

Annual Report 2002



ANNUAL REPORT 2002



Standards in Public Office Commission
Comisiún um Chaighdeán in Oifigí Poiblí

Foreword

In accordance with the provisions of section 27(2)(a) of the Ethics in Public Office Act, 1995, I am pleased to furnish the Annual Report of the Standards in Public Office Commission for 2002 to the Minister for Finance.



Justice Matthew P. Smith
Chairman

Standards in Public Office Commission

June 2003



Justice Matthew P. Smith
Chairman



John Purcell



Kevin Murphy



Kieran Coughlan



Deirdre Lane



Liam Kavanagh



Contents

Introduction by the Chairman	4
Chapter 1	
Ethics in Public Office Acts, 1995 and 2001 (Ethics Acts)	8
Establishment of the Standards Commission	8
Standards in Public Office Act (Standards Act)	8
Evidence of Compliance with Tax Acts	9
Codes of Conduct	10
Codes of Conduct for members of both Houses of the Oireachtas	10
Codes of Conduct for Office Holders	10
Codes of Conduct for Directorships and Positions in Public Bodies	11
Guidelines and Advice	11
Conflict of Interest	12
Chapter 2	
Electoral Acts, 1997 to 2002 (Electoral Acts)	15
General Election to Dáil Éireann	15
General Election to Seanad Éireann	22
Donations disclosed by TDs, Senators and MEPs in 2002	22
Donations disclosed by political parties in 2002	23
Exchequer funding of political parties	25
Registration of Third Parties	33
Accounting Units	37
Review of legislation	38
Chapter 3	
Freedom of Information	40
Chapter 4	
Costs in 2002	42

Introduction by the Chairman

This is the first annual report of the Standards in Public Office Commission (the Standards Commission) which was established in December 2001 by the Standards in Public Office Act, 2001 (the Standards Act). The Standards Commission replaced, and assumed all of the functions of, the former Public Offices Commission which was established in November 1995 by the Ethics in Public Office Act, 1995 (the 1995 Act). The 1995 Act and the Standards Act are known together as the Ethics in Public Office Acts, 1995 and 2001 (the Ethics Acts).

I was honoured to be appointed by the President as the first Chairman of the Standards Commission, on the advice of the Government, following resolutions passed by both Houses of the Oireachtas. I am privileged to have as fellow Commissioners the Comptroller and Auditor General, the Ombudsman, the Clerk of Dáil Éireann, the Clerk of Seanad Éireann and Mr. Liam Kavanagh who has served as a member of the Dáil, as a Minister and as a member of the European Parliament. The Standards Act strengthens substantially the body of ethics legislation, as will be described in more detail later in this report, and incorporates many of the suggestions made by the former Public Offices Commission.

Experience has shown that constant vigilance in maintaining ethical standards is essential to safeguarding integrity and tackling corruption. Events in Ireland in recent years, including material emanating from tribunals and other public inquiries, show that there is a pressing need to continually monitor and, where appropriate, raise standards in the public interest. The Standards Commission, as a body established by the Oireachtas to supervise both the Ethics Acts and the Electoral Acts, 1997 to 2002 (the Electoral Acts), is committed to making a major contribution towards this objective.

I am already on record as saying that substantial progress has been made in terms of putting in place a wide body of legislation which creates many new obligations in terms of disclosure of interests by parliamentarians and public servants and introduces comprehensive regulation in the area of political funding. It is regrettable that, for the most part, the real and very tangible benefits of this legislation, and other developments, have not attracted the positive evaluation which they merit and that concentration by media and other commentators seems to focus almost entirely on negative factors. The concept of openness, accountability and transparency, which is clearly embedded in the legislation, is about more than hitherto inaccessible material now being in the public domain. It also requires recognition that major change has occurred in recent years and an acceptance on the part of those who are reporting events, or who are opinion formers, that they have an obligation to provide balance, including giving credit where this is due, when they are dealing with matters which are of great public importance.

I regret to say that, in my experience to date, the latter has not been greatly in evidence. The result is that many citizens, and influential outside observers of Irish affairs, are of the opinion that we have a serious problem of corruption in the public sector. This view is supported by, for example, the findings of the international body Transparency International which, in its Corruption Perception Index for 2002, ranked Ireland in 23rd position out of 102 countries surveyed, a fall from 18th position in 2001. The sources used in determining Ireland's position were the University of Columbia, the Institute for Management Development in Switzerland, the Economist Intelligence Unit and the World Economic Forum. The findings led to comment in at least one publication that *"corruption is a central theme of Irish life and politics and that Ireland is now regarded as one of the more corrupt European states"*. I do not accept either



contention. The concern is, however, that the perception is out there and may be a cause of damage to this country in a number of respects, including in relation to inward investment.

To illustrate my point about the need for balance, it is worth drawing attention to the fact that, in contrast to the Transparency International findings, GRECO (Group of States against Corruption), a highly respected body which operates under the auspices of the Council of Europe, in its evaluation report on Ireland in 2002, which was based on a factual study rather than perceptions, concluded that *"Ireland appears to belong to the group of those GRECO members that are least affected by corruption"*. Interestingly, the Transparency International findings were afforded considerable prominence in the media and elsewhere with, as far as I am aware, virtually no coverage of the GRECO study.

As is the case in most countries, there are many issues affecting Government and civil society in areas such as the environment, crime, healthcare, housing, social services, infrastructure, etc. To suggest, however, as seems to occur on a regular basis and without much thought, that corruption is at the core of the difficulties we face in all of these matters does not stand up to objective scrutiny. It is vital, in the national interest, that when we speak of corruption we are clear as to its meaning which is the abuse of public office for private gain and not something entirely different. We are fortunate in this country to have a public service which, to a very large extent, has been free of corruption. Any evidence of wrongdoing which has emerged relates to a very small number of individuals whose conduct is in marked contrast to the contributions made by the thousands of public servants who, over the decades since the foundation of the state, have served in many different capacities with honesty and integrity in the public interest. Of course there is no room for complacency and we must be firm in our resolve

to deal effectively with those who, by their actions or inactions, would undermine the fundamental principles on which our democracy is founded. It is somewhat ironic, and a cause of regret, that the approach we have adopted whereby past difficulties are dealt with in a very public manner, as is the case with the various tribunals, has led to criticism of our systems of governance. This criticism is not, in the main, supported by the facts which, in my view, would show that the integrity of the decision making process has not been impugned.

It will be seen that 2002 was an extremely challenging first year for the newly formed Standards Commission. It was necessary to ensure that procedures were in place to give effect to the provisions contained in the Standards Act. It was also necessary to devise structures for dealing with matters arising under the Electoral Acts relating to the Dáil and Seanad general elections. The Dáil election was the first ever general election to take place under the full regulation of the Electoral Acts in regard to election spending and donations.

The key objective of the Standards Commission, in its supervision of both the Ethics and Electoral Acts, is to provide an information, guidance and advice service to its clients. The Standards Commission regards it as a vital element of the duty entrusted in it by the Oireachtas to ensure that all of its clients are fully aware of their duties and responsibilities and that the advice given and guidelines published are comprehensive, accurate and meaningful. In circumstances of non-compliance, the Standards Commission will, where it is appropriate, utilise its powers of investigation under the Ethics Acts and its powers of referral to the Director of Public Prosecutions where there has been a contravention of the Electoral Acts. The client base of the Standards Commission now extends to members of both Houses of the Oireachtas, including office holders, members of the European Parliament,

senior civil servants, directors and executives in more than 100 semi-state companies, ministerial special advisers, political parties, candidates and their election agents at Dáil, Seanad, European Parliament and Presidential elections, accounting units of political parties and third parties who are involved in political activity.

The establishment of the Standards Commission, and its predecessor, the Public Offices Commission and the enactment of the legislation referred to above was part of a concerted and wide ranging response to a demand for greater transparency in public life. Other important elements include the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 and, more recently, the Local Government Act, 2001 which provides for a code of ethics for officials and members of local authorities. No doubt, as time goes on, further refinement and expansion of the laws and procedures on ethics and electoral matters will become necessary. Above all else, the fundamentals of leadership and encouragement from the very highest levels of the public service will continue to be critical in ensuring that the standards of behaviour we have come to expect in the public service are maintained and that the citizens of this country can have confidence that the public interest will take precedence over the personal interests of individual public servants.

I wish to pay tribute to my fellow Commissioners who have been a tremendous support to me in my first year as Chairman and have served with great dedication and enthusiasm. I also wish to pay tribute to the former Public Offices Commission which initiated the regulatory frameworks and did so much valuable work in setting the foundations for the supervision of the Ethics and Electoral Acts.

Finally, I would like to thank the Standards Commission Secretary, Mr. Brian Allen, and his excellent staff for their continued commitment and hard work during the year. The range of tasks to be performed by the Standards Commission is now so wide that it would be impossible for it to discharge all of its statutory obligations in a timely and effective manner were it not for the tremendous assistance afforded to it by the Secretariat.



ANNUAL REPORT
2002

1



Chapter 1

Ethics in Public Office Acts, 1995 and 2001 (Ethics Acts)

Establishment of the Standards Commission

The Standards Commission was established by the Standards in Public Office Act, 2001 (Standards Act) which amended many of the provisions of the Ethics in Public Office Act, 1995 (1995 Act) and introduced a number of new provisions in areas which had not previously been regulated. Notably, the Standards Act introduced provisions requiring the production of evidence of compliance with taxation legislation by members of both Houses and persons who were appointed to senior office in the public service after 10 December 2001. It also provided for the drawing up and publication of codes of conduct indicating standards of conduct and integrity for parliamentarians and public servants.

The Standards Commission is now a six person body headed by a permanent Chairman with four ex-officio members and a former member of a House of the Oireachtas. The Chairman, Mr. Justice Matthew P. Smith, a Judge of the High Court, was appointed by the President, on the recommendation of Dáil and Seanad Éireann, on 12 December 2001, for a six-year term. In 2002, the ex-officio members of the Standards Commission were:

- Mr. John Purcell, Comptroller and Auditor General,
- Mr. Kevin Murphy, Ombudsman,
- Mr. Kieran Coughlan, Clerk of Dáil Éireann,
- Ms. Deirdre Lane, Clerk of Seanad Éireann.

As a former member of Dáil Éireann, Mr. Liam Kavanagh, MCC, was appointed to the Standards Commission by the Government in December 2001, following resolutions passed by both Houses of the Oireachtas. Commissioner Kavanagh was a member of the Dáil from 1969 to 1997 during which time he served as Minister

for Labour and the Public Service, Minister for Labour, Minister for the Environment and Minister for Tourism, Forestry and Fisheries. He was a member of the European Parliament from 1973 to 1981 and was directly elected to the Parliament for the Leinster Constituency in 1979.

Standards in Public Office Act (Standards Act)

The Standards Act has introduced a number of new provisions in the area of standards in public life. As already mentioned, these include provisions for codes of conduct and for the production of evidence of compliance with the Tax Acts for members of the Houses of the Oireachtas and senior public servants. The Standards Commission has a significant role in relation to both. Similar obligations concerning tax compliance by members of the judiciary are handled by the Judicial Appointments Board and the Government. Additionally, a number of provisions of the 1995 Act have been amended. Included are those concerning the powers of the Standards Commission to arrange for the examination of any person inside or outside the state and the granting of absolute privilege to members, advisers, officials or agents of the Standards Commission in the performance of their official functions.

As well as its new responsibilities under the Standards Act, the Standards Commission has inherited all of the functions conferred on its predecessor, the Public Offices Commission under the Ethics and Electoral Acts.

The new elements of the Standards Act include a provision whereby complaints can be made to the Standards Commission where "specified persons" have acted in a way which is not consistent either with the proper performance of the functions of the relevant position or with the maintenance of public confidence, where the matter is one of



significant public importance. "Specified persons" includes office holders, ordinary members of both Houses, special advisers, senior civil servants and directors and senior executives of state bodies. Without prejudice to the generality of the term "significant public importance", the Standards Act indicates it would cover any benefit received by the specified person, or a connected person, where the value was €13,000 or more.

Additionally, and in response to a direct suggestion by the former Public Offices Commission, the Standards Act provides for a procedure whereby the Standards Commission can engage Inquiry Officers to conduct preliminary inquiries into complaints under the Ethics Acts. Such preliminary inquiries would culminate in a report to the Standards Commission which could, if it had been requested, include an opinion as to whether prima facie evidence existed to sustain the complaint concerned.

Evidence of Compliance with Tax Acts

With effect from 10 December 2001, the Standards Act introduced a requirement whereby members of the Dáil and Seanad, members of the judiciary and holders of "senior office" ("senior office" means a designated position or directorship in a public body prescribed under the 1995 Act, including the civil service, in relation to which the remuneration is not less than the lowest remuneration for a Deputy Secretary General in the civil service), must provide evidence of compliance with the following tax legislation within a fixed period of being elected or nominated or appointed, as the case may be:

- (a) the Tax Acts
- (b) the Capital Acquisitions Tax Act, 1976 and the enactments amending or extending that Act,

- (c) the Capital Gains Tax Acts and
- (d) the Value-Added Tax Act, 1972 and the enactments amending or extending that Act.

Evidence of tax compliance in the case of members of the Houses and appointees to "senior office" is provided to the Standards Commission within nine months of election or nomination or appointment, as the case may be. In relation to the judiciary, the evidence is provided to the Judicial Appointments Board or the Secretary General to the Government, as appropriate.

The documents required as evidence of tax compliance consist of the following:

- 1) a Tax Clearance Certificate, issued by the Collector-General of the Revenue Commissioners (Collector-General), not more than 9 months before, and not more than 9 months after, the date of election or nomination or appointment, as appropriate, or
- 1A) an Application Statement, issued by the Collector-General, on application, not more than 9 months before, and not more than 9 months after, the date of election or nomination or appointment, as appropriate, in circumstances where the Collector-General has not decided whether to issue or refuse a Tax Clearance Certificate, or where a Tax Clearance Certificate has been refused and that refusal is the subject of an appeal which has not yet been determined, and

- 2) a Statutory Declaration, which is an instrument prescribed by the Statutory Declarations Act, 1938, as amended by the Standards Act to the extent that the penalty for false declarations has been increased to a maximum fine of €2,500 and/or imprisonment for up to 6 months, attesting to compliance with the tax clearance certification provisions of the Standards Act. The Statutory Declaration must be made not more than one month before, and not more than one month after, the date of election or nomination or appointment, as appropriate.

The non-provision of any of the tax compliance documentation within the nine month time limit, or the failure to make the Statutory Declaration within the two month time frame, causes a contravention of the Standards Act which leads to investigation by the Standards Commission. Following investigation, the Standards Commission draws up a report in writing which is provided to the relevant Committee on Members' Interests, in the case of a member of a House of the Oireachtas, and to the head of the body concerned, in the case of an appointee to "senior office".

Codes of Conduct

The Standards Act provides for the introduction of codes of conduct which, by indicating standards of conduct and integrity for the persons to whom they relate, are intended to act as guidance in the performance of their particular range of official functions. Separate codes are prescribed covering members of both Houses of the Oireachtas, office holders (e.g. Ministers and Ministers of State) and directorships and positions in public bodies. In each case, the Standards Act requires that the Standards Commission will be consulted at the formulation stage and will

publish all codes of conduct. The codes are an integral part of the regulation framework and are admissible in proceedings before a court, a Committee of the Dáil or Seanad or the Standards Commission.

Codes of Conduct for Members of both Houses of the Oireachtas

Separate codes of conduct for the members of both Houses of the Oireachtas were published by the Standards Commission during 2002, having been drawn up by the Committees on Members' Interests of each House, following consultation with the Standards Commission, and having been adopted by resolution of each House. In each case, the Standards Commission considered the draft codes in detail and suggested a number of amendments to the Committees. Neither Committee responded in any way to the suggestions made and none of the amendments were incorporated in the codes which went before the Houses for adoption. The Standards Commission intends to use the consultation machinery, which exists in relation to the operation of the Ethics and Electoral Acts, to address this matter further with the Committees in due course.

Code of Conduct for Office Holders

The Standards Act provides that the Government will give a draft of any proposed code to the Standards Commission and, before drawing up the code, will consider any submissions made to it by the Standards Commission in relation to the draft. In accordance with this procedure, the Standards Commission examined a preliminary draft of the proposed code of conduct in mid-2002 and provided a number of observations which were subsequently developed between the two parties. Towards the end of 2002, the final

draft of the code, as approved by the Government, was provided to the Standards Commission for consideration. It is expected that, following its consideration by the Standards Commission, the final code will be published in 2003. The Standards Commission has reached broad agreement with the Government to provide a composite document for office holders which will include the Standards Commission's Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts, 1995 and 2001 (published in December 2002), the code of conduct for office holders and the Government's Guidelines for Office Holders, dealing with supplies of property and services (published in August 1996, pursuant to section 15 (4) of the 1995 Act).

Codes of Conduct for Directorships and Positions in Public Bodies

The Standards Act provides that the Minister for Finance will draw up codes of conduct for holders of directorships and occupiers of positions in public bodies, after consultation with the Standards Commission and staff representatives. The codes will then be published by the Standards Commission. This is a diverse grouping which ranges from civil servants in Government departments and offices to directors and executives in a large number and variety of bodies in the wider public service. The Department of Finance has consulted on a general level with the Standards Commission during 2002 and that consultative process will be advanced in the course of 2003. Because of the diversity of the grouping to be covered by codes of conduct it is possible that a multiplicity of codes may emerge.

The Standards Commission, in co-operation with the Department of Finance and the public bodies concerned, would be disposed to considering

ways in which it could expand its role in the promulgation of codes of conduct to include, for example, contributing to the training of public servants in ethical decision-making. A first step in this regard might be to incorporate, in the Performance Management Development System, a competency surrounding the use of a model for ethical decision-making.

Guidelines and Advice

The commencement of the Standards Act, which introduced amendments to 26 of the 38 sections of the 1995 Act, meant that the guidelines for office holders and for public servants which had been published by the former Public Offices Commission under section 25 of the 1995 Act were no longer reflective of the full range of amended and new provisions. The Standards Commission drew up new *Guidelines for Office Holders (Third Edition)* which were circulated to the Ministers and Ministers of State of the 29th Dáil and to the Chairman and Vice-Chairman of Dáil and Seanad Éireann. New *Guidelines for Public Servants (Second Edition)* were also drawn up and were circulated to Government departments and offices and to the Company Secretaries of the public bodies prescribed by Statutory Instrument No. 32 of 1997. The guidelines were posted, in downloadable form, on the website of the Standards Commission (www.sipo.ie).

Additionally, the Standards Commission has agreed with the Department of Finance, as the body charged with prescribing the forms to be used for disclosure of interests by office holders, special advisers and public servants, that, with effect from the 2003 reporting year, it will make the forms available on the Department's website (www.finance.gov.ie).

The Standards Commission continued to provide its statutory advice function under section 25 of the 1995 Act. Advice was given to both office holders and public servants on a wide range of subjects relating to their obligations under the legislation arising in the course of 2002.

Conflict of Interest

Ultimately, the Ethics Acts are in place to contribute to the protection of the public interest. The public interest is not an easy concept to define. The extent to which the public interest must be assessed beyond national boundaries is increasing. This is because a decision in one jurisdiction can have an impact beyond that jurisdiction itself and can even extend to a global level. For instance, it is a matter of public interest that laws are enacted and implemented and that there is an infrastructure in place to collect taxes and to distribute those taxes in the form of, for example, health services and education. Equally, and this is the domain of the Ethics Acts, it is a matter of public interest that members of the Houses of the Oireachtas, including office holders, and public servants should not seek personal advantage from their public roles. The Ethics Acts provide the mechanism by which the persons concerned can demonstrate adherence to this principle by disclosing any interests which have the potential to cause a conflict. Equally, those interests which actually do cause a conflict of interests have to be resolved. In that regard, it is to be expected that any conflict of interest would be resolved in favour of the public interest.

The Ethics Acts, in describing circumstances which require a disclosure of interests, make reference to any interest which could materially influence the person in, or in relation to, the performance of the functions of office. An interest which could materially influence a person is also referred to as a conflict of interest, a set of circumstances where a person, for example, a

public servant, has a private or personal interest which could influence, or be reasonably regarded as capable of influencing, that public servant in the performance of his or her official duties. In this connection, the Ethics Acts provide for both direct and indirect interests. In other words an interest may be direct, as in one's own, or it may be indirect, as in an interest of a relative or business associate. An interest could be financial or it could be any other benefit as defined by the 1995 Act, i.e.

“ “benefit“ includes-

- (a) a right, privilege, office or dignity and any forbearance to demand money or money's worth or a valuable thing,
- (b) any aid, vote, consent or influence or pretended aid, vote, consent or influence,
- (c) any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of, any gift, loan, fee, reward or other thing aforesaid,

or other advantage and the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;”

The conflict of interest arises when the performance of the official role is compromised to any extent, however minor, by the external consideration of a private interest, whether direct or indirect.

All of the persons covered by the Ethics Acts hold positions of trust in the public service, whether as ordinary members of the Houses of the Oireachtas, as office holders or as public servants. Holding a position of trust means that the public is entitled to expect objectivity and even-handedness in all matters. If not dealt with, a conflict of interest, or the appearance of such, is an obvious betrayal of public trust and is, therefore, a matter of legitimate concern to the public. It causes damage to the public service



because it diminishes the trust people generally have in that service. The Ethics Acts provide a mechanism whereby potential conflicts of interest can be disclosed by means of an annual statement of interests while an actual conflict of interest can be dealt with by means of a statement of material interest. For public servants, this includes an obligation not to proceed with the function in which the material interest has arisen.

The Standards Commission can be contacted for advice regarding the application of the Ethics Acts in any particular circumstance, including where there is the possibility of a conflict of interest. As a general comment it would advise that great care should be taken in this area, that the widest possible perspective should be taken and that, where there is doubt, it is preferable to disclose an interest than not to disclose which, in the latter case, could give rise to a subsequent determination by the Standards Commission that an interest should have been disclosed.

ANNUAL REPORT
2002

2



Chapter 2

Electoral Acts, 1997 to 2002 (Electoral Acts)

Under the Electoral Acts, the Standards Commission is responsible for supervising those elements of the legislation which relate to limits and disclosure of political donations, limits on spending at Dáil, European Parliament and presidential elections, reimbursement of certain candidates' election expenses and Exchequer funding of political parties. With the exception of statements from financial institutions and certificates of monetary donations, which are excluded from public display by the legislation, all of the statements furnished to the Standards Commission relating to donations, election spending and Exchequer funding can be inspected and copied by the public at the office of the Standards Commission. They can also be viewed, in summary form, on its website (www.sipo.ie). The fact that access to this material is required to be made available to the public is regarded by the Standards Commission as a hugely important element of the legislation.

In this part of the report the Standards Commission outlines its activities during 2002 in relation to the general elections to Dáil Éireann and Seanad Éireann. A summary is provided of donations disclosed by unsuccessful candidates at the above elections. The activities of third parties and accounting units are described. Details are given of donations disclosed by TDs, Senators, MEPs and political parties in 2002. In addition, a breakdown is provided of Exchequer funding for 2002 received by political parties and an account is provided of how the funding received by parties for 2001 was used.

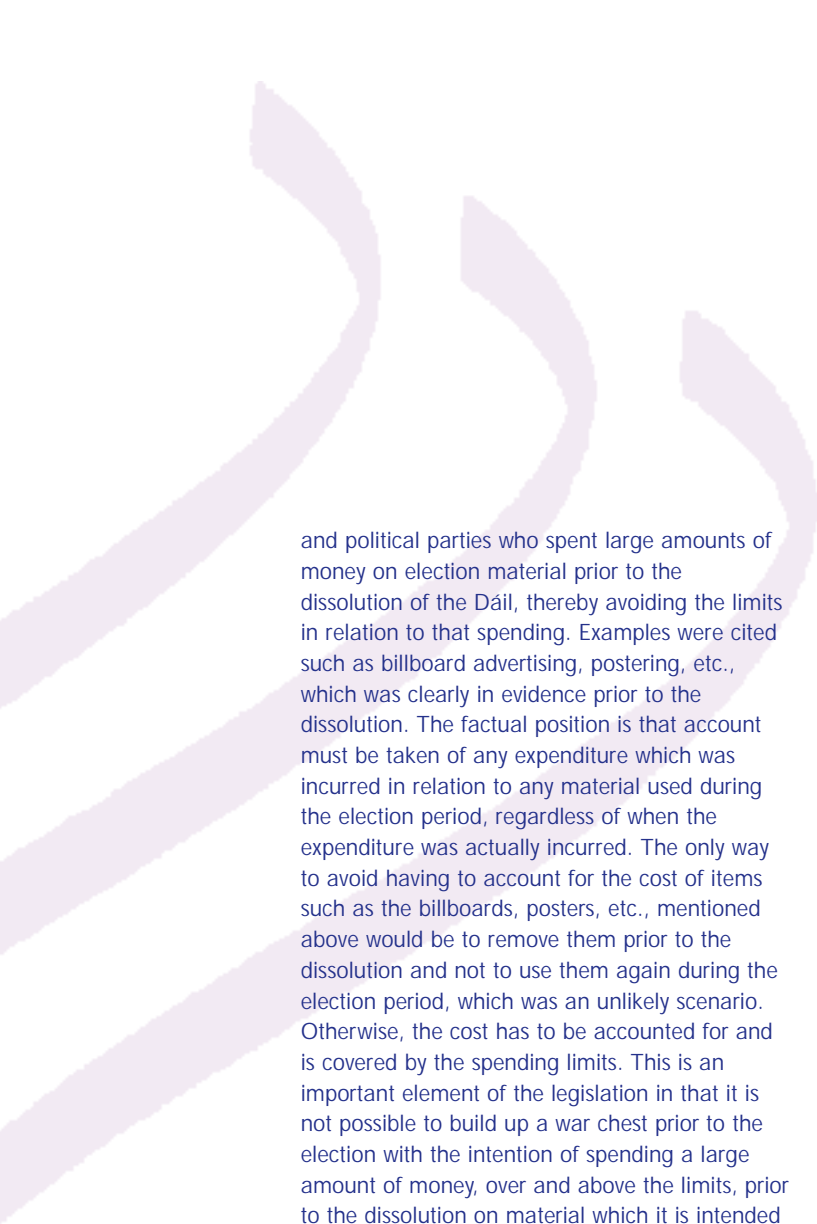
General Election to Dáil Éireann

A major part of the work of the Standards Commission during 2002 was related to the general election to the 29th Dáil. Polling took place on 17 May 2002. A series of regional visits, which were organised in conjunction with the

political parties, had already taken place in 2000 and 2001 to brief candidates, election agents and political parties on the provisions of the legislation. The visits continued during the early part of 2002. An important focus of the visits was to direct attention to the fact that, for the first time at a Dáil general election, limits were in place restricting the amount of expenses that could be incurred on behalf of candidates and political parties contesting the election. A limit also applied in terms of the value of donations which could be accepted by candidates from the same donor. In addition, acceptance of foreign donations and anonymous donations was prohibited.

The Standards Commission is satisfied that its involvement in this programme was hugely beneficial and that it contributed in a significant way to increasing the level of understanding of the many statutory obligations which fell to be discharged by the various participants at the election. This applied, in particular, to the election agents appointed by candidates who were required to ensure that expenses incurred on behalf of candidates remained within the statutory limits and that proper records and accounts were maintained. It was evident to the Standards Commission that a considerable number of election agents might not have been fully aware in advance of the nature of the duties which they agreed to undertake, including the fact that legal responsibility for a breach of the expenditure limits rested with them.

In relation to the limits on expenditure referred to above, it should be noted that the limits apply to any expenditure incurred on property, goods or services which are used during the election period to promote a candidate or a political party. The election period runs from the date of dissolution of the Dáil up to, and including, polling day. There was some suggestion at the time of the election, and subsequently, that the provisions in question were being circumvented by candidates



and political parties who spent large amounts of money on election material prior to the dissolution of the Dáil, thereby avoiding the limits in relation to that spending. Examples were cited such as billboard advertising, postering, etc., which was clearly in evidence prior to the dissolution. The factual position is that account must be taken of any expenditure which was incurred in relation to any material used during the election period, regardless of when the expenditure was actually incurred. The only way to avoid having to account for the cost of items such as the billboards, posters, etc., mentioned above would be to remove them prior to the dissolution and not to use them again during the election period, which was an unlikely scenario. Otherwise, the cost has to be accounted for and is covered by the spending limits. This is an important element of the legislation in that it is not possible to build up a war chest prior to the election with the intention of spending a large amount of money, over and above the limits, prior to the dissolution on material which it is intended to use during the election period.

It is still possible, of course, to engage in activity prior to dissolution of a Dáil which, in essence, is electioneering and where the costs would not be covered by the spending limits. This could involve, for example, prospective candidates distributing leaflets, newsletters or the like prior to dissolution encouraging voters to support them when the election is actually called. The Standards Commission shares the view, previously expressed by the former Public Offices Commission, that there should be some consideration given to whether, for a specific period prior to an election, there is a need to regulate such activity in terms of the spending limits at elections, as is the case in other countries. In this regard, the Standards Commission recognises fully the difficulty in distinguishing between election spending and costs incurred in relation to what could be described as normal representational activity which is ongoing in the period prior to the calling of an election.

A related issue which was raised with the Standards Commission prior to the election being called was that of members of Government and Ministers of State engaging in what were regarded as high profile campaigns associated with matters falling within the remits of their various Departments. Complaints about this were received by the Standards Commission from members of the Houses who were concerned about what they described as systematic spending of large amounts of public money by the Government to boost the political profiles of Ministers and Ministers of State in advance of the general election and widespread and sustained use of personalised advertising by Ministers and Ministers of State, all of which was funded from the Exchequer. As stated, the complaints related to the period prior to dissolution of the Dáil and did not refer to activities during the actual election period. In those circumstances, the Standards Commission was not in a position to determine that any spending involved would be subject to the limits provided for in the legislation or that there had been any breach of the legislation. It was, however, pointed out to the complainants that the matter would be raised by the Standards Commission in the context of the code of conduct for office holders referred to earlier in this report. The Standards Commission is of the view that a code of conduct would have regard to the spirit as well as the letter of the legislation in this area and that account would be taken of the underlying principles of ethical governance, including the general principle that public office or position should not be used for personal advantage.



Guidelines

On 5 March 2002, as required under the legislation, the Standards Commission published *Guidelines for the General Election to the 29th Dáil 2002*. These set out, in detail, the legal obligations attaching to participants at the elections relating to donations and election spending. They were sent to the registered political parties and to candidates and election agents whose names had, at that stage, been notified to the Standards Commission, mostly by the larger political parties. They were also sent to any independent candidates who were known to be standing at the election. In addition, a leaflet containing frequently asked questions and answers was published and circulated.

An issue did arise in relation to the above in that most independent candidates, and some candidates from the smaller political parties, who were not known to the Standards Commission, did not receive the guidelines, or have any other contact with the Standards Commission, until less than two weeks before polling day. The legislation requires that the Returning Officer for a constituency must, after the latest date for the withdrawal of candidature at the election (4 May 2002), notify the Standards Commission of the name and address of each candidate and election agent in that constituency. Not unexpectedly, in the majority of cases, it was a number of days after 4 May before the Returning Officers could provide the Standards Commission with the relevant details. As outlined in the previous paragraph, this was not a problem in cases where the political parties had already supplied the information or where the Standards Commission was otherwise aware of the existence of candidates and election agents. However, it was most unsatisfactory for the Standards Commission to find itself in a position where it was unable, until a few days before polling, to communicate with a large number of persons who were involved in the general election

campaign and who, it emerged, had little, if any, knowledge of their statutory obligations in relation to matters such as controls on expenditure and prohibition/limitations on acceptance of donations. The Standards Commission is not in a position to offer a legislative solution to this problem which, if it is not dealt with, will arise again in the future. The matter has been brought to the attention of the Minister for the Environment and Local Government.

On 25 March 2002, shortly after publication of the guidelines, the Electoral (Amendment) Act, 2002 was passed. This included an amendment of the previous definition of what constituted a donation. Because it had implications for candidates and election agents, it was decided by the Standards Commission to circulate an addendum to the guidelines which outlined the nature and effect of the change.

Advice

Advice on the operation of the legislation was sought from the Standards Commission by many candidates and agents in the weeks leading up to polling day. The advice was given either verbally or in writing. Where a matter was raised with the Standards Commission by way of a request for advice, and the matter was of general application, the advice was circulated to other candidates and agents.

The "Des Kelly" case

The Electoral (Amendment) Act, 2001 (the 2001 Act), was passed by the Oireachtas in October 2001. A commentary on the main provisions of the 2001 Act, including those which deal with Oireachtas facilities, is contained in the Annual Report of the former Public Offices Commission for 2001. Amongst other things, the 2001 Act

increased the spending limits of candidates at Dáil elections. More controversially, however, it provided that, in an election campaign, candidates could use facilities paid for out of public funds, without having to account for the cost of this use as part of their election spending.

During the course of the regional visits referred to earlier in this report, candidates and election agents regularly commented on the unfairness of a situation where the electoral prospects of incumbent candidates could be enhanced by virtue of the provisions in question of the 2001 Act. These comments were reflective of views expressed in the 2001 Annual Report of the former Public Offices Commission where it was said that one of the purposes of the Electoral Act, 1997 was to provide a level playing field for all candidates and parties at an election insofar as each candidate would be entitled to incur the same level of expenditure, including benefits in kind, in contesting the election. It was also said in that report that the effect of the amendment, relating to the use of facilities which were paid for out of public funds, was clearly to bestow significant advantage on candidates who were outgoing members of the Houses over other candidates who did not have access to such facilities.

On 8 April 2002, the High Court gave leave to Mr. Des Kelly, a Fianna Fáil candidate in the Dublin Mid West constituency, to apply, by way of Judicial Review, for certain reliefs, including a declaration that the provisions of the legislation, which provided that the cost of use of facilities which fell to be met out of public funds was not an election expense, were repugnant to the Constitution. He claimed that, as a non-incumbent of either the Dáil or the Seanad, he was gravely disadvantaged in that members of those Houses were entitled to use the facilities of the Houses for electoral purposes, without having to account for the cost of same as part of their spending limits. Mr. Kelly succeeded in his action.

The judgment of the High Court was delivered on 16 May 2002, the eve of the Dáil general election.

The Standards Commission considered the implications of the judgment. It agreed, supported by legal advice, that the provisions of the legislation which were found to be repugnant to the Constitution were such from the date of their enactment and, accordingly, must be regarded as never having existed. An explanatory memorandum was issued to election agents outlining the position and pointing out that it would be necessary to include, in their Election Expenses Statements, details of any election expenses which were met out of public funds. The Election Expenses Statements were due to be furnished to the Standards Commission by 12 July 2002, i.e. 56 days after polling day.

The judgment of the High Court referred to above was appealed to the Supreme Court. The appellants were the Minister for the Environment, Ireland and the Attorney General. On 3 July 2002 the Electoral (Amendment) (No. 2) Act, 2002 (the 2002 (No. 2) Act) was passed. This extended to 31 October 2002, or 21 days after the date of the Supreme Court judgment, whichever was later, the date by which the Election Expenses Statements were to be furnished to the Standards Commission.

On 29 November 2002 the Supreme Court upheld the judgment of the High Court. Accordingly, having regard to the provisions of the 2002 (No. 2) Act, election agents and national agents of political parties had until 20 December 2002 to furnish the Election Expenses Statements to the Standards Commission.

The Standards Commission decided that it would not be appropriate to refer a file to the Director of Public Prosecutions where, specifically as a result of the judgments, it was found that an overspend occurred at the general election. In arriving at its decision, the Standards Commission



had regard to the fact that the original High Court judgment was delivered on 16 May 2002, the last day of campaigning at the election. Prior to that date, agents and candidates were entitled to assume that the rules on spending were as set out in the relevant legislation and reflected in the guidelines published by the Standards Commission. The Standards Commission was mindful of the fact that it would be a defence to a prosecution for overspending that a person did not know, and could not reasonably have known, that he or she incurred election expenses above the statutory limit.

The Standards Commission also decided that if an overspend did occur, specifically as a result of the judgments, it would not be recommending to the Minister for Finance that the amount of the overspend should be deducted from the reimbursement of election expenses payable to the candidate or from the Exchequer funding payable to the political party. The making of such a recommendation was open to the Standards Commission under the legislation. The Standards Commission also pointed out that it had no function in relation to the petitioning of the High Court in any case where it was felt that an overspend had materially affected the outcome of the election.

An advisory letter issued to each election agent and national agent setting out a basis for calculating the value of election expenses which were met out of public funds.

At the time of writing, the Election Expenses Statements received by the Standards Commission are being processed in preparation for laying before both Houses of the Oireachtas. Having regard to the major effort made by the Standards Commission to assist agents in completing the necessary documentation, it is a matter of serious concern that the standard of some of the returns falls far short of what might reasonably have been expected. It is difficult to

avoid the conclusion that this is due in many cases to lack of care on the part of agents coupled, perhaps, with an element of disregard for either the requirements of the legislation or the mandate of the Standards Commission, or both. The result has been that much reworking of the material has been necessary causing a long delay in placing it in the public domain. The Standards Commission is committed to ensuring that a full account of election expenditure will emerge at the end of the process.

Donations disclosed by unsuccessful candidates at the Dáil General Election

Donation Statements and Statutory Declarations from unsuccessful candidates at the Dáil general election were due to be furnished to the Standards Commission by 12 July 2002, i.e. 56 days after polling day. Unsuccessful candidates were required to disclose details of any donations valued in excess of €634.87 received in relation to the election.

The number of candidates contesting the Dáil general election was 463. Excluding the Ceann Comhairle, 165 candidates were elected, leaving a total of 298 unsuccessful candidates from whom Donation Statements and Statutory Declarations were required. Donations with a total value of €274,466.29 were disclosed by these candidates - see Table A below. It should be noted that it is an annual requirement for sitting members of the Dáil and Seanad to furnish a Donation Statement and a Statutory Declaration.

The largest single donor was Sinn Féin which gave monetary donations totalling €43,511.43 to its unsuccessful candidates of which €12,971.04 was subsequently refunded to the party by those candidates who had accepted donations from the party in excess of the statutory limit - see below. Other political parties - Fine Gael (€5,790 of which €710.52 was refunded), Fianna Fáil

(€5,437.50), the Labour Party (€3,873.59), the Green Party (€2,239.00) and the Workers' Party (€900) - also gave monetary donations to their unsuccessful candidates.

The second largest single donor was SIPTU which gave donations totalling €26,900 to candidates of the Labour Party. Three other trades unions - ASTI (€3,500), INTO (€2,538.74) and MSF (€2,000) - also made donations to candidates at the election.

Prohibited Donations

Receipt of donations with an aggregate value in excess of €2,539.48 from the same donor is statutorily prohibited with effect from 1 January 2002. Eight unsuccessful candidates disclosed that they had received monetary donations which were in excess of this limit. The necessary refunds were made to the donors in all cases. In the case of one candidate, a donation was returned which was not in excess of the limit. In all, donations with a value of €16,951.30 were returned to donors by unsuccessful candidates. This represents 6.18% of the total value of €274,466.29 of donations received.

Non receipt of Donation Statements

Files relating to eight unsuccessful candidates who failed to furnish a completed Donation Statement and Statutory Declaration were referred to the Gardaí . All Donation Statements and Statutory Declarations were subsequently received.



Table A: Summary of donations disclosed by unsuccessful candidates at the Dáil and Seanad general elections

Political Party	Dáil Éireann		Seanad Éireann	
	No. of donations disclosed	Value of donations disclosed €	No. of donations disclosed	Value of donations disclosed €
Fianna Fáil	12	51,288.62 of which €500 was returned	2	4,269.74
Fine Gael	9	21,215.28 of which €710.52 was returned	2	2,270.00
Labour Party	20	55,278.01	1	2,000.00
Green Party	4	6,498.52	none	n/a
Progressive Democrats	3	9,100	n/a	n/a
Socialist Party	1	2,500	n/a	n/a
Sinn Féin	20	66,298.09 of which €12,971.04 was returned	n/a	n/a
Christian Solidarity	none	n/a	n/a	n/a
Workers Party	2	1,900	n/a	n/a
Socialist Workers Party	none	n/a	n/a	n/a
Communist Party	n/a	n/a	none	n/a
Non-Party	25	60,387.77 of which €2,769.74 was returned	7	25,269.39
Total	96	274,466.29 of which €16,951.30 was returned	12	33,809.13

General Election to Seanad Éireann

A general election to Seanad Éireann takes place not later than 90 days after a dissolution of Dáil Éireann. The Minister for the Environment and Local Government fixed 11 and 12 July 2002 as the dates for the panel and university elections, respectively. Guidelines setting out the statutory position in relation to receipt and disclosure of donations were issued by the Standards Commission to all candidates contesting the election. There are no spending limits at Seanad elections.

Donations disclosed by unsuccessful candidates at the Seanad General Election

Donation Statements and Statutory Declarations from unsuccessful candidates at the Seanad general election were due to be furnished to the Standards Commission by 10 September 2002 (panel candidates) and 11 September 2002 (university candidates), i.e. 56 days after polling day. Unsuccessful candidates were required to disclose donations valued in excess of €634.87 received in relation to the election.

A total of 151 candidates contested the Seanad general election. Of these, 49 were elected, leaving a total of 102 unsuccessful candidates from whom Donation Statements and Statutory Declarations were required. The remaining 11 members of the Seanad were nominated by the Taoiseach on 26 July 2002. Donations with a total value of €33,809.13 were disclosed by 12 of the 102 unsuccessful candidates - see Table A above.

The largest single donor was ASTI which gave donations totalling €5,078.02 to two of its members who were candidates at the election. INTO also gave donations totalling €2,539.74 to two of its members while SIPTU gave a donation of €2,000 to one of its members. Fianna Fáil (Carlow Comhairle Ceanntair) made a donation of €1,000 to one of its candidates. Fine Gael (Athlone branch) made a similar donation to one of its candidates.

Files were referred to the Gardaí relating to two unsuccessful candidates who failed to furnish a Donation Statement and Statutory Declaration. The documents were subsequently received from both candidates.

Donations disclosed by TDs, Senators and MEPs in 2002

Members of both Houses of the Oireachtas and of the European Parliament are required to furnish an annual Donation Statement and Statutory Declaration disclosing details of donations received for political purposes, which exceed a value of €634.87. The annual Donation Statement and Statutory Declaration must be furnished by 31 January of each year in respect of the preceding calendar year. In the case of Donation Statements and Statutory Declarations for 2001, the relevant date was 31 January 2002. The statutory limit on the value of donations which may be accepted did not apply in the case of donations received in 2001.

Donation Statements received in 2002

A total of 241 Donation Statements and Statutory Declarations for 2001 were received by the Standards Commission in 2002 from 166 members of Dáil Éireann, 60 members of Seanad Éireann and 15 members of the European Parliament. Senator Avril Doyle, MEP, and Deputy Proinsias De Rossa, MEP, furnished two separate statements in recognition of their dual mandates. The Donation Statements and Statutory Declarations, together with a report by the Standards Commission to the Ceann Comhairle, were laid before the Houses of the Oireachtas and put on public display. A summary showing the number and value of donations disclosed is in Table B.



Table B: Donation Statements received in 2002 from members of the Dáil and Seanad and members of the European Parliament.

Political Party	Dáil Éireann		Seanad Éireann		European Parliament		Total value of donations disclosed €
	No. of donations disclosed	Value of donations disclosed €	No. of donations disclosed	Value of donations disclosed €	No. of donations disclosed	Value of donations disclosed €	
Fianna Fáil	10	34,560	2	4,126	none	n/a	38,686
Fine Gael	3	4,639	none	n/a	none	n/a	4,639
Labour Party	5	8,037	1	1,270	none	n/a	9,307
Green Party	none	n/a	n/a	n/a	none	n/a	n/a
Progressive Democrats	2	11,306	none	n/a	n/a	n/a	11,306
Socialist Party	none	n/a	n/a	n/a	n/a	n/a	n/a
Sinn Féin	none	n/a	n/a	n/a	n/a	n/a	n/a
Non-Party	1	20,399	none	n/a	1	952	21,351
Total	21	78,941	3	5,396	1	952	85,289

Donations disclosed by political parties in 2002

The Appropriate Officer of each registered political party is required to furnish an annual Donation Statement and Statutory Declaration to the Standards Commission, indicating whether the party received any donations exceeding €5,078.95 in value, or in aggregate value, from the same person, during the preceding calendar year. Parties are not required to disclose donations valued at €5,078.95 or less. The Donation Statement and Statutory Declaration must be furnished by 31 March each year. If an Appropriate Officer is not appointed, the leader of the party is deemed to be the Appropriate Officer and is required to furnish the Donation Statement and Statutory Declaration.

Donation Statements received in 2002

Donation Statements and Statutory Declarations covering the period from 1 January to 31 December 2001 were received by the Standards Commission in 2002 from each of the 13 political parties registered in the state during 2001 to contest a Dáil or European Parliament election. Copies of the Donation Statements and Statutory Declarations received from the parties were laid by the Standards Commission before the Houses of the Oireachtas and put on public display. A summary of the information contained in the Donation Statements is provided in Table C.

Table C: Donation Statements received in 2002 from political parties

Political Party	Value of donations disclosed (€)	Number of donors	Value of largest donation (€)
Sinn Féin	25,395 + US\$295,740 + Australian \$48,950	3	US \$295,740
Fianna Fáil	194,615	27	26,855
Labour Party	*164,929	*3	78,587
Progressive Democrats	137,132	6	63,487
Socialist Party	37,077	1	35,807
Green Party	**22,810	**4	9,675
Fine Gael	none	n/a	n/a
Christian Solidarity Party	none	n/a	n/a
Communist Party of Ireland	none	n/a	n/a
Christian Democrats (The National Party)	none	n/a	n/a
Socialist Workers Party	none	n/a	n/a
South Kerry Independent Alliance	none	n/a	n/a
Workers Party	none	n/a	n/a
Totals	581,958 + US\$295,740 + Australian \$48,950 (equivalent to €947,768)	44	n/a

* The Labour Party pointed out in its Donation Statement that one donation, the value of which was €63,487, was returned to the donor, Mr. Denis O'Brien. This amount is included in the €164,929 shown above.

** Three of the donations disclosed by the Green Party did not exceed €5,078.95 and, accordingly, were not required to be disclosed.



A number of elected representatives made donations to their political parties. The largest such donation was made by Deputy Joe Higgins who contributed €37,077 to the Socialist Party followed by Deputy Caoimhghin Ó Caoláin, who made donations of €25,395 to Sinn Féin and Deputy Prionsias De Rossa who made donations of €22,855 to the Labour Party. Donations were also disclosed by the Green Party from Ms. Patricia McKenna, MEP, who contributed €9,675 to the party. The Green Party also disclosed contributions of €4,723 and €4,381 from Deputies Trevor Sargent and John Gormley, respectively, and a donation of €4,031 from Ms. Nuala Ahern, MEP. These donations, being under the €5,078.95 threshold, did not require to be disclosed.

Exchequer Funding of Political Parties

Funding under the Electoral Acts

The Electoral Acts provide for the public funding of qualified political parties. To qualify for funding under this legislation, a political party must be included in the Register of Political Parties and must have secured at least two per cent of the first preference votes at the last Dáil general election. Seven political parties, including the former Democratic Left, qualified for public funding on the basis of the 1997 general election results. Six political parties qualify on the basis of the 2002 general election results. The amount of funding payable to each qualified party is determined by the proportion it secured of the total first preference votes received by all of the qualified parties.

The legislation provides that the funding must be applied to the general conduct and management of the party's affairs and the lawful pursuit by it of any of its objectives and, without prejudice to the generality of the foregoing, any or all of the following purposes:

- general administration of the party;
- research, education and training;
- policy formulation;
- co-ordination of the activities of branches and party members.

The funding is deemed to include provision in respect of the promotion of participation by women and young persons in political activity. It is also provided that the funding must not be "applied to, or to recoup, election expenses".

Qualified parties must account for their use of the funding on an annual basis. The Appropriate Officer of each qualified party provides an Exchequer Expenditure Statement to the Standards Commission which details the amount of funding received in respect of the preceding year and the purposes to which it was applied. A public auditor is required to audit the statement and the auditor's report must be submitted with the statement to the Standards Commission. Payments are not made beyond end-April of any year to a qualified party unless it has furnished a Donation Statement and an Exchequer Expenditure Statement to the Standards Commission in respect of the preceding year.

Payments made in respect of 2001

Under the 1997 Act, total payments to qualified parties could not exceed €1,269,738 annually. This figure, however, was subject to an automatic increase in line with general increases in civil service remuneration. The total funding which was available to qualified political parties in respect of 2000 was €1,379,616.80. During 2001 there was a 2% increase effective from 1 April 2001 and a 5.5% increase with effect from 1 October 2001, under the Programme for Prosperity and Fairness. In addition, the 2001 Act increased the level of funding with effect from 1 November 2001. In a full year, qualified parties

would now be paid €126,974 each and would share €3,809,214, on the basis described above. The total funding available to qualified political parties in respect of 2001 was €1,980,471.

The amount actually paid to qualified political parties in respect of 2001 was €1,950,054. The balance of €30,417 represents the amount that would have been payable to Democratic Left, up to 31 October 2001, had it continued to be registered as a political party. In no longer being registered, since the merger with the Labour Party in January 1999, it did not meet one of the qualifying criteria for payment. However, the 2001 Act provided that where one or more

political parties is or are amalgamated with another political party, the total number of first preference votes obtained by every candidate of each former party would be attributed to the larger party. Accordingly, with effect from 1 November 2001, the Labour Party is eligible to receive the funding that would otherwise have been payable to the former Democratic Left.

A breakdown of how the funding received by each of the six qualified political parties in respect of 2001 was spent is provided in Table D.

Table D: Spending of Exchequer funding received under the Electoral Acts in respect of 2001.

Qualified Political Party	General admin. (€)	Research, education, & training (€)	Policy formulation (€)	Co-ordination of activities of branches & members (€)	Promotion of women & young persons (€)	Amount of total funding spent (€)
Fianna Fáil	540,291	3,028	Nil	287,892	(59,625) ¹	831,211
Fine Gael	354,670	1,270	Nil	192,226	48,498	596,664
Labour Party	196,851	Nil	8,585	13,167	34,328	252,931
Progressive Democrats	117,543	Nil	Nil	Nil	Nil	117,543
Green Party	55,299	Nil	254	Nil	889	56,442 ³
Sinn Féin	73,717	Nil	Nil	Nil	Nil	73,717
Total.	1,338,371	4,298	8,839	493,285	83,715² (143,340)	1,928,508⁴

¹: Already included under heading 'Co-ordination of activities of branches & members'

²: Does not include the amount referred to at 1.

³: The Green Party received €77,988 in Exchequer funding in respect of the period 1 January 2001 to 31 December 2001 and accounted for €56,442 in its Exchequer Expenditure Statement. All other parties accounted for the full amounts received.

⁴: Figures have been rounded to the nearest €

Table E: Exchequer funding received under the Electoral Acts by qualified political parties for 2002

Qualified Political Parties	Total funding received	Total expenditure in 2002, if any, of funding received	Balance of funding carried forward to 2003
	€	€	€
Fianna Fáil	1,898,164	1,898,125	39
Fine Gael	1,193,566	906,305	287,261
Labour Party	627,385	494,059	133,326
Progressive Democrats	307,594	307,594	nil
Green Party	272,834	182,375	90,459
Sinn Féin	347,664	347,664	nil
Total	4,647,207	4,136,122	511,085

Payments made in respect of 2002

Table E above shows the amount of Exchequer funding paid to the six qualified parties in respect of 2002. Details of how this funding was used by the parties will be provided in the Annual Report of the Standards Commission for 2003.

Funding under the Party Leaders Allowance

The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001 (the Act) provides for the payment of an annual allowance to the parliamentary leader of a qualifying political party in relation to expenses arising from the parliamentary activities, including research, of the party. This allowance is known as the Party Leaders Allowance.

A qualifying party is defined as a party, registered in the Register of Political Parties, which contested the last preceding general election or any subsequent bye-elections and which had at least one member elected to Dáil Éireann or elected or nominated to Seanad Éireann at that general election or at any subsequent bye-election.

The allowance is calculated for each parliamentary leader by reference to the number of members of the party elected to Dáil Éireann at the last preceding Dáil general election or at a subsequent bye-election, or elected or nominated to Seanad Éireann at the last preceding Seanad general election or nominated to it after the last preceding general election.

In the case of Dáil Éireann, the allowance is €48,547 per member for each of the first 10 members elected, €38,837 per member for each member elected from 11 to 30 members and €19,423 for each member elected over 30 members.

In the case of Seanad members, the allowance is €31,743 per member elected or nominated for each of the first 5 members and €15,872 for each member elected or nominated over 5 members.

Independent members of Dáil Éireann receive an allowance of €27,934 and independent members of Seanad Éireann receive an allowance of

€15,872. Such members are not required to furnish to the Standards Commission a Statement of Expenditure in relation to the allowance.

If a qualifying party forms part of the Government, the combined allowances in respect of its members of the Dáil, only, will be reduced by one-third. The allowance must not be used for, or to recoup, election or poll expenses incurred for the purposes of an election or poll held under various Electoral Acts, European Parliament Elections Acts, Presidential Elections Acts, Referendum Acts or Seanad Electoral Acts. The allowances are not liable to income tax. Where the members of a qualifying party agree to dissolve the party and to amalgamate with, or all its members join, another specified qualifying party, the members of the Dáil and Seanad of the former party will, from the date of dissolution, be deemed to be members of the specified other party for the purpose of payment of the allowance.

Each party leader is required to prepare, or cause to be prepared, not more than 120 days after the end of the financial year in which an allowance has been paid, a statement of any expenditure from the allowance. The statement must be audited by a public auditor and must be submitted with the auditor's report to the Standards Commission within the 120 day period.

The Standards Commission must furnish a report to the Minister for Finance indicating whether the statement and auditor's report have been submitted within the specified period, whether any unauthorised expenditure is disclosed and whether the statement is adequate or inappropriate. A copy of the report to the Minister for Finance must be laid before each House of the Oireachtas.

A copy of the statements and auditors' reports must be retained by the Standards Commission for three years and must be available for public inspection and copying.

The allowance will not be paid to the parliamentary leader unless the statement of expenditure and auditor's report have been received by the Standards Commission not more than 120 days after the end of the financial year (i.e. by 30 April). The period of 120 days is extended by any period for which the Dáil stands dissolved which coincides with that period.

"Expenses arising from the parliamentary activities, including research" include expenditure on the following matters:

- (a) the general administration of the parliamentary activities of a qualifying party,
- (b) the provision of technical or specialist advice likely to be required in connection with legislative proposals or potential parliamentary initiatives,
- (c) research and training,
- (d) policy formulation,
- (e) the provision of consultant services, including the engagement of public relations services,
- (f) polling or public attitude sampling in connection with parliamentary debates or initiatives,
- (g) the purchase of support services for a parliamentary party from the party,
- (h) the payment to a parliamentary leader of any salary or honorarium in respect of duties arising from his or her activities as such leader as distinct from those of a member of Dáil Éireann or a holder of a Ministerial office,
- (i) the payment to another person of any salary or honorarium in respect of duties arising from the person's activities in a parliamentary party,



- (j) the provision for, or recoupment of, transport and personal expenditure incurred by a parliamentary leader, officers or a parliamentary party spokesperson as a result of their parliamentary party function,
- (k) entertainment.

The Minister for Finance may, by regulation, extend the above list after consulting the parliamentary leaders and after considering any report made by the Standards Commission.

Payments made in respect of 2001

The Standards Commission wrote to the parliamentary leaders of the seven qualifying parties on 19 March 2002 requesting that they prepare, or cause to be prepared, a statement of any expenditure from the annual allowance which was paid under the Act in 2001. They were informed that the statement must be accompanied by an auditor's report.

The parliamentary leaders who qualified for payment in 2001 were:

- Mr. Bertie Ahern, TD, Taoiseach, Fianna Fáil.
- Mr. Michael Noonan, TD, Fine Gael.
- Mr. Ruairí Quinn, TD, Labour Party.
- Ms. Mary Harney, TD, Progressive Democrats.
- Mr. Trevor Sargent, TD, Green Party.
- Mr. Caoimhghín Ó Caoláin, TD, Sinn Féin.
- Mr. Joe Higgins, TD, Socialist Party.

The Standards Commission requested completion and return of the appropriate forms by 31 March 2002. This date, while not specified in the legislation, was chosen by the Standards Commission to ensure that parliamentary leaders had adequate time to furnish the statements

before 30 April 2002, having regard to the fact that the Act provides that an allowance shall not be paid unless the statement and auditor's report have been received by the Standards Commission not more than 120 days after the end of the financial year to which the statement and auditor's report relate (i.e. by 30 April). The period of 120 days is extended by any period for which the Dáil stands dissolved which coincides with that period.

In relation to returns in respect of 2001, as the Dáil was dissolved on 25 April 2002 and did not reconvene until 6 June 2002, the date by which parliamentary leaders were required to furnish a statement of expenditure and auditor's report in respect of 2001, was extended to 12 June 2002.

A Statement of Expenditure and Public Auditor's Report was received by the Standards Commission from the parliamentary leaders of six of the seven qualifying parties within the extended deadline of 12 June 2002. The material from Fine Gael was received on 17 June 2002.

The Standards Commission considered the Statements of Expenditure and Public Auditors' Reports and was satisfied that:

- a) they did not disclose any expenditure which did not comply with the Act, and
- b) they were adequate and were not inappropriate.

Details of the allowances paid to the parliamentary leaders and an outline of expenditure from the allowances in 2001 are contained in Table F. Table G provides a breakdown of expenditure from the allowances.

If funding in respect of a particular year is not spent in that year, it must be accounted for in the statement(s) for the year in which it is actually spent.

Table F: Funds received by the parliamentary leaders of qualified political parties under the Party Leaders Allowance in 2001.

	Total Received €	Total Spent €
Fianna Fáil	1,562,205	946,278
Fine Gael	1,718,843	1,431,726
Labour Party	956,454	956,454
Progressive Democrats	182,055	90,579
Green Party	102,344	56,886
Sinn Féin	51,172	49,471
Socialist Party	51,172	37,385
Total	4,624,245	3,568,779



Table G: Breakdown of spending of funds received by the parliamentary leaders of qualified political parties under the Party Leaders Allowance in 2001. The letters in the first column represent the headings listed in a) to k) on pages 29 and 30.

	Fianna Fáil	Fine Gael	Labour Party	Progressive Democrats	Green Party	Sinn Féin	Socialist Party	Total
	€	€	€	€	€	€	€	€
a	446,323	153,719	801,458	3,796	1,404	9,353	nil	1,416,053
b	nil	nil	1,581	nil	nil	nil	nil	1,581
c	92,756	nil	8,819	1,251	18,536	nil	30,056	151,418
d	46,433	73,795	2,539	nil	2,793	nil	5,823	131,383
e	127,956	50,328	23,218	nil	nil	nil	nil	201,502
f	109,369	nil	38,092	nil	nil	nil	nil	147,461
g	96,870	1,024,662	11,750	83,803	34,153	25,395	nil	1,276,633
h	nil	46,463	19,046	nil	nil	nil	nil	65,509
i	nil	nil	12,697	nil	nil	14,723	nil	27,420
j	22,000	82,759	30,454	nil	nil	nil	1,506	136,719
k	4,571	nil	6,800	1,729	nil	nil	nil	13,100
Total	946,278	1,431,726	956,454	90,579	56,886	49,471	37,385	3,568,779

Payments made in respect of 2002

The parliamentary leaders who qualified for payments in 2002 were:

- Mr. Bertie Ahern, TD, Taoiseach, Fianna Fáil.
- Mr. Enda Kenny, TD and Mr. Michael Noonan, TD, Fine Gael.
- Mr Pat Rabbitte, TD and Mr. Ruairi Quinn, TD, Labour Party.
- Ms. Mary Harney, TD, Progressive Democrats.
- Mr. Trevor Sargent, TD, Green Party.

- Mr. Caoimhghín Ó Caoláin, TD, Sinn Féin.
- Mr. Joe Higgins, TD, Socialist Party.

The legislation provides that the person who was the parliamentary leader of a party and the person who succeeds him or her may agree in writing that a statement of expenditure from the annual allowance paid to a former parliamentary leader shall be included in the next statement of his or her successor.

Table H: Funds received by the parliamentary leaders of qualified political parties under the Party Leaders Allowance in 2002.

	Total funding received €	Amount of funding brought forward from 2001 €	Overall total funding available for spending in 2002 €	Total expenditure in 2002, if any, of funding received €	Balance of funding carried forward to 2003 €
Fianna Fáil	2,094,432	615,927	2,710,359	1,418,036	1,292,323
Fine Gael	1,826,963	230,932	2,057,895	2,057,895	nil
Labour Party	1,052,611	nil	1,052,611	906,393	146,218
Progressive Democrats	331,620	120,336	451,956	223,642	228,314
Green Party	232,629	102,222	334,851	25,207	309,644
Sinn Féin	182,322	1,700	184,022	109,027	74,995
Socialist Party	50,305	13,787	64,092	59,814	4,278
Total¹	5,770,882	1,084,904	6,855,786	4,800,014	2,055,722

¹ Rounded to the nearest €

A breakdown of how those funds were spent will be provided in the Annual Report of the Standards Commission for 2003.

Table I shows the extent to which qualified political parties were funded directly by the Exchequer in 2002.

Table I: Total Exchequer funds received by the qualified political parties under the Electoral Acts and the Party Leaders Allowance in 2002.

	Total funding received under the Party Leaders Allowance for 2002 €	Total funding received under the Electoral Acts for 2002 €	Overall total Exchequer funding for 2002 €
Fianna Fáil	2,094,432	1,898,164	3,992,596
Fine Gael	1,826,963	1,193,566	3,020,529
Labour Party	1,052,611	627,385	1,679,996
Progressive Democrats	331,620	307,594	639,214
Green Party	232,629	272,834	505,463
Sinn Féin	182,322	347,664	529,986
Socialist Party	50,305	n/a	50,305
Total	5,770,882	4,647,207	10,418,089

Registration of Third Parties

Background

Section 23C of the Electoral Act, 1997, as inserted by the 2001 Act, provides that a third party, i.e. any person, other than a 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, must register with the Standards Commission.

The provisions of section 23C came into effect on 1 January 2002. While they have on-going effect, they are particularly relevant during political campaigns such as elections or referenda. In 2002 they applied to the referendum on abortion on 6 March, the Dáil general election on 17 May and the Nice Treaty referendum on 19 October.

A public notice, providing information on the obligations attaching to third parties, was published by the Standards Commission in the

daily newspapers on 24 January 2002. On the same day, articles relating to the new provisions appeared in a number of newspapers. Also on that day, an explanatory note, outlining the relevant provisions of the legislation, was published on the website of the Standards Commission (www.sipo.ie). The public notice was published during the following week in the Sunday and provincial newspapers.

The Standards Commission received a number of enquiries from potential third parties in response to the public notice, explanatory note and media coverage. Given the general nature of the publicity at the time and the extremely wide definition of political purposes, callers included individuals and numerous bodies ranging from charities, tidy towns committees, chambers of commerce, community organisations, etc., to those such as the Union for Europe Movement and the Pro-Life Campaign.

Those individuals and groups who made contact with the Standards Commission, who considered that they might be covered by the legislation, were requested to write to the Standards Commission providing details of the individual or group, an account of the activities in which it was intended to engage and an outline of any normal source of funding.

The Standards Commission decided that the approach it would take in dealing with such individuals and groups would be to contact all of those coming to its attention in relation to particular campaigns, e.g. the referendum on abortion, the Dáil general election 2002 and the Nice Treaty referendum.

Outside of such campaigns, and because the requirement to register as a third party applies at all times once a donation of more than €126.97 for political purposes has been received, the Standards Commission is required to deal with any other case where there is evidence that an individual or group has received such a donation and has not registered. In that regard, unless it has reason to believe that the individual or group is likely to have received a donation of more than €126.97 for political purposes, it is not the intention of the Standards Commission to pursue each individual and group involved in every type of campaign where the activities could be covered by the definition of political purposes. Such individuals or groups will, however, be contacted by the Standards Commission for clarification of their position if a complaint, or other information, is received about their failure to register.

Referendum on Abortion

Polling in relation to the referendum on abortion took place on Wednesday 6 March 2002. The Standards Commission engaged with groups involved in campaigning on the issue as and when they approached the Standards Commission for information or if they otherwise

came to its attention. In the weeks leading up to polling day, it was evident that substantial expenditure was being incurred on posters, etc., relating to the campaigns being conducted by certain groups. The Standards Commission was aware that at least some of these groups were soliciting donations and had not registered as third parties.

The following is a summary of the position relating to those groups and individuals who were active during the referendum on abortion campaign:

- one group, "Pro-Life Campaign", registered with the Standards Commission of its own volition before the launch of the referendum on abortion campaign.
- a second group, "Abortion Reform", registered of its own volition almost two months after the referendum.
- two groups, "Pro-Life Movement" and the "Irish Family Planning Association", registered with the Standards Commission after it was brought to their attention that they could be covered by the legislation.
- another group, "Ireland for Life", changed its name to "Éire ar son na Beatha" and registered with the Standards Commission, following an exchange of correspondence, after it was brought to its attention that it could be covered by the legislation.
- "Pro-Life Alliance", also registered with the Standards Commission, following an exchange of correspondence, after it was brought to its attention that it could be covered by the legislation.
- the Standards Commission had some difficulty contacting "Alliance for a No Vote" (using a PO Box Number). When contact was made, this group also registered as a third party.



- ten groups or individuals, whose activities came to the attention of the Standards Commission during the referendum on abortion campaign, were not required to register as third parties as the provisions of the legislation did not apply to them, viz., "Mother and Child Campaign", "Youth Defence", "Family Solidarity", "Maynooth Life Society", "European Life Network (Ireland)", "Human Life International", "NearT", Ms. Nora Bennis, Mrs. Dana Rosemary Scallan and "Alliance for all Life".
- "SPUC (UK)", did not reply to correspondence from the Standards Commission. Being outside the jurisdiction, in the event that a reply to correspondence is not received, there is no further action that can be taken in the case of "SPUC (UK)".

The referendum on abortion was the first significant relevant event to occur after the coming into operation of the provisions of section 23C of the 1997 Act. It is clear that, notwithstanding the newspaper advertising and other publicity undertaken by the Standards Commission, there was a low level of awareness and understanding of the legal obligations attaching to third parties in relation to the referendum. With the exception of "SPUC (UK)", all groups and individuals whose participation in the campaign came to the attention of the Standards Commission took steps to comply with the statutory requirements.

The Standards Commission has made all reasonable efforts to ensure that individuals or groups who are covered by the legislation will discharge their legal responsibilities. It may be the case that individuals or groups, other than those who came to the attention of the Standards Commission, were involved in the abortion referendum campaign and should have registered as third parties having received donations, in relation to the referendum, valued in excess of €126.97. The Standards Commission will consider the matter and take appropriate action if evidence to that effect becomes available.

Dáil General Election

In the lead up to the Dáil general election, the Standards Commission placed a public notice in the national daily newspapers on Thursday, 25 April 2002, in the Sunday newspapers on 28 April 2002 and in the provincial newspapers during the week which began on 29 April 2002, providing information on the obligations attaching to third parties. An explanatory note outlining the relevant provisions of the legislation was published on the website of the Standards Commission (www.sipo.ie). (The 28th Dáil was dissolved on 25 April 2002.)

The following is the position relating to individuals or groups which were active during the general election campaign in relation to the requirement to register as third parties:

- one group, "Pro-Life Campaign", was already registered as a third party for the purpose of the referendum on abortion.
- four groups, "No Incinerator Alliance", "N9 Action Group", "Galway for Safe Environment" and "Elect Carlow Candidates Organisation" registered following an exchange of correspondence.
- as they did not receive donations for political purposes, there was no need for the following 10 groups or individual, whose activities came to the attention of the Standards Commission, to register, "N9/N10 Unified Group", "Vote Local Vote Drogheda Campaign", Joe McManus, "Fluoride Free Water", "Farmers Positive Action Group", "National Women's Council of Ireland", "Ennis Chamber of Commerce", "Focus Ireland", "Anti Facist Action" and "Amnesty International".
- neither was there any evidence of receipt of donations by the following eight groups or individual, "Navan Lobby Group", "Ballyfin Parents Council", Michael Prendergast, "Campaign Against Service Charges", "Union of Students in Ireland", "MIJAG", "Campaign Against the Bin Tax" and "The Carers Association".

- no reply to correspondence has been received from "Residents Against Racism". However, as it would appear that their election spending, if any, was funded from membership fees, this case was not pursued further.

The Standards Commission has made every effort to engage with those individuals and groups who were involved in campaigning at the election. It is possible that other groups or individuals should have registered as third parties having received donations for political purposes valued in excess of €126.97 in relation to the election. If evidence of any such groups or individuals becomes available, the Standards Commission will consider the matter and take the appropriate action.

Nice Treaty Referendum

Polling at the Nice Treaty referendum took place on 19 October 2002. A public notice, which provided information on the obligations attaching to third parties, was published by the Standards Commission in the daily and Sunday newspapers on 13 and 15 September 2002, respectively. An explanatory note outlining the relevant provisions of the legislation was published on the website of the Standards Commission (www.sipo.ie).

The following is the position relating to individuals or groups that were involved in the Nice Treaty Referendum campaign:

- sixteen groups or individuals registered with the Standards Commission, namely, "Ireland for Europe", "Irish Alliance for Europe", "European Access Providers Limited", "IFSC for Yes", "No to Nice Campaign", "Irish Business and Employers Confederation", "Disability Alliance for Europe", "Concerned Christians against Nice", "Equal in Europe", "The National Platform", Mr. Anthony Coughlan, "Immigration Control Platform", "Alliance Against Nice", "Women for a Yes Vote", "Democrats against Nice" and "Peace and Neutrality Alliance".

- it was not necessary for "Afri", "Yes to Nice.com", "Irish Congress of Trade Unions", "Dublin Chamber of Commerce", "The Irish Farmers Association" and "Cork Chamber of Commerce" to register as a third party.
- while no reply was received from "European Movement Ireland", there was no evidence that it received a donation in excess of €126.97 for political purposes and, accordingly, there was no evidence that it should register as a third party;
- in relation to one group, "Libertarians Against Nice", which used a Post Box Number, at the time of writing, the Standards Commission is in correspondence with An Post with a view to getting the name and address of the subscriber to the PO Box Number.

During the Nice Treaty referendum campaign there appeared to be a far greater awareness of the requirements in relation to third parties than was the case with the referendum on abortion or the Dáil general election. Seven of the groups/individuals which or who had registered as third parties had contacted the Standards Commission before the public notice appeared in the newspapers. Another eight contacted the Standards Commission after the notice appeared. The other group which registered did so after it was contacted by the Standards Commission.

The Standards Commission presented a report to the Ceann Comhairle on the activities of the third parties referred to above as it was anxious to outline to the Houses of the Oireachtas and the Minister for the Environment and Local Government the issues which have arisen in the supervision of this aspect of the legislation. Also, the report might be useful to the Minister and the Houses when carrying out a review of the legislation, as was indicated by the Minister in his address to the Seanad in the course of the debate on the Electoral (Amendment) (No 2) Bill, 2002. The report is on the Standards Commission website (www.sipo.ie).



The responsible person of all of those third parties (i.e. the person or persons responsible for the organisation, management or financial affairs of the third party) which have registered with the Standards Commission and which have received a monetary donation exceeding €126.97, must, by 31 March 2003, furnish to the Standards Commission a statement, provided by the financial institution where the third party has opened a political donations account, specifying the transactions that have taken place in relation to the account during the preceding year. The responsible person must also furnish a certificate stating that all monetary donations received by the third party during the preceding year were lodged to the said account and that all amounts debited from the account were used for political purposes. The certificate must be accompanied by a statutory declaration that, to the best of the person's knowledge and belief, the certificate is correct in every material respect and that the person has taken all reasonable action in order to be satisfied as to the accuracy of the certificate. In accordance with the terms of the legislation, such certificates, statements and statutory declarations are not laid before the Houses and are not for public display.

The Standards Commission will prepare and publish a report on certificates, statements and statutory declarations when the relevant material has been received and considered.

Accounting Units

Section 49 of the 2001 Act came into operation on 1 January 2002 and introduced a new entity in relation to political parties called accounting units. An 'accounting unit', in relation to a political party, means a branch, including the headquarters of a political party if it is a separate accounting unit or other subsidiary organisation of the party, which in any particular year, receives a donation the value of which exceeds €126.97. On receipt of such a donation, which is a monetary donation, the accounting unit is required to open and maintain an account in a financial institution and to lodge that donation and any further monetary donation received by it, of whatever value, to that account.

An accounting unit, must not, directly or through any intermediary, accept from a particular person in a particular year a donation the value of which exceeds €6,348.69.

An accounting unit, must not, directly or through any intermediary, accept a donation of whatever value given by -

- (a) an individual (other than an Irish citizen) who resides outside the island of Ireland, or
- (b) a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland, being an office from which the carrying on of one or more of its principal activities is directed.

The appropriate officer of each political party is required to notify the Standards Commission, as soon as possible, and from time to time thereafter as circumstances require, of the name and address of each accounting unit of the political party and the name of the responsible person or persons of the accounting unit. 'Responsible person' in relation to an accounting unit, means the treasurer or any other person responsible for dealing with donations to the unit.

The responsible person of each accounting unit, must, by 31 March 2003 in relation to the year 2002, furnish to the Standards Commission a statement provided by the financial institution where the accounting unit has opened the political donations account referred to above, specifying the transactions which have taken place in relation to the account during the preceding year together with a certificate signed by the responsible person stating that all monetary donations received by the accounting unit during the preceding year were lodged to the said account and all amounts debited from the account were used for political purposes. The certificate must be accompanied by a statutory declaration that, to the best of the person's knowledge and belief, the certificate is correct in every material respect and that the person has taken all reasonable action in order to be satisfied as to the accuracy of the certificate. In accordance with the legislation, these certificates, statements and statutory declarations are not put on public display.

Standards Commission is of the opinion that many technical aspects of the legislation should be examined with a view to streamlining its application in a number of respects. In that regard, the Standards Commission has accepted an invitation from the Minister for the Environment and Local Government to furnish its observations. This will be done during the course of 2003.

Review of Legislation

As stated above, the Minister for the Environment and Local Government, in his address to the Seanad in the course of the debate on the Electoral (Amendment) (No 2) Bill, 2002, indicated that he would be carrying out a review of the Electoral Acts. Based on experience from supervising the legislation over the past number of years, including during the general election to Dáil Éireann in 2002, the Standards Commission agrees that a review of its operation at this stage is timely. Arising from that review and any amending legislation which may follow, it is hoped by the Standards Commission that the fundamentals of the legislation, in areas such as disclosure of donations, prohibition on acceptance of certain types and values of donations, limits on election spending and public access to material, will not be diminished. The



ANNUAL REPORT
2002

3



Chapter 3

Freedom of Information

During 2002 one request for information was received and accommodated in full. The request was for "All records (in any form) relating or referring to the GRECO 'Evaluation Report on Ireland'."

It is, of course, the case that the vast bulk of the material furnished to the Standards Commission under the Electoral Acts is available for public inspection and copying at the office and on the website of the Standards Commission. There is, however, a general prohibition on the disclosure of information obtained under the Ethics Acts, except in specific circumstances as outlined in section 35 of the 1995 Act. It is an offence under the legislation to contravene the provisions in question, which are not superseded by the Freedom of Information Act, 1997.



ANNUAL REPORT
2002

4



Chapter 4

Costs in 2002

Table J below outlines the expenditure incurred by the Standards Commission in 2002. The figures for 2001 are also shown for comparison purposes. The expenditure is provided for in Subhead B of Vote 17 [Ombudsman].

All of the figures, with the exception of Consultancy and Legal Fees, show a marked increase in 2002 over 2001 due mostly to the fact that general elections to Dáil and Seanad Éireann were held in 2002. Additional staff were recruited to manage the workload associated with the general elections and other substantial new areas of responsibility assigned to the Standards Commission under both the Ethics and Electoral Acts.

The increase in Travel and Expenses was as a result of the programme of regional visits undertaken by staff of the Standards Commission in relation to the Dáil general election, as outlined earlier in this report.

The figure for Incidental Expenses normally covers the cost of public notices in national and local newspapers advertising the availability for public inspection of material furnished to the Standards Commission under the Electoral Acts and drawing attention to the statutory obligations attaching to companies, trades unions, building societies, etc., to disclose details of donations made by them. Additional public notices were published in 2002 to alert persons, other than candidates and political parties, who intended to incur expenses at the Dáil general election, of the requirements of the legislation in this regard. Separate public notices were also published to draw attention to the legal requirements attaching to third parties who intended to become involved in the referendum on abortion and the Nice Treaty referendum.

The increase under the Postal and Telecommunications heading is attributable to the Dáil and Seanad general elections.

The increases under the headings Office Machinery and Other Office Supplies and Office Premises is attributable to the fact that the office of the Standards Commission was relocated to Longphort House, Lower Leeson Street, Dublin 2, during 2002.

The reduction in Consultancy and Legal Fees reflects the fact that the former Public Offices Commission conducted a formal investigation under the Ethics Act in 2001 and, as well as additional services provided by its solicitor, engaged a Junior and Senior Counsel for that purpose. There was no similar investigation in 2002.



Table J: Expenditure incurred in 2002

	2002 €'000	2001 €'000
Staff Salaries	396	277
Travel & Expenses	19	3
Incidental Expenses	167	60
Postal & Telecommunications	13	9
Office Machinery and Other Office Supplies	63	34
Office Premises	87	10
Consultancy & Legal Fees	24	86
Total	769	479



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