

Annual Report of the Public Offices Commission 2001

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Foreword

I hereby present the Annual Report of the Public Offices Commission for 2001 to the Minister for Finance pursuant to the provisions of section 27(2)(a) of the Ethics in Public Office Act, 1995.

A handwritten signature in blue ink that reads "Kevin Murphy". The signature is written in a cursive style with a large initial 'K'.

Kevin Murphy
Chairman
Public Offices Commission

June 2002

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Introduction

Introduction

This is the final report of the Public Offices Commission (the Commission) which was established in November 1995 and, as of 10 December 2001, was replaced by the Standards in Public Office Commission (the Standards Commission). The members of the Commission responsible for this report are:

Mr. Kevin Murphy, Ombudsman (Chairman),
Mr. John Purcell, Comptroller and Auditor General,
Mr. Séamus Pattison, TD, Chairman of Dáil Éireann,
Mr. Kieran Coughlan, Clerk of Dáil Éireann,
Ms. Deirdre Lane, Clerk of Seanad Éireann.

As a final report, it reviews, in Part 1, developments which have occurred during the period from 1995 to 2001. Part 2 of the report deals with some of the issues which have emerged over the years in relation to the Commission's supervisory role under the Ethics in Public Office Act, 1995 (the Ethics Act), including an account of a formal investigation which was initiated by the Commission in February 2001 and concluded with the issue of an investigation report in December 2001.

In Part 3 the report outlines the main elements of the Standards in Public Office Act, 2001 (the Standards Act), which became law on 10 December 2001.

The activities of the Commission during 2001 under the Electoral Acts, 1997 to 2001 (the Electoral Acts) are described in Part 4. Matters covered include the Tipperary South Dáil bye-election of June 2001, donations disclosed by TDs, Senators, MEPs and political parties in 2001, Exchequer funding of political parties under the Electoral Acts and the Party Leaders' Allowance Scheme and other issues.

Part 5 provides details of costs incurred by the Commission in 2001.

In this final report, the Commission wishes to record its appreciation of the contribution made to its work and development by the former Ceann Comhairle, Mr. Seán Treacy, who was the first Chairman of the Commission and served in that capacity from 1995 until his retirement in 1997. The Commission also wishes to express its gratitude to Mr. Séamus Pattison, TD, the Ceann Comhairle of the 28th Dáil, who was a member of the Commission from June 1997 to December 2001 when the Commission was replaced by the Standards Commission. The Standards Commission will not have the Ceann Comhairle as one of its members.

The Commission would like to thank the Commission Secretary, Mr. Brian Allen, and his staff for their valued commitment and hard work over the life of the Commission. Finally, the Commission wishes its successor, the Standards Commission, under the Chairmanship of The Honourable Mr. Justice Matthew P. Smith, every success in the future.

Part 1

Review (1995 - 2001)

Review (1995 - 2001)

The enactment of the Ethics Act in July 1995 was a very significant development introducing, for the first time, statutory obligations relating to disclosure of interests by office holders, by members of Dáil and Seanad Éireann and by certain categories of persons in the public service, including the civil service. The Ethics Act also sets out standards to be observed in the performance of public service functions and measures for dealing with potential conflicts of interest. Overall, it was an important element in the legislative response of the Oireachtas in the mid 1990s to a public demand for transparency in public life.

The passage of the Electoral Act in mid-1997, and subsequent amending legislation, was guided by similar principles of openness and accountability, focusing on the relationships between, on the one hand, political parties and individual politicians and, on the other, their supporters where that support takes the form of donations of money, property, goods or services. The Electoral Acts also seek to achieve equity in the electoral process by capping election spending and to assist greater candidate participation by providing for recoupment by the Exchequer of a portion of their election expenses where certain conditions are satisfied. In other jurisdictions where limits on election spending have been in force for a much longer period, the existence and supervision of such limits is considered to be extremely important in the fight against corruption. Where there is uncontrolled spending at elections, there will always be the danger that the need to raise large amounts of money to contest campaigns will take priority over other considerations including concerns about the source of the funds or the expectations of those who are providing them. The emphasis in the Electoral Acts is on facilitating public scrutiny of political donations and election spending and, in the event of failure to make proper disclosure, allowing for prosecution of offences in the courts. The Exchequer funding of political parties is designed to assist the development of administrative structures at party level and to promote research, education, training and the formulation of policy. Promoting participation by women and young people in political activity is also a specific objective of the funding.

Since 1995, the Commission, initially under the chairmanship of Mr. Seán Treacy, then TD and Ceann Comhairle, and, since 1997, under the chairmanship of Mr. Kevin Murphy, Ombudsman, has played a central role in promoting awareness of the Ethics and Electoral Acts amongst the general public and also in supervising the legislation in relation to those covered by it. An example would be the publication of guidelines and the giving of advice under the Ethics Act to Ministers, their advisers and to a large number of other public servants on the steps to be taken by them to assist compliance. The Commission has also implemented the disclosure requirements of the Ethics Act and, at the end

of 2001, held in excess of 4,000 statements of interests. A number of inquiries, on foot of complaints or on the Commission's own initiative, have been conducted under the Ethics Act since 1995. In 2001, the Commission completed its first formal investigation which is described in some detail later in this report.

The Commission has also issued guidelines and given advice in relation to the Electoral Acts. Supervision of this legislation began with the disclosure of donations by unsuccessful candidates at the Dáil and Seanad general elections of 1997 followed by candidates at the presidential election in the same year. Limits on election spending were introduced in 1998 and these applied at the European Parliament elections in 1999 and at the six Dáil bye-elections which have taken place since 1997. The legislation has also required the annual disclosure and publication, since 1998, of donations received by TDs, Senators, MEPs and political parties.

The Commission has used its annual reports, which have been presented to the Minister for Finance each year since 1996, to highlight issues of interest and to express its considered opinion in a number of areas. Examples of issues raised in this way which are relevant to the Ethics Act have included the question of gifts given to office holders (1998), the circumstances leading to the resignation of a special adviser and its implications (1999), the absence of a statutory definition of 'friend' and the limitations inherent in the definition of 'connected person' (1999) and the special responsibilities attaching to ministerial conduct (2000). In relation to the Electoral Acts, issues dealt with included the disclosure of "pick me up" payments received by political parties (1998), donations made to political parties by party members and affiliates (1999), Exchequer funding of merged political parties (1999), donations from outside the State (1999), the use of "free" Oireachtas facilities for election purposes (2000) and the date from which election spending limits apply (2000).

In late 1998 two members of the Commission (the Chairman and the Comptroller and Auditor General) addressed the Joint

Committee on Finance and the Public Service in the course of that Committee's deliberations on proposals for a Standards in Public Office Bill. The Commission members drew the attention of the Committee to many aspects of the Ethics Act which, in their view, would benefit from amendment. They argued strongly for a change in the membership of the Commission especially since the then members, who all had other full time commitments, could not be expected to undertake tribunal type investigations as a normal function of the Commission. It was suggested that it would be appropriate that a serving or former High Court judge should be appointed as Chairman because of the likelihood that formal investigations would be a feature of the work of the Commission. The Commission members also, with the Ceann Comhairle's consent, raised the sensitive and somewhat anomalous position he was in as a member of the Commission. They also recommended that the independent office holders such as the Ombudsman and the Comptroller and Auditor General should continue as ex-officio members of any new Commission. Another important proposal put forward by the Commission members was that the legislation should be complemented by Codes of Conduct which would set out the standards which those in public life should be expected to meet.

After detailed consideration over more than three years by the Government and by both Houses of the Oireachtas, including three Oireachtas Committees, the Standards Act became law in December 2001. Many of the Commission's observations, including the structure of the Commission itself and the need for an inquiry mechanism which did not call for the full investigatory attention of the Commission, have been incorporated into the Standards Act as have provisions requiring the drawing up of Codes of Conduct. The five person ex-officio Commission of the Ethics Act has been replaced by a six person Commission (four ex-officio and one former member of Dáil Éireann) with a permanent Chairman who is a Judge of the High Court and who is appointed by the President on the advice of the Government following resolutions passed by each House of the Oireachtas recommending the appointment.

The Commission envisaged that Codes of Conduct would enable those principles to be set down which should govern the behaviour of those in public life, but which cannot appropriately be expressed in legislation. The most important one is, of course, that public office should never be used for private gain or personal advantage. The Commission welcomes section 10 of the Standards Act which requires separate Codes of Conduct to be drawn up for members of

the two Houses of the Oireachtas, for Ministers and other office holders, for civil servants and other public servants and for directors of State bodies. The Commission hopes that the opportunity this provides to outline principles of integrity and set standards of conduct will not be lost and that adherence to these principles and standards, and to the legislation itself, will ultimately reverse the perception which exists at present among the general public in relation to sleaze and corruption. It is important to bear in mind that, increasingly, when decisions on investment in this country are being made by foreign companies, ethical standards in both Government and private business are taken into account. Codes of Conduct will become admissible in any proceedings before a court or tribunal or before a Committee on Members' Interests or before the Standards Commission.

Apart from the new functions which the Standards Commission will have as a result of these and other changes, there were other legislative initiatives during 2001 which will expand the Commission's role, viz.

- (1) *the Electoral (Amendment) Act, 2001 which prohibits acceptance of foreign donations, provides for limits on the value of donations which may be received by political parties and parliamentarians, introduces a requirement to open political donations accounts and provides for the registration of pressure groups, and*
- (2) *the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001 which provides a new statutory footing for payment of an annual allowance to the leaders of parliamentary parties to defray expenses arising from the parliamentary activities of the party. This Act gives the Standards Commission a supervisory role in relation to the spending of the allowance.*

It would be premature to attempt to assess the likely impact of these recent developments. However, in the case of the Standards Act, what is clear is that the focus of the legislation has broadened significantly from a position where disclosure of interests and reporting of possible conflicts of interest were the principal features to a more prescriptive mode which includes tax clearance certification for public service appointees and the observance of Codes of Conduct. The law is now clearly stating that certain behaviour by those who are involved in the exercise of public office is not acceptable. The many new requirements of the Electoral Acts are designed to ensure greater transparency, equality and accountability in the area of political funding and are a further important step in the strengthening of public trust in the institutions of the State.

Part 2

Ethics in Public Office Act,
1995 (Ethics Act)

Ethics in Public Office Act, 1995 (Ethics Act)

The Commission's role under the Ethics Act was to supervise the legislation in so far as it applied to office holders, an Attorney General who was not a member of the Dáil or Seanad, Ministerial special advisers, designated directors and executives of specified public bodies and certain civil servants; to provide guidance and advice on the applicability of the Act and, where considered necessary, to carry out investigations into possible contraventions of the Act.

Scope of the Act

The Ethics Act applies directly to members of the Houses of the Oireachtas, to specified office holders and to Ministerial special advisers. However, it applies to civil servants and directors and executives of bodies in the state-sponsored sector only where a specific designation is made by the Minister for Finance acting under section 3 of the Ethics Act. The extent and nature of change in the state-sponsored sector since 1997, when the designations were put in place, has been unprecedented. Many new public bodies have been established since 1997, many others have been privatised, sold, amalgamated or renamed and these changes have given rise to operational problems. For example, in a case where a state-sponsored body is sold in its entirety, there is the question of where responsibility rests for the safe-keeping of the statements of interests of its directors and executives which can be requested under statute by the Standards Commission for up to fifteen years from the date on which they were initially furnished to the body under the Ethics Act. Additionally, there has been an amount of corporate change where position titles, which is a designating factor, have been revised. The cumulative effect is that the number of bodies and positions covered by the Ethics Act has diminished and the Commission has found that some positions which should fall within remit are not designated. The Commission was assured that these matters are receiving attention in the Department of Finance and that they will be resolved satisfactorily as quickly as possible.

Special responsibility of Ministers and Ministers of State

In its report for 2000 the Commission commented on the nature of ministerial office. Obviously, Ministers have substantial power and influence and the principle of not using public office for private advantage is particularly appropriate in their cases. It is important, therefore, that Ministers and Ministers of State set a particularly high standard of compliance when it comes to their obligations under the Ethics Act.

The Ethics Act recognises their special position and provides for an additional level of disclosure beyond that attaching to ordinary members of the Houses of the Oireachtas. As well as registering interests and declaring any interest in the subject matter of the proceedings before speaking or voting in the Houses, a Minister or Minister of State must also disclose any interest of a spouse or child which could materially influence the Minister or Minister of State in the performance of his or her official functions. In addition, they must provide a statement of the facts if a person connected to them, whether through family or in a business or trustee relationship, has an interest in an official function which they propose to perform. The Commission would suggest that, on appointment as a Minister or Minister of State, the appointee should give serious consideration to the possibility that a conflict of interest may arise at some stage and to the making of a voluntary declaration of interests even if it is not prescribed in the Ethics Act.

A Minister, or Minister of State, must also surrender to the State any gift which is received by virtue of office and is valued at more than €650. He, or she, is expected to adhere to the fundamental principle that an offer of gifts or services or hospitality should not be accepted where it would, or might appear to, place him or her under an obligation.

Definition of "friend"

The Ethics Act, in dealing with gifts to Ministers and Ministers of State, and certain other office holders, provides exemption from disclosure or possible surrender to the State (or the making of an appropriate refund) by the recipient, where the benefactor is a "relative" or a "friend" of the office holder. The exemption is repeated in the guidelines for office holders published by the Government and also applies, in relation to disclosure, to other categories of persons including members of the Houses of the Oireachtas who are covered by the Ethics Act. A decision on whether or not persons are relatives is normally a reasonably straightforward matter. It is considerably more difficult, however, to make a determination as to what constitutes a friend. In its examination of complaints over the years the Commission has found that the

absence of a working definition of "friend" was frequently a complicating factor in assessing complaints. In December 1998 the Commission members conveyed their views on difficulties in this area to the Oireachtas Joint Committee on Finance and the Public Service to which draft proposals for a Standards in Public Office Bill had been referred for consideration. However, the Commission is disappointed that the new Standards Act did not provide some clarification on this issue and the Commission expects that the Standards Commission will continue to have to grapple with the problem.

The Commission recognises the difficulty in attempting to construct a robust definition of a "friend" but considers that the problem may be overcome by defining what is not a friend for the purposes of the Ethics Act. The Commission still holds to the view that a person who does business with the public service, or could potentially do business with it, should not be covered by the term "friend".

Alternatively, and having regard to the argument, which the Commission does not find totally convincing, that long-standing friendships should not be prejudiced because one party assumes public office, consideration might be given to applying a higher value threshold when dealing with a gift from a friend so that significant gifts would have to be disclosed.

Definition of "connected person"

This matter also was brought to the attention of the Joint Committee on Finance and the Public Service in December 1998 when the proposals for a Standards in Public Office Bill were under consideration. The term "connected person" is used in the Ethics Act to deal with situations where an office holder or a public servant could, in making a decision or performing a function, cause a specific benefit to accrue to themselves and/or to a person who is connected to them. This is deemed by the Ethics Act to constitute a material interest in a matter and, in such cases, a statement of the facts and of the nature of the interest must be provided. As currently defined, a connected person means a relative or a person or company with whom an office holder or public servant has a trustee or formal business relationship.

The Commission members, based on their experience, suggested that the definition should be extended to any person who has given, or agreed to give, a gift for personal reasons in the previous three or so years or who has, during that period, bestowed, or agreed to bestow, advantage, economic or otherwise, on an office holder or public servant who is covered by the Ethics Act. Again, the Commission is disappointed that the Standards Act did not make any change.

Investigation of alleged contravention by an office holder

In the course of 2001, the Commission carried out an investigation to determine whether or not Deputy Ned O'Keeffe, former Minister of State at the Department of Agriculture, Food and Rural Development, had contravened the Ethics Act. There were six alleged contraventions and a public hearing, attended by all the members of the Commission, was held on Friday, 23 November 2001.

In addition to the legal submissions, the testimony of seven witnesses called by Deputy O'Keeffe and two witnesses called by the Commission was presented through examination and cross-examination by Counsel. Under the Ethics Act, the Commission must prepare a report setting out its findings and determinations as to whether there has been a contravention of the Ethics Act. Where it finds that a contravention did occur, it must determine whether the contravention is continuing, whether the contravention was committed inadvertently, recklessly or intentionally, whether the contravention was serious or minor and whether the person acted in good faith and in the belief that he or she was complying with the Commission's guidelines or advice.

Of the six alleged contraventions, two were upheld by the Commission as follows:

1. The Commission found that Deputy O'Keeffe, while Minister of State at the Department of Agriculture, Food and Rural Development, contravened Part II of the Ethics Act in the following respect:

- he failed, as required by section 7 of the Ethics Act, either before or during his speech in Dáil Éireann on 29 November 2000, to declare a material interest which he and connected persons had in the subject matter of the proceedings, on a Motion calling for, inter alia, the introduction of legislation to prevent the feeding of meat and bone meal to pigs.

The contravention was determined not to be a continuing one.

The Commission considered that the contravention of section 7 committed by Minister of State O'Keeffe was not intentional. The Commission noted that Minister of State O'Keeffe had made a full disclosure of his registrable interests and that there was no evidence that he had deliberately concealed his material interest (and that of connected persons) so as to gain an advantage for himself and those other persons.

The Commission, nevertheless, could not ignore the fact that Minister of State O'Keeffe spoke and voted in favour of the Government amendment and that he was fully apprised of all the issues involved including the implications for Ballylough Milling Ltd., in which he had a shareholding, and for his own farm. It also had to be borne in mind that, some months previously, the Committee on Members' Interests of Dáil Éireann had reported on the failure by Deputy Denis Foley to make an appropriate declaration under section 7 when voting on a proposed amendment to a motion to establish the Tribunal of Inquiry into Alleged Payments to Politicians (the Moriarty Tribunal). That report dealt in detail with the responsibilities of members under the Ethics Act. Against that background, it could be argued that Minister of State O'Keeffe was neglectful of what he ought to have done and had not given proper care and attention to his responsibilities even though he clearly did not act recklessly. The Commission considered that Minister of State O'Keeffe's contravention of section 7 was careless to an extent that it could not be said to have been inadvertent. Accordingly, the Commission determined that his contravention, in that sense, was negligent.

As indicated above, the Commission was satisfied that Minister of State O'Keeffe's failure to declare a material interest during proceedings in the Dáil was not a deliberate attempt to conceal an interest so as to gain an advantage. If he had declared that he and connected persons had interests in Ballylough Milling Ltd. and that the company held a meat and bone meal licence, he might have suffered a considerable degree of political and personal embarrassment. But no question could have been raised about the legitimacy of holding the licence or about any wrong-doing on his part. In these circumstances, Minister of State O'Keeffe's contravention was at the lower end of any scale of seriousness. At the same time, the Commission was of the view that, as a general rule of thumb, a minor contravention would arise only where there was a technical breach of the Ethics Act which did not seriously impugn the principle that interests should be open to scrutiny where there is the possibility that they may conflict with the performance of public functions, including speeches and votes arising from Oireachtas proceedings. Minister of State O'Keeffe's contravention could not, on that basis, have been said to have been a minor matter.

2. The Commission determined that Minister of State O'Keeffe, while Minister of State of the Department of Agriculture, Food and Rural Development, contravened Part III of the Ethics Act in the following respect:

· he failed, as required by section 13 of the Ethics Act, to disclose in his Statements of Additional Interests dated 5 March 1998, 24 February 1999 and 24 February 2000 the interests of his wife, his son and his daughter-in-law in Ballylough Milling Ltd.

The Commission found that the contravention was continuing and determined that Deputy O'Keeffe should, as soon as possible and in accordance with section 29(1)(b) of the Ethics Act, furnish to the Clerk of Dáil Éireann a statement of the additional interests concerned in respect of the periods 8 July 1997 to 31 January 1998, 1 February 1998 to 31 January 1999 and 1 February 1999 to 31 January 2000.

The Commission had no evidence that Minister of State O'Keeffe deliberately concealed the interests of his wife and children and the Commission was satisfied that the contravention was not intentional. Evidence was given to demonstrate the difficulty of interpreting section 13 and particularly of understanding what the term "additional interests" covers. The Commission, while accepting that the Ethics Act is a complex one, had available to it numbers of Statements of Additional Interests furnished by other office holders which appear to be correctly completed. The Commission could not ignore the fact that the front page of the form, prescribed by the Minister for Finance for disclosing "additional interests", clearly points out that the interests to be included on the form relate to the spouse and/or children of the office holder. In addition to the Guidelines issued by the Commission to office holders under section 25 of the Ethics Act, there is provision for the Commission to give advice to any office holder who so requests. This provision has been availed of by office holders on numerous occasions. Furthermore, the Cabinet handbook, with which Ministers and Ministers of State must be expected to be familiar, makes it clear that the responsibility for complying with the Ethics Act rests clearly on the office holder, viz.

"1.36 The function of departments in this area is purely one of providing outline information; the legal obligation to comply with the terms of the Act lies with individual office holders and public servants. In that regard, under the Ethics in Public Office Act 1995, office holders and public servants are obliged to act in accordance with the advice given and guidelines published by the Public Offices Commission unless to do so would constitute a contravention of another provision of the Act. Accordingly, while Departments will provide the outline information mentioned and copies of the relevant Commission Guidelines, Ministers and Ministers of State and staff

personally appointed by them, to whom the relevant provisions of the Act apply, should consult with the Commission in relation to any matter pertaining to their personal obligations under the Act."

[Extract from Cabinet Handbook published by the Department of An Taoiseach in 1998]

In all the circumstances, the Commission considered that Minister of State O'Keeffe was neglectful of his responsibilities under section 13 of the Ethics Act but that he did not act recklessly. Accordingly, the Commission determined that Minister of State O'Keeffe's contravention of section 13 was negligent and that it was reasonable to conclude that he should have been aware of his obligations.

The Commission considers it extremely important that office holders should comply with their obligations under the Ethics Act and, if in any doubt, that they should seek advice from the Commission. Minister of State O'Keeffe had never sought such advice. Ministers and Ministers of State, in particular, should declare all additional interests where there is the possibility that, given the nature of their Departmental powers and duties, a conflict of interests could arise at some stage. Minister of State O'Keeffe failed to declare such interests in the case of his family members. The Commission determined that the contravention of section 13 by Minister of State O'Keeffe was in all the circumstances a serious matter.

Finally, in view of the fact that much of the evidence was to the effect that Minister of State O'Keeffe was not aware that he was contravening the Ethics Act, the Commission assumed that it was implied that Minister of State O'Keeffe acted in good faith and in the belief that his action was in accordance with the Guidelines published by the Commission. The Commission had already found that the two contraventions committed were not intentional. To that extent, it could be said that the Commission did not find that Minister of State O'Keeffe acted in bad faith. However, the Commission had determined that the two contraventions were committed negligently. In those circumstances, the Commission could not determine that Minister of State O'Keeffe acted in good faith and in the belief that his action was in accordance with published Guidelines. It was noted again in this connection that Minister of State O'Keeffe did not seek advice from the Commission.

The full report, the main findings of which are summarised above, was provided, as is required under the Ethics Act, to, inter alia, the Committee on Members' Interests of Dáil Éireann in mid-December 2001. Because contraventions were determined, that Committee was obliged to cause a copy of the report to be laid before Dáil Éireann. Deputy O'Keeffe was subsequently suspended from the service of the House for a period of 10 days.

Part 3

Standards in Public Office
Act, 2001 (Standards Act)

Standards in Public Office Act, 2001 (Standards Act)

The newly established Standards Commission has inherited all of the functions conferred on its predecessor under the Ethics Act and the Electoral Acts and will also have additional responsibilities which arise under the Standards Act.

There are many important new elements in the Standards Act. For example, complaints may 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, Ministerial special advisers, senior civil servants and directors and senior executives of State bodies and, significantly, also covers ordinary members of both Houses of the Oireachtas. 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 from the Commission, the Standards Act provides for a procedure whereby the Standards Commission can engage Inquiry Officers who would 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.

The Standards Act also introduces a requirement on members of the Dáil and Seanad, senior judges and senior public servants to provide tax-clearance certification within a fixed period of being elected, nominated or appointed. Briefly, the Standards Act contains provisions whereby, with effect from 10 December 2001, the Judicial Appointments Board or the Secretary to the Government, as appropriate, are to be provided with tax clearance certification in relation to persons who are being appointed to judicial office. The Standards Commission is to be provided with the tax clearance certification in respect of persons who are elected or nominated to Dáil or Seanad Éireann and persons who are appointed to "senior office" [i.e. designated positions and directorships in public bodies prescribed under the Ethics 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 which, as of 1 October 2001, was €118,095.80 (£93,008)].

The documentation in question comprises:

- (1) a **Tax Clearance Certificate**, which would issue from the Collector-General if the person was in compliance with his or her obligations in relation to the payment or remittance of any taxes, interest or penalties required to be paid and the delivery of any returns required to be made;
- (2) an **Application Statement**, which would issue from the Collector-General in circumstances where it had not yet been decided whether to issue or refuse a Tax Clearance Certificate, or where refusal had occurred and that refusal was the subject of an appeal which had not yet been determined;
- (3) 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 €2,539.48 and/or imprisonment for up to 6 months.

Arising from the above, a person who is elected, or nominated, as a member of either House of the Oireachtas or a person who is appointed to "senior office" must, within 9 months following the election, or nomination, or appointment date, provide the following to the Standards Commission:

- a Tax Clearance Certificate which was issued by the Collector-General not more than 9 months either side of the election, or nomination, or appointment date, or
- an Application Statement which was issued by the Collector-General not more than 9 months either side of the election, or nomination, or appointment date, and
- a Statutory Declaration which had been made by the person within one month either side of the election, or nomination, or appointment date, attesting to compliance with their taxation obligations and to the absence of any known impediment which would prevent the issue, by the Collector-General, of a Tax Clearance Certificate.

The Codes of Conduct, referred to earlier in this report, being introduced by the Standards Act will be subject to prior

Part 4

Electoral Acts,
1997 to 2001 (Electoral Acts)

Electoral Acts, 1997 to 2001 (Electoral Acts)

Under the Electoral Acts, 1997 to 2001, the Commission is responsible for supervising those elements of the legislation relating to 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. It is worth noting that all of the statements furnished to the Commission relating to donations, election spending and Exchequer funding can be inspected and copied by the public at the Commission's offices and viewed on the Commission's website. The fact that this material is required by statute to be made available is regarded by the Commission as a hugely important element of the legislation.

In this part of the report the Commission provides details of donations disclosed and election expenses incurred and reimbursed in relation to the June 2001 Tipperary South Dáil bye-election, a summary of donations disclosed by TDs, Senators, MEPs and political parties in 2001, details of Exchequer funding for 2001 received under the Electoral Acts by qualified political parties and an account of how Exchequer funding received by the parties for 2000 was used.

Information is also provided in this part on a complaint made to the Commission concerning Deputy Jim Mitchell arising from the Fine Gael leadership contest in early 2001.

New legislation was enacted in late 2001 which gave additional responsibilities to the Commission. The Electoral (Amendment) Act, 2001, amongst other things, introduced limits on the value of donations which may be accepted by individual TDs, Senators and MEPs and by political parties, provided for the opening of political donation accounts and the registration of third parties, including pressure groups. The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001 provides for the payment

of allowances to leaders of political parties. This is to be supervised by the Standards Commission. Further details on both pieces of legislation are provided later in this report.

Also included is an account of the Seanad bye-election held on 18 December 2001.

Some figures quoted in this part of the report are in Irish pounds only as they relate to events which took place prior to the introduction of the Euro.

Tipperary South Dáil bye-election of 30 June 2001

The Tipperary South Dáil bye-election of 30 June 2001 was the sixth Dáil bye-election to which the provisions of the Electoral Acts covering the disclosure of donations and the limitation and reimbursement of election expenditure applied. Four candidates and three political parties contested the bye-election which was held on 30 June 2001 to fill the vacancy caused by the death of Ms. Theresa Ahearn. See Table A hereunder.

Table A: Candidates, Election Agents and National Agents at the Tipperary South Dáil bye-election

Candidate	Political Party	Election Agent	National Agent
Sen. Tom Hayes	Fine Gael	Ms. Maria Murphy	Mr. John Mitchell
Cllr. Denis Landy	Labour Party	Mr. Mike Allen	Mr. Mike Allen
Cllr. Michael Maguire	Fianna Fáil	Mr. John Hartnett	Mr. John Hartnett
Cllr. Phil Prendergast	Independent	Mr. Séamus Healy, TD	n/a

The Commission published guidelines for the bye-election entitled '*Handbook for the Tipperary South Dáil bye-election on 30 June 2001*'. A copy of the handbook was issued to each candidate, election agent and the national agents of political parties with candidates contesting the bye-election.

Representatives of the Commission visited the constituency during the election campaign and met with candidates and agents to provide advice and assistance regarding the requirements of the legislation. Campaign offices were visited and samples of election material were provided to the Commission.

Donations

Details of the donations disclosed to the Commission by the three unsuccessful candidates are contained in Table B below. The successful candidate, as a member of the Dáil, provides an annual Donation Statement to the Commission by 31 January each year.

Two of the three unsuccessful candidates disclosed donations valued in excess of £500 received by them in connection with the bye-election. The Commission was not notified of receipt of anonymous donations by any of the bye-election candidates. Candidates cannot accept anonymous donations (meaning donations where the name and address of the donor are not known to the candidate).

Election Expenses Statements

Election Expenses Statements were furnished to the Commission by each of the four election agents and by the national agents of the three political parties with

candidates contesting the bye-election. Details of the expenditure incurred are also provided in Table B below.

The Commission considered the Election Expenses Statements furnished to it. In general, the Commission found a good level of awareness of the requirements of the legislation on the part of candidates, election agents and national agents. However, it was necessary in a number of cases to request that minor errors in statements be corrected and that relevant invoices be provided.

Having considered the Election Expenses Statements received, the Commission was satisfied that there was no evidence of the expenditure limit at the bye-election having been exceeded.

Reimbursement of election expenses

All four candidates qualified for the maximum reimbursement of election expenditure of £5,000. A reimbursement is made where a candidate is either elected at a bye-election or is unsuccessful but, at any stage of the counting of votes, secures in excess of one quarter of what would have been the quota in the constituency had the bye-election been a general election, i.e. 1,995 votes in this case. Details of the reimbursements are provided in Table B below.

The Donation Statements, Election Expenses Statements and Statutory Declarations furnished to the Commission were laid by the Commission before both Houses of the Oireachtas and put on public display.

Table B: Summary of donations disclosed, expenditure incurred and reimbursements received in relation to Tipperary South Dáil bye-election

Candidate	Value of Donations £	Expenditure by Candidate's Election Agent £	Expenditure by National Agent £	Total Expenditure £	Reimbursements Received £
Sen. Tom Hayes	none	700	12,396.99	13,096.99	5,000
Cllr. Denis Landy	none	Nil	10,169.77	10,169.77	5,000
Cllr. Michael Maguire	8,673.50	14,118.50	Nil	14,118.50	5,000
Cllr. Phil Prendagast	11,658.23	11,658.23	n/a	11,658.23	5,000
Total	20,331.73	26,476.73	22,566.76	49,043.49	20,000

Donations disclosed by TDs, Senators and MEPs in 2001

The legislation requires members of both Houses of the Oireachtas and representatives in the European Parliament to furnish an annual Donation Statement to the Commission disclosing details of donations received by them for political purposes which exceed a value of £500 (€634.87). The values of all donations received by the same person from the same donor in the same year must be aggregated and, if the total value exceeds £500 (€634.87), must be disclosed. Donations can take the form of money, property, goods or services, including items which are supplied at less than their commercial price. Also covered are contributions made to fund-raising events. The annual Donation Statement must be furnished by 31 January of each year in respect of the preceding calendar year. In the case of Donation Statements for 2000, the relevant date was 31 January 2001.

A donation made to a member of either House of the Oireachtas or a representative in the European Parliament is not regarded as a donation to that person if the donation is passed on by the person to their political party and a written acknowledgement of the donation is received from the party. Expenditure incurred by a political party on a candidate at an election is not regarded as a donation by the party to the candidate. However, donations of money from a political party to a candidate must be disclosed if the amount is greater than £500 (€634.87).

The penalty for failing to furnish a Donation Statement or failing to notify the Commission of receipt of an anonymous donation is a fine of up to £1,000 (€1,269.74). If the failure to furnish a Donation Statement continues after a conviction, there can be a further fine of up to £100 (€126.97) per day until such time as the Donation Statement has been provided. The penalty for knowingly furnishing a false or misleading Donation Statement is a fine of up to £20,000 (€25,394.76) or imprisonment for up to 3 years, or both.

Donation Statements received in 2001

A total of 240 Donation Statements for 2000 were received by the Commission in 2001 from 165 members of Dáil Éireann (there was one vacancy caused by the death of Ms. Theresa Ahearn), 60 members of Seanad Éireann and 15 representatives in the European Parliament. Senator Avril Doyle, MEP, and Deputy Proinsias De Rossa, MEP, furnish two separate statements in recognition of their dual mandates. The Donation Statements together with a report by the Commission to the Ceann Comhairle were laid before the Houses of the Oireachtas and put on public display. A summary showing the number of donations disclosed in the Statements is in Table C.

The Commission was not notified of receipt of any anonymous donations valued in excess of £100 (€126.97).

Table C: Donation Statements received in 2001 from members of the Dáil and Seanad and representatives in the European Parliament.

Political Party	Dáil Éireann		Seanad Éireann		European Parliament	
	Donations disclosed	Nil returns	Donations disclosed	Nil returns	Donations disclosed	Nil returns
Fianna Fáil	9	67	1	30	0	6
Fine Gael	3	50	1	16	0	4
Labour Party	4	17	0	3	0	1
Green Party	0	2	n/a	n/a	0	2
Progressive Democrats	1	3	0	3	n/a	n/a
Socialist Party	0	1	n/a	n/a	n/a	n/a
Sinn Féin	0	1	n/a	n/a	n/a	n/a
Non-Party	1	6	0	6	0	2
TOTAL	18*	147*	2	58	0	15**

* Vacancy in the Dáil due to the death of Ms. Theresa Ahearn

** Deputy Proinsias De Rossa, MEP, and Senator Avril Doyle, MEP, were required to furnish two statements in recognition of their dual mandates.

The total value of donations, valued at more than £500, disclosed by TDs and Senators in 2001, in respect of the 2000 calendar year, was **£87,794.31**. No donations were disclosed by MEPs.

Twenty of the Donation Statements received contained at least one disclosure. Two hundred and twenty respondents had no disclosure to make. Donations received by TDs, valued at **£73,833.14**, accounted for 84.1% of the total and those received by Senators, valued at **£13,961.17**, accounted for the remaining 15.9%.

Members of Fianna Fáil, who received donations with a total value of **£44,669**, had the highest proportion (50.9%) of the donations. This was followed by members of Fine Gael who received **£25,511.17** (29.1% of the total), members of the Labour Party who received **£4,876.30** (5.6%) and members of the Progressive Democrats who received **£1,729.80** (2%). Non party members and the Ceann Comhairle accounted for **£11,008.04** (12.5%).

Donations disclosed by political parties in 2001

The legislation requires the Appropriate Officer of each registered political party to furnish a Donation Statement to the Commission, indicating whether the party received any donations exceeding £4,000 (€5,078.95) in value, or £4,000 (€5,078.95) in aggregate value from the same person, during the preceding calendar year. The Donation Statement must be furnished to the Commission 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.

The Appropriate Officer is personally responsible for furnishing the Donation Statement and for ensuring the accuracy of the information contained therein. The sanctions, already outlined, which apply to TDs, Senators and MEPs for failing to furnish a Donation Statement or for knowingly furnishing a false or misleading statement also apply to Appropriate Officers in relation to their party's Donation Statement.

Donation Statements received in 2001

The Commission was advised by the Office of the Registrar of Political Parties that the registration of Muintir na hÉireann was cancelled on 11 May 2000 and that the National Party had changed its name in the Register of Political Parties to

"The Christian Democrats (The National Party)". The Commission was also advised by the Appropriate Officer of the Natural Law Party that it ceased to exist as a political party in December 2000. Notwithstanding the foregoing, both Muintir na hÉireann and the Natural Law Party, having been registered in 2000, were required to furnish Donation Statements in respect of 2000.

Donation Statements covering the period from 1 January to 31 December 2000 were received by the Commission in 2001 from each of the 15 political parties which were registered in the State during 2000 to contest a Dáil or European Parliament election. Copies of the Donation Statements received from the parties were laid by the 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 D on the following page.

Table D: Donation Statements received in 2001 from political parties.

Political Party	Value of donations disclosed (£)	Number of donors	Value of largest donation (£)
Fianna Fáil	152,455	20	50,000
Sinn Féin	20,806.58 +US \$44,926.02 #	3	US \$44,926.02
Fine Gael	50,000	1	50,000
Labour Party	46,721	2	28,721
Green Party	21,372	4	7,170
Socialist Party	12,000	1	12,000
Progressive Democrats	65,259	3	50,000
Christian Solidarity Party	none	none	n/a
Communist Party of Ireland	none	none	n/a
Muintir na hÉireann	none	none	n/a
Christian Democrats (The National Party)	none	none	n/a
Natural Law Party	none	none	n/a
Socialist Workers Party	none	none	n/a
South Kerry Independent Alliance	none	none	n/a
Workers Party	none	none	n/a

This donation was from "Friends of Sinn Féin, U.S.A.". Sinn Féin confirmed that it did not contain any individual donations valued at more than £4,000.

The total value of donations, exceeding in value £4,000, disclosed by political parties in 2001, in respect of the 2000 calendar year, was **£368,613.58 + US\$ 44,926.02**. Seven of the parties made a disclosure. Fianna Fáil disclosed donations with the highest total value (**£152,455**), followed by the Progressive Democrats (**£65,259**), Sinn Féin (**£20,806.58 + US\$ 44,926.02**), and Fine Gael (**£50,000**). Donations were also disclosed by the Labour Party (**£46,721**), the Green Party (**£21,372**) and the Socialist Party (**£12,000**). None of the other political parties disclosed donations.

The largest individual contributor to political parties was Mr. Denis O'Brien who made donations totalling **£150,000** (£50,000 each to Fianna Fáil, Fine Gael and the Progressive Democrats). The next largest contributor was "Friends of Sinn Féin, USA", which made donations of **US \$44,926.02** to Sinn Féin followed by SIPTU, which made donations of **£28,721** to the Labour Party.

Donations from companies were disclosed by both Fianna Fáil and the Progressive Democrats. Companies listed as donors included Anglo Irish Bank, Ballymore Properties, Cantrell & Cochrane Group, Castle Market Holdings, DCD

Builders, Durkan New Homes, Gunne Commercial, MW Homes, McGinley Motors, Murnane & O'Shea Ltd., Nissan Ireland, PJ Hegarty & Sons, Park West, Seán Quinn Group, Spencer Dock Developments (all disclosed by Fianna Fáil) and Precision Software Ltd. (Progressive Democrats). No other political parties disclosed donations from companies.

A number of elected representatives made donations to their political parties. The highest donation was from Deputy Proinsias De Rossa, MEP, who contributed **£18,000** to the Labour Party, followed by Deputy Caoimhghín Ó Caoláin, who made donations of **£16,000** to Sinn Féin and Deputy Joe Higgins who made donations of **£12,000** to the Socialist Party. Donations were also disclosed by the Green Party from its MEPs, Ms. Nuala Ahern and Ms. Patricia McKenna, who each contributed **£7,170** to the party. The Green Party also disclosed contributions of **£3,720** and **£3,312** from Deputies Trevor Sargent and John Gormley, respectively. These donations, being under the £4,000 threshold, did not require to be disclosed.

Supplementary Donation Statements were also received from the Appropriate Officer of Fianna Fáil in respect of donations which were made during 1998 and 1999 to a

branch of the party. The donations should have been included in the party's Donation Statements for 1998 and 1999 but were not. The Appropriate Officer provided the Commission with details of the steps taken by him to ensure a full and accurate disclosure in the original Donation Statements. Having considered the matter, the Commission was satisfied that the Appropriate Officer did not contravene the Electoral Acts by knowingly furnishing a false or misleading Donation Statement in respect of either 1998 or 1999. In addition, the Commission was satisfied that the Appropriate Officer took all reasonable action to ensure the accuracy of the Donation Statements.

Exchequer funding of political parties

The electoral legislation provides for the Exchequer funding of qualified political parties. To qualify for funding, 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 qualified for public funding on the basis of the 1997 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 used for one or more 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 in the legislation 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 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 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 Commission in respect of the preceding year.

Payments made in respect of 2000

Under the legislation, total payments to qualified parties could not exceed **£1m.** 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 1999 was **£1,055,924.** During 2000 a 1.0% increase effective from 1 April 2000 under Partnership 2000 and a 5.5% increase effective from 1 October 2000 under the Programme for Prosperity and Fairness brought the total funding available to qualified political parties in respect of 2000 to **£1,086,536.60.**

The amount actually paid to qualified political parties in respect of 2000 was **£1,053,603.21.** Arrears of **£2,727.75** which were due to qualified parties in respect of the fourth quarter of 2000 were paid in April 2001. As the Exchequer Expenditure Statements for 2000 were due to be furnished to the Commission by 31 March 2001, the spending of these arrears was not accounted for by qualified parties in their Exchequer Expenditure Statements for 2000. Arrangements were made to account for this expenditure in the Exchequer Expenditure Statements for 2001. The balance of **£30,205.64,** represents the amount that would have been payable to Democratic Left 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. A breakdown of how the funding received by each of the 6 qualified political parties in respect of 2000 was spent is provided in Table E.

Table E: Spending by political parties of Exchequer funding for 2000

Qualified Political Party	General Administration	Research, Education, & Training. (£)	Policy Formulation (£)	Co-ordination of Activities of Branches & Members (£)	Promotion of Women & Young Persons (£)	Total Funding received (£)
Fianna Fáil	215,398	Nil	Nil	257,325	(36,729) ¹	472,723
Fine Gael	182,848	23,000	27,000	50,300	52,700	335,848
Labour Party	112,464	Nil	Nil	Nil	12,490	124,954
Progressive Democrats	56,246	Nil	Nil	Nil	(5,625) ²	56,246
Green Party	32,792	370	Nil	Nil	Nil	33,162
Sinn Féin	30,670	Nil	Nil	Nil	Nil	30,670
Total	630,418	23,370	27,000	307,625	65,190³ (107,544)	1,053,603⁴

1 Already included under heading 'Co-ordination of Activities of Branches & Members'

2 Already included under heading 'General Administration'

3 Does not include amounts referred to in notes 1 and 2. Total deemed to have been incurred under this heading is £107,544.

4 Figures have been rounded to the nearest £.

Table F below shows the amount of Exchequer funding paid to the six qualified parties in 2001. Details of how this funding was used by the parties will be provided in the Annual Report of the Standards Commission for 2002. The Electoral (Amendment) Act, 2001 (further details are provided later in this report) has increased the level of

Exchequer funding payable to the six qualified parties to €126,973.81 (£100, 000) each, plus a share of €3,809,214 (£3m) to be calculated in line with party strength as outlined above. New arrangements for merged parties were also introduced.

Table F: Exchequer funding received by qualified political parties for 2001

Qualified Political Party	First preference votes as a % of total first preference votes	Column 2 as a % of qualified parties' total first preference votes	Total Exchequer funding for 2001 (£)
Fianna Fáil	39.33	43.62	654,632.63
Fine Gael	27.95	30.99	469,912.09
Labour Party	10.40	11.53	199,199.11
Progressive Democrats	4.68	5.19	92,573.21
Green Party	2.76	3.06	61,420.82
Sinn Féin	2.55	2.83	58,056.94
Total	87.67*	97.22*	1,535,794.80

*Democratic Left excluded

Disclosure requirements for certain categories of donors

An important aspect of the electoral legislation is the obligation attaching to individual donors to furnish a Donation Statement in certain circumstances. Section 24(1A) of the Electoral Act, 1997, as introduced by section 6 of the Electoral (Amendment) Act, 1998, provides that a person who makes donations in a calendar year, the aggregate value of which exceed €5,078.95 (£4,000), to:

- (i) two or more persons who, when the donations were made, were members of the same political party, or
- (ii) one or more persons and to the political party of which such person or persons were members when the donations were made to them,

must furnish a Donation Statement to the Commission showing the aggregate value of the donations, the political party concerned and the name, description and address of each recipient. The donor is required to furnish the statement irrespective of whether the donations are also required to be disclosed by the recipient.

This provision is intended to achieve the disclosure of multiple donations made by a person to different members and/or organs (e.g. headquarters and branches) of the same political party which would not otherwise be disclosed because the value of the individual donations might fall below the disclosure thresholds applying to the particular recipients. A related amendment to the Electoral Act, 1997 removed the obligation which had attached to Appropriate Officers to enquire of every organ and member of the party (elected and unelected) to establish if they had received a donation of any kind or value, to aggregate the values of all donations received from the same donor and to make a disclosure if the total value of donations received from the same donor exceeded €5,078.95 (£4,000) in a calendar year.

It remains the case, however, that as well as providing details of donations valued at more than €5,078.95 (£4,000) received by party headquarters, Appropriate Officers are required to make the necessary enquiries and to disclose any single donation, exceeding a value of €5,078.95 (£4,000), received by a subsidiary organisation of the party. If the same person makes a donation valued at more than €5,078.95 (£4,000) to a subsidiary organisation and also makes a donation to party headquarters, the values of the donations should be aggregated by the Appropriate Officer for disclosure purposes.

Two Donation Statements, as required from individual donors who make donations to different members and/or organs of a political party, were received by the Commission up to the end of 2001. These were laid by the Commission before both Houses of the Oireachtas and put on public display.

Seanad bye-election

On 18 December 2001 a bye-election was held to fill the vacancy caused by the election of Senator Tom Hayes to Dáil Éireann. Two candidates contested the election. The successful candidate was Mr. M. J. Nolan. In accordance with the provisions of the Electoral Act, 1997, the unsuccessful candidate, Mr. Michael Fitzgerald, was obliged, within 56 days after closing of the poll, to furnish a Donation Statement disclosing any donations received in relation to the election. Mr. Fitzgerald furnished a Donation Statement on 15 January 2002 indicating that he did not receive any donations in relation to the bye-election.

There are no spending limits or reimbursement of election expenses at a Seanad election.

The Electoral (Amendment) Act 2001

The Electoral (Amendment) Act, 2001 (the 2001 Act) introduced new provisions relating to political donations, third parties, accounting units, election spending and funding of political parties.

Donations

With effect from 1 January 2002, the maximum value of donations which may be accepted from the same donor in the same calendar year by members of either House of the Oireachtas, representatives in the European Parliament and candidates at Dáil, Seanad, European or presidential elections is €2,539.48 (£2,000). Political parties, accounting units of political parties (see below) and third parties (see below) may not accept donations from the same donor valued at more than €6,348.69 (£5,000) in a calendar year.

None of those referred to above may accept a donation from an individual (other than an Irish citizen) who resides outside the island of Ireland or from a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which the carrying on of one or more of its principal activities is directed.

Also with effect from 1 January 2002, those mentioned above must:

- a) open and maintain an account in a financial institution in the State if they receive a monetary donation the value of which exceeds €126.97 (£100);
- b) lodge that donation and any further monetary donation received, of whatever value, to the account;
- c) furnish to the Commission, at the end of each year, a statement provided by the financial institution specifying the transactions that have taken place in relation to the account during the preceding year;
- d) furnish to the Commission a certificate and statutory declaration stating that all monetary donations received were lodged to the account and all amounts debited from the account were used for political purposes.

Third Parties

In addition to the foregoing, the 2001 Act has introduced further requirements in relation to the registration and funding of third parties. A 'third party' means any person, other than a registered political party or a candidate at an election, which or who accepts, in a particular year, a donation the value of which exceeds €126.97 (£100). A donation is any contribution given for political purposes and includes a donation of money, property, goods or services. "Political purposes" is widely defined and means any of the following purposes, namely:

- (i) (I) to promote or oppose directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or
- (II) to present, directly or indirectly, the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party, or
- (III) to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party with regard to the policy or policies of

another political party, political group, a member of either House of the Oireachtas, representative in the European Parliament, third party or candidate at an election or referendum or otherwise, or

- (IV) to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority;
- (ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;
- (iii) otherwise to influence the outcome of the election or a referendum or campaign referred to in paragraph (i)(IV) of this definition.

As soon as may be after the receipt by it of a donation the value of which exceeds €126.97 (£100), and before incurring any expenses for political purposes, a third party must furnish to the Commission:

- i) the name and address of the third party and the name and address of the responsible person in relation to the third party (the responsible person means the person or persons responsible for the organisation, management or financial affairs of the third party),
- ii) a statement of the nature, purpose and estimated amount of the donations to, and proposed expenses of, the third party in any year, and
- iii) an indication of the third party's connection, if any, with any political party or candidate at an election, referendum or otherwise.

The extent of the definition of "political purposes" appears to the Commission to mean that any group which campaigns on any issue relating to a policy of the Government, or any public authority, and which receives a donation exceeding in value €126.97 (£100), is deemed to be a third party and must register with the Commission.

It is an offence for a third party to fail to comply with the requirements of the legislation.

It should also be noted that any individual or group, who or which intends to incur election expenses at a Dáil or European Parliament election, must register with the Commission whether or not they received a donation.

Accounting Units

An accounting unit 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 (£100). The 2001 Act requires the Appropriate Officer of a political party to notify the Commission of the name and address of each accounting unit and the name and address of the responsible person or persons of the accounting unit (i.e. the treasurer or any other person responsible for dealing with donations to the unit).

Election Expenses

The 2001 Act increased the spending limits of candidates at Dáil elections from £14,453, £17,550 and £20,648 in respect of three, four and five seat constituencies to €25,394.76 (£20,000), €31,743.45 (£25,000) and €38,092.14 (£30,000), respectively.

The Act also dealt with the question of Oireachtas facilities being used for electoral purposes by outgoing members of the Houses. The Commission, in its Annual Report for 2000, stated that prospective candidates at the Dáil general election, who were not members of the 28th Dáil or Seanad, had expressed concern to the Commission at the prospect of outgoing members of the Houses having an unfair advantage if the latter were allowed to use free envelopes and other Oireachtas facilities for election purposes, without having to account for the cost of this use as part of their election spending.

The Commission also said the following in that report:

"As outlined earlier in this report, an issue which arose in relation to the Tipperary South Dáil bye-election was the use by candidates of "free" Oireachtas envelopes. The Commission had noted the use of this facility by candidates at previous Dáil and European Parliament elections. The Electoral Acts provide that "any payment, service or facility provided to a person out of public funds ... (... pursuant to ... the Oireachtas (Allowances to Members) Acts, 1938 to 1996) ... by virtue of being a member of either House of the Oireachtas ... [or] a political party ... " shall not be regarded as a donation to the person or as an election expense.

"The Commission understands the position to be that the Oireachtas (Allowances to Members) Act, 1962, as amended, confines the use of Oireachtas envelopes to correspondence arising in the discharge of a member's parliamentary duties. The Commission had been advised, prior to the bye-election, of a determination in this regard made by the Dáil Committee on Procedure and Privileges. The Commission referred to the matter in its guidelines for the bye-election, advising that Oireachtas envelopes should not be used at elections. The Commission also stated in the guidelines that "in the unlikely event that Oireachtas pre-paid envelopes are used by a candidate, or on behalf of a candidate, the use shall be regarded by the Commission as a donation to the candidate and as an election expense incurred by the candidate".

The Commission pointed out in the report that it was not part of its mandate to determine the appropriateness, or otherwise, of such use by outgoing members. The Commission's concern, in the context of its supervisory role under the Electoral Acts, was to ensure that there was full understanding of the requirements of the legislation; that all election spending encompassed by the legislation was accounted for and that appropriate action to deal with offences under the legislation, including overspending, would be taken where necessary.

Two legislative changes, which are relevant to the above, were made after publication of the Commission's 2000 report. Firstly, paragraph 1 of the Schedule to the 2001 Act listed the items which would be regarded as election expenses. Paragraph 2 of the Schedule specifically provided as follows:

"For the avoidance of doubt, nothing in paragraph 1 (of the Schedule) extends to - (c) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds;"

Secondly, Part 6 of the Ministerial, Parliamentary and Judicial Offices and Oireachtas Members (Miscellaneous Provisions) Act, 2001, amended section 2 of the Oireachtas (Allowances to Members) Act, 1962, by deleting the reference "arising out of a member's parliamentary duties" in relation to the use of Oireachtas telephone and postal facilities.

One of the purposes of the Electoral Act, 1997 was to provide a level playing field for all candidates and parties at an election. It was intended that each candidate would be entitled to incur the same level of expenditure, including benefits in kind, in contesting the election. In the view of the Commission, the effect of the legislative amendments referred to above is clearly to bestow significant advantage on candidates who are outgoing members of the Houses over other candidates who do not have access to facilities which are paid for out of public funds.

Another provision of the 2001 Act which caused concern to the Commission was that which stated that any sum disbursed by an individual out of the individual's own resources for any minor expenses (not exceeding €126.97 in any one payment), lawfully incurred in relation to the election, would not be an election expense if the sum was not repaid to the person. It appeared to the Commission that this left open the possibility of major expenditure being incurred at an election without it having to be accounted for. If this was to be the case, it would clearly defeat the whole purpose of the spending limits in the legislation. The matter was considered at length by the Commission. It was concluded that the only persons who could "lawfully" incur expenditure at an election are the election agent of a

candidate, the national agent of a political party, a person authorised by either agent or a person who has registered with the Commission for that purpose. Accordingly, for the Dáil general election, the Commission's guidelines explain the position as outlined above and require that an account be maintained by the appropriate agent of any such minor expenses which are not intended to be included in the statutory Election Expenses Statement which is furnished after the election. The account will be submitted with the Election Expenses Statement. The Commission is of the view that, unless such an arrangement is in place, it would be impossible to adjudicate in cases where complaints are made about failure to include particular items of expenditure in the Election Expenses Statement. When taken together, the Election Expenses Statement and the account of minor expenses should cover all expenditure at the election.

Funding of Political Parties

As stated earlier, the 2001 Act increased substantially the Exchequer funding of qualified political parties.

Table G below sets out in Column 2 the estimated funding to be received by each of the qualified political parties for 2002, applying the revised funding arrangements provided for in the 2001 Act. Column 3, for comparison purposes, sets out the actual amounts paid in 2000 under the original legislative provisions. It should be noted that the figures in Column 2 reflect the position after the 1997 Dáil general election and will be revised to reflect changes in party strength following the general election to the 29th Dáil.

Table G: Exchequer funding of political parties

Qualified Parties	Payable in 2002 under the 2001 Act	Paid in 2000 under the Electoral Act, 1997
Fianna Fáil	€1,788,553 (£1,408,600)	€600,234 (£472,723)
Fine Gael	€1,307,449 (£1,029,700)	€426,439 (£335,848)
Labour Party	€672,072* (£529,300*)	€158,658** (£124,954)**
Progressive Democrats	€324,672 (£255,700)	€71,418 (£56,246)
Green Party	€243,536 (£191,800)	€42,107 (£33,162)
Sinn Féin	€234,775 (£184,900)	€38,943 (£30,670)
Total	€4,571,057 (£3,600,000)	€1,337,799 (£1,053,603)

* Based on the first preference votes received by both the Labour Party and Democratic Left at the 1997 Dáil general election.

** Does not include what would have been paid to Democratic Left.

The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001

In addition to the funding under the Electoral Acts referred to above, the Ministerial and Parliamentary Offices Act, 1938 provided for the payment of an annual allowance to the leaders of parliamentary parties in relation to expenses arising from the parliamentary activities of the party (this was known as the Party Leaders' Allowance Scheme). The allowances were calculated for each party 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. The Oireachtas (Miscellaneous Provisions) and Ministerial and Parliamentary Offices (Amendment) Act, 1996 provided that payments would be made as follows - £25,000 per member of Dáil Éireann for each of the first 5 members; £20,000 per member for each member from 6 to 10 members; £10,000 per member for each member from 11 to 60 members and £5,000 per member for each member over 60 members. A payment of £10,000 was made to each non-party member.

The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001 has further amended the manner in which such allowances are to be paid. The allowances will now also be paid in respect of members elected or

nominated to Seanad Éireann at the last preceding Seanad general election or nominated to it after the last preceding general election.

The revised allowances in respect of Dáil members will be €48,547 per member for each of the first 10 members; €38,837 per member for each member from 11 to 30 members and €19,423 for each member over 30 members. Non-party members will receive an allowance of €27,934.

In the case of Seanad members, the allowance will be €31,743 per member (elected or nominated) for each of the first 5 members and €15,872 for each member over 5 members. Non-party members will receive €15,872.

Where the qualifying party forms part of the Government, the combined allowances will be reduced by one third. The allowance may not be used for, or to recoup, election or poll expenses and they are tax free.

Table H gives a breakdown of the estimated payments to party leaders under the new arrangement. Table I shows the position as it would have applied had the 2001 legislation not been enacted. The figures in Table H for Fianna Fáil and the Progressive Democrats show the reduction of one-third due to their participation in Government in the 28th Dáil.

Table H: Estimate of payments in 2001 to party leaders under the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001

Political Party	Fianna Fail	Fine Gael	Labour	Progressive Democrats	Green Party	Sinn Féin	Socialist Party	Independents	Total
No. of Deputies	76	54	21*	4	2	1	1	7	166
Payments re. Deputies	£1,131,828	£1,361,208	£718,797	£101,957	£76,468	£38,234	£38,234	£154,000	£3,620,726
No. of Senators	29	16	4	4	0	0	0	7	60
Payments re. Senators	£425,000	£262,500	£100,000	£100,000	0	0	0	£87,500	£975,000
Total	£1,556,828	£1,623,708	£818,797	£201,957	£76,468	£38,234	£38,234	£241,500	£4,595,726

*Includes former Democratic Left members

Table I: Estimate of payments to party leaders in 2001 under the previous arrangement:

Political Party	Fianna Fail	Fine Gael	Labour	Progressive Democrats	Green Party	Sinn Féin	Socialist Party	Independents	Total
No. of Deputies	76	54	21*	4	2	1	1	7	166
Payments re. Deputies	£822,145	£1,016,953	£512,317	£101,957	£76,468	£38,234	£38,234	£107,044	£2,713,352
Total	£822,145	£1,016,953	£512,317	£101,957	£76,468	£38,234	£38,234	£107,044	£2,713,352

*Includes former Democratic Left members

The new legislation also provides that 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. This matter was raised in previous reports of the Commission.

The legislation gives the following new functions to the Commission, in relation to payments made from 1 January 2001.

- a) Party leaders must prepare, or cause to be prepared, a statement of expenditure from the allowance, within 120 days of the end of the financial year for which the allowance has been paid. He/she must have the statement audited by a Public Auditor and must submit the statement and the auditor's report to the Commission.
- b) The Commission must then:
 - (i) consider the statement and auditor's report,
 - (ii) consult with the party leader on any matter contained in it, if necessary,
 - (iii) 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, whether the statement is adequate or inappropriate.
- c) The Commission must cause a copy of the report to the Minister for Finance to be laid before each House of the Oireachtas.
- d) A copy of the statements and auditors' reports must be retained by the Commission for three years and must be available for public inspection and copying.

The allowance will not be paid to the party leader unless the statement and auditor's report have been received by the Commission not more than 120 days after the end of the financial year (i.e. by 30 April).

The above requirements do not apply to independent members of either House.

The legislation provides that "expenses arising from the parliamentary activities of the party" 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 list after consulting the parliamentary party leaders and after considering any report made by the Commission.

Complaint against Deputy Jim Mitchell

On 20 February 2001, the Commission received a complaint from Deputy Seán Fleming, Fianna Fáil, "concerning the use of private opinion polls by Deputy Jim Mitchell as part of his campaign to be leader of Fine Gael which requires investigation in the public interest to establish whether a breach of the Electoral Act has occurred."

In his letter Deputy Fleming claimed that "at the time that Deputy Mitchell received the benefit of this opinion poll, the donors were anonymous to him."

He requested the Commission "to consider this matter in light of Section 23 of the Electoral Act, 1997..." and "to determine as soon as possible whether a breach of the Electoral Act occurred when Deputy Mitchell received the information contained in the poll without knowing the full identities of the suppliers of that donation".

Deputy Fleming also requested the Commission to establish "whether the use of the poll referred to constitutes a donation to Deputy Mitchell" and to investigate "the authenticity of the much publicised claim that 20 individuals paid £450 each towards the cost of this opinion poll."

The Commission entered into correspondence with Deputy Mitchell in an effort to establish the facts of the case.

The Commission found:

- that the opinion poll was commissioned by two supporters of Deputy Mitchell (whose names and addresses were supplied to the Commission). It also accepted, on the basis of the evidence available, that none of the 20 people involved contributed more than £500 to the cost of the opinion poll,
- that, in the normal course, the commissioning of an opinion poll for political purposes constitutes a supply of services and is covered by the definition of a donation which is provided in section 22 of the Act. A donation, valued in excess of £500, which is received by a member of either House of the Oireachtas during the calendar year 2001 does not fall to be disclosed until a Donation Statement is furnished to the Commission for that year, which must be not later than 31 January 2002. As in the case of any service valued at more than £500, which is supplied for political purposes to a member of either House of the Oireachtas, the member would be required to disclose, in the annual Donation Statement, the names and addresses of the sponsors together with the total cost of the service and information concerning any other person who contributed more than £500 to the cost.
- that, while Deputy Mitchell did not initially know the identities of each contributor to the cost of the opinion poll, he was aware of the promoters' identities and, through them, would have been able to, and subsequently did, establish the identities of each contributor. At most, there was a three day period, from 2 to 5 February 2001, when he did not actually know the names of the individual contributors.

- the Commission was satisfied, therefore, that this was not an anonymous donation as described in section 23 of the Electoral Act.

The Commission concluded that there was no breach of the Electoral Act on the part of Deputy Mitchell and that no offence was committed by him.

Preparation for the Dáil General Election

In its Annual Report of 2000 the Commission outlined the preparations being put in place for the general election to the 29th Dáil. The Commission is very aware of the importance attaching to the advice and guidelines functions it has under the electoral legislation. It was the intention of the Commission that every participant at the election who had statutory responsibilities would be fully aware of his or her obligations, particularly in relation to acceptance and disclosure of donations and limits on election spending. In that regard, the Commission, in conjunction with the political parties, arranged a programme of regional visits, which was ongoing at year's end, to brief candidates, election agents and other party activists involved in the election. A number of meetings were also held in Dublin. Contact was made with prospective independent candidates in cases where the Commission knew, through media coverage or otherwise, of their intention to stand at the election.

It should be noted that the Commission does not officially become aware of the total number of candidates standing at an election until informed of their names and addresses by the returning officer in each constituency, which happens after the last date for receiving nominations at the election. This is not a problem in the case of party candidates as the parties would already have supplied the Commission with lists of their candidates and election agents. It does, however, create a difficulty for the Commission when it comes to briefing independent candidates whose intention to stand would not be known in advance. The information from the returning officers will not be available until the campaign is already well under way. This is very late to be contacting candidates for the first time and sending them guidelines on spending limits and donations. Given that the spending limits apply to any expenses incurred, at any time, on property, goods or services which are used during the election period (i.e. from the date of dissolution of the Dáil up to polling day) there is the possibility that, before being contacted by the Commission, independent candidates could already have spent considerable sums on their

campaigns and could even have exceeded the spending limits, without knowing anything about the limits. It is also possible that they could have accepted donations which are prohibited and failed to return them to the donors or remit them or their value to the Commission within the statutory deadline as is required. The Commission is not in a position to offer a solution to this problem. It might, however, be examined by the Department of the Environment and Local Government which has legislative responsibility in relation to matters connected to elections. The Commission accepts that, at the end of the day, it is a matter for candidates and election agents to be aware of the law and to take whatever steps are necessary in order to comply. It is to be hoped that as time passes and the existence and detail of the new legislation become better known, independent candidates will be more pro-active in seeking out the relevant information.



Part 5

Costs in 2001

Costs in 2001

The expenditure outlined below was incurred in 2001. The expenditure is provided for in Subhead B of Vote 17 [Ombudsman]. The figure for incidental expenses mainly covers the cost of public notices in national and local newspapers advertising the availability for public inspection of material furnished to the Commission under the Electoral Acts and the statutory obligations attaching to companies, trades unions, societies, etc., to disclose details of donations made by them. The cost of legal fees reflects the fact that the 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.

	£'000	€'000
Staff Salaries	218	277
Travel & Expenses	2	3
Incidental Expenses	47	60
Postal & Telecommunications	7	9
Office Machinery & other Office Supplies	27	34
Office Premises	8	10
Consultancy & Legal Fees	68	86
Total	377	479