enquiries and maintain such records as are necessary for the purpose of furnishing an Election Expenses Statement and making a Statutory Declaration may result in a fine of up to €1,269.74.
- 3.44 Failure to furnish an Election Expenses Statement and Statutory Declaration to the Standards Commission by the statutory deadline can result in a fine of up to €1,269.74 and an on-going fine of up to €126.97 per day for each day, after a conviction, on which the Statement and Declaration are still outstanding.
- 3.45 The penalty if a national agent is found guilty of the offence of breaching the expenditure limit is a fine of up to €1,269.74.
- 3.46 Knowingly furnishing a false or misleading Election Expenses Statement to the Standards Commission can result in a fine of up to €25,394.76 and/or up to 3 years imprisonment.
- 3.47 Failure to furnish to the Standards Commission, within 7 days after the date of the order, a copy of a court order for the payment of a disputed claim may result in a fine of up to €1,269.74.

Chapter 4

Third Parties, Other Persons and Publishers

Third Parties, Other Persons and Publishers

The key issues which third parties, other persons and publishers should be aware of in order to ensure compliance with the requirements of the legislation are as follows:

- (A) What is a "Third Party" and "Other Persons"?
- (B) Requirements of a Third Party with regard to receipt of donations
- (C) Requirements of a Third Party and Other Persons with regard to incurring election expenses
- (D) What are election expenses?
- (E) Expenditure incurred in relation to a referendum
- (F) Payment of invoices to suppliers
- (G) Election Expenses Statements
- (H) Requirements for publishers under section 31(10) of the Electoral Act, 1997
- (I) Offences and Penalties applicable to third parties with regard to the receipt of donations
- (J) Offences and Penalties applicable to third parties and other persons with regard to incurring election expenses
- (K) Offences and Penalties applicable to publishers with regard to publishing unauthorised advertisements or notices

A. What is a "Third Party" and "Other Persons"?

- 4.1 A "third party" is defined in the legislation as meaning any person, other than a registered political party or a candidate at a European election, who accepts, in a particular year, a donation for political purposes, the value of which exceeds €126.97.
- 4.2 An "other person", is a person or group, other than a candidate, the election agent of a candidate, a national agent of a political party or a third party (as defined above), who intends to incur expenditure at the election by promoting or opposing a candidate or a political party.
- 4.3 The difference between an "other person" (referred to in paragraph 4.2 above) and a third party (referred to in paragraph 4.1 above) incurring expenditure at the European election

is that the "other person" would not have accepted, in a particular year, a donation the value of which exceeds €126.97.

B. Requirements of a Third Party with regard to receipt of donations.

Registration

4.4 As soon as possible after the receipt by it of a donation the value of which exceeds €126.97 and before incurring any expenses for political purposes or, as the case may be, incurring, subsequent to that receipt, any further such expenses, a third party must furnish to the Standards Commission in writing -

- (a) the name and address of the third party and the name and address of the "responsible person", or each "responsible person", in relation to the third party (a "responsible person" is the person(s) responsible for the organisation, management or financial affairs of the third party),
- (b) a statement of the nature, purpose and estimated amount of the donations to, and proposed expenses of, the third party in any year, and
- (c) an indication of the third party's connection, if any with any political party or candidate at a Dáil, Seanad or European election or referendum or otherwise.

What is a donation?

4.5 A donation is defined in the legislation as meaning any contribution given for political purposes by any person, whether or not the person is a member of a political party.

There are a number of important words in the definition of a donation.

(a) Donation.

This includes:

- (i)** a donation of money;
- (ii)** a donation of property or goods;
- (iii)** the free use of property or goods;
- (iv)** a free supply of services;
- (v)** the difference between the commercial price and the (lower) price charged for property, goods or services; and
- (vi)** a donation received by way of a contribution made to the net profit from a fund-raising event organised for the benefit of a third party. (The method of calculating the profit from a fund-raising event is outlined in Appendix 2. While the Appendix relates to **candidates** at an election, the same approach should be adopted in calculating the value of a donation in the case of a fund-raising event organised by a third party.)

(b) Political purposes.

The contribution must be given for political purposes. The definition of political purposes can be found at Appendix 1.

(c) Person.

This can be:

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

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

Prohibited Donations

- 4.6 Acceptance of an anonymous donation exceeding a value of €126.97 is prohibited. A donation is anonymous if a third party does not know the name and address of the donor.
- 4.7 If an anonymous donation is received by a third party, the Standards Commission must be notified by the third party within 14 days of its receipt. Also, the donation, or its value, must be remitted by the third party to the Standards Commission.
- 4.8 A third party is also prohibited from accepting a donation, or donations, from a person in the same calendar year valued in excess of €6,348.69. Where such a donation is received, the third party must notify the Standards Commission within 14 days and remit that donation, or that part of a monetary donation which is over the limit, to the Standards Commission. As an alternative, the third party 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.
- 4.9 A third party is prohibited from accepting a donation from an individual (other than an Irish citizen) who resides outside the island of Ireland or from a company which does not keep an office in the island of Ireland from which the carrying on of one or more of its principle activities are directed. This is known as a foreign donation.
- 4.10 Where a foreign donation is received, it must be notified by the third party to the Standards Commission within 14 days and must be remitted to the Standards Commission. As an alternative, the third party may return the donation to the donor and keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

4.11 **Failure to notify, remit or return, as appropriate, a prohibited donation is an offence.**

Opening of Political Donations Account

4.12 If a third party receives, in any particular calendar year, a **monetary** donation for political purposes, the value of which exceeds €126.97, it is required to open and maintain an account in a financial institution and lodge that donation and any further such monetary donations, of whatever value, received by the third party to that account. [It should be noted that a credit union is not regarded as a financial institution for the purposes of the legislation].

4.13 If a third party is already operating a political donations account, it is not necessary to open a new account specifically for the European election. In such circumstances monetary donations, of whatever value, received in relation to the European election, must be lodged to this account.

Furnishing of Statutory Documentation in relation to political donations accounts

4.14 Where a third party has been required to open a political donations account, the responsible person of that third party will be required to furnish to the Standards Commission a Certificate of Monetary Donations and a statement from the financial institution where the account is held. This documentation must be furnished by 31 March each year following the opening of the political donations account. The Certificate of Monetary Donations must be signed by the responsible person stating that all monetary donations received after the account was opened were lodged to the account and that all amounts debited from the account were used for political purposes. The Certificate must be accompanied by a Statutory Declaration.

4.15 The statement from the financial institution must specify the transactions that have taken place in relation to the account during the period beginning on the date of opening of the account up to the end of the calendar year, or the date of closing of the account if the third party ceases to exist.

4.16 The Standards Commission Secretariat will be in contact with registered third parties at the beginning of the relevant calendar year and will provide the relevant Certificate of Monetary Donations and Statutory Declaration form for completion.

4.17 Certificates of Monetary Donations and Statutory Declarations and their accompanying statements from financial institutions are retained by the Standards Commission and are not put on public display or otherwise disclosed, unless required by court order or an enquiry by the Standards Commission.

C. Requirements of a Third Party and Other Persons with regard to incurring election expenses

4.18 In addition to the requirement to register as a third party, (having received a donation in excess of €126.97), a third party which proposes to incur election expenses, must, before incurring any such expenses, separately furnish to the Standards Commission, in writing:

- i) the name, address and description of the person proposing to incur the expenses,
- ii) a statement of the nature, purpose and estimated amount of such expenses, and

- iii) an indication of the person's connection, if any, with any political party or candidate at the election.

4.19 An "other person" (as defined in paragraph 4.2 above) must also provide the above information to the Standards Commission before incurring any election expenses at a European election. Once a third party or other person has complied with the above requirements and is deemed not to be connected to a political party or a candidate at the European election, there is no limit to the amount of expenses which the third party or other person may incur at a European election.

D. What are election expenses?

4.20 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 European election during the election period in order :

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

4.21 A donation of property, goods or services which is received, free or below cost, and is used at the European election during the election period is regarded as an election expense which must be accounted for at its full commercial price. However, allowance may be made for any discount which is normally given or is generally available in respect of the property, goods or services.

E. Expenditure incurred in relation to a referendum

4.22 In the event that the proposed referendum on Irish citizenship takes place at the same time as the European election, third parties/other persons should note that where material relating to the referendum mentions the involvement of a political party or any candidate(s) at the European election, this will be regarded as either promoting or opposing the party and/or the candidate(s) concerned. If such material is used during the election period, the cost will be regarded as an election expense. Third parties/other persons circulating such material will be required to comply with the provisions of section 31(7) of the Electoral Acts (as outlined in paragraph 4.18 above).

F. Payment of invoices to suppliers

4.23 Claims for payment of election expenses, from suppliers, must be received by a third party/other person within 45 days after polling day, which, in the case of the European election is 26 July 2004. **Claims received after this date cannot be paid by the third party/other person.** It is an offence to make a payment if the claim is received after the 45 days have elapsed. This is specifically provided for in the legislation. To avoid disputes, suppliers should be informed of this requirement when placing orders for property, goods or services. Even though such claims cannot be paid, they are still regarded as election expenditure and must be accounted for in the Election Expenses Statement furnished to the Standards Commission.

G. Election Expenses Statements

4.24 Shortly after the European election, the Standards Commission will send to a third party or other person, who or which notified the Standards Commission of its intention to incur election expenses, an Election Expenses Statement and Statutory Declaration form. On this form, the third party or other person must disclose to the Standards Commission details of all expenses incurred and payments made by, and on behalf of, the third party or other person in relation to the European election. Staff of the Standards Commission Secretariat will be available to offer assistance in completing the form.

4.25 The completed form must be received by the Standards Commission within 56 days after polling day (6 August 2004, in the case of the European election).

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

- i) details of all election expenditure by the third party or other person;
- ii) details of any disputed claims;
- iii) details of any late claims for payment (i.e. claims received more than 45 days after polling day which must not be paid i.e. after 26 July 2004).

4.27 Invoices, receipts or vouchers for every payment of an election expense exceeding €126.97 must be included with the Election Expenses Statement. The Standards Commission reserves the right to request any invoice, receipt or voucher for an item of expenditure valued at less than €126.97 contained in an Election Expenses Statement.

4.28 Minor omissions or errors found by the Standards Commission in any document may be corrected within 14 days.

4.29 The Election Expenses Statement and Statutory Declaration form furnished to the Standards Commission will be laid before both Houses of the Oireachtas and made available to the public for inspection and copying. Details of the third party/other person and the expenditure incurred will be included in a report to the Chairman of Dáil Éireann and will be published on the website of the Standards Commission.

H. Requirements for publishers under section 31(10) of the Electoral Act, 1997

4.30 A publisher of a newspaper, magazine or other periodical publication must not publish any advertisement or notice in relation to the European election purporting to promote or oppose, directly or indirectly, the interests of a political party or a candidate at the European election, unless requested to do so by one of the following people:

- the national agent of a political party, or a person authorised in writing by such agent, or
- a candidate at the election, their election agent or person authorised in writing by such candidate or agent, or
- a person who produces to the publisher a certificate from the Standards Commission certifying that they have complied with the provisions of section 31(7) of the Electoral Act, 1997 in relation to the election (as outlined in paragraph 4.18 above)

4.31 These provisions of the legislation are not intended to prevent or restrict the lawful publication of any matter in relation to the European election in a newspaper or other publication, or the broadcast of such matter by radio or television or the lawful expression of opinion on any matter of public interest by any person.

I. Offences and Penalties applicable to third parties with regard to the receipt of donations

4.32 Failure by a third party to register with the Standards Commission on receipt of a donation the value of which exceeds €126.97 may result in a fine of up to €1,269.74.

4.33 Failure to notify the Standards Commission of, or remit, as appropriate, to the Standards Commission, or return, as appropriate, to the donor, a prohibited donation referred to in paragraphs 4.6 to 4.10 above may result in a fine of up to €1,269.74.

4.34 Failure to furnish to the Standards Commission, by 31 March each year, the statement of a financial institution, Certificate or Statutory Declaration, referred to at paragraphs 4.14 to 4.15 above, may result in a fine of up to €1,269.74 and an on-going fine of up to €126.97 per day for any day after a conviction on which the Statement, Certificate or Statutory Declaration is still outstanding.

4.35 Knowingly furnishing to the Standards Commission a statement of a financial institution, Certificate or Statutory Declaration which is false or misleading may result in a fine of up to €25,394.76 and/or up to 3 years imprisonment.

J. Offences and Penalties applicable to third parties and other persons with regard to incurring election expenses

- 4.36 If a person who is not authorised to do so incurs expenditure or makes a payment in relation to the European election, he or she, on conviction, can be fined up to €1,269.74.
- 4.37 Failure to notify the Standards Commission of intent to incur election expenses can result in a fine of up to €1,269.74.
- 4.38 Failure to make such enquiries and maintain such records as are necessary for the purpose of furnishing an Election Expenses Statement and making a Statutory Declaration may result in a fine of up to €1,269.74.
- 4.39 Failure to furnish an Election Expenses Statement to the Standards Commission by the statutory deadline can result in a fine of up to €1,269.74 and an on-going fine of up to €126.97 per day for any day, after a conviction, on which the Statement and Declaration are still outstanding.
- 4.40 Knowingly furnishing a false or misleading Election Expenses Statement to the Standards Commission can result in a fine of up to €25,394.76 and/or up to 3 years imprisonment.
- 4.41 Failure to furnish to the Standards Commission, within 7 days after the date of the order, a copy of a court order for the payment of a disputed claim may result in a fine of up to €1,269.74.

K. Offences and Penalties applicable to publishers with regard to publishing unauthorised advertisements or notices

- 4.42 Failure by the publisher of a newspaper, magazine or other periodical publication to

comply with the provisions of section 31(10) of the Electoral Act, 1997 (see paragraphs 4.30 to 4.31 above) is an offence which can result in a fine of up to €1,269.74.

Appendix 1

Definitions

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

'account' means an account in an institution in the State for the purpose of crediting and

debiting money received in respect of donations;

'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: the above definition does not include a credit union.)

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

'third party' means any person, other than a registered political party or a candidate at an election, who accepts, in a particular year, a donation for political purposes, the value of which exceeds €126.97.

'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;

'election expenses' - section 31 of the Electoral Act, 1997, as amended by section 50 of the Electoral (Amendment) Act, 2001 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.

[NOTE: *Costs incurred in developing new websites or developing additions to*

existing websites for the purpose of promoting a candidate or a political party on the internet are election expenses.]

(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.

(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, 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 campaign workers, insurance and other costs.

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 Electoral Act, 1997, as amended, a donation includes the **net** value of a contribution to a fund-raising event. 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, the gross contribution to the event would be €1,000. If the cost of running the event was €20 per person, a sum of €200 would be deducted from the person's 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 the person's contribution to the fund-raising event.

Fund-raisers organised by a political party

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

- 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 exceeding a net value of €5,078.95.
- The maximum limit of €6,348.69 for acceptance by political parties of donations from the same person in the same year also applies to the net value of contributions to fund-raising events.
- If the net value of any individual monetary donation to a fund-raising event exceeds €126.97, the accounting unit of the party (i.e. branch or head office) which organised the event will, if it does not already have one, be required to open a political donations account.
- If the net value of each individual monetary donation to the event does not exceed €126.97, 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 candidate

- The candidate will not be required to disclose in a donation statement the total value of the proceeds of the fund-raising event.
- The candidate will be required to disclose any donations from a person contributing to the event which exceed a net value of €634.87.
- The maximum limit of €2,539.48 for acceptance by candidates of donations from any one person in the same year, also 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 €126.97, 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 each individual monetary donation to the event does not exceed €126.97, the candidate will not be required to open a political donations account.
- If the candidate already has opened 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 the party

Funds raised at an event organised on behalf of a candidate by a person or group other than the candidate or the candidate's political party (e.g. "Friends of" groups) will be treated as follows:

If the funds are handed over to the candidate

- The fund-raising person/group is regarded as an **intermediary accepting donations on the candidate's behalf.**
- The candidate will not be required to disclose in a Donation Statement the total value of the proceeds of the event received from the fund-raising person/group.
- The candidate will be required to disclose any donations from **individual contributors to the fund-raising event** which exceed a net value of €634.87.
- The maximum limit of €2,539.48 for acceptance by candidates of donations from any one person in the same year applies also to **the net value of contributions to fund-raising events.**
- If the net value of any individual monetary donation to the event exceeds €126.97, and the candidate does not already have one, he/she 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 any individual monetary donation to the event does not exceed €126.97, 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.

If the funds are not handed over to the candidate

- The fund-raising person/group is **not** regarded as an **intermediary accepting donations on the candidate's behalf**.
- If the net value of any donation to the fund-raising event exceeds €126.97 the fund-raising person/group will be required to register with the Standards Commission as a third party and to comply with the rules applying to third parties as set out in Chapter 4.
- If the fund-raising person/group intends to incur expenditure at the European election, whether or not it receives a donation exceeding €126.97, it will be necessary to comply with the rules applying to other persons as set out in Chapter 4.
- Expenditure incurred at the European election by the fund-raising person/group may be deemed to be covered by paragraph 2.33 above.
- Any election expenses incurred, or payments made, by the fund-raising person/group on behalf of the candidate may be regarded as donations to the candidate.
- If the total value of donations from the fund-raising person/group to the candidate exceeds €634.87, the candidate may be required to disclose details of same in his/her Donation Statement.
- **The maximum value of donations which the candidate can accept from a fund-raising person/group which is not regarded as an intermediary is €2,539.48 in any year.**

Appendix 3

Items accounted for as election expenses at the Dáil General Election 2002

The following are examples of the more common items which were accounted for as election expenses after the Dáil General Election 2002. **The list is not exhaustive.**

A - Advertising

Newspaper Advertisements

Magazine Advertisements

Website Design

B - Publicity

Photography

Press Conference, i.e. room rental, p.a. system hire

C - Election Posters

Design and Printing of Election Posters

Erection of Election Posters

Removal of Election Posters (if removed before the end of the election period)

Cable Ties

Timber/Materials for Erecting Posters.

D - Other Election Material

Design and Printing of Canvass Cards

Design and Printing of Election Leaflets

Manifestos/Newsletters

Badges/Banners

Delivery of Election Leaflets

E - Office and Stationery

Rental of an Election Office

Photocopying

Use of Fax Machines

Telephone Bill (only during the election period)

Electricity Bill (only during the election period)

Envelopes (Ordinary or Oireachtas)

F - Transport and Travel

Couriers

Petrol/Diesel which was reimbursed to a candidate, campaign workers/drivers

Hire of Vehicles

G - Market Research

Opinion Poll or similar survey which has been taken within 60 days of polling day

H - Campaign Workers

Wages/Salaries for Campaign Workers

Insurance

If you have any queries relating to expense items which you may incur during the election

period, the Standards Commission Secretariat are available to assist when completing the Election Expenses Statement.

Appendix 4

Items which are not election expenses and which were included in Election Expenses Statements at the Dáil General Election 2002

The following are examples of the more common items which are not election expenses and which were accounted for, incorrectly, as election expenses after the Dáil General Election 2002. **The list is not exhaustive.**

A - Advertising

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

B - Publicity

Free post service provided to candidates by An Post

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.

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 where the amount incurred per day on any one person did not exceed the amount determined by the Standards Commission as constituting reasonable living expenses.

If you have any queries relating to expense items which you may incur during the election period, the Standards Commission Secretariat are available to assist when completing the Election Expenses Statement.