

**Guidelines
for the
Seanad General Election
2007**

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Introduction

1. These guidelines for the 2007 general election to the Seanad have been published by the Standards in Public Office Commission (the Standards Commission) in accordance with section 4(6)(a) of the Electoral Act 1997, as amended ("the Act").
2. The Standards Commission was established in December 2001 by the Standards in Public Office Act 2001. The members of the Standards Commission are:

The Hon. Mr Justice Matthew P. Smith, former 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 Kavanagh, a former Member of Dáil Éireann.

The Standards Commission has a permanent secretariat based at 18 Lower Leeson Street, Dublin 2.

3. The Act has been amended a number of times. The most significant amendments were contained in the 1998 and 2001 Electoral (Amendment) Acts. In these guidelines a reference to a section of the Act should be read as including any amendment(s) to that section.
4. There is no legislative limit on expenditure for the Seanad election. Insofar as the Seanad election is concerned, the electoral legislation is of relevance to candidates only in relation to donations. These guidelines cover the main requirements of the Act relating to the acceptance and disclosure of political donations received by candidates to the 2007 general election to the Seanad.

5. The Standards Commission is required to publish guidelines and give advice on how the Act works in practice. 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 Act. Advice is given either in writing, including by email, or by responding to telephone enquiries.
6. If a person is in any doubt about any aspect of the legislation, he or she should contact a member of staff of the Standards Commission Secretariat. The Standards Commission recommends that advice should be sought immediately if a matter arises about which there is uncertainty. By so doing, it is less likely that the issue will cause a difficulty later.
7. The staff of the Standards Commission Secretariat will be available before, during and after the election to help resolve any difficulties that may arise. They can be contacted at the phone numbers listed on the inside cover page.
8. Failure to comply with certain provisions of the Act is a criminal offence. The most serious offence is to knowingly furnish a false or misleading Donation Statement. This is punishable by a fine of up to €25,394.76 and/or imprisonment for up to 3 years.
9. The Guidelines reflect the legal position as it applies at the time of publication, i.e., May 2007. The Standards Commission may issue further guidelines to candidates on specific issues which may arise during the course of the election.
10. Tá leagan Gaeilge de na treoirínte seo ar fáil.

Requirements in relation to donations

Candidates at the Seanad election should be aware of the following in order to ensure compliance with the legislation:

- (A) Keeping a record of donations received in relation to the election.
- (B) Opening and maintaining a political donations account when required to do so.
- (C) Prohibited donations.
- (D) Furnishing the required statutory documentation after the election, including tax clearance requirements.
- (E) Offences and penalties applicable to candidates at the election.

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

What is a donation?

11. 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 this definition of a donation.

(a) Donation

A donation 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. This can include a loan provided to a candidate by a financial institution at terms and conditions which are more

favourable than that provided by the financial institution to other individuals. For the Standards Commission's in relation to loans, see paragraph 18 below;

- (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

A person 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.

12. Only donations with a value, or an aggregate value from the same person, of more than **€634.87** must be disclosed. If the same person makes more than one donation to a candidate in relation to the election, the donations must be aggregated and treated as a single donation for disclosure purposes.
13. If more than one member of the same family, or other group, makes 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 donations must be aggregated and treated as a single donation for disclosure purposes and for the purposes of observing the maximum

limit applying to the acceptance of donations (see paragraphs 25 to 28 in relation to donations in excess of the prescribed limit). Similarly, if a company and any of its directors makes a donation to the same candidate, it must be clear that these are separate donations. In such circumstances the Standards Commission may look for evidence that the donations are from separate legal entities. In each case, the candidate must make whatever enquiries are necessary in order to be satisfied as to the position with regard to the donation.

14. A donation to a candidate also includes money given to the candidate by his/her political party.
15. A donation made to a candidate through an intermediary is deemed to be a donation made to the candidate.
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. The candidate must, however, ensure that he/she receives a written acknowledgement of receipt of the donation from the party.

What is not a donation?

17. Items not regarded as donations to a candidate include:
 - (i) Free post service provided to the candidate (i.e., Litir um Thoghacán).
 - (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.

It is important to note that this provision only applies where the candidate, by virtue of his/her position or office, is entitled to use the services/facilities provided. For instance, if a candidate who is not a Member of the Houses of the Oireachtas is provided with the free use of Oireachtas facilities (e.g., envelopes, telephones), it is regarded as a donation from the Member allowing the candidate to avail of the facilities.

- (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 an election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit in kind other than his or her normal remuneration (including recoupment of expenses) for that service.
- (v) Normal media coverage and the transmission 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

Loans to candidates

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

Where an individual or body, which is not a financial institution, gives a loan to a candidate, it must be evident that the loan offered is a *bona fide* loan. In that regard, the following would apply:

- (i) as with a loan from a financial institution, the terms and conditions applying to the loan and its repayment must be stated clearly in writing;
- (ii) interest is chargeable on the loan at a rate (whether fixed or variable) which reflects the interest charged by financial institutions on loans of a similar amount and duration. Where the interest charged is less than the lowest rate available from a financial institution, the benefit accruing from the difference in rates is regarded as a donation to the candidate;
- (iii) the Standards Commission may require sight of the terms and conditions, including the interest charge, applying to the loan and may require confirmation that the loan has been repaid in accordance with these terms and conditions. If the loan is not repaid in accordance with the terms and conditions, or is only partially repaid, the benefit of such non-repayment may be regarded as a donation to the candidate.

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

- 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, 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.
- 20. If a candidate already operates a political donations account it is not necessary to open a separate account specifically for the general election. All monetary donations, however, of whatever value, received in relation to the election must be lodged to the account.
- 21. It should be noted that a candidate who is elected or a person who is nominated to the Seanad will have an on-going requirement as a Member of Seanad Éireann to maintain

his/her political donations account and will be required, on an annual basis, to furnish documentation relating to the account to the Standards Commission.

C. Prohibited donations

Anonymous donations

22. 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 14 days of its receipt. The donation or its value must also be remitted by the candidate to the Standards Commission.

Foreign donations

23. A candidate must not accept a foreign donation. A foreign donation is a donation, of whatever value, given by an individual (other than an Irish citizen) who resides outside the island of Ireland or by a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which the carrying on of one or more of its principal activities is directed.
24. A foreign donation must be notified and remitted to the Standards Commission by the candidate within 14 days. As an alternative, the candidate may return the donation to the donor. If the donation is returned, the candidate must keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

Donations in excess of the prescribed limit

25. 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 donations must be aggregated for the purpose of observing the maximum limit.

26. 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. It is important to note that, although the maximum limit may not apply to a donation of a constituency office, such a donation must be disclosed if the value exceeds **€634.87**.
27. 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.
28. 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 the 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

29. 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.
30. 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.
31. **Failure to notify, remit or return, as appropriate, a prohibited donation is an offence.**

D. Furnishing the required statutory documentation after the election, including tax clearance requirements.

Unsuccessful candidates

32. If a candidate is unsuccessful at the election, he or she must, within **56 days** after the relevant polling day, furnish to the Standards Commission a Donation Statement and Statutory Declaration. The Donation Statement must give details of all donations received **in relation to the election** with a value greater than **€634.87**. It should be noted that "in relation to the election" means donations received at any time in relation to the election, and includes donations received before the date of the Seanad General Election Orders 2007, and donations which might be received after polling day. Donations made by the same person to the same candidate in relation to the election must be aggregated and treated as a single donation.

33. 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.
34. If a monetary donation in excess of **€126.97** was received and the candidate was required to open a political donations account (see paragraph 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 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 is accompanied by a separate Statutory Declaration.
35. Failure to send a Donation Statement and all accompanying documentation to the Standards Commission by the due date is an offence.
36. The staff of the Standards Commission Secretariat will contact unsuccessful candidates after the 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

37. If a candidate is elected or nominated to the Seanad, 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, he/she will be required, as a Member of Seanad Éireann, to furnish an annual Donation Statement and Statutory Declaration and accompanying documentation to the Standards Commission. This Donation Statement/Statutory Declaration is completed in respect of the previous calendar year and must be submitted by **31 January** each year. Forms for this purpose are provided to Members of the Seanad by the Standards Commission in early January each year.

38. The first Donation Statement/Statutory Declaration and accompanying documentation submitted by Members of the Seanad after the 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.
39. Copies of Donation Statements and Statutory Declarations furnished by both unsuccessful candidates and by Members of the Seanad 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 Standard Commission. Details of the donations disclosed are published on the website of the Standards Commission.
40. 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.

Tax clearance requirements

41. Section 21 of the Standards in Public Office Act 2001 provides that candidates who are elected or nominated to the Seanad must provide the following to the Standards Commission within **nine** months of their election or nomination:
 - a Tax Clearance Certificate (or Application Statement) issued not more than **nine** months either side of the election or nomination date, and
 - a Statutory Declaration, made not more than **one** month either side of the election or nomination date, to the effect that, to the best of his/her knowledge, his/her tax affairs are in order and that nothing prevents the issue of a Tax Clearance Certificate.

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

E. Offences and penalties applicable to candidates at the election.

42. Failure to take the appropriate action in relation to a prohibited donation as specified in paragraphs 22 (anonymous donations), 24 (foreign donations) or 28 (donations in excess of the prescribed limit) may result in a fine of up to **€1,269.74**
43. Knowingly accepting a prohibited donation, referred to at paragraph 29 above, may result in a fine of up to **€1,269.74**
44. Failure to furnish to the Standards Commission a Donation Statement, Certificate of Monetary Donations or statement from a financial institution 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 required statutory documentation is still outstanding.
45. Knowingly furnishing to the Standards Commission a Donation Statement or Statutory Declaration, Certificate of Monetary Donations or statement from a financial institution which is false or misleading may result in a fine of up to **€25,394.76** and/or up to **3 years imprisonment**.

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: this definition does not include a credit union.)

'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 Parliament 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.

Appendix 2

Fund-raising events

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

In accordance with the provisions of sections 22(2)(a)(vi) & (vii) of the Act, a donation includes the **net** value of a contribution to a fund-raising event. The net value of a contribution to an event is arrived at by first calculating the net profit from the event (i.e., by deducting the cost of running the event from the total amount raised by the event). The net profit is then attributed to the number of people contributing to the event in proportion to the contribution made by each person. This gives the net value of each person's contribution to the fund-raising event.

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

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 which exceeds 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.
- Where 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 such 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 person/group will be required to register as a "third party" with the Standards Commission and comply with the requirements of the legislation applying to

third parties with regard to the opening of a political donations account and the acceptance of certain donations;

- any election expenses incurred, or payments made, by the fund-raising group on behalf of the candidate are regarded as donations to the candidate;
- if the aggregate value of donations from the fund-raising group to the candidate exceeds **€634.87**, the candidate will be required to disclose the details in his/her Donation Statement;
- **The maximum value of donations which the candidate can accept in any year from a fund-raising person/group which is not regarded as an intermediary is €2,539.48.**