

GUIDELINES FOR THE EUROPEAN PARLIAMENT ELECTION

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under section 4(6)(a) of the Electoral Act 1997, as
amended**

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Introduction

1. Guidelines for the European Parliament election have been published by the Standards in Public Office Commission (the Standards Commission), under section 4 of the Electoral Act 1997 as amended (referred to hereafter as "the Act"). The other relevant Acts of the Oireachtas are the Electoral (Amendment) Acts, 1998, 2001, 2002, 2002 (No. 2) and 2004. In these guidelines a reference to a section of the Act should be read as including any amendment(s) to that section.
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 of election expenses to qualified candidates.
3. The Standards Commission was established in December 2001 by the Standards in Public Office Act, 2001. The members of the Standards Commission are:

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

Mr John Buckley, 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 Michael Smith, 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 election. These are:

- candidates;
- election agents of candidates and
- national agents of political parties.

The Act also imposes obligations on publishers of newspapers and magazines, etc., on "third parties" receiving political donations and on "other persons" who incur expenditure in promoting or opposing a political party or a candidate at the 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 Act requires that a person must act in accordance with guidelines or advice published or given by the Standards Commission unless, by so doing, he/she would be contravening another provision of the Act. Advice is given either in writing, including by electronic mail, or by responding to telephone enquiries. Staff of the Standards Commission Secretariat may wish to meet with candidates and their election agents to ensure that they are familiar with the requirements of the legislation.

6. If a person is in any doubt about any aspect of the legislation, he/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 election to help resolve any difficulties that may arise.

7. The Standards Commission Secretariat can be contacted at the telephone numbers listed on the cover page. Staff 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. This may include visits to the constituency, collecting samples of election material, recording details of advertisements in newspapers and periodicals, etc.
9. The guidelines are divided into four chapters which set out the requirements attaching to each category of person. 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 election. The Guidelines have been written in the clearest possible terms to assist understanding.
10. Failure to comply with certain provisions of the Act is a criminal offence. The most serious offence (knowingly furnishing a false or misleading Donation Statement or Election Expenses Statement) is punishable by a fine of up to €25,394.76 and/or imprisonment for up to 3 years.
11. Tá leagan Gaeilge de na Treoirínte seo ar fáil.

Chapter 1 - Candidates

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

- (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 election as a party candidate)
- (C) Keeping a record of donations received in relation to the election
- (D) Opening and maintaining a political donations account when required to do so
- (E) Prohibited Donations
- (F) Persons who may be incurring unauthorised expenditure to promote or oppose candidates at the election
- (G) Furnishing the required statutory documentation after the election
- (H) Claiming a reimbursement of election expenses if eligible to do so
- (I) Offences and penalties applicable to candidates at the election

A. Appointment of an election agent

- 1.1 Each candidate must appoint an election agent. The election agent, for the purposes of this Act, is the person who will be responsible for accounting for expenditure on the candidate's campaign. The election agent appointed under this Act is not necessarily the same person who will be present on the candidate's behalf for the counting of votes and who acts on the candidate's behalf for other specific purposes set out in the 1992 Electoral Act.
- 1.2 Ideally the appointment of the candidate's election agent should be made before any election expenses are incurred. If election expenses are incurred before the election agent is appointed, the candidate must give the election agent details of any such expenses together with all relevant invoices/receipts. It is an offence for a candidate to fail to comply with this requirement.
- 1.3 Candidates should give careful consideration to the appointment of an election agent. The election agent should be comfortable with handling money and keeping accounts. He/she must maintain proper records of all transactions relating to spending on the candidate's election campaign and retain receipts, invoices or vouchers for inspection, and for public display, by the Standards Commission.
- 1.4 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 election (11 May 2009). There is no provision on the nomination papers for the candidate to give details of his/her election agent. The Standards Commission has issued a form to Returning Officers which a candidate may use to give details of his/her election agent. The Returning Officer will inform the Standards Commission of the name and address of the election agent 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 (i.e. the person who will be responsible for accounting for expenditure on the candidate's campaign). 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.

- 1.5 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 by the last day for receiving nominations 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 Act applying to election agents (see Chapter 2).
- 1.6 Apart from the national agent of a 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 election campaign. A candidate's election agent can authorise other people, including the candidate, to incur expenses or make payments in connection with the candidate's campaign. A person who is authorised in this way is entitled 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 election as a party candidate)

- 1.8 If a candidate is contesting the 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. 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	€230,000.00
Amount assigned by candidate to the party	€100,000.00
Amount which election agent can spend	€130,000.00

1.9 The Act does not specify when the agreed assignment between the candidate and the political party should be made. Similarly, the Act 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 Act provides 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.

Paragraphs 1.8 - 1.10 above are not relevant to non-party candidates.

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

1.11 It is the candidate who is required to comply with the requirements of the Act regarding the disclosure of donations. It is important, therefore, that candidate keeps a record of donations received in relation to the election for the purposes of furnishing a Donation

Statement to the Standards Commission after the election (see section G).

The candidate is also responsible for ensuring that donations accepted by him/her are not prohibited under the Act (see section E). The onus is on the candidate to satisfy him/herself that a donation is not prohibited under the Act. This is particularly important where donations are received online. Where a candidate is accepting donations through a website he/she must ensure that he/she can properly identify the source of the donation and that he/she is not prohibited from accepting a donation from the donor. It is also important for disclosure purposes and for the purposes of adhering to the maximum acceptance limit that there is a system in place which will aggregate donations received online from the same donor (whether by credit card, laser card etc).

What is a donation

1.12 A donation is defined in the Act 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.

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. Details of the Standards Commission's position with regard to the issuing and repayment of loans can be found at paragraph 1.20 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.

(c) Person.

This can be:

- (i) an individual;
- (ii) a body corporate (e.g. a public or private company) and any subsidiary thereof. In this regard section 155 of the Companies Act should be applied when determining whether a company is a subsidiary of another company. Where donations are received from associated companies the candidate should enquire from the donors whether, under section 155 of the Companies Act, one or other of the companies is a subsidiary of the other.
- (iii) an unincorporated body of persons, e.g. a political party, a partnership, a residents association, a lobby group.

1.13 Donations with a value, or donations from the same person with an aggregate value of more than **€634.87** are required to be disclosed. Where the same person makes more than one donation to a candidate in relation to the 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 1.28 to 1.31). 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.

- 1.15 A donation to a candidate also includes money given to a candidate by his/her political party.
- 1.16 Where expenses are incurred on a candidate's behalf by an individual or body other than a political party as defined in the Act and the expenses are borne by the individual/body, the expenses may be regarded as a donation to the candidate. This would include expenses incurred by a European political party (see para 1.20 below and Chapter 4), a local elections candidate (see paragraph 1.39 below) or a third party (see Chapter 4).
- 1.17 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 the candidate receives a written acknowledgement from the party of receipt of the donation.
- 1.18 A donation made to a candidate through an intermediary is deemed to be a donation made to the candidate.

What is not a donation

1.19 Items not regarded as donations to a candidate include:

- (i) free post service provided to candidates by An Post;
- (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 Seanad;

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;

There are a couple of important points to note in relation to this provision as follows:

- a) This provision only applies where the candidate, by virtue of his/her position or office, is entitled to use the services/facilities provided out of public funds. 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.

- b) Section 22(2)(b)(ii) of the Act provides that any payment, service or facility provided to a **person** provided out of public funds by an institution of the European Union or other intergovernmental organisation to which the State is a party, pursuant to specified legislation, or by virtue of the person being an MEP or a political group is not regarded as a donation. It therefore follows that funds provided to an MEP/political group by the European Parliament is not regarded as a donation. It is also the Standards Commission's understanding that funding is made available by political groups to Irish MEPs/political parties by virtue of their membership of the political group. Where such funds have been provided to the political group by the European Parliament, then by virtue of Section 22(2)(b)(ii) of the Act those funds would not be classified as donations if made available by the group to MEPs/political parties.

- (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;

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

- (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 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 Act;
- (viii) the services of personation officers on polling day.

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

1.20 As stated in paragraph 1.19(vi) above expenses incurred by a political party on behalf of

a candidate are not regarded as a donation to the candidate. A political party is defined in the Act as a party registered in the Register of Political Parties (in accordance with section 25 of the Electoral Act 1992) as a party organised to contest a Dáil or European election or both such elections. Only expenses incurred by a registered political party are not regarded as a donation to a candidate. If an organisation is not registered in the Register of Political Parties as a party organised to contest a Dáil or European election it is not regarded as a political party for the purposes of the Act. In that regard, therefore, expenses incurred by "third parties" (see Chapter 4) on a candidate are regarded as donations to the candidate. Similarly a "European political party" which is not registered as a political party in this jurisdiction is not regarded as a political party for the purposes of the Act. Any expenses incurred by a "European political party" on a candidate's behalf may be regarded as a donation to the candidate. In each case the donations are subject to disclosure limits and to the rules regarding prohibited donations (see paras 125 to 134 below).

Loans to candidates

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

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

- 1) 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.

- 2) 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.
- 3) The Standards Commission may require sight of the terms and conditions, including the interest charge, applying to the loan and may require confirmation that the loan has been repaid in accordance with these terms and conditions. If the loan is not repaid in accordance with the terms and conditions, or is only partly repaid, the benefit of such non-repayment may be regarded as a donation to the candidate.

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

- 1.22 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 (a political donations account). (A credit union is not regarded as a "financial institution" for the purposes of the Act.) 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. The account should be in the candidate's name and he/she should be an authorised signatory on the account. All monies withdrawn from the account must be used for political purposes.
- 1.23 If a candidate already operates a political donations account he/she should not open a separate political donations account specifically for the election. The candidate should ensure, instead, that all monetary donations, of whatever value, received in relation to the election are lodged to his/her existing political donations account. If the candidate wishes to open a specific "election account" he/she can transfer money from his/her political donations account to the election account. Monies transferred to an election

account could be regarded as having been used for electoral purposes.

- 1.24 It should be noted that MEPs have an ongoing requirement to maintain a political donations account and will be required, on an annual basis, to furnish documentation relating to the account to the Standards Commission.

E. Prohibited Donations

Anonymous donations

- 1.25 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 to the Standards Commission.

Foreign donations

- 1.26 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.
- 1.27 A foreign donation must be notified and remitted to the Standards Commission by the candidate within 14 days of its receipt. As an alternative, the candidate may return the donation to the donor. If the donation is returned the candidate must keep a written record of that return for the purpose of its being furnished to the Standards Commission, if required.

Donations in excess of the maximum prescribed limit

- 1.28 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.

- 1.29 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.
- 1.30 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.
- 1.31 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

- 1.32 There is another type of donation which a candidate is prohibited from accepting. To explain this it is necessary to say that, in accordance with section 24(1A) of the Act, 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. 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.

1.33 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.

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

F. Persons who may be incurring unauthorised expenditure to promote/oppose candidates at the election

1.35 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 election campaign if this is not authorised by the candidate's election agent or the national agent of the candidate's political party.

1.36 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.

1.37 "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 of Authorisation from the Standards Commission confirming that they have complied with their legal obligations as outlined in paragraph 4.19 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 Act in this regard.

1.38 Each candidate is advised to be aware of any such expenditure being incurred on his/her behalf by directors of elections or other persons. If a candidate becomes aware that a person, other than his/her election agent or the national agent of the political party, is incurring expenses on his/her behalf at the election, the candidate should ensure that the

expenditure 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 of Authorisation to incur the expenses has been issued to the person by the Standards Commission (See Chapter 4). If necessary, the candidate should bring the matter to the attention of the Standards Commission and appropriate action will be taken.

1.39 As the 2009 local elections and the Dáil bye-elections in Dublin Central and Dublin South are being held on the same day as the European election, European election candidates will need to be particularly aware of local election or Dáil bye-election candidates who may be including a reference to the European election candidate in their local election or Dáil 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 the European election candidate. Where the full cost of the promotional material or advertising is borne by the local election candidate or the Dáil bye-election candidate, the cost of the % of the European election candidate's feature in such material/advertising is regarded as a donation to the European election candidate by the local election candidate or Dáil bye-election candidate.

1.40 A local election candidate, Dáil bye-election candidate, director of elections, etc., who intends to include a reference to a European election candidate in local election or Dáil 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.

G. Furnishing the required statutory documentation after the election

Unsuccessful candidates

1.41 If a candidate is unsuccessful at the election, he or she must, within 56 days after polling day (i.e. by 31 July 2009), 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.

Donations made by the same person to the same candidate in relation to the election must be aggregated and treated as a single donation. It should be noted that "in relation to the election" means donations received at any time in relation to the 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 1.22), or if the candidate already had a political donations account, the Donation Statement must be accompanied by a statement provided by the financial institution where the account is held (bank statement). If a new political donations account was opened the bank statement must specify the transactions that have taken place in relation to the account during the period beginning on the date of opening of the account and ending on polling day at the election. If an existing political donations account was used the bank statement must specify the transactions which have taken place on the account since 1 January 2009. 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 56 days of polling day is an offence.

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

Successful candidates

- 1.46 If a candidate is **elected** at the 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 he/she will be required, as an MEP, 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 will be provided to MEPs by the Standards Commission in early January each year.
- 1.47 The Donation Statement/Statutory Declaration and accompanying documentation submitted by MEPs must include donations with a value, or aggregate value from the same person, greater than €634.87 received during the previous calendar year. The statement from the financial institution must specify the transactions that have taken place on the account during the previous calendar year.
- 1.48 Copies of Donation Statements and Statutory Declarations furnished by both unsuccessful candidates and by MEPs 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. Details of donations disclosed are published 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.

H. Claiming a reimbursement of election expenses by eligible candidates

- 1.50 A qualified candidate is entitled to apply for a reimbursement of his/her 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 behalf of the candidate.

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

- expenses incurred on behalf of the candidate and accounted for by the candidate's election agent, and
- expenses incurred on behalf of the candidate 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 statutory documentation:

- completed election agent's Election Expenses Statement/Statutory Declaration;
- completed national agent's Election Expenses Statement/Statutory Declaration (if applicable);
- 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.

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 issue an application form for a reimbursement of election expenses until the correctly completed documentation has been received.**

- 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 to the 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 Act to pass on 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 election.

I. Offences and penalties applicable to candidates at the 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/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 Knowingly accepting a prohibited donation, referred to in paragraph 1.32 above, may result in a fine of up to €1,269.74.
- 1.61 Failure to take the appropriate action in relation to a prohibited donation as specified in paragraphs 1.25 (anonymous donations), 1.27 (foreign donations) or 1.31 (donations in excess of the prescribed limit) may result in a fine of up to €1,269.74.
- 1.62 Failure to furnish to the Standards Commission a Donation Statement, Certificate of Monetary Donations or statement from a financial institution within the statutory deadline (i.e. by 31 July 2009) 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 above statutory documentation is still outstanding.

- 1.63 Knowingly furnishing to the Standards Commission a Donation Statement or Statutory Declaration, Certificate of Monetary Donations or statement of 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.

Chapter 2

Candidates' Election Agents

The key issues which the election agent of a candidate at the 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 election
- (D) Assignment by a candidate of a portion of his/her statutory spending limit to his/her political party (if contesting the election as a party candidate)
- (E) "The Election Period" - Dates between which the spending limit applies
- (F) Persons who may be incurring unauthorised expenditure to promote or oppose candidates at the election
- (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 election
- (K) Consequences of overspending by an election agent
- (L) Offences and penalties applicable to election agents at the election

A. Appointment as an election agent

- 2.1 Each candidate must appoint an election agent. For the purposes of this Act the election agent is the person who is responsible for accounting for expenses incurred on the candidate's behalf during the election campaign. 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.

- 2.2 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 election (11 May 2009). The Returning Officer will subsequently provide the election agent's details to the Standards Commission.

- 2.3 There is no provision on the nomination papers for the candidate to give details of his/her election agent. The candidate must, therefore, provide such details separately to the Returning Officer. The Standards Commission has issued a form to Returning Officers which a candidate may use to give details of his/her election agent. It is very important that the correct details of the person appointed as election agent (i.e. the person who will account for expenditure on the candidate's campaign) are notified to the Returning Officer on this form. 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 that the candidate has notified his/her correct details to the Returning Officer.

- 2.4 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 by the last day for receiving nominations 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 Act both as a candidate and as an election agent.

B. Main functions of an election agent

- 2.5 The election agent is the key link for the Standards Commission at the election in relation to expenditure incurred on the candidate's behalf at the election. He/she should be comfortable with handling money and keeping accounts.
- 2.6 The main function of the election agent is to authorise and control spending connected to the candidate's election campaign and to account for such spending.
- 2.7 Subject to what is stated at paragraphs 2.8 and 2.9 below, the election agent is the only person who may incur expenditure or make payments on behalf of the candidate. All invoices, receipts or vouchers must be provided to the election agent and retained by him/her for the purposes of completing his/her Election Expenses Statement.
- 2.8 A candidate cannot incur any expenses or make any payments in relation to the election campaign without being authorised to do so by the election agent. It is an offence for a candidate to incur expenses or make payments, other than in respect of "his or her reasonable living expenses", unless authorised to do so by the election agent. (See paragraph 2.36(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 invoices/receipts, to the election agent once he/she has been appointed. It is an offence for a candidate to fail to comply with this requirement.
- 2.9 The election agent may authorise other persons to incur expenditure or make payments within specified financial limits. The election agent must account for spending by all such authorised persons. Expenses incurred or payments made by authorised persons must be within the limit specified by the election agent. An election agent may authorise the candidate or the national agent of the candidate's political party (if applicable) to incur election expenses. The name and address of every authorised person will have to be included in the Election Expenses Statement, which the election agent must furnish to the Standards Commission after the election.

C. Spending limits for the election

- 2.10 The statutory spending limit for the European elections is €230,000.00 **inclusive of VAT**. The statutory limit represents the maximum spending allowed on a candidate in a constituency. All spending by the election agent and a political party (both head office and local organisation) on a candidate must be within this limit.
- 2.11 The statutory limit is for each individual candidate in a constituency. No part of one candidate's limit can be transferred to another candidate.
- 2.12 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 2.13 below). If a candidate of a political party does not assign any part of the statutory spending limit to the party, the party cannot incur any expenses on behalf of the candidate at the 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 election as a party candidate)

- 2.13 If a candidate is contesting the 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 will be assigned to the party for spending by the party's national agent. This could be up to 100% of the candidate's limit. There is, however, no legal obligation on a candidate to assign any amount to the party. The candidate's election agent can only spend, or authorise to be spent, the amount of the statutory limit for that candidate which remains after the assignment has been made. 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	€230,000.00
Amount assigned by candidate to the party	€100,000.00
Amount which election agent can spend	€130,000.00

- 2.14 The Act does not specify when the written assignment must be made. Similarly the Act 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.
- 2.15 The Act requires that the agreed assignment must 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 as he/she will be required to furnish a copy of the written agreement to the Standards Commission with his/her Election Expenses Statement.
- 2.16 The combined expenditure incurred on behalf of the candidate by the candidate's election agent (including authorised persons) and by the national agent of the party (including authorised persons) must remain within the statutory spending limit for the candidate.

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

- 2.17 The spending limit at the election applies to all expenses incurred and payments made on property, goods or services which are used for electoral purposes during the "election period". At a European election the election period commences on the date of the order appointing polling day and ending on polling day itself, both dates included. The election period for the 2009 European election is from 29 April 2009 until 5 June 2009.
- 2.18 Regardless of when the expenses are incurred or the payments are made, they must be taken into account if they relate to property, goods or services which are used for electoral purposes during the election period. Accordingly, expenses which are incurred or payments which are made at any time before the commencement of the election period on property, goods or services which are used during the election period must be accounted for.

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

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

2.20 If an advertisement is published in a newspaper or other periodical publication which carries a publication date (i.e., the date printed on the paper) which is during the election period, the advertisement will be regarded as an election expense. If the publication date is before or after the election period, the advertisement is not regarded as an election expense.

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

Expenditure by "third parties"/"other persons"

2.22 Expenditure by "**third parties**" and "**other persons**", i.e. those not connected to a candidate or a political party, is permitted under the Act (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. If a Certificate has not been issued, the person or group may be committing an offence and the

Standards Commission will enquire into the matter.

2.23 Notices or advertisements in newspapers, magazines or other periodical publications promoting or opposing the interests of a candidate may only be placed if requested by the candidate, the candidate's election agent, 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 of Authorisation from the Standards Commission stating that they have complied with the requirements outlined in paragraph 4.19 below. The Standards Commission will notify editors/publishers of the provisions of the Act in this regard.

2.24 "Third parties"/"Other Persons" who incur election expenses will have to account for their election expenses in an Election Expenses Statement (see paras 4.24 to 4.30 below).

Expenditure by Local Party Organisations

2.25 No separate or additional spending by a political party over and above the statutory spending limit is allowed. Any expenditure incurred on behalf of a candidate by a local party organisation should either be:

- authorised by the national agent and taken into account in the national agent's Election Expenses Statement; or
- authorised by the election agent and taken into account in the election agent's Election Expenses Statement.

Expenditure by local election and Dáil bye-election candidates

2.26 As the 2009 local elections and the Dáil bye-elections in Dublin Central and Dublin South are being held on the same day as the European election, there is the possibility that European election candidates will be mentioned in local election or Dáil 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.

2.27 A local election candidate, Dáil bye-election candidate, director of elections, etc., who intends to include a reference to a European election candidate in local election or Dáil 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.

2.28 Where a European election candidate is featured in local election or Dáil election material or advertising which is used during the election period, the extent to which he/she is featured should be used as a basis for calculating the amount of expenses deemed to have been incurred on behalf of the European election candidate. If the amount deemed to have been incurred is less than €126.97 and has been borne by the local election candidate or Dáil bye-election candidate it will be regarded as a minor expense and should be accounted for as such (see para 2.38 below). If the expenditure exceeds €126.97 it will have 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.

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

2.29 Election agents should be aware that if a person or a body, who or which is considered by the Standards Commission to be associated with, connected to, or under the influence or control of a candidate, incurs expenses at the election to either promote the candidate or to oppose another candidate, such expenses will be regarded as part of the first candidate's election expenses and will have to be taken into account by his/her 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. This may be of particular relevance to candidates who are affiliated or connected to a **European Political Party**. If expenses are incurred by a European Political Party to

promote a candidate or to oppose another candidate, the Standards Commission may deem the expenses to have been incurred on behalf of the candidate who is connected to the European Political Party and require his/her election agent to account for these expenses.

2.30 Given that expenditure by certain individuals/groups may ultimately be deemed to be expenditure incurred on behalf of their candidates, it is important that election agents are aware of the activities of such individual/groups and, if necessary bring such matters to the attention of the Standards Commission.

G. What are election expenses?

2.31 The Act provides that election expenses are those and only those, set out in the definition of election expenses in Appendix 1, which are incurred in the provision of property, goods or services for use at the election during the election period (29 April 2009 to 5 June 2009) in order to:

- (i) promote or oppose the interests of a political party or the election of a candidate, or
- (ii) 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) solicit votes for or against a candidate, or
- (iv) 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.

2.32 Where property, goods or services which are provided free or below cost are used

during the election period, they are regarded as election expenses which must be authorised by the election agent or the national agent, and accounted for as election spending by the relevant agent at their commercial price. An example might be where a printer agrees to provide, free of 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.

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

Election Expenses which are met out of public funds

2.34 Arising from the judgement in *Kelly v. Minister for the Environment and Ors.* (2002) 4 I.R. 191, 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.

2.35 The Standards Commission is aware that some candidates at the election who are already public representatives may be required to communicate with their constituents during the election period. It is necessary, therefore, where costs are met from public funds to differentiate between the use of property, services (including staff) and/or facilities in carrying out reasonable constituency business and the use of such material for electoral purposes. The following is relevant in this regard.

- If, during the election period, such materials are used by the candidate for the purpose of any form of unsolicited communication to any of the electorate in the constituency, the materials will be regarded as having been used for electoral purposes and the costs will have to be accounted for as an election expense at their

full commercial value. This also applies to unsolicited material issued by other elected representatives where the material either promotes or opposes a candidate or otherwise seeks to influence the outcome of the election.

- Where a new enquiry is raised with a candidate (i.e., an enquiry which had not been raised with the candidate prior to the election) while he/she is canvassing and facilities the cost of which are met out of public funds are used for the purposes of responding to the enquiry, these facilities will be regarded as having been used for electoral purposes. This includes time spent by staff in responding to the enquiry (except where such staff are working voluntarily on the candidate's campaign - see 2.36(vi) below).

H. What are not election expenses?

2.36 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 make participants 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 election if the said sum is not repaid to the person. See paragraph 2.38 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 2.39 to 2.40 below for further information relating to this;

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

The Standards Commission has previously given the following advice in relation to this particular provision of the Act:

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

Where an outgoing MEPs staff or Oireachtas member's staff (i.e. personal assistant, research assistant, etc.) takes annual leave and works on a candidate's election campaign on a voluntary basis during the election period, the work carried out by the member of staff will be deemed to have been carried out as a free service and the cost of his/her salary while working voluntarily will not be regarded as election expenses for the purposes of the Act.

- (vii) a service provided at an election by an employee of a political party, including

use of the individual's motor vehicle, where the employee's remuneration is paid for 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 who is employed for the **specific purpose** of ensuring compliance with the requirements of the Act;
- (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.**

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

Minor expenses

2.38 The only persons who may **lawfully** incur expenses or make payments at an election in relation to a candidate are the election agent of a candidate, 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 an election on behalf of a candidate is committing an offence. Election agents must maintain a record of all "minor expenses" which are not been accounted for as an election expense in his/her Election Expenses Statement (see paras 2.43 to 2.48). In order to deal with

any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense in the Election Expenses Statement, a record of all such "minor expenses" may be required to be furnished to the Standards Commission. Invoices, receipts and vouchers in respect of minor expenses may also be required and should be retained by the election agent.

Minor expenses are not included in the calculation of the total election expenses incurred.

Re-using election material

2.39 If election expenses in relation to material used at the election have already been recorded in an Election Expenses Statement furnished in respect of a previous Dáil, European or local election, there is no need to record these expenses again. This does not apply to material used in relation to a referendum.

2.40 If a candidate intends to use, or re-use, election material which has already been accounted for in an Election Expenses Statement, his/her election agent must notify the Standards Commission Secretariat and provide details of the materials being re-used and the Election Expenses Statement on which they were previously accounted.

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

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

- 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 electoral legislation (e.g. room hire, documents, refreshments, travel);

I. Payment of invoices to suppliers

2.42 Claims for payment of election expenses, from suppliers, must be received by the election agent within 45 days after polling day (i.e. by 20 July 2009). **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 Act. To avoid disputes, it is very important that agents advise their suppliers of this requirement when placing orders for property, goods or services. Even though such claims cannot be paid, they are still regarded as election expenses and must be accounted for in the Election Expenses Statement furnished to the Standards Commission.

J. Furnishing an Election Expenses Statement after the election

2.43 Shortly after the election, the Standards Commission will send each election agent an **Election Expenses Statement and Statutory Declaration** form. On this form, the election agent must disclose details of all expenses incurred and payments made by, or on behalf of, the agent on property, goods or services used by the candidate during the election period. Staff of the Standards Commission Secretariat will be available to provide assistance to election agents in completing the form. The completed form must be received by the Standards Commission within 56 days after polling day (i.e. by 31 July 2009).

2.44 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 which were used during the election period;

- ii) details of authorised persons (which may include the candidate, a director of elections or the party's national agent) including the amount each authorised person was authorised to spend and the amounts actually spent by them;
- 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 2.15 above 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 claims for payment received more than 45 days after polling day;
- vi) details of expenses incurred on goods, property or services used during the election period where the costs of the goods, property or services were met out of public funds.

A record of minor expenses may also be required to be furnished to the Standards Commission in order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense on the Election Expenses Statement. Minor expenses will not be included in the calculation of the total election expenses incurred (see paragraph 2.36(iii) and 2.38 for a definition of "minor expenses").

2.45 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 or a record of minor expenses.

- 2.46 Omissions or errors found by the Standards Commission in an Election Expenses Statement will be notified to the election agent. If requested to amend his/her Election Expenses Statement the election agent must do so within 14 days.
- 2.47 The Standards Commission can request additional information from an election agent in relation to his/her Election Expenses Statement. Where such additional information is requested, it must be provided in a form determined by the Standards Commission and may have to be accompanied by a Statutory Declaration.
- 2.48 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

- 2.49 There are a number of consequences arising from an overspend by an election agent at the 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 election

- 2.50 If a person who is not authorised to do so incurs expenditure or makes a payment in relation to the election, he or she on conviction may be fined up to €1,269.74.
- 2.51 The penalty if an election agent is found guilty of the offence of exceeding the expenditure limit is a fine of up to €1,269.74.

- 2.52 Payment of claims received more than 45 days after polling day (i.e. after 20 July 2009) can result in a fine of up to €1,269.74.
- 2.53 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
- 2.54 Failure to furnish an Election Expenses Statement and Statutory Declaration to the Standards Commission by the statutory deadline (i.e. 31 July 2009) can result in a fine of up to €1,269.74 and an on-going fine of up to €26.97 for each day, after a conviction, on which the Statement and Declaration are still outstanding.
- 2.55 Failure to provide supplementary information relating to an Election Expenses Statement as requested by the Standards Commission can result in a fine of up to €1,269.74.
- 2.56 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.
- 2.57 Failure to furnish to the Standards Commission, within seven 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

The key issues which national agents of political parties with candidates contesting the European elections 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) Persons incurring unauthorised expenditure to promote/oppose candidates at the election
- (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 election
- (J) Consequences of overspending by the national agent
- (K) Offences and penalties applicable to a national agent at the election

A. Appointment of a national agent

3.1 Each political party with a candidate contesting the European elections 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 election (11 May 2009) 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" (appointed under section 71 of the Act) will be deemed to be the national agent. If an appropriate officer has not been appointed, the party leader is

deemed to be the party's appropriate officer and as such will be deemed to be its 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 election on behalf of a political party, he/she may assign a portion of his/her statutory spending limit to the party for spending at the 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 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 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 political party has 4 candidates contesting the election each of whom assign €100,000 to the party from within their individual spending limit, the national agent of the party would be entitled to spend a total of €400,000 at the election. The amount of the limit available to be spent by each candidate's election agent would, as a result, be reduced by €100,000.

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

Commission recommends that national agents 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 Act 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 must 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. 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. It is an offence for a political party to fail to comply with this requirement.
- 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)). Where election materials (e.g. posters, billboards) feature a party's leader and its candidates, the expenditure will be deemed to have been incurred on the candidates concerned and not the party leader.
- 3.14 Spending by the national agent on a particular candidate cannot exceed the amount assigned to the party by the candidate. No part of a candidate's spending limit can be transferred from one candidate to another. Total spending on a candidate by his/her election agent and by the party's national agent cannot exceed the statutory limit for candidates at the election (€230,000).
- 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, expenditure by the national agent would be as an authorised person of the election agent and any such expenditure would have to be recorded by the election agent.
- 3.16 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 particular candidate or candidates in a constituency. Reference should be to the party, its leadership, its policies or election issues in a national context. National spending should be reasonably evenly spread throughout the country. National spending is usually on items like the party manifesto, party political broadcasts, tours by the party leader, etc. Where party political broadcasts feature members of the party leadership or party spokespersons, the expenses incurred will be regarded as national spending and will not be regarded as having been incurred on the individual candidates. Where a candidate who is not a party spokesperson and who is not part of the party leadership appears in a party political broadcast, this will not be regarded as national spending and an appropriate portion of the cost of the broadcast may be regarded as expenditure incurred on the candidate's behalf.

D. Persons incurring unauthorised expenditure to promote or oppose candidates at the election

3.17 The national agent is the only person who can incur expenditure or make payments on behalf of a political party at the election. National agents should be aware that if a person or body is incurring expenses at the election to promote the party or its candidates, the Standards Commission may regard such expenses as expenditure incurred by the political party, if it 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 a spending limit has not been assigned to the party, the candidate's election agent will have to account for the expenditure as appropriate. If such expenditure brings spending by the party or the election agent 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 or its candidate(s). The Standards Commission should be notified immediately of the activities of any such person or body. Expenditure by the following groups or individuals is particularly relevant in this regard.

Local party organisation

3.18 A local party organisation (e.g., constituency or branch) cannot incur expenditure or make a payment in relation to the party's election campaign, e.g. pay bills, without the authority of the national agent. Such expenses must be accounted for by the national agent in his/her Election Expenses Statement.

A local party organisation cannot incur expenditure or make a payment in relation to

any of the party's candidates at the election unless authorised to do so by the party's national agent or the particular candidate's election agent. Such expenses must be accounted for in the Election Expenses Statement of the agent who authorised the expenses.

Expenditure by local election and Dáil bye-election candidates

3.19 As the 2009 local elections and Dáil bye-elections in Dublin Central and Dublin South are being held on the same day as the European election, there is the possibility that local election or Dáil 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 the party or the candidates concerned and will be regarded as expenditure incurred on behalf of the party or its candidates at the European election.

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

Where a political party's European election campaign or its European election candidate(s) is featured in local election or Dáil election material or advertising which is used during the election period, the extent of the European election feature should be used as a basis for calculating the amount of expenses deemed to have been incurred on behalf of the party or European election candidate. If the amount deemed to have been incurred is less than €126.97 and has been borne by the local election candidate or Dáil bye-election candidate it will be regarded as a minor expense and should be accounted for as such (see para 2.38 above).

If the feature refers to the party's European election campaign generally and the expenditure exceeds €126.97 the party's national agent should account for the election expenses in his/her Election Expenses Statement. If the feature refers to the party's European election candidate(s) and the expenditure exceeds €126.97 it will have 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.

Expenditure by persons/bodies deemed to be associated with, connected to, or under the influence or control of, a political party

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 election.

Where a political party or its candidates are affiliated or connected to a **European Political Party** and expenses are incurred at the election by a European Political Party to promote a political party or candidate or to oppose another political party or candidate, the Standards Commission may deem the expenses to have been incurred on behalf of the party or candidate concerned and require the party's national agent or the candidate's election agent to account for these expenses.

Expenditure incurred by unconnected "third parties"/"other persons"

3.21 As stated in paragraph 2.22 above, expenditure by **"third parties" and "other persons"**, i.e. those not connected to a candidate or a political party, is permitted under the Act (see Chapter 4). 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.

3.22 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 of Authorisation from the Standards Commission certifying that they have complied with the legal requirements outlined in paragraph 4.19 below. The Standards Commission will notify editors/publishers of the provisions of the Act in this regard. [The provisions in question also apply to magazines and other periodical publications.]

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

3.23 See paragraphs 2.17 to 2.21 of Chapter 2 "Candidates' Election Agents"

F. What are election expenses

3.24 An outline of what needs to be considered in accounting for election expenses is provided in paragraphs 2.31 to 2.35 of Chapter 2 "Candidates' Election Agents" and in the definition of election expenses in Appendix 1.

G. What are not election expenses

3.25 An outline of what are not election expenses is provided in paragraphs 2.36 to 2.41 of Chapter 2 "Candidates' Election Agents".

H. Payment of invoices to suppliers

3.26 Claims for payment of election expenses, from suppliers, must be received by the national agent within 45 days after polling day (i.e. by 20 July 2009). **Claims received after this date cannot be paid by the national 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 Act. To avoid disputes, it is very important that national 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 expenditure and must be included in the Election Expenses Statement furnished

to the Standards Commission.

I. Furnishing an Election Expenses Statement after the election

- 3.27 Shortly after the election, the Standards Commission will send 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 national agent in relation to the 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 (i.e. by 31 July 2009).
- 3.28 The Election Expenses Statement form to be sent to each national agent will be tailored to reflect the number of the party's candidates standing at the election. In each case the following must be included in the form:
- i) details of all expenses incurred and payments made by the national agent and his/her authorised persons, including supplies of property, goods or services free or below cost which were used during the election period;
 - ii) details of authorised persons, including the amount each authorised person was permitted to spend and the amount actually spent;
 - iii) confirmation of the portion of each candidate's spending limit which was assigned by the candidate to the national agent's political party;
 - iv) a breakdown of spending by the national agent on the national campaign and on each individual candidate;
 - v) details of any disputed claims for payment;
 - vi) information concerning claims for payment received more than 45 days after polling day;

vii) details of expenses incurred on goods, property or services used during the election period where the costs were met from public funds (see paragraphs 2.34 and 2.35)

3.29 A record of minor expenses may also be required to be furnished to the Standards Commission in order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense on the Election Expenses Statement. Minor expenses will not be included in the calculation of the total election expenses incurred (see paragraph 2.36(iii) and 2.38 for a definition of "minor expenses").

3.30 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 or a record of minor expenses.

3.31 Minor omissions or errors found by the Standards Commission in a national agent's Election Expenses Statement may notified to the national agent. If requested to amend his/her Election Expenses Statement the national agent must do so within 14 days.

3.32 The Standards Commission can request additional information from a national agent in relation to his/her Election Expenses Statement. Where such additional information is requested, it must be provided in a form determined by the Standards Commission and may have to be accompanied by a Statutory Declaration.

3.33 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

3.34 The consequences of an overspend by a national agent at the 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 under the Electoral Acts.

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

3.35 It is an offence for a political party to fail to furnish to the national agent relevant details of expenses incurred before the appointment of the national agent.

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

3.37 Payment of claims received more than 45 days after polling day (i.e. after 20 July 2009) can result in a fine of up to €1,269.74.

3.38 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

3.39 Failure to furnish an Election Expenses Statement and Statutory Declaration to the Standards Commission by the statutory deadline (i.e. by 31 July 2009) can result in a fine of up to €1,269.74 and an on-going fine of upto €126.97 per day for each day, after a conviction, on which the Statement and Declaration are still outstanding.

3.40 Failure to provide supplementary information relating to an Election Expenses Statement as requested by the Standards Commission can result in a fine of up to €1,269.74.

- 3.41 A fine of up to €1,269.74 is the penalty when a national agent is found guilty of the offence of breaching the expenditure limit.
- 3.42 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.
- 3.43 Failure to furnish to the Standards Commission, within 7 days after the date of the order, a copy of a court order for payment of a disputed claim may result in a fine of up to €1,269.74.

Chapter 4 - 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 an "Other Person"
- (B) Statutory requirements of a Third Party with regard to receipt of donations
- (C) Statutory requirements of a Third Party and Other Person with regard to incurring election expenses
- (D) What are election expenses
- (E) Payment of invoices to suppliers
- (F) Election Expenses Statements
- (G) Statutory requirements for publishers under section 31(10) of the Act
- (H) Offences and Penalties applicable to third parties with regard to the receipt of donations
- (I) Offences and Penalties applicable to third parties and other persons with regard to incurring election expenses

A. What is a "Third Party" and an "Other Person"

- 4.1 A "third party" is defined in the Act as meaning any person, other than a registered political party or a candidate at an election, who accepts, in a particular year, a donation given for political purposes, the value of which exceeds €126.97.
- 4.2 An "other person" is a person or group who intends to incur expenses at the election to promote or oppose a candidate or a political party. Candidates, their election agents or national agents of political parties are not regarded as "other persons".
- 4.3 A third party must also register as an "other person" if it intends incurring expenses at the election. An "other person", however, is not required to register also as a "third party" if it has not accepted a donation which exceeds €126.97.

B. Statutory 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, before incurring 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.

Third parties are not required under the Act to disclose details of donations received by them.

What is a donation?

- 4.5 A donation is defined in the Act 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

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 third party by a financial institution at terms and conditions which are more favourable than that provided by the financial institution to other individuals or organisations. Details of the Standards Commission's position with regard to the issuing and repayment of loans to third parties can be found at paragraph 4.6 below) 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. It should be noted that where an individual or a group organises a fund-raising event for a candidate at an election and the individual/group retains control of the proceeds of the event (i.e. does not pass the proceeds to the candidate) the individual/group may be regarded as a third party. This is explained in more detail in Appendix 2, as is the method of calculating the profit from a fund-raising event.

(b) Political purposes.

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

(c) Person.

This can be:

- (i) an individual;
- (ii) a body corporate (e.g. a public or private company), and any subsidiary thereof. In this regard section 155 of the Companies Act should be applied when determining whether a company is a subsidiary of another company. Where donations are received from associated companies it may be necessary to enquire from the donors whether, under section 155 of the Companies Act, one or other of the companies is a subsidiary of the other;
- (iii) an unincorporated body of persons, e.g. a political party, a partnership, a residents association, a lobby group.

Loans to third parties

- 4.6 Where a loan is provided to a third party by a financial institution and the normal terms and conditions attaching to such loans apply, the loan is not regarded as a donation to the third party. However, where a loan is provided to a third party by a financial institution in circumstances where either the interest charged is less than the lowest rate available from the financial institution or the loan is not repaid in accordance with the terms and conditions under which the loan was issued or is only partially repaid, the benefit to the third party may be regarded as a donation and may, therefore, be subject to the maximum limit of €6,348.69 applying to the acceptance of donations by third parties.

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

- As with a loan from a financial institution, the terms and conditions applying to the loan and its repayment must be stated clearly in writing.
- Interest is chargeable on the loan at a rate (whether fixed or variable) which reflects the interest charged by financial institutions on loans of a similar amount and duration. Where the interest charged is less than the lowest rate available from a

financial institution, the benefit accruing from the difference in rates is regarded as a donation to the third party.

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

Prohibited Donations

- 4.7 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.
- 4.8 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.
- 4.9 A third party is also prohibited from accepting a donation, or donations, from the same person in the same calendar year which is 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.
- 4.10 A third party is prohibited from accepting a foreign donation. A "foreign donation" is 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 principal activities is directed.

4.11 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.

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

Opening and maintaining a Political Donations Account

4.13 If a third party receives, in any particular calendar year, a **monetary** donation for political purposes which exceeds €126.97, it is required to open and maintain an account in a financial institution (a political donations account) 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 Act].

4.14 If a third party campaigning at the election is already the holder of a political donations account, it is not necessary to open a new account specifically for donations received in relation to the election campaign. In such circumstances monetary donations, of whatever value, received in relation to the election campaign must be lodged to the existing political donations account.

Furnishing of Statutory Documentation in relation to a political donations account

4.15 Where a third party has been required to open a political donations account, the responsible person of the 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 (bank statement). 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.

- 4.16 The bank statement must specify the transactions that have taken place in relation to the account during the period beginning on the date of opening of the account up to the end of the calendar year, or the date of closing of the account if the third party ceases to exist.
- 4.17 The Standards Commission Secretariat will be in contact with registered third parties at the beginning of the relevant calendar year and will provide a Certificate of Monetary Donations form for completion.
- 4.18 Certificates of Monetary Donations and their accompanying bank statements 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. Statutory requirements of a Third Party and Other Person with regard to incurring election expenses

- 4.19 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 expenses at the election 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.
- 4.20 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 an 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 an election, there is no limit to the amount of expenses which the third party or other person may incur. (See paragraph 2.29 regarding expenditure incurred by an individual/body deemed to be

connected to a candidate and paragraph 3.20 regarding expenditure incurred by an individual/body deemed to be connected to a political party.)

D. What are election expenses

4.21 Election expenses are those and only those, set out in the definition of election expenses at Appendix 1, which are incurred in the provision of property, goods or services for use at the election during the election period (29 April 2009 to 5 June 2009 - see paragraphs 2.17 to 2.21 for a definition of 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.**

4.22 A donation of property, goods or services which is received, free or below cost, and is used at the 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. 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 (i.e. by 20 July 2009). **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 Act. 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.

F. Election Expenses Statements

- 4.24 Shortly after the election, the Standards Commission will send to a third party/other person, 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/other person must disclose to the Standards Commission details of all expenses incurred and payments made by, and on behalf of, the third party/other person in relation to the 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 (i.e. by 31 July 2009).
- 4.26 The following must be included in the Election Expenses Statement completed by a third party/other person:
- i) details of all election expenses incurred by the third party/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).

- 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 Omissions or errors found by the Standards Commission in an Election Expenses Statement will be notified to the person who furnished the statement. If a person is requested to amend an Election Expenses Statement he/she must do so within 14 days.
- 4.29 The Standards Commission can request additional information in relation to an Election Expenses Statement. Where such additional information is requested, it must be provided in a form determined by the Standards Commission and may require to be accompanied by a Statutory Declaration.
- 4.30 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.

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

- 4.31 A publisher of a newspaper, magazine or other periodical publication must not publish any advertisement or notice in relation to the election purporting to promote or oppose, directly or indirectly, the interests of a political party or a candidate at the election, unless requested to do so by one of the following people:
- the national agent of a political party, or a person authorised in writing by such agent, 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 of Authorisation from the Standards Commission certifying that they have complied with the provisions of section 31(7) of the Act in relation to the election (as outlined in paragraph 4.19 above)

4.32 These provisions of the Act are not intended to prevent or restrict the lawful publication of any matter in relation to the 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.

4.33 Failure by the publisher of a newspaper, magazine or other periodical publication to comply with the above requirements can constitute an offence which may result in a fine of up to €1,269.74.

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

4.34 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.

4.35 Failure by the responsible person of a third party 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 4.7 to 4.11 above may result in a fine of up to €1,269.74.

4.36 Failure by the responsible person of a third party to furnish to the Standards Commission, by 31 March each year, the bank statement or Certificate referred to at paragraphs 4.15 to 4.16 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 bank statement or Certificate is still outstanding.

4.37 A responsible person of a third party who knowingly furnishes to the Standards

Commission a bank statement or Certificate of Monetary Donations which is false or misleading in any material respect may be liable to a fine of up to €25,394.76 and/or up to 3 years imprisonment.

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

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

4.39 Failure to notify the Standards Commission of intent to incur election expenses can result in a fine of up to €1,269.74.

4.40 Payment of claims received more than 45 days after polling day (i.e. after 20 July 2009) can result in a fine of up to €1,269.74.

4.41 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

4.42 Failure to furnish an Election Expenses Statement by the statutory deadline (31 July 2009) 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 Election Expenses Statement is still outstanding.

4.43 Failure to provide supplementary information relating to an Election Expenses Statement as requested by the Standards Commission can result in a fine of up to €1,269.74.

4.44 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.

4.45 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.

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 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;

'political party' means a political party registered in the Register of Political Parties in accordance with section 25 of the Electoral Act of 1992 as a party organised to contest a Dáil election or a European election or both such elections;

'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.
- (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 Act, a donation includes the net value of a contribution to a fund-raising event. A contribution to a fund-raising event is deemed to have been made on the date the fund-raising event is held (and not the date on which the contribution is actually received).

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

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

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

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

Where a fund-raising event is organised by a political party for the purposes of raising funds for the party, the net contribution made by a person to the fund-raising event is regarded as a donation to the party. This applies even if the funds are subsequently used by the party for

the purposes of supporting one or more of its candidates at an election.

- If some or all of the proceeds of the event are given in the form of money to the party's candidate(s) it is regarded as a donation by the party to the candidate(s) (see paragraph 1.14). If the proceeds are used by the party to pay election expenses incurred on the candidate's behalf it is not regarded as a donation by the party to the candidate(s).
- The party will not be required to disclose in a Donation Statement the total value of the proceeds of the fund-raising event.
- The party will be required to disclose any donation(s) from a person which exceeds a net value of €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 applies to the net value of contributions to fund-raising events.
- Where the net value of a monetary donation to the 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 a 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.

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

Where a fund-raising event is organised by a political party for the purposes of raising funds

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

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

3 Fund-raisers organised by a candidate

Where a fund-raising event is organised by a candidate for the purposes of raising funds for his/her election campaign, contributions to the event are deemed to be donations to the candidate.

- 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 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 a 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.

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

Where a fund-raising event is organised on behalf of a candidate by a person or group other than the candidate or his/her political party (e.g., "Friends of groups") and the proceeds of the event are handed over to the candidate, the fund-raising person/group is regarded as an intermediary accepting donations on the candidate's behalf. The donations are deemed to have been received by the candidate and he/she is responsible for ensuring that the legislative requirements (set out at 3 above) are complied with.

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

- If the net value of any donation to the fund-raising event exceeds €126.97, the person/group will be required to register as a "third party" with the Standards Commission. The person/group will be required to comply with the provisions of the Act applying to third parties with regard to the opening of a political donations account and the acceptance of certain donations. These requirements are set out in Chapter 4 of these guidelines;
- All money subsequently given to the candidate and all election expenses incurred or payments made by the fund-raising group on behalf of the candidate are regarded as donations to the candidate;
- If the aggregate value of donations from the fund-raising group to the candidate is in excess of €634.87, the candidate will be required to disclose details of same 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 regarded as a third party (and not as an intermediary accepting donations on the candidate's behalf) is €2,539.48.

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

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

A - Advertising

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

B - Publicity

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

C - Election Posters

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

D - Other Election Material

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

E - Office and Stationery

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

F - Transport and Travel

- Diesel/Petrol costs which were not reimbursed to the person.

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.