



**STANDARDS
IN
PUBLIC
OFFICE
COMMISSION**

Annual Report 2006

Contents

Foreword	02
Introduction by the Chairman	02
Chapter 1	04
Ethics Acts	05
Scope of the Ethics Acts	05
Complaints to the Standards Commission	06
Complaints against Office Holders	07
Own Initiative Inquiries	08
Tax Clearance provisions	09
Position in relation to Deputy Michael Collins	10
Codes of Conduct	11
Chapter 2	14
Electoral Acts	15
Donations	15
Prosecutions of offences under section 25 of the Electoral Act 1997	17
Electoral (Amendment) Act 2005	17
Kildare North and Meath Dáil by-elections of 11 March 2005	18
Accounting Units	19
Third Parties	20
Chapter 3	22
Exchequer funding of political parties	23
Funding under the Electoral Acts	23
Funding under the Party Leaders Allowance legislation	24
Chapter 4	26
General Issues	27
Appearance by the Standards Commission before the Joint Oireachtas Committee on Finance and the Public Service	27
Re-design of the Standards Commission website	27
Chapter 5	28
Freedom of Information	29
Requests for Information during 2005	29
Section 15/16 Manual	29
Prohibition on Disclosure of Information	29
Chapter 6	30
Costs in 2005	31
Appendices	32
APPENDIX 1 - List of third parties registered with the Standards Commission	33
APPENDIX 2 - Standards Commission Publications in 2005	33
APPENDIX 3 - Proposals for changes to the Ethics and Electoral legislation	34

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 2005 to the Minister for Finance.



Justice Matthew P. Smith
Chairman
Standards in Public Office Commission
June 2006

Introduction by the Chairman

2005 was the fourth full year of the Standards in Public Office Commission's operation and saw the introduction of regulations by the Minister for Finance which increased, with effect from 1 January 2006, the number of bodies in the civil and public service which are within the scope of the Ethics Acts from almost 400 to around 470. The Standards Commission welcomes the commitment of the Department to keep the regulations up to date. It is important that the reach of the legislation should extend to all publicly-funded bodies. In this report, the Commission emphasises the need for consistent application of the legislation, notably in the publicly-funded health sector.

Complaints may be made to the Standards Commission under the Ethics Acts if it is considered that a breach of the legislation may have occurred. Details as to who may complain are set out in Section 22 of the Ethics in Public Office Act; while the provisions of the section are somewhat technical, any person may complain about possible contraventions of the legislation by, for example, office holders or holders of designated directorships or designated positions in public bodies. A number of examples of such complaints are given in this report. Unless the Standards Commission receives a complaint, it is somewhat constrained in what steps it may take if a possible breach of the Ethics legislation comes to its attention. The Commission wishes once again to stress the need to amend the legislation such as that it may appoint an Inquiry Officer to conduct preliminary inquiries where the Commission may wish to pursue a matter under the legislation but has not received a complaint. Such an own initiative power to investigate would only be used by the Commission in the most exceptional of circumstances. The Commission has made a number of proposals for other amendments to both the Ethics and Electoral legislation. Some of these are summarised in Appendix 3.

Members



Justice Matthew P. Smith
 Chairman



Deirdre Lane
 Clerk of Seanad Éireann

Chapter 1 of this report gives some details of the position in relation to Deputy Michael Collins. This matter was also noted in the Standards Commission's reports for 2003 and 2004. It appears that the matter is still under consideration by the Office of the Director of Public Prosecutions and An Garda Síochána and the Standards Commission has no indication as to when a decision may be reached. The Commission is concerned at the length of time involved and urges that the matter be resolved without further delay.

In its 2004 Annual Report, the Standards Commission expressed its regret that the Department of Environment, Heritage and Local Government had not taken on board observations which the Commission had made on the draft Code of Conduct for Local Authority employees. During 2005, the Department decided to review the code and there were indications by the end of the year that the Commission's concerns would be addressed. The Standards Commission welcomes this development.

Chapter 2 of this report deals with the Commission's activities under the Electoral Acts and summarises the donations disclosed by TDs, Senators and MEPs during the year. This chapter also deals with donations disclosed by political parties and by companies. Following a report by the Standards Commission to the Director of Public Prosecutions in the case of former Senator Liam Cosgrave, Mr Cosgrave pleaded guilty on 17 October 2005 at the Dublin Circuit Criminal Court to having committed an offence under the Electoral Act 1997 and is to receive a community service sentence, subject to an assessment as to suitability. Also, on 10 November 2005, an unsuccessful candidate at the 2004 European Parliament election, Mr Gerard Hannan, pleaded guilty to an offence under the Electoral Act and was fined €250.

In December 2005, GRECO - the Council of Europe Group of States against Corruption - finalised its second evaluation round report

on Ireland. In relation to public administration, GRECO recommended that the existing fee system for access to official information under the Freedom of Information legislation be reconsidered. It also called for clear rules/guidelines for public officials to report suspicions of corruption as well as for regular training on standards of conduct and expected behaviour. GRECO will report on measures taken by Ireland to comply with its recommendations towards the end of 2007. It is important that Ireland continues to improve its anti-corruption measures in order to maintain and enhance public confidence in public administration.

Also of importance is Ireland's international reputation in this area. Transparency International's Global Corruption Report complimented Irish policy makers on the steps taken to date but emphasised that whistleblower legislation was vital "to combat an engrained cultural acceptance of corruption in Ireland." In 2005, Ireland was placed 19th in Transparency International's Corruption Perception Index with a score of 7.4 out of 10. While this score is relatively high in international terms, it falls short of the scores achieved by our northern European neighbours. Effectively, Ireland has slipped from 11th least corrupt country with a score of 8.57 in 1995 to our present position. The Standards Commission welcomes Transparency International's National Integrity System study of Ireland which will be conducted during 2006. The study will provide the first in-depth assessment of the ability of our laws and institutions to prevent corruption and should provide a clearer picture of what further reforms may be needed.

Finally, as in previous years, I want to thank my fellow members of the Standards Commission for their contributions during the year. I also want to thank the Commission Secretary, David Waddell, who joined us in December 2005 and his predecessor, Brian Allen, for their dedication and commitment. The Commission Secretariat has also served us well during the year and has our sincere thanks.



Liam Kavanagh
Former member of Dáil Éireann



John Purcell
Comptroller and Auditor General



Kieran Coughlan
Clerk of Dáil Éireann



Emily O'Reilly
Ombudsman

CHAPTER 1

Ethics Acts

During 2005, the Standards Commission continued its supervision of the Ethics in Public Office Act 1995 (the 1995 Act) and the Standards in Public Office Act 2001 (the 2001 Act), collectively known as the Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts). Its work in this area is primarily concerned with providing guidelines and advice to those subject to the Ethics Acts, overseeing their disclosure of interests, administering the tax compliance obligations under the Ethics Acts attaching to members of both Houses of the Oireachtas and senior public servants, publication of codes of conduct and, where necessary, investigating alleged contraventions of the Ethics Acts.

The Standards Commission notes that the Minister for Finance has not initiated the appropriate motion in the Houses of the Oireachtas to designate the Chairpersons of Oireachtas Committees as office holders thereby making them subject to the Act in respect of those positions. The Standards Commission would welcome such a change, which would be in keeping with the expansion of the Ethics Acts in other areas of the Public Service.

In this chapter of the report, the Standards Commission gives an account of its activities under the Ethics Acts in 2005, including the further extension of the application of the Ethics Acts to a number of public bodies in the semi-state sector. The Standards Commission provided guidance and advice to designated directors and occupiers of designated positions in these bodies setting out their obligations under the legislation. This chapter also highlights the need for these public bodies to ensure that appointees to senior office within the bodies are made aware of their tax clearance obligations. Information is provided on the complaints mechanisms of the Ethics Acts and on the powers available to the Standards Commission to deal with alleged contraventions of the legislation. Also included is commentary on developments relating to other codes of conduct applying to the public service.

Scope of the Ethics Acts

The Standard Commission welcomes the introduction in 2005 of two sets of regulations which were signed by the Minister for

Finance under the 1995 Act. These regulations are the *Ethics in Public Office (Designated Positions in Public Bodies) (Amendment) Regulations 2005 (S.I. No. 673 of 2005)*, which prescribe designated positions in Civil Service Departments and Offices and the *Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of and Positions in Public Bodies) Regulations 2005 (S.I. No. 672 of 2005)*, which prescribe public bodies, designated directorships and designated positions in organisations in the wider public service. The regulations, which came into effect on 1 January 2006, amend and update previous regulations made in 2004. The new regulations increase the number of prescribed bodies in the civil and public service which are within the scope of the Ethics Acts from almost 400 to around 470. The Standards Commission welcomes the commitment of the Department of Finance to keep the regulations up to date.

In its Annual Report for 2004, the Standards Commission noted that only certain posts in the 35 City and County Enterprise Boards, mainly the Chief Executive Officers, had been prescribed as designated positions for the purposes of the Ethics Acts and that members of those Boards had not been prescribed as designated directors and accordingly were not covered by the legislation. The new regulations now prescribe membership of those boards as designated directorships; this is another welcome development.

Another very significant extension of the Ethics Acts is the inclusion of the Health Service Executive in the Regulations. Along with six hospital boards established by the Minister for Health (Beaumont Hospital, Tallaght Hospital, the Dublin Dental Hospital, Leopardstown Park Hospital, Saint James's Hospital and Saint Luke's Hospital), a large number of persons involved in the health sector will now be subject to the provisions of the legislation. The six hospitals mentioned have been included as they fall within the definition of a public body within the meaning of the Ethics Acts as they were established by enactment. However, a number of public voluntary hospitals such as St. Vincent's Hospital, the Mater Misericordiae Hospital and Mercy University Hospital, are not in-

cluded in the regulations as they do not fall with the definition of a public body. Under the Ethics Acts, it is open to the Minister for Finance to prescribe as a public body for the purposes of the legislation any other body, organisation or group financed wholly or partly out of funds provided by the Oireachtas if, in the opinion of the Minister, such a body ought, in the public interest and having regard to the provisions and spirit of the Act, to be so prescribed. This would, in turn, allow the Minister to prescribe designated directorships and designated positions in those bodies in order that the disclosure provisions of the Ethics Acts apply consistently across the publicly-funded health sector.

The 1995 Act provides that the Minister may prescribe directorships and positions of employment in public bodies for the purposes of the Ethics Acts if he considers that it is necessary in the public interest to do so in order to ensure, in a case in which, in the opinion of the Minister, a conflict could arise between an interest held by a director or an employee and the public interest in the performance of his or her functions, that the function will not be performed without the disclosure of the interest.

While the number of public bodies within the remit of the Ethics Acts has been expanded significantly in the last two years, there remains a number of publicly-funded organisations whose directors or employees are not subject to the disclosure requirements of the legislation. The Standards Commission has received indications that there has been some resistance on the part of government departments and bodies to prescribe the members of advisory boards as designated directors for the purposes of the Ethics Acts on the basis that they are not directors. The definition of "director" in the Ethics Acts refers to a director within the meaning of the Companies Acts, 1963 to 1990, but also includes, in the case of a public body that is not a company "a person who is a member of it or a member of any board or other body that controls, manages or administers it". As it is possible to envisage that a conflict of interest may arise for a member of such an advisory board in the performance of his or her functions, due consideration must be given to the question of whether it is in the public interest that such a conflict of interest should not be disclosed in accordance with the provisions of the legislation.

The Standards Commission also notes that the remit of the Ethics Acts has not as yet been extended to cover the north/south implementation bodies established by the Irish and British Governments to implement policies agreed by ministers in the North/South Ministerial Council. These bodies are the Foyle, Carlingford and Irish

Lights Commission (to be comprised of the Lights Agency and the Loughs Agency but in which only the Loughs Agency is operational), InterTradelreland, The North/South Language Body (comprised of the Ulster-Scots Agency and Foras na Gaeilge), *Safefood*: Food Safety Promotion Board and Waterways Ireland. In addition a plc, Tourism Ireland, was also established to market the island of Ireland internationally. Two of the bodies, the Loughs Agency and Foras na Gaeilge have taken over functions which were previously performed by two bodies, the Foyle Fisheries Commission and Bord na Gaeilge respectively, which were within the remit of the Ethics Acts. The Standards Commission is of the view that consideration should be given to including the above bodies within the scope of the Ethics Acts insofar as their activities within the State are concerned.

The Standards Commission also wishes to stress the necessity for public bodies, where directorships and positions of employment have been prescribed as designated directorships and designated positions, to ensure that persons who have obligations under the Ethics Acts in relation to disclosure of interests or to the provision of evidence of compliance with taxation legislation are notified of their responsibilities in good time to allow for compliance. It is important to note that primary responsibility for discharging those responsibilities rests with the individuals concerned. However, the Standards Commission emphasises that it is crucial that all prescribed public bodies should take seriously the obligations attaching to designated directors and employees under the Ethics Acts. It therefore recommends that public bodies include relevant briefing as part of induction training and that they should have structured follow-up contact, at least once a year, with designated directors and employees, to remind them of the steps which are required to be taken to ensure compliance with the legislation. In addition to the general information material which it supplies on a regular basis, the Standards Commission is available to assist in this process and to provide direct guidance and advice on any issue relating to the provisions of the Ethics Acts as they may apply to individual designated directors and employees.

Complaints to the Standards Commission

The Ethics Acts provide for the making of a complaint to the Standards Commission where it is considered that a contravention of the legislation may have occurred. Section 22 of the 1995 Act details the sources from which the Standards Commission can receive complaints. Section 4 of the 2001 Act broadened the circumstances in which complaints can be made to the Standards Commission. For example, any person may complain to the

Standards Commission if they consider that a specified person¹ or a connected person² may have done an act which is inconsistent with the proper performance of the functions of the position or office held or occupied by the specified person. Full details of the scope of the complaints provisions are outlined in the table below.

Who can complain	Subject of the complaint
Any person	<ul style="list-style-type: none"> ■ Office Holder³ ■ Specified Person ■ Connected Person
TD or Senator	<ul style="list-style-type: none"> ■ Public Servant ■ Office Holder
Minister for Finance	<ul style="list-style-type: none"> ■ Public Servant
Any Minister (with the permission of Minister for Finance)	<ul style="list-style-type: none"> ■ Public Servant in a body where that Minister has charge or has functions conferred on him/her
A Public Body	<ul style="list-style-type: none"> ■ Designated director of the body ■ Occupier of a designated position in the body
Appropriate Authority⁴	<ul style="list-style-type: none"> ■ Civil Servant
Committee on Members' Interests of Dáil/Seanad Éireann	<ul style="list-style-type: none"> ■ TD or Senator

Note¹ : A specified person:

- (i) is or, at the time to which the complaint concerned relates, was an office holder or the holder of the office of Attorney General but not a member;
- (ii) is or, at the time aforesaid, was a special adviser or held a designated directorship of, or occupied a designated position in, a public body; or
- (iii) holds or occupies or, at the time aforesaid, held or occupied a directorship or a position of employment in a public body.

Note² : a person is connected with an individual by means of a family or business relationship.

Note³ : a Minister of the Government, a Minister of State, a Chairman/Deputy Chairman of Dáil/Seanad Éireann.

Note⁴ : generally the Government as the appointing authority for the majority of civil servants.

In the first instance, complaints against members of Dáil Éireann who are not office holders would be made to the Committee on Members' Interests of Dáil Éireann, while complaints against members of Seanad Éireann who are not office holders would be made to the Committee on Members' Interests of Seanad Éireann, via the Clerk of the Dáil or Seanad, as appropriate. The Clerk will pass on the complaint to the relevant Committee provided there is sufficient evidence to establish a prima facie case in relation to a complaint.

Complaints against Office holders

Inappropriate use of facilities paid for out of public funds

The Standards Commission received a number of complaints/enquiries during the course of 2005 regarding the inappropriate use by office holders of facilities paid for out of public funds.

In July 2003, the Standards Commission published a Code of Conduct for Office Holders drawn up by the Government in accordance with section 10(2) of the 2001 Act. The code is designed to indicate "... the standards of conduct and integrity for the persons to whom it relates in the performance of their functions...". Paragraph 1.5 of the code provides that office holders should "... at all times observe the highest standards of behaviour and act in good faith with transparency, fairness and impartiality to promote the common good in the performance of their official functions." and "... act only by reference to and dedicate the resources of their offices in furtherance of the public interest".

Paragraph 2.2.3 of the code states that office holders "are provided with facilities at public expense in order that public business may be conducted effectively. The use of these facilities should be in accordance with this principle. Holders of public office enjoy an enhanced public profile and should be mindful of the need to avoid use of resources in a way that could reasonably be construed as an inappropriate raising of profile in the context of a General Election. Official facilities should be used only for official purposes. Office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which, undoubtedly, are attached to office."

The Standards Commission is disappointed that in 2005 it was again required to deal with such issues. It considers that office holders, together with heads of Government Departments and Offices, should ensure that procedures are in place which are clear and which discourage and prevent any inappropriate use of public funds for personal, electoral or party political gain. In the absence of clear guidelines, it may be reasonable to expect that public concern could again arise in the event of instances of office holders appearing in public advertising as the general election approaches and that further such complaints could be made to the Standards Commission.

Minister of State at the Department of Transport, Ivor Callely T.D.

The Standards Commission received a complaint regarding an advertisement for the “operation freeflow” system which outlined traffic and travel arrangements in Dublin in the pre-Christmas period, and which featured a photograph of the Minister of State. The complainant was of the view that the Minister’s appearance in the advertisement was a direct contravention of section 2.2.3 of the Code of Conduct for Office Holders as outlined above. Having considered the matter, the Standards Commission wrote to the complainant advising that the Standards Commission did not consider that the inclusion of a photograph of an office holder in an advertisement relating to a matter which encompassed his or her functions as an office holder was necessarily inappropriate. However, it also considered that the provisions of the code were insufficiently clear so as to distinguish between the appropriate use of a photograph of an office holder as part of a necessary advertising campaign and an inappropriate raising of profile in the context of a general election. The Standards Commission wrote to the Taoiseach and requested that the provisions of section 2.2.3 of the Code of Conduct for Office Holders be reviewed in order that office holders are provided with clear guidelines as to the circumstances in which public resources can be used in a way which avoids the inappropriate raising of profile in the context of a General Election.

Minister of State at the Department of Finance, Tom Parlon, T.D.

The Standards Commission received a complaint regarding the appearance of the Minister of State in an advertisement endorsing a particular animal feed. The complainant considered that the Minister of State’s appearance in the advertisement breached the ethics guidelines for members of the Houses of the Oireachtas. Having considered the matter, the Standards Commission decided

that it would not be appropriate to commence an investigation under the Ethics Acts. The Standards Commission wrote to Minister Parlon and expressed its view that a serving office holder should not be directly associated with the endorsement of a particular commercial product, unless such is required in the performance by the office holder of his/her official functions. The Minister was also told that his actions were not in keeping with the spirit of the Code of Conduct for Office Holders.

Own Initiative Inquiries

In its Annual Report for 2004, the Standards Commission noted that while it can appoint an Inquiry Officer where a complaint is made in relation to a specified act or a contravention of the Ethics Acts, it cannot do so if it is acting on its own initiative and has not received a complaint. The role of an Inquiry Officer in the case of a complaint is to make a preliminary inquiry into the matter complained of. The Ethics Acts give the Inquiry Officer powers to:

- procure the evidence of the complainant or of any other relevant person;
- put such evidence before the person the subject of the complaint;
- allow the person the subject of the complaint to make a statement;
- conduct interviews with the complainant and the person the subject of the complaint;
- request the production by a person of any relevant document in the possession or control of the person; and
- report in writing to the Standards Commission.

Such a report would not contain any determinations or findings, but would, if the Standards Commission so requested, include an expression of the opinion of the Inquiry Officer as to whether there was prima facie evidence to sustain the complaint.

Again in its appearance before the joint Oireachtas Committee on Finance and the Public Service in May 2005 (see Chapter 4) the Standards Commission expressed the view that the legislation should be amended so that an Inquiry Officer can be appointed in cases where the Standards Commission wishes to pursue a matter under the legislation but has not received a complaint.

In a response on this matter to a parliamentary question during 2005, the Minister for Finance indicated that he was not aware

that the Standards Commission had made a formal proposal to his Department that the Ethics Acts should be amended to facilitate the appointment of Inquiry Officers. The Minister stated that he was satisfied that the powers of the Standards Commission, as they stand, are ample to meet public concerns in the field of public life. The Minister went on to say that he would find it difficult to accept that the appointment of inquiry officers would be justified in circumstances where a formal complaint had not been made to the Standards Commission from one of the numerous categories of persons, including members of the public and any public representative.

The Standards Commission is disappointed with this response. It remains of the view that the legislation should be amended to allow it to appoint an Inquiry Officer when considering whether or not to investigate a matter in the absence of a complaint. Contrary to any view which might be held that it might wish to embark on 'fishing expeditions', the Standards Commission does not envisage having to avail of such a facility in any but the most exceptional of circumstances. It considers that the exercise of its powers to investigate on its own initiative would only be used as a last resort where other procedures had not been invoked or had been ineffective in matters of significant public importance.

Tax Clearance Provisions

Evidence of Compliance with the Tax Acts

The 2001 Act introduced a set of provisions requiring the production of evidence of compliance with the Tax Acts¹. These apply to members of Dáil and Seanad Éireann and to appointees to senior office² and the judiciary.

The evidence of compliance consists of certain documents - a Tax Clearance Certificate³ or Application Statement⁴ and a Statutory Declaration⁵. In the case of TDs, Senators and appointees to senior office, the evidence of compliance must be provided to the Standards Commission within 9 months of being elected or nominated or appointed, as the case may be. Persons who are being recommended for appointment to judicial office must provide the evidence of compliance to the Judicial Appointments Board.

TDs, Senators and appointees to senior office must provide:

- a Tax Clearance Certificate, or Application Statement, which must be dated not more than 9 months before, and not more than 9 months after, the date of election or nomination or appointment, as the case may be;

- a Statutory Declaration which must be dated not more than one month before, and not more than one month after, the date of election or nomination or appointment, as the case may be.

Appointees to judicial office must provide:

- a Tax Clearance Certificate which was issued not more than 18 months before the date of the recommendation for appointment;
- a Statutory Declaration that taxation obligations have been discharged which was made not more than one month before the date of the recommendation for appointment.

The Standards Commission has no role in relation to appointees to judicial office. Statutory documentation must be provided to the Judicial Appointments Board.

Note¹ - The Tax Acts referred to are:
 (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,
 (d) the Value-Added Tax Act 1972, and the enactments amending or extending that Act.

Note² - "senior office" means a designated position or directorship in a public body within the meaning of the 1995 Act in relation to which the remuneration is not less than the lowest remuneration for a Deputy Secretary General in the civil service [€149,454 at 1/1/06].

Note³ - A Tax Clearance Certificate is issued by the Collector General on application where the applicant has complied with the requirements of the Tax Acts.

Note⁴ - An Application Statement is issued by the Collector General in circumstances where a decision has not been reached on whether to issue or refuse a Tax Clearance Certificate or where a Tax Clearance Certificate has been refused and the refusal is the subject of an appeal under the Taxes Consolidation Act 1997.

Note⁵ - A Statutory Declaration is a document prescribed by the Statutory Declarations Act 1938, as amended by the 2001 Act. In this case the declaration is that the person is in compliance with the Tax Acts and that there is no impediment to the issue of a Tax Clearance Certificate by the Collector -General. A Statutory Declaration must be witnessed by one of the following:

- Notary Public
- Commissioner for Oaths
- Peace Commissioner
- Practising Solicitor

Tax Clearance Provisions - compliance by appointees to senior office

With the increase in the number of public bodies within the remit of the Ethics Acts, more persons are being appointed to senior office within the meaning of the 2001 Act. It is essential that such persons are advised of their statutory obligations to provide the required evidence of compliance with the relevant taxation legislation in good time. Otherwise, such persons may find themselves to be in contravention of the 2001 Act, through not being informed of their responsibilities.

Accordingly, the Standards Commission recommends that public bodies put in place procedures to identify directorships or positions which would fall within the definition of senior office and to notify appointees to such positions of their obligations, preferably at the time an offer of appointment is being made.

Position in relation to Deputy Michael Collins

In its annual reports for 2003 and 2004, the Standards Commission set out the position in regard to Deputy Michael Collins and steps taken by him arising from the requirements of the 2001 Act relating to evidence of compliance with the Tax Acts. In summary, Deputy Collins provided a Tax Clearance Certificate and a Statutory Declaration to the Standards Commission on 14 June 2002 in fulfilment of these requirements. Subsequently, on 26 September 2003, his name was published in *Iris Oifigiúil* as the holder of a bogus non-resident account. The Standards Commission considered this development and sought legal advice in relation to the evidence of tax compliance which it had received from Deputy Collins pursuant to section 21 of the 2001 Act. The

Standards Commission was advised that neither the 1995 Act nor the 2001 Act gave it any authority, in the absence of a complaint, to investigate the actions of Deputy Collins, as a member of Dáil Éireann. The powers of the Standards Commission, in relation to the initiation of an investigation without a complaint, do not extend to a member of a House of the Oireachtas who is not an office holder. The Standards Commission also considered whether the 2001 Act would permit an investigation of the validity of the evidence of tax compliance provided by Deputy Collins and, having regard to legal advice, concluded that it would not.

In these circumstances, the Standards Commission drew the attention of the Minister for Finance, as sponsor of the enabling legislation, to the limitations of the Ethics Acts which had been brought to light in these particular circumstances. It brought the matter to the attention of the Committee on Members' Interests of Dáil Éireann as the body which, under the Ethics Acts, is charged with the supervision of the Ethics Acts relating to members of Dáil Éireann who are not office holders and it referred the matter to the Director of Public Prosecutions (DPP) for his consideration of whether any offence had been committed by Deputy Collins.

Subsequently, and pursuant to section 22(2)(5)(b) of the 1995 Act (as inserted by Schedule 1 of the 2001 Act), the Committee on Members' Interests of Dáil Éireann determined by resolution that an investigation should be carried out by the Standards Commission. The Chairman of the Committee made a complaint in writing to the Standards Commission in relation to the matter. Investigation of the complaint by the Standards Commission commenced and Deputy Collins was notified accordingly. In addition, the Office of the DPP indicated to the Standards Commission that it had referred the matter to An Garda Síochána for investigation.

In June 2004, having considered views expressed in correspondence from the DPP and also observations made to it by Deputy Collins, the Standards Commission decided to suspend its investigation into the complaint until such time as the matter has been dealt with by the DPP. At the time of writing, the matter is still under consideration by the DPP and An Garda Síochána and there is no indication of when a decision may be reached.

The Standards Commission is concerned at the length of time this matter has been under consideration and urges that it be resolved without further delay.

Codes of Conduct

Section 10 of the 2001 Act provides for the introduction of codes of conduct for the following categories, following consultation with the Standards Commission:

- members of both Houses of the Oireachtas;
- office holders;
- public servants.

Codes of conduct for members of both Houses of the Oireachtas, as drawn up by the Committees on members' Interests of Dáil Éireann and Seanad Éireann, were published by the Standards Commission in 2002.

The Code of Conduct for Office Holders, as drawn up by the Government was published by the Standards Commission on 3 July 2003.

The Civil Service Code of Standards and Behaviour, as drawn up by the Minister for Finance, was issued by way of circular 26/04 on 9 September 2004 and was subsequently published by the Standards Commission.

In its 2003 and 2004 Annual Reports, the Standards Commission referred to its consultations with the Department of Finance regarding codes of conduct for public bodies in the wider public service. The Standards Commission is not aware of any significant progress in 2005 in regard to the development of such a code. However, in discussions with the Department of Finance, it has been advised that separate codes of conduct for the commercial and non-commercial sectors are under consideration. The Standards Commission is also aware of concerns at the proliferation of different types of codes, statutory and administrative, which are emerging in this area. State bodies are subject to the Code of Practice for the Governance of State Bodies, published by the Minister for Finance in October 2001, which includes a code of ethics. In addition to this, some statutory bodies have been established under legislation which provides for codes of conduct specific to those bodies. The danger of confusion as to the relevant provisions of such competing codes, and even the possibility of conflict between the codes, is evident.

The Standards Commission notes that Section 10 of the 2001 Act provides that a code of conduct drawn up under the Act shall indicate the standards of conduct and integrity for the persons to

whom it relates in the performance of their functions and in relation to any matter connected with or affecting or likely to affect such performance and in relation to such other matters (if any) as may be specified in the code.

The provisions of such a code need not, therefore, be too specifically tailored to the circumstances applying in a particular public body but should set out the general principles of conduct and integrity which apply to public bodies generally. It may then be appropriate that those general principles could be elaborated on in the specific circumstances applying in a public body in a subordinate document. The Standards Commission considers that, while it may be appropriate to introduce separate codes in the commercial and non-commercial state sectors, it is essential that such codes are drawn up and published at the earliest date.

Codes of Conduct for Local Authorities

In its Annual Report for 2004, the Standards Commission set out the position in regard to two codes of conduct, one for local authority employees and the other for councillors, which were issued in June 2004 by the Minister for the Environment, Heritage and Local Government. The Local Government Act 2001 provides that the Minister is required to consult with the Standards Commission in relation to the drafting of such codes. The Standards Commission was consulted on the codes in December 2003, and provided its observation on the contents of the codes in February 2004. The Standards Commission suggested the possibility of provision being made whereby protection against reprisal would be guaranteed in any circumstances where a bona fide report or complaint was made by an employee or a councillor who believed that s/he was being required to act in a manner which:

- was illegal, improper, or unethical;
- was in breach of constitutional convention or a professional code;
- may involve possible maladministration; or
- was otherwise inconsistent with the relevant code.

The Standards Commission informed the Department that section 5 of the Standards in Public Office Act 2001, which provides immunity for complainants under that legislation, might serve as a model in this respect.

The Standards Commission had other reservations about the draft code for employees where it dealt with "Attendance and

Outside Employment". In particular, the Standards Commission indicated that it would not be satisfied with the position whereby, if an outside business, occupation or activity was being carried on contemporaneously with the local authority employment, and could reasonably be regarded as weakening public confidence, the matter would be referred to a supervisor for a judgment on its propriety. The Standards Commission felt that there should be a general prohibition on any such business, occupation or activity which could weaken public confidence while the person was in the employment of a local authority, with the proviso that the matter should be referred to a supervisor in the event of uncertainty.

The Standards Commission also considered that it would be appropriate to include a provision in the code which would bring some element of control to the situation whereby local authority employees could leave their employment and take up consultancies or other employment in the private sector to which they could bring access/information/contacts gained in the course of their local authority employment. In such circumstances, it was felt that the imposition of a moratorium for a specified period would not be unreasonable.

In the 2004 Annual Report, the Standards Commission regretted that the Department of Environment, Heritage and Local Government had not taken on board the observations provided in 2004. In December 2005, however, the Department consulted the Standards Commission about draft amendments to Section 10 of the code of conduct for local authority employees, which provide that employees who intend to accept, within twelve months of resignation or retirement, employment or consultancy engagements outside the local authority sector, whose terms are such that the question of a conflict of interest could arise, must consult with and obtain the consent of the appropriate authority.

The Standards Commission indicated to the Department that it welcomes the proposed amendments as being in line with one of its observations in 2004. The proposed amendments bring the Local Authority Code more into line with the Civil Service Code of Standards and Behaviour. The Standards Commission indi-

cated that it had a reservation about the balance of the proposed Outside Appointments Board which was to be composed of the Secretary General of the Department and four other members, at least two of which would not be serving or former local authority employees. It considered that the balance ought to be weighted in favour of persons with non-public service backgrounds as is the case with the Civil Service Outside Appointments Board. It also considered that any provisions should be enforceable and that legislation should be introduced to ensure this, if necessary.

It also expressed its disappointment that its other observations on the original code, which related to the protection of employees who may complain about being required to act in an improper manner, and the fact that the code lacks a general prohibition on outside business, occupations or activities while in the employment of a local authority, were not addressed. The Standards Commission welcomes the Minister's comments in Dáil Éireann on 8 March 2006 made in response to parliamentary questions about protection for local authority employees who make complaints. The Minister indicated that he is open to the development of suitable provisions within the local government legislative code, subject to detailed consideration of the specific issues arising in a local government context and to Government approval. He said that he would be disposed to bring such provisions forward at the next appropriate legislative opportunity.

In regard to local authority employees engaging in outside business, occupations or activities, the Standards Commission considered that the wording of this provision of the Code should be strengthened to reflect more accurately the statutory provisions and the fact that a breach of the provision could be considered to be a 'specified act' within the meaning of the 2001 Act, i.e., an act or an omission that is, or the circumstances of which are, such as to be inconsistent with the proper performance by the specified person of the functions of the office or position by reference to which he or she is such a person or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance. The Standards Commission indicated its willingness to discuss these matters further with the Department.

CHAPTER 2

Electoral Acts

The Electoral Act 1997 (the 1997 Act) provides a framework for the limitation and disclosure of political donations made to political parties, TDs, Senators and MEPs, “third parties” and to candidates at elections. It also regulates spending by political parties, candidates and “other persons” at Dáil, European Parliament and presidential elections. It provides for the reimbursement of election expenses to qualified candidates and for the state financing of qualified political parties (dealt with in Chapter 3).

Significant amendments to the 1997 Act were introduced by the Electoral (Amendment) Acts 1998 and 2001. Minor amendments were also introduced in two Electoral (Amendment) Acts enacted in 2002. To give effect to the judgments of the High Court and the Supreme Court in the Desmond Kelly case, the Electoral (Amendment) Act 2004 (the 2004 Act) was enacted. However, the wording of the 2004 Act gave rise to practical difficulties in relation to the limitation of election expenses and this was resolved in the Electoral (Amendment) Act 2005. This issue is discussed later in this Chapter.

The above legislation is referred to collectively in this Chapter and in Chapter 3 as “the Electoral Acts”.

During 2005, the Standards Commission supervised compliance with the Electoral Acts by TDs, Senators and MEPs, political parties and their accounting units, candidates and agents at the Dáil by-elections in Kildare North and Meath and by “third parties” and “other persons”. Unlike the Ethics Acts, where disclosure of certain information obtained under that legislation is prohibited, the vast bulk of the material furnished to the Standards Commission under the Electoral Acts is in the public domain in the form of reports to the Ceann Comhairle which are laid before the Houses of the Oireachtas. The material is also made available to the public for inspection and copying, including, in summary form, on the website of the Standards Commission. The Standards Commission considers it to be of the utmost importance that information furnished to it under the Electoral Acts should be made widely

available to allow for public scrutiny and to facilitate a broadly based assessment of the statutory documentation.

Donations

Donations disclosed by TDs, Senators and MEPs in respect of 2005

By 31 January 2006, TDs, Senators and MEPs were required to furnish to the Standards Commission their Donations Statements and accompanying documentation in respect of 2005. Any donations with a value exceeding €634.87 received during the year had to be disclosed. The maximum value of donations which can be accepted from the same donor in the same calendar year is €2,539.48. Donations received from the same donor must be aggregated and regarded as a single donation for the purposes of the disclosure and maximum acceptance limits. TDs, Senators and MEPs are prohibited from accepting anonymous donations exceeding €126.97 or foreign donations of any value.

A total of 233 Donation Statements were received in respect of 2005 (166 TDs, 60 Senators and 7 MEPs - the remaining 6 MEPs are also TDs or Senators and a single Donation Statement was received in respect of their dual mandates). Donations with a total value of €147,526 were disclosed in respect of 2005. This is a decrease of 12% compared with the figure of €166,793.79 for the calendar year 2004. Donations disclosed included money, property, goods and services.

Details of donations disclosed in respect of 2005 are contained in a report to the Ceann Comhairle which was published on 30 March 2006. The report, which is available on the website of the Standards Commission, also contains details of Supplementary Donation Statements furnished in respect of 2003 and 2004 by Senator John Hanafin.

Donations made by multiple donors in 2005

Section 24(1A) of the 1997 Act (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, 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 Standards 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. No section 24(1A) Donation Statement was received during 2005.

Donations disclosed by political parties in respect of 2005

By 31 March 2006, each of the 13 registered political parties was required to furnish a Donation Statement to the Standards Commission in respect of donations received during 2005. Donations exceeding €5,078.95 in value received during the year had to be disclosed. The maximum value of donations which a political party can accept from the same donor in the same calendar year is €6,348.69. Donations received from the same donor during the year must be aggregated and regarded as a single donation for the purposes of the disclosure and maximum acceptance limits.

Statements received in 2005 showed that political parties received disclosable donations with a total value of €142,917.55. Details of donations disclosed in respect of 2005 are contained in a report to the Ceann Comhairle which was published on 16 May 2006 and which is available on the website of the Standards Commission.

Disclosure of donations made by companies under section 26 of the 1997 Act

Section 26 requires companies to include in their statutory annual report/return to the Companies Registration Office (CRO), details of any political donation(s) exceeding €5,078.95 in value which were made by them during the year to which the report/return relates. Donations include money, the free or below cost use of property, goods and services and the gross value of a contribution made by a company to a fund-raising event.

The report/return must specify the value of the donation and the name of the individual/political party to which it was given. Donations made by a company to the same individual/political party during the year to which the report/return relates must be aggregated and treated as a single donation for the purposes of observing the disclosure threshold. With effect from 1 January 2002, it is an offence for a company to fail to comply with the provisions of section 26. The penalty for this offence is a fine not exceeding €1,269.74.

During 2005 the Standards Commission liaised with the CRO and examined returns made by companies which had been included on the annual Donation Statements furnished by political parties as having made a donation exceeding €5,078.95. It was evident from the returns examined that some of these companies had not included the required details in the relevant report/return furnished to the CRO. The Standards Commission wrote to the companies concerned notifying them of their failure to comply with section 26 of the 1997 Act and requesting them to ensure that in future, where donations exceeding €5,078.95 are made by the company, details of same are included in the relevant statutory report/return to the CRO.

In some instances the amounts disclosed by companies in their annual report/return did not correspond with the amounts disclosed by the party on its annual Donation Statement. The Standards Commission recognised that this may have been on account of the fact that:

- 1) returns furnished by some of the companies were not in respect of a single calendar year (unlike a political party's Donation Statement); and
- 2) companies must disclose the gross value of a contribution to a fund-raising event whereas a political party need only disclose the net value of such a contribution.

The Standards Commission wrote to the parties concerned requesting them to provide details of donations received by them from the companies concerned during the relevant period. If a donation received was in the form of a contribution to a fund-raising event the party was asked to indicate the gross and net value of the donation. At the time of writing this report, the Standards Commission is still corresponding with the parties concerned.

Prosecutions of offences under section 25 of the 1997 Act

Former Senator Liam Cosgrave

In his evidence to the Flood Tribunal on 3 April 2003, former Senator Liam Cosgrave admitted having received a contribution of £2,500 from Mr. Frank Dunlop in July 1997. In further evidence on 9 April 2003, Mr. Cosgrave admitted having made a false declaration when completing his Donation Statement and Statutory Declaration in relation to donations received during 1997.

In accordance with the provisions of section 24(1)(a) of the 1997 Act, Mr. Cosgrave had, on 29 January 1998, furnished a Donation Statement and Statutory Declaration form to the then Public Offices Commission in respect of the period 15 May 1997 (commencement date of the 1997 Act) to 31 December 1997. The Donation Statement had not included details of any donations from Mr. Dunlop.

In light of this evidence, the Standards Commission, having considered the Donation Statement and Statutory Declaration furnished by Mr. Cosgrave on 29 January 1998, and comments subsequently furnished by Mr. Cosgrave on the matter, was of the opinion that Mr. Cosgrave may have committed an offence under section 25(1)(d) of the 1997 Act by knowingly furnishing a Donation Statement or making a Statutory Declaration which is false or misleading in any material respect. The penalty for this offence is a fine not exceeding €25,394.76 and/or up to 3 years imprisonment.

In accordance with the provisions of section 4(3)(c) of the 1997 Act, the Standards Commission furnished a written report on the matter to the Director of Public Prosecutions (DPP) on 3 July 2003. The DPP subsequently requested the Gardaí to carry out an investigation into whether a criminal offence had been committed. Having concluded their investigations, the Gardaí submitted a file to the DPP in relation to the matter.

On 17 October 2005 Mr. Cosgrave pleaded guilty at the Dublin Circuit Criminal Court to having committed an offence under section 25(1)(d) of the 1997 Act. He was sentenced to community service, subject to suitability.

Gerard Hannan

In its Annual Report of 2004, the Standards Commission reported that a file had been referred to the Gardaí in relation to Mr. Hannan, an unsuccessful candidate at the European Parliament election of 11 June 2004. Mr. Hannan had failed to furnish a Donation Statement/Statutory Declaration form to the Standards Commission by the statutory deadline of 6 August 2004. This is an offence under section 25(1)(c) of the 1997 Act. The penalty for this offence is a fine not exceeding €1,269.74. Although a Donation Statement was subsequently received from Mr. Hannan and the Gardaí notified, the Gardaí proceeded with a prosecution of the offence. On 10 November 2005 Mr. Hannan pleaded guilty at Limerick District Court to committing an offence under section 25(1)(c) of the 1997 Act. Mr. Hannan was fined €250.

Electoral (Amendment) Act 2005

In its Annual Report for 2004 the Standards Commission referred to difficulties which had arisen due to the introduction of section 33 of the Electoral (Amendment) Act 2004. Section 33 was intended to amend paragraph 2(a) of the Schedule of the Electoral Acts to reflect the High Court and Supreme Court judgments in the Desmond Kelly case. Arising from these judgments, election expenses at Dáil and European Parliament elections which are met from public funds are now subject to the expenditure limit applying at the election and must be accounted for in an Election Expenses Statement. Paragraph 2(a) had hitherto precluded such costs from being regarded as election expenses. Paragraph 2(a) had also included a number of other matters which were not to be regarded as election expenses. These matters had not been affected by the Courts' judgments in the Desmond Kelly case. Section 33, rather than amending paragraph 2(a) specifically in relation to costs met from public funds, had instead deleted the paragraph in its entirety.

The Standards Commission set out the implications of this amendment and its concerns in this regard. It reported that it had made these concerns known to the Minister for the Environment, Heritage and Local Government who had agreed to bring forward legislative proposals which would address the position. The Standards Commission noted that an amending Bill had been introduced. That Bill was subsequently enacted on 9 July 2005 as the Electoral (Amendment) Act 2005 (the 2005 Act). The Standards Commission is satisfied that section 6 of the 2005 Act satisfactorily addresses the issue by restoring in paragraph 2(a)

to the Schedule those matters which had not been affected by the Courts' judgments.

Kildare North and Meath Dáil by-elections of 11 March 2005

Polling for the Dáil by-elections in Kildare North and Meath took place on 11 March 2005 to fill the vacancies arising from the departure from national politics of former deputies Charles McCreevy and John Bruton. Eight candidates contested the Kildare North by-election while seven contested the Meath by-election.

Donation Statements were required to be completed by unsuccessful candidates at the by-elections. Election Expenses Statements were required to be completed by the election agents of all candidates and the national agents of the six political parties who contested the by-elections. Groups unconnected to a party or candidate at the by-elections who incurred election expenses were also required to complete an Election Expenses Statement. All of these statements were required to be furnished to the Standards Commission by the 56th day after polling day (i.e. by 6 May 2005).

The elected candidates, Deputies Shane McEntee and Catherine Murphy, were required, as TDs, to furnish an annual Donation Statement to the Standards Commission by 31 January 2006. All donations received by them during 2005 which exceeded €634.87 in value, including any such donations received in relation to the by-elections, were required to be disclosed.

Election expenses totalling €321,767.25 were incurred on behalf of the 15 candidates and six political parties who contested the by-elections. Of this amount, €189,738.19 was spent at the Meath by-election and €132,029.06 was spent at the Kildare North by-election. The spending limit at the Meath by-election was €38,092.14 per candidate and €25,394.76 at the Kildare North by-election. There was no overspend at either by-election. Eleven candidates, six in Kildare North and five in Meath, qualified for reimbursement of their election expenses, which was €6,348.69 in each case.

The Standards Commission deemed that expenses of €6,840 incurred during the by-elections by the Federation of Irish Salmon & Sea Trout Anglers (FISSTA) and by the National Association of Regional Game Councils (NARGC) were election expenses. The

expenses were incurred on newspaper advertisements which the Standards Commission considered purported to oppose indirectly the interests of candidates contesting the by-elections on behalf of Government parties. An Election Expenses Statement on behalf of both organisations was subsequently received on 19 May 2005. While both groups had contravened the provisions of section 31(7) of the Electoral Acts by failing to notify the Standards Commission in advance of their intention to incur election expenses, the Standards Commission took no further action in terms of a referral of the matter to the Gardaí, as both groups had otherwise complied with the legislation by furnishing an Election Expenses Statement.

Section 31(10) of the 1997 Act provides that if the publisher of a newspaper intends to publish an advertisement or notice from an individual or group which purports to promote or oppose, directly or indirectly, the interests of a political party or a candidate at a Dáil by-election, that individual or group must be authorised in writing to do so by either a candidate at the election or his/her election agent or the national agent of a political party. If not so authorised the individual/group must be able to produce to the publisher a certificate from the Standards Commission confirming that the individual/group has complied with section 31(7) of the 1997 Act.

It is an offence for the publisher of a newspaper, magazine or other periodical publication to fail to comply with the requirements of section 31(10). As neither FISSTA or NARGC had notified the Standards Commission of their intention to incur election expenses and had not been issued with a certificate of compliance with the provisions of section 31(7) of the Act, the Standards Commission was of the view that publication of their advertisements by the Meath Chronicle and Leinster Leader newspapers contravened the provisions of section 31(10) of the Act.

The Standards Commission wrote to both newspapers and, having considered their replies, accepted that neither newspaper had intentionally contravened the provisions of section 31(10) of the Act. In addition the Standards Commission was assured that procedures had been put in place in each newspaper to ensure that such contraventions do not recur. On that basis, the Standards Commission decided not to take any further action in terms of a referral of either matter to the Gardaí.

Details of election expenses incurred at the by-elections and donations disclosed by unsuccessful candidates are contained in a report to the Ceann Comhairle which was published on 15 July 2005 and which is available on the website of the Standards Commission. Details of donations disclosed by the two successful candidates are set out in a report to the Ceann Comhairle which was published on 30 March 2006 and which is also available on the website of the Standards Commission.

Accounting Units

An accounting unit, in relation to a political party, means a branch or other subsidiary organisation of the party, which, in any particular year, receives a donation the value of which exceeds €126.97. The appropriate officer of a political party is required to provide the Standards Commission with the name and address of each accounting unit of the party, including the name of its "responsible person". The responsible person is the treasurer or any other person responsible for dealing with donations to the unit.

On receipt of a monetary donation in excess of €126.97, the accounting unit must open and maintain a Political Donations Account in a financial institution in the State and must lodge the donation and any further monetary donations received, of whatever value, to the account. The responsible person of an accounting unit must, by 31 March each year, furnish to the Standards Commission a statement from the financial institution in which the account is held together with a Certificate of Monetary Donations stating that all monetary donations received during the preceding year were lodged to the account and that all amounts debited from the account were used for political purposes. The Certificate of Monetary Donations is accompanied by a Statutory Declaration. It is an offence for the responsible person of an accounting unit to fail to comply with this requirement.

The provisions of the Electoral Acts relating to accounting units came into effect on 1 January 2002. The Standards Commission has encountered a number of difficulties in supervising this part of the legislation.

- The Standards Commission estimates that the number of branches/subsidiary organisations of political parties currently operating may be in excess of 4,000. The number of accounting units currently notified to the Standards Commission by all political parties is 154. There has been a general

election, a European Parliament election and local elections since the introduction of these provisions of the legislation for which a certain amount of fund-raising would have been carried out by local party organisations. The Standards Commission considers, therefore, that there is a significant number of accounting units which have not been notified to it.

- There are no offences in the Electoral Acts for failure by an appropriate officer to notify the Standards Commission of the existence of an accounting unit. Similarly, there is no offence for failure on the part of a branch/subsidiary organisation to notify the appropriate officer that it is an accounting unit. In the absence of such sanctions there may be little or no incentive to comply with these provisions of the legislation.
- There is no offence for failure by the responsible person of an accounting unit to open a political donations account.
- In some cases appropriate officers have notified the Standards Commission that a particular branch or unit is an accounting unit when, in fact, it is not, i.e. it has not received any donation in excess of €126.97 since 1 January 2002.
- An ongoing difficulty is the failure to notify the Standards Commission where there has been a change of responsible person in an accounting unit. This delays the process of submitting the required statutory documentation, some of which may be received after the statutory deadline, which is a contravention of the legislation.

The Standards Commission recognises that the requirements of these provisions of the legislation create a significant administrative burden for appropriate officers, particularly those of the larger political parties. The Standards Commission also recognises that there has been a concerted effort by some appropriate officers to identify the branches/subsidiary organisations within their parties which are accounting units. The Standards Commission considers, however, that it is incumbent on all appropriate officers to have sufficient procedures in place to ensure that they are aware of all accounting units and their responsible persons. Also changes of responsible persons must be notified to them promptly to allow such notification to be forwarded to the Standards Commission.

The Standards Commission considers that the introduction of a sanction for branches/subsidiary organisations who do not notify appropriate officers of the receipt of a donation exceeding €126.97 and details of their responsible person would be of benefit in this regard.

Third Parties

A “third party” is defined in the Electoral Acts as any person (i.e., an individual or a group), 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. The definition of political purposes is quite broad and, as well as referring to elections and referenda, also covers any campaign which supports or opposes any policy of the Government or a public authority.

Third parties are required to register with the Standards Commission. They are prohibited from accepting “anonymous” or “foreign donations”. The maximum donation which a third party can accept from the same person in the same year is €6,348.69 (the same limit applies to political parties). If a third party receives a monetary donation exceeding €126.97 it must open a political donations account.

Not later than 31 March each year, the “responsible person” of a third party (i.e. the person responsible for its organisation, management or financial affairs) must furnish a Certificate of Monetary Donations and a statement from the financial institution in which the political donations account is held specifying the transactions which have taken place on the account during the preceding year. A strict reading of the legislation would require a registered third party to comply with this requirement every year even though it may no longer be in existence or engaged in activities which are captured by the definition of political purposes. Most third parties tend to be either standing organisations which decide to become involved in a particular campaign, or groups which are established for a definite purpose, e.g. to influence the outcome of a referendum, election, etc. Most third parties do not continue in existence thereafter.

The Standards Commission takes what it considers to be a practical approach to supervising these provisions of the legislation. Each year it writes to relevant third parties asking them to confirm whether or not they intend to continue in existence as a third

party. If the third party confirms that it does not intend to continue in existence or engage in activities which are captured by the definition of political purposes, no further contact is made with that individual or group.

Nine groups submitted returns to the Standards Commission in respect of 2004. Two of these groups registered for the first time in 2004, with a further group registering in 2005 and submitting documentation retrospectively. Seven of the nine groups completed a Certificate of Monetary Donations and submitted a bank statement in respect of 2004. The remaining two groups notified the Standards Commission that they did not have any activity in their political donations account in 2004 and, therefore, were not required to complete a Certificate of Monetary Donations.

Accordingly, the Standards Commission wrote to each of the nine registered third parties in advance of the 31 March 2005 deadline for return of statutory documentation for 2004, and requested that the responsible person confirm in writing if the third party was continuing to operate during 2005. One group (Stop Bush Campaign) had ceased to operate as a third party, while a further group (Éire ar son na Beatha) advised that it had no plans to operate in 2005.

Statutory documentation for 2005 was submitted by the responsible person for four of the remaining seven groups to the Standards Commission by 31 March 2006. A further group advised in writing that it was no longer in operation. Another group advised verbally that it did not operate in 2005 but has yet to confirm this in writing. The remaining group has been in contact with the Standards Commission to confirm that the outstanding documentation will be forwarded shortly. Details of the third parties which have registered with the Standards Commission since the commencement of these provisions on 1 January 2002 are set out in Appendix 1 of this report.

The Standards Commission recognises that most individuals/groups are unaware of the requirement to register as a third party. It publishes a notice in the national newspapers each year setting out the requirements of the legislation. It also publishes a detailed explanatory note which is available on its website. The Standards Commission also contacts individuals/groups which may be involved in activities which are captured by the definition of political purposes. A copy of the explanatory note is provided and the

CHAPTER 3

Exchequer Funding of Political Parties

Significant Exchequer funding is now available to qualified political parties under the Electoral Acts and the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001.

Funding under the Electoral Acts

Since 1998 direct general funding has been provided under the Electoral Acts. This coincided with the introduction of statutory obligations whereby political parties, and others, are required to disclose donations over certain values. The level of funding was increased considerably in 2001 at a time when limits were put in place on the values of donations that could be accepted and a ban on foreign donations was introduced.

To qualify for funding under the Electoral Acts, 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. Currently six political parties qualify on the basis of the 2002 general election results. Funding received under the Electoral Acts is not subject to income tax.

Each qualified party is now paid a basic amount of €126,974 annually. In addition, each qualified party is entitled to a share of an annual sum which is increased in line with general pay increases in the civil service. The amount of the fund payable to a qualified party is determined by expressing each qualified party's first preference votes at the most recent Dáil general election (May 2002) as a proportion of the total first preference votes received by all qualified parties. The total funding received by qualified political parties in respect of 2005 was €5,049,656.

Qualified political parties must account for their use of the funding on an annual basis. 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 also deemed to include provision in respect of the promotion of participation by women and young persons in political activity. The funding may not be used to recoup election or referendum expenses.

The appropriate officer of each qualified political party provides an Exchequer Expenditure Statement to the Standards Commission by 31 March each year. The Exchequer Expenditure Statement sets out the amount of funding received in respect of the preceding year, as well as any amount brought forward from the previous year. It must provide details under the above headings of the matters to which the funding 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.

The Standards Commission furnishes a report to the Ceann Comhairle each year giving details of the funding received under the Electoral Acts by qualified political parties for the previous year and the matters to which the funding was applied. The Exchequer Expenditure Statements and Auditors' Reports are laid before the Houses of the Oireachtas and are made available for public inspection and copying. The report in respect of 2005 was furnished to the Ceann Comhairle on 16 May 2006 and is available on the website of the Standards Commission.

Funding under the Party Leaders Allowance legislation

The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 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 and the legislation is referred to hereafter as the Oireachtas Act 2001. The Standards Commission has a supervisory role under the Oireachtas Act 2001 in relation to expenditure of the Party Leaders Allowance.

A qualifying party is defined as a party, registered in the Register of Political Parties, which had at least one member elected to Dáil Éireann or elected or nominated to Seanad Éireann at the last preceding Dáil or Seanad general elections (2002) or at any subsequent by-election. The allowance is calculated on the basis of the number of members which have been elected to Dáil Éireann or elected or nominated to Seanad Éireann. Based on results at the 2002 general elections and subsequent by-elections, the parliamentary leaders of seven political parties currently qualify for payment of the allowance. Six of those seven parties also qualify to receive funding under the Electoral Acts.

The allowances were set by the Oireachtas Act 2001 and are increased in line with civil service general pay increases. The allowances can also be increased by an order of the Government.

For Members of Dáil Éireann, the allowances as at 31 December 2005 were as follows:

	2005 (per member)
First 10 members	€61,011
From 11 to 30 members	€48,807
Over 30 members	€24,410
Independent members	€35,105

In the case of Seanad members, the allowances were:

	2005 (per member)
First 5 members	€39,894
Over 5 members	€19,947
Independent members	€19,947

The total amount paid to qualified political parties in respect of 2005 was €6,896,735. If a qualifying party forms part of the Government, the combined allowances in respect of its members of the Dáil only, are reduced by one-third. The allowance must not be used for, or to recoup, election or poll expenses and is not subject to income tax.

Each parliamentary party leader is required to prepare annually, or cause to be prepared, a statement of any expenditure from the allowance. The statement sets out the amount received in respect of 2005 and the amount, if any, carried forward from 2004. The statement must give details, under the headings provided for in the Oireachtas Act 2001, of the matters on which the funding was spent during 2005. The statement must be audited by a public auditor and furnished to the Standards Commission within 120 days after the end of the financial year in which the allowance has been paid. The relevant date is usually 30 April. However, the period of 120 days is extended by any period for which the Dáil stands dissolved during that period. If the statement of expenditure and auditor's report are not received by the Standards Commission within the required timescale, payment of the allowance is suspended until such time as the statement and auditor's report have been received.

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 report concerning expenditure of the allowance in 2005 was furnished to the Minister for Finance on 15 May 2006 and laid before the Houses of the Oireachtas on 16 May 2006. The report is available on the website of the Standards Commission. Copies of the statements and auditors' reports are made available for public inspection and copying at the offices of the Standards Commission.

CHAPTER 4

General Issues

Appearance by the Standards Commission before the Joint Oireachtas Committee on Finance and the Public Service

During 2005 the Standards Commission was invited to address the Joint Oireachtas Committee on Finance and the Public Service. The Chairman and three other members of the Standards Commission, Ms. Emily O'Reilly, Mr. John Purcell and Mr. Liam Kavanagh appeared before the Committee on 25 May 2005. The Standards Commission welcomed this opportunity to address the Committee and to discuss the role and functions of the Standards Commission. It also availed of the opportunity to highlight some difficulties which it had encountered in its supervision of the Ethics Acts, the Electoral Acts and the Oireachtas Act 2001. Many of these issues have already been referred to earlier in this Report.

Among the issues discussed were:

- the absence of a provision in the Ethics Acts which would allow for the appointment of an Inquiry Officer in circumstances where the Standards Commission wishes to enquire into a matter which has not been the subject of a complaint to it;
- a comparison of the Corruption Perception Index which is published annually by Transparency International and an evaluation report on Ireland which was published in 2001 by GRECO (Council of Europe - Group of States Against Corruption);
- the regulation of "third parties" under the Electoral Acts;
- the issue of election spending and whether current spending limits are adequate or ought to be increased. In this context, the issue of expenditure on election materials which are used prior to the commencement of the election period and which are not subject to the spending limits or are not required to be accounted for, needs to be addressed;
- the absence of a requirement for non-party members of the Dáil and Seanad to account for expenditure of funding received under the Oireachtas Act 2001. The Oireachtas Act 2001 provides for the furnishing of Statements of Expenditure of the Allowance by the parliamentary leaders of qualified political parties only;
- the issuing of Tax Clearance Certificates to Members of the Houses of the Oireachtas;
- the position taken by the Standards Commission in relation to the provisions of section 33 of the Electoral (Amendment) Act 2004;
- observations provided by the Standards Commission on a draft Code of Conduct for Local Authority employees.

Re-design of the Standards Commission website

During 2005 the Standards Commission, in conjunction with the Office of the Ombudsman and the Office of the Information Commissioner, invited tenders for the re-design and re-development of its website. The contract for the re-development of all the three websites was awarded to **TERMINALFOUR**, a Dublin based software development company.

The new website of the Standards Commission was launched in December 2005. The site has been designed to the highest accessibility standards with the intention of making it easier to read and providing a clear structure and a simple, intuitive navigation. The website also has an improved search function and there is an Irish language version of the site.

It is envisaged that the new site will become a valuable tool for disseminating information about the Standards Commission and the legislation it supervises. It is hoped that it will be used by members of the public to access information published by the Standards Commission and by those subject to the legislation as a reference on how to comply with Ethics, Electoral and Party Leaders Allowance legislation.

CHAPTER 5

Freedom of Information

Requests for information during 2005

The Standards Commission received no requests for release of records under the Freedom of Information Acts 1997 and 2003 during 2005. One request was on hand at the beginning of 2005. Access to the records requested was granted in full.

Section 15/16 Manual

The Standards Commission has published a combined manual under Section 15 and 16 of the Freedom of Information Acts 1997 and 2003, setting out:

- (a) its structure and organisation, its functions, powers and duties, the nature of the documentation held by it and the process by which requests for information can be made, and
- (b) the rules, procedures, practices, guidelines, interpretations and precedents which the public may expect under any enactment or scheme operated by the Standards Commission in the areas of decisions, determinations or recommendations, together with appropriate information in relation to the manner or intended manner of administration of any such enactment or scheme.

The manual is available on the Standards Commission's website.

Prohibition on disclosure of information

Under section 35 of the Ethics in Public Office Act 1995, an offence is committed by disclosing information which is obtained under the Ethics Acts, or which is obtained by attending a meeting of the Standards Commission held in private. This prohibition on disclosure of information extends to requests for records made under the Freedom of Information Acts. Section 35 provides a number of specific exemptions to this absolute rule whereby information may be disclosed in the following circumstances:

- by a Minister of the Government when it is deemed by him or her to be in the public interest;
- by a person to whom a statement of interest was provided if that person believes that a conflict may exist between an interest disclosed or not disclosed in a statement, and the public interest;
- by a person in the performance of his or her functions;
- by a person, in the public interest, to a Minister, the Secretary General to the Government, a Committee on Members' Interests, the Standards Commission or, in the case of an occupier of a designated position, the relevant authority in the public body;
- by the Standards Commission in accordance with an order of a court;
- by, or with the permission of, a person to whom the information relates, of information contained in a report of an investigation by the Standards Commission or a Committee on Members' Interests which has not been laid before either House (e.g. where a report following an investigation of a public servant carried out by the Standards Commission did not conclude that there had been a contravention of the Ethics Acts).

CHAPTER 6

Costs in 2005

The table below outlines the expenditure incurred by the Standards Commission in 2005. The figures for 2004 are also shown for comparison purposes. The expenditure is provided for in Sub-head B of Vote 18 [Ombudsman].

	2004 € '000	2005 € '000
Staff Salaries	574	616
Travel and Expenses	8	2
Incidental Expenses	165	143
Postal Telecommunications	22	18
Office Machinery and Other Office Supplies	42	40
Office Premises	22	26
Consultancy & Legal Fees	31	41
TOTAL	864	886

APPENDICES

Appendix 1

Third parties that have registered with the Standards Commission since 1 January 2002

2002

Pro-Life Campaign
Pro Life Movement Association
Irish Family Planning Association
Pro-Life Alliance
Abortion Reform
Éire ar son na Beatha
Alliance for a NO Vote
Elect Carlow Candidates Organisation (ECCO)
Galway for Safe Environment
No Incineration Alliance
N9 Action Group
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
PANA

2003

Irish Hospitality Industry Alliance

2004

Stop Bush Campaign
NASC

2005

Irish Council for Civil Liberties

Appendix 2

Publications by the Standards Commission in 2005

Ethics Acts

1. Civil Service Code of Standards and Behaviour (February 2005)
2. Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001 - Public Servants (3rd Edition) (June 2005)

Electoral Acts and Oireachtas Act 2001

1. Presidential Election of 2004 - statutory returns received from the presidential election agent (21 January 2005)
2. Guidelines for candidates, election agents and national agents in respect of the Kildare North and Meath Dáil By-Elections of 11 March 2005 (February 2005)
3. Donations Statements and Statutory Declarations, in respect of 2004, furnished to the Standards in Public Office Commission by members and former members of both Houses of the Oireachtas, representatives in the European Parliament and other persons, pursuant to section 24 of the Electoral Act 1997 (7 April 2005)
4. Statements of Expenditure and Public Auditors' Reports, in respect of 2004, furnished to the Standards in Public Office Commission, pursuant to section 1.10(11)(a) and Section 1.10(11)(d) of the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 (31 May 2005)
5. Annual Donation Statements and Statutory Declarations, in respect of 2004, furnished to the Standards in Public Office Commission by political parties pursuant to section 24 of the Electoral Act 1997 and Annual Statements of Expenditure of Exchequer Funding and Auditors' Reports, in respect of 2004, furnished to the Standards in Public Office Commission by qualified political parties pursuant to section 20 of the Electoral Act 1997 (2 June 2005)
6. Donation Statements and Statutory Declarations received from unsuccessful candidates at the Kildare North and Meath Dáil By-Elections of 11 March 2005 and Election Expenses Statements and Statutory Declarations received from election agents of candidates, national agents of political parties and other persons at the Kildare North and Meath Dáil By-Elections of 11 March 2005 (15 July 2005)

All of the above publications may be viewed on the website of the Standards Commission - www.sipo.gov.ie

Appendix 3

Proposals for changes to the Ethics and Electoral legislation

The Standards Commission has proposed a number of changes to both the Ethics and Electoral Acts at various times; some of these are summarised below.

Ethics Legislation

- Provision for the appointment by the Standards Commission of an Inquiry Officer to carry out a preliminary inquiry into a matter which is not the subject of a complaint, but where the Standards Commission considers it appropriate to do so.
- Provision in regulations amending Section 5(2) requiring members to furnish statements of 'nil' interests to the Standards Commission rather than to the relevant Clerk to be made in primary legislation in order to remove any doubt as to its constitutionality.
- Provision that, where an elected member or an appointee to a senior office in a public body furnishes an application statement to the Standards Commission, which indicates that the person has applied to the Office of the Collector General for the issue to him or her of a tax clearance certificate and that a decision has not been made, that person shall be required to furnish a tax clearance certificate to the Standards Commission where such a certificate is subsequently issued to him or her.
- Provision for the application by the Standards Commission of discretion as to whether an investigation is warranted into a contravention of the requirements on elected members and appointees to senior office to provide evidence of compliance with specified taxation legislation.
- Amendments to the time limits within which statutory declarations, tax clearance certificates and application statements are to be made or issued and furnished to the Commission - for example, tax clearance certificates could be issued and furnished to the Commission within six months rather than nine months as at present and that statutory declarations could be made and furnished within three months rather than made within one month and furnished within nine months as at present.
- Revision of the timescale for the taking of proceedings concerning possible offences regarding the making of false statutory declarations.
- Provision for the date of first assembly of the relevant House of the Oireachtas be used as the election date for the purposes of determining the time limits by which an elected member must make his or her statutory declaration and furnish to the Standards Commission a tax clearance certificate or an application statement.
- The amendment of Section 24(2)(b)(ii) of the Standards in Public Office Act 2001 to provide that a report by the Standards Commission concerning the contravention of the tax clearance provisions by an Attorney General who is not a member of the Oireachtas, and who subsequently complied, should be sent to both Houses of the Oireachtas rather than to 'the House' as is currently provided.
- That the Chairmen of Oireachtas Committees be designated as Office Holders for the purposes of the Ethics Acts - i.e. that the disclosure requirements of the Acts would apply to them. This could be done by motion in the Houses - an amendment to the Acts is not necessary.

Electoral Legislation

The Standards Commission published a review of the Electoral Acts in December 2003 and suggested a range of amendments at that time. These included:

- As the body with responsibility for supervising the Electoral Acts the Standards Commission should have a statutory basis on which to review the legislation and report on its findings.
- Certain sections of the Act need to be amended to take account of the fact that Members of Local Authorities and candidates at local elections have their own reporting requirements under the Local Elections (Disclosure of Donations and Expenditure) Act 1999 as amended by the Electoral (Amendment) Act 2001 and that the Standards Commission does not have a supervisory function in relation to this legislation.

- Provision for offences and penalties for failure to comply with the provisions of Parts IV, V and VI of the Electoral Act - these parts relate to disclosure of donations, expenditure by candidates and political parties at Dáil and European Parliament elections, and donations and election expenses at presidential elections, respectively.
- Provision for an offence and penalty for failing to comply with a request from the Standards Commission (under section 4(4) of the Act) to provide information or documentation.
- The definition of a “financial institution” for the purposes of opening political donations accounts should be amended to include credit unions.
- Provision for the disposal of surplus donations in situations where a person is no longer required to maintain a political donations account and there are funds remaining in the account which have not been used.
- Provide for the furnishing of a single Donation Statement in situations where a person holds a dual mandate or where, in a particular year he/she as a TD, Senator or MEP unsuccessfully contested a Dáil, Seanad or European election. (Currently such a person would be required to furnish an annual Donation Statement and a Donation Statement as an unsuccessful candidate at the election.)
- Consideration should be given to imposing some accountability, in the context of the spending limits, in respect of a specified period prior to commencement of the legally defined election period, (i.e. that the election period might be extended to include a period prior to the dissolution of the Dáil or moving of the writ at an election).
- The definition of “minor expenses” should be limited to €126.97 per candidate per election.
- Provide that a candidate (or other person) shall be guilty of an offence if, at any time before, during or after the election he/she fails to provide the necessary information to an election agent or national agent for the purposes of facilitating the completion of the agent’s Election Expenses Statement. Provide a penalty for this offence.
- The definition of what constitutes a “third party” should not be determined on the basis of whether an individual/group has received a donation but should focus on spending by individuals/groups and to regard them as third parties if they intend to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes as defined in the legislation.
- The registration process for “third parties” and for “other persons” (who intend to incur election expenses) should be amalgamated. (There should be no need for a individual/group to register as a “third party” and to also register as an “other person”.)
- The legislation suggests that once an individual/group has registered as a third party, it is required to furnish documentation to the Standards Commission on an annual basis even though it is no longer active for political purposes. The approach taken by the Standards Commission in this matter has been to ask third parties to confirm whether or not they intend to continue in existence. If they do not, there will be no further contact made with them. This situation might be addressed and clarified.
- Consideration should be given to imposing a limit on the amount of expenditure which may be incurred by a “third party”/“other person” at an election. For example if a “third party”/“other person” is opposing a particular candidate at an election the amount of expenditure which can be incurred by the “third party”/“other person” should not exceed the statutory spending limit applicable to that candidate.