

# Annual Report

Public Offices Commission 1998

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# Foreword

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

Kevin Murphy  
Chairman  
June 1999

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# Introduction

This is the third Annual Report of the Public Offices Commission (the Commission) since its establishment under the Ethics in Public Office Act, 1995. During the year now being reported on, ethics in public life has attracted a great deal of media and public attention, not least because of the existence of two Tribunals of Inquiry charged with investigating events spanning three decades. With the Tribunals have come repeated calls for the establishment of a regulatory framework to deal, on an ongoing basis, with the question of standards in public life. Arising in part from its own 'An Action Programme for the Millennium' and from recommendations of Judge McCracken in the Tribunal of Inquiry (Dunnes Stores), the Government has published proposals for a Standards in Public Office Bill which is intended to give further practical effect to a stated commitment to the highest standards in public life. The proposals were laid before the Dáil and the Seanad and forwarded to the Joint Oireachtas Committee on Finance and the Public Service in July 1998. As part of its consideration of the proposals, the Joint Committee was required to consult with the Committees on Members' Interests of both Houses. The Commission, also, was formally invited by the Joint Committee to participate in the deliberative process. The Commission presented its views on the proposals to a meeting of the Joint Committee on 2 December, 1998. Some of the points raised by the Commission with the Joint Committee are reflected in this report under a number of headings.

Much of the public debate and media coverage regarding the proposed Standards in Public Office Bill gives an impression that the Bill will represent a totally new departure in the area of standards in public life. The same observation could be applied to the internal initiatives on standards which have been taking place at political party level. Commentary on these proposals and initiatives rarely includes a clear reference to the existing provisions of the Ethics in Public Office Act, 1995, or the Electoral Acts, 1997 and 1998. As a result of this legislation, a wide range of statutory regulatory measures are already being administered, largely by the Commission, which apply not only to members of the Houses of the Oireachtas and office holders but also to a wide range of senior public servants, and directors and executives of public bodies.

The Commission supervises the operation of the Acts and provides guidelines and advice on steps required to be taken to ensure compliance at individual level. In addition, the Commission has statutory powers which underpin a regime of inquiry in cases involving offences under the Electoral Acts with referral, where appropriate, to the Director of Public Prosecutions for possible prosecution as well as a process of formal investigation and reporting to the Dáil or Seanad by the Commission itself in cases of alleged contraventions of the Ethics in Public Office Act.

Since July 1995, the Ethics in Public Office Act has provided a statutory

framework for the disclosure of registrable interests by parliamentarians (including office holders), civil servants, Ministerial appointees and directors and executives in the commercial and non-commercial semi-state sectors. In general terms, registrable interests include other occupations, shareholdings, directorships, holdings of property and land, gifts received, services obtained, interests in contracts with the State, etc. Disclosure of such interests, which is described more fully later in this report, occurs on an annual basis. Registers exist for each of the years 1996, 1997 and 1998 showing the interests of each member of the Dáil and Seanad. The information is published annually and the Registers themselves are open to inspection in the library of the Houses of the Oireachtas. In addition, the Commission holds the filed statements for those years containing details of the family interests of office holders and the personal and family interests of Ministerial appointees. Details of the personal interests of Ministerial appointees and a copy of the contracts they hold are laid before both Houses of the Oireachtas thus rendering them also open to public scrutiny. Directorships in over 100 semi-state bodies were prescribed for the purposes of the Act from 15 January, 1997. The filed statements of persons holding these directorships, containing details of their personal and family interests and covering the disclosure periods which have elapsed since January 1997, are held by the Commission. Having regard to the right to privacy of private citizens, this information (and similar information relating to executives who occupy designated positions in state-sponsored bodies) is not available for public inspection. However, in addition to being held by the Commission, the information is furnished by the individual concerned to an appropriate person (usually the Company Secretary, or equivalent) within the body in question and is, therefore, available for reference purposes if it is relevant to the decision making process of the body.

Supervision of the Electoral Acts began with the unsuccessful candidates at the Dáil and Seanad general elections of 1997 all of whom had an obligation to disclose to the Commission details of any donations received by them in relation to the elections which exceeded a value of £500. The Acts applied in similar fashion in relation to the five candidates at the 1997 presidential election and to the unsuccessful candidates at the Dáil bye-elections in Dublin North, Limerick East and Cork South Central and the Seanad bye-election which were held in 1998. Members of the Dáil and Seanad and representatives in the European Parliament are obliged, since 15 May, 1997, to file an annual statement with details of any donations, exceeding a value of £500, received by them during the previous calendar year. At the wider political party level, a statement of all donations received by a party during the year, which exceeded a value of £4,000, must be filed at the end of each year. Since January 1998, further provisions of the electoral legislation have operated to limit expenditure at elections, reimburse the election expenses of certain election candidates and publicly fund qualified political parties. The latter provision entitles a number of political parties, subject to certain expenditure qualifications which are evaluated by the Commission, to a share of Exchequer funding based on the proportion of first preference votes obtained by them at the last previous Dáil general election. For the calendar year 1998, the total funding thus expended was slightly in excess of one million pounds.

One hugely important aspect of the Commission's activities under the Electoral Acts is the provision of access to the public whereby inspection and copying of all statements of donations and election expenses, etc., referred to in the previous paragraph, is facilitated. It is, therefore, disappointing to report that very few members of the public have availed of this facility. When account is taken of the fact that the legislation was designed to provide for a very definite interactive role for the public, the extremely low level of interest is perhaps surprising particularly given the considerable expenditure incurred by the Commission in regularly publishing newspaper notices advertising the availability of material for inspection. There is the possibility, of course, that the public is simply not interested in viewing the full extent of the material available given that it has already been carried in (often very) summarised form by, for the most part, the print media. There is also the possibility that placing public notices in the national and provincial newspapers is not an effective and cost efficient means of communicating with members of the public who might be interested. These are matters which will be considered by the Commission in the context of its overall review of expenditure on public information notices.

The Commission is conscious of the fact that coverage of material which is placed in the public domain tends not to reflect the legislative context in which the material is being made available for inspection. Nor is it indicated that considerable advances have been made in the whole area of public access to such information. The dearth of comment, by way of acknowledgement and, particularly, analysis of the existing regulatory framework, does not do justice to the renewed priority which the Oireachtas has, since 1995, afforded to the question of standards in public life. A fairer balance would be reflected by a fuller recognition of the fact that, because of legislation enacted by the Oireachtas, public duties must now be carried on in a wholly different statutory environment, an environment which respects and gives effect to the principles of openness, accountability and transparency. To continue to ignore the developments that have taken place is to render a disservice to the body politic and does nothing to encourage confidence on the part of the citizenry in the democratic process. The focusing of attention on events in other fora, events which appear to predate the relevant legislation, is perfectly understandable and the material emanating from such events is undoubtedly of public concern and should lawfully be made available in the public interest. However, a view might be taken that the level of debate would be enhanced greatly if a fair weighting was to be given to the purpose and effect of the legislation in place since 1995, including the availability of material to public scrutiny and the ongoing invitation to the public to participate. This would serve to provide a greater balance and promote a truer sense of the prevailing reality that the Ethics and Electoral Acts, which may not answer all of the questions, represent major reform in providing an enforceable transparent structure surrounding participation in Irish public life.

## **Ethics in Public Office Act, 1995**

The Ethics in Public Office Act is designed to enhance public confidence in the integrity of public office holders and the decision-making process in government and the public service. It provides for an annual Register of Interests of all members of the Houses of the Oireachtas and also for disclosure, by individual office holders and public servants, of any material factors which, in their opinion, have the potential to influence them in the exercise of any of their official duties. Regulation of the Act comes in the form of an investigation process by the Commission, where compliance by an office holder or public servant is in question, and by the Dáil or Seanad Select Committee on Members' Interests, in cases involving a member of either House who is not an office holder. Up to the end of 1998, the Commission has not had any case brought to its attention nor has it considered that circumstances existed which called for the invoking of the investigation process.

While the broad principles of the ethical conduct of the business of governance are generally accepted, broad principles do not transfer easily to a legislative medium which must satisfy a number of tests. To be effective, legislation must be operable, objective and rational. It must not place an undue burden on its constituency; it must be fair and equitable and it must have the confidence of its constituency and of the public at large. It is important that the task of ensuring that the requirements which must be met to prevent misuse of public office are not so intrusive that they become a major irritant to those covered by the legislation. Furthermore, there is the need to avoid a situation where what is acceptable or not acceptable in public life becomes so formal and legalistic that standards are more a matter of parsing and analysing the rules rather than of real commitment to them. Finally, one must balance the need for openness, monitoring and, on occasion, investigation, with the right to privacy and to one's good name.

Given the tradition we have in this country (unlike some other common law countries), of not putting principles and purposes into our legislation except, to an extent, in the long title to an Act, the Commission has suggested that, in its examination of the Government's proposals for a Standards in Public Office Bill, the Joint Committee on Finance and the Public Service might consider the possibility of requiring those appointed, or elected, to designated public offices to sign an undertaking to meet specified standards for public life. This would be a procedure not unlike the relatively common procedure of undertaking to respect confidentiality and secrecy.

To a large extent, and despite the low profile given to the legislation, as referred to earlier, the Ethics in Public Office Act has proved to be a valuable enhancement of public life in this country. Its very introduction and its operation in practice is a worthwhile reminder of the responsibilities office holders and public servants have to act in the public interest rather than in their own private interest. The opportunity to file statements of interests also serves

as a long-term protection for holders of public office.

## Secondary Legislation under the Act

The Ethics in Public Office Act, 1995, provides for determination, by the Minister for Finance, of a number of its provisions. In that regard, the following Statutory Instruments have been introduced by the Minister to date:

- **Ethics in Public Office (Designated Positions in Public Bodies) Regulations, 1996 (S.I. No. 57 of 1996)** which prescribe the positions within Government Departments and Offices, the occupiers of which have obligations under Section 18 of the Act in relation to any interests of their own, or of a spouse or child, which could materially influence them in performing their official functions.
- **Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) Regulations, 1997 (S.I. No. 32 of 1997)** which prescribe those directorships and positions in bodies in the commercial and non-commercial semi-state sector, the holders and occupiers of which have obligations under Sections 17 or 18 of the Act in relation to any interests of their own, or of a spouse or child, which could materially influence them in performing their official functions.
- **Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) (Amendment) Regulations, 1997 (S.I. No. 310 of 1997)** which removed Airmotive Ireland Holdings Ltd., because of a change in ownership, from its designation as a public body under the Act.
- **Ethics in Public Office Act, 1995 (Section 3(1)(b)) Regulations, 1997 (S.I. No. 320 of 1997)** which provide that, where an office holder leaves office in the course of a registration year, any of his/her appointees whose employment is simultaneously terminated as a consequence and who is covered by the Act, has seven days within which to furnish to the office holder and to the Commission a statement of interests covering the period up to the date of leaving. The office holder has 30 days from leaving office in which to lay each such statement before the Dáil and Seanad.

## Operational Comment

**Section 17 of the Ethics in Public Office Act** provides that the statements of interests of designated directors of public bodies should be furnished "to the Commission and to such officer of the body as may be determined by the Minister [for Finance]". In a number of the public bodies which are specified for the purposes of the Act, the person so determined to receive the statement of

interests furnished by the head of the body is not, as far as the Commission understands, an "officer of the body". This arises, for example, where the Secretary General of the Department of Health is the determined recipient of the statements of the Chairs of the following:

- Blood Transfusion Services Board,
- General Medical Services Payments Board,
- Irish Medicines Board,
- National Rehabilitation Board,
- Voluntary Health Insurance Board.

Similarly, the Chief Executives of the above bodies all furnish their statements to the Secretary General of the Department of Health. In their cases, as occupiers of designated positions, Section 18 of the Act is less prescriptive than Section 17 and does not specifically require that the "relevant authority" to whom their statements should be furnished must be a person within the public body. Its definition of "relevant authority" is "such person or persons as may stand determined for the time being by the Minister in relation to the position." Most public bodies do not distinguish between board members and the Chair (they are all designated directors for the purposes of the Act) and normally their statements are made to the Company Secretary, or equivalent. The destinations of statements of executives who are in designated positions, including the Chief Executive, would usually also be undifferentiated and these would go to a person within the body such as the Company Secretary, or equivalent.

In providing in the legislation that the statements of persons holding designated directorships should be furnished to "such officer of the body as may be determined by the Minister", the Commission understands the intention to have been that the information contained in the statements could, under Section 35 of the Act, where a possible conflict of interests arose, be made available by the Company Secretary, or equivalent, to the other directors of the body at, say, a board meeting. Apart from the strict legality of the procedure adopted in the cases mentioned above, this intention would seem to be defeated if the statements are held by a person outside of the body who might not be in a position to report on their contents at the appropriate time.

**Statutory Instrument No. 32 of 1997**, which prescribes those directorships and positions in bodies in the semi-state sector whose holders and occupiers have obligations under the Act, became law on 15 January, 1997. Many changes have occurred since then in the structure and title of semi-state bodies resulting in inconsistency in the application of the Act across the sector. For example, several of the 113 originally specified bodies have since changed nomenclature while a number of new public bodies have been established since 1997. Because it is important that the Act be applied uniformly in whatever sectors it is operational, appropriate action to keep pace with these changes is obviously required and this should happen when the bodies are being set up or when the names of bodies are being changed. It would be useful also to set out criteria for determining which bodies should be included within the scope of the Act. The

basis for the initial selection of bodies is understood to have been one of inviting Departments to nominate bodies within their aegis for inclusion; that may not be sufficiently objective or reliable in the longer term.

## **Disclosable Interests**

The Ethics in Public Office Act provides a structure for the disclosure of interests by three categories of persons, i.e.

- Members of the Dáil and Seanad,
- Office holders (Ministers; Ministers of State; Chair and Deputy Chair of Dáil and Seanad Éireann),
- Public servants in the civil service and the wider public service (Attorney General; designated directors; occupiers of designated positions; Ministerial appointees).

The Act specifies three categories of interest:

1. Registrable Interests set out in the Second Schedule to the Act. Each member of the Dáil and Seanad, including office holders, must disclose all such interests on an annual basis for publication. The disclosure obligation on other persons covered by the Act only arises in circumstances where the existence of such interests could have the effect of materially influencing a person in the performance of his or her official functions. The interests are:

- occupational income of more than £2,000,
- shareholdings valued individually at more than £10,000,
- directorships,
- land and property (excluding the family home) valued at more than £10,000,
- gifts valued at more than £500,
- property and services with a benefit of more than £500,
- travel and hospitality valued at more than £500,
- remunerated position (political or public affairs lobbyist, consultant or adviser),
- contracts, valued at more than £5,000, for the supply of goods or services to a Minister of the Government or a public body.

2. Additional Interest means any registrable interest, as set out above, of a spouse or child, of which an office holder or public servant has actual knowledge, which could materially influence that office holder or public servant when performing their official functions because they, or the spouse or child, could substantially benefit as a result.

3. Material Interest is the term applied by the Act to the existence, on the part of an office holder or a public servant or a connected person, of a possibility that they might benefit personally or specially from, or as a result of, the

performance of their official functions. The term is also applied in the context of members of the Dáil or Seanad in circumstances where they are aware that they, or a connected person, might benefit arising out of proceedings of the Houses in which they are participating.

## Disclosure Statements

Table 1 below illustrates the standard disclosure requirements attaching to the different categories of persons covered by the Ethics in Public Office Act.

Table1

Category	Register of Members' Interests (Annual) (Mandatory)	Statement of Registrable Interests (Annual)	Statement of Additional Interests (Annual)	Statement of Material Interest (As Required)
Ordinary members of the Dáil and Seanad	X			X
Office Holders <ul style="list-style-type: none"> <li>● Ministers</li> <li>● Ministers of State</li> <li>● Chair/Dep. Chair of the Dáil and Seanad</li> </ul>	X		X	X
Attorney General		X	X	X
Designated Directors		X	X	X
Designated Positions		X	X	X
Ministerial Appointees		X	X	X

Any statement of interests furnished under the Ethics in Public Office Act is either held by, or must be available to, the Commission for 15 years from the date on which the statement was furnished.

## Annual Disclosure Statements

**Members of the Dáil and Seanad** are obliged to disclose all registrable interests, falling within the Second Schedule categorisation, to the Clerk of the appropriate House. Each Clerk establishes a register (known as the Register of Interests of Members of Dáil Éireann / the Register of Interests of Members of Seanad Éireann) which is furnished to the Commission, laid before the appropriate House and published in *Iris Oifigiúil*.

**Those members who are also office holders** have an obligation to disclose to the appropriate Clerk any additional interests (of spouses or children) which could materially influence them in the performance of the functions of office. The Clerk furnishes a copy of any such statement to the Commission and, if it is a statement of a Minister of the Government or a Minister for State, to the Taoiseach.

In the case of an **Attorney General** who is not a member of either House, an annual statement of any registrable interests or additional interests which could materially influence him / her in relation to the performance of the functions of that office is furnished to the Taoiseach and to the Commission.

**Public servants** (including senior civil servants, directors and occupiers of positions in specified semi-state bodies and Ministerial appointees) are obliged to furnish an annual statement of any registrable interest or additional interest which could materially influence them in the exercise of their public service roles. Where the public servant is a designated director of a public body any such statement is furnished to a person within the body (normally the Company Secretary, or equivalent) and to the Commission; the occupier of a designated position within a public body (including the civil service) furnishes any such statement to a prescribed officer within the body only but the statement is available to the Commission. Ministerial appointees furnish their statements to the Minister concerned and to the Commission.

### **Statements of a Material Interest in the Performance of a Function**

In addition to the annual requirement to furnish statements, a further obligation to disclose, in the form of a Statement of a Material Interest, attaches to office holders and public servants covered by the Act in circumstances where their performance of certain functions introduces a material interest on their own part or on the part of a connected person.

For the purposes of the Act, a person is connected to another person if they are:

- relatives,
- involved in a trust where one is a trustee and the other (or any children or any body corporate s/he controls) is a beneficiary of the trust,
- partners,
- in shared control of a company,
- acting together or using intermediaries to secure or exercise control of a company.

**Office holders** would prepare such a statement, setting out the facts and the nature of the material interest, and furnish it to a number of persons, depending on the office held.

- Any such statement of a Taoiseach is furnished to the Chairman of the Commission;

- Any such statement of a Minister or a Minister of State is furnished to the Taoiseach and to the Commission;
- Any such statement of any other office holder is furnished to the Commission.

An **Attorney General**, who is not a member of either House of the Oireachtas, would prepare and furnish such a statement setting out the facts and the nature of the interest to the Taoiseach and to the Commission

**Designated directors** would prepare and furnish a statement of the facts to the other directors. They would also be prevented from performing the function unless there were compelling reasons requiring them to do so. If they proposed to perform the function, they would be required to prepare and furnish, to the other directors of the body and to the Commission, a statement of the compelling reasons.

Occupiers of **designated positions** are similarly required to furnish, to their relevant authority, a statement of the facts, and, if appropriate, a statement of the reasons compelling them to perform the function.

The requirement on **Ministerial appointees** is the same as that for occupiers of designated positions except that both the statement of facts and, if appropriate, the statement of compelling reasons, are furnished to the office holder and to the Commission.

**Members of the Dáil and Seanad** who are aware that they, or a connected person, have a material interest in the subject matter of proceedings of the Houses, must make a declaration to that effect before voting or speaking in the proceedings.

### **Other Non-Routine Statements**

Provision exists within the Act for the submission of statements during the course of a reporting year (1 February to 31 January) in circumstances of:

- failure to do so within the originally prescribed period,
- receipt of advice from the Commission under Section 25 of the Act,
- an interpretation derived from a reading of guidelines,
- compliance with a determination of the Commission.

Finally, persons covered by the Act have, at any time, the option to furnish a statement where an interest exists which is not specifically prescribed as a registrable interest in the Second Schedule to the Act.

### **Format of Disclosure Statements**

With the exception of the forms used to register the interests of members of the Dáil and Seanad, responsibility for determining the forms to be used in

furnishing statements of interests under the Ethics Act rests with the Minister for Finance. From an operational viewpoint and having regard to feedback from users it is generally agreed that a review of the forms would now be useful.

Other than in the case of members of the Houses, statements are not statutorily required from persons covered by the Act who have registrable interests if such persons are satisfied that the interests could not materially influence them in performing their public service functions. The Commission has, however, taken the view that a 'nil' statement, rather than no statement, would be appropriate in those circumstances. To facilitate the furnishing of a 'nil' statement, a standard shorter form of statement should be available. In the experience of the Commission, the exclusive use of the long format (ten pages) in all circumstances means that, since a large number are 'nil' statements, nine of the ten pages of these are redundant in terms of content while, under the Act, secure storage of the entire statement is required for 15 years.

It is noteworthy that members of the Houses have commented unfavourably about the extent to which forms are required to be completed under the Ethics Act and the Electoral Acts (which are discussed in detail later) and also about the level of duplication in the disclosure requirements under both pieces of legislation. The Commission is aware of the views expressed in that regard and considers that the statutory synchronisation of the annual disclosure dates would be beneficial (as it stands the reporting year under the Electoral Acts ends on 31 December and under the Ethics Act on 31 January) and that clarity is required in terms of what should be disclosed under the different Acts, particularly when it comes to the disclosure of political donations. Having said that, it should be borne in mind that the obligation on members of the Dáil and Seanad is to fill in one form annually under each piece of legislation while those members who are also office holders may have an obligation to complete a second form under the Ethics Act (Statement of Additional Interests). The apparent confusion about forms may be due, in some part, to the different destinations of forms (forms of registrable interests and additional interests under the Ethics Act are furnished to the Clerks of the Houses; Donation Statements under the Electoral Acts go directly to the Commission).

## **Gifts and Property or Services**

In addition to disclosure within a statement of interests, the Ethics Act also makes specific provision for office holders and their spouses and children in relation to the treatment of gifts worth in excess of £500 and the supply of property or services where the value exceeds £500.

### **Gifts**

Where a gift of money or other property has a value greater than £500 and is given, by virtue of office, to either the office holder personally or to a spouse or child, it is deemed to be a gift given to the State and must be surrendered. Surrender, in such circumstances, is initiated by the office holder informing the

Secretary General to the Government who will, if it is not already clear, determine the value of the gift and / or the question of whether it was given by virtue of office.

Gifts thus surrendered may be held on behalf of the State, loaned or disposed of by sale or gift. Proceeds emanating from such a loan or sale may be returned to the Exchequer or employed for charitable purposes.

The Act exempts from surrender those gifts with a value greater than £500 which are given:

- as a donation for political purposes,
- for personal reasons only by a friend or relative,
- by virtue of another office or position.

### **Property or Services**

The Government, on 14 August, 1996, published guidelines for office holders on steps to be taken in circumstances where, by virtue of office, an office holder personally, or a spouse or child, is offered or supplied with:

- property or a service at below commercial price,
- a loan of property free of charge or for less than its commercial value, or
- a service free of charge

and the value exceeds £500. The guidelines stipulate that any such offer must be refused. An office holder who is supplied with property or services as described above must notify the Secretary General to the Government and make an appropriate refund to the person supplying the benefit. The Secretary General will accordingly inform the Taoiseach, Tánaiste and such other Minister as may be specified by the Government. Where a refund is not practicable, the Taoiseach, Tánaiste and specified Minister will determine appropriate alternative action, such as donation of an equivalent amount to a voluntary body or charity. Compliance with a determination of this nature is mandatory.

In all such cases where there has been a supply of property or services, the Secretary to the Government will notify the Commission of the occurrence and of the outcome.

Where property or services, as described above, are supplied to an office holder other than a Minister or Minister of State, i.e. to:

- a member of either House who holds the office of Attorney General,
- the Chair or Deputy Chair of the Dáil or Seanad,
- the Chair of a Committee of either House (where designated),
- the Chair of a Joint Committee of both Houses (where designated),

that office holder must notify the Commission and make a refund to the Commission. If the latter is not practicable, the Commission will determine

alternative action, such as a donation of an equivalent amount to a voluntary body or charity.

The Act exempts from the application of the guidelines any property, any loan of property or any service supplied:

- as a donation for political purposes,
- for personal reasons only by a friend or relative,
- by virtue of another office or position,
- where the offer or supply is not intended or calculated to confer, and does not confer, directly or indirectly, a benefit on the office holder concerned.

## **Disclosure by Directors of Public Bodies**

In January 1997 the Minister for Finance extended the application of the Ethics in Public Office Act to 113 public bodies. Within those 113 bodies, all board members and selected senior executive positions were designated for the purposes of the Act. As already outlined in this report, the disclosure requirement on directors and executives is activated in circumstances where the existence, in their evaluation, of interests of their own or of a spouse or child, could materially influence them in relation to the performance of the functions of the directorship or position so as to benefit those interests. There is no legal obligation to furnish a statement if it is considered that no conflict of interests is likely to arise.

The registration years which have elapsed since the making of the Regulations (Statutory Instrument No. 32 of 1997) are:

- |     |   |                       |
|-----|---|-----------------------|
| (1) | 15 January, 1997, to 28 February, 1997, | (1997 reporting year) |
| (2) | 1 March, 1997, to 31 January, 1998,     | (1998 reporting year) |
| (3) | 1 February, 1998, to 31 January, 1999,  | (1999 reporting year) |

For the reporting years 1998 and 1999, the Commission has provided the Company Secretary (or equivalent) of each of the specified bodies with a synopsis of the disclosure requirements. This included a recommendation that, where persons in the body who are covered by the Act considered that interests with a capacity to influence did not exist, a 'nil' statement would be appropriate. The statements of directors are furnished to an officer of the body and to the Commission; those of executives are not furnished directly to the Commission but are available to the Commission.

Disclosure statements thus furnished to the Commission by directors for the 1997 and 1998 reporting years are outlined in Table 2 below.

**Table 2:**  
**Statements of Interests from Directors for 1997 and 1998\***

<b>Reporting Year</b>	<b>Total Number of Public Bodies Specified by Regulation</b>	<b>Number of Public Bodies Quoted on Statements from Directors</b>	<b>Number of Public Bodies not Quoted on Statements from Directors</b>	<b>Total Number of Statements Received from Directors</b>
1997	113**	83	23	480
1998	112**	82	23	574

\* Statements for the 1999 reporting year were due by 2 March, 1999, and will be covered in the Commission's next Annual Report.

\*\* Of the public bodies specified by Regulations, 7 are with regard to designated positions only

# Standards in Public Office Bill

In July 1998 the Government published proposals for a Standards in Public Office Bill. The main features of the proposal were:

- the establishment of a Standards in Public Office Commission with a wide ranging brief to investigate possible financial irregularity by those in public life, as well as overseeing the Ethics and Electoral Acts,
- a legal requirement for the provision of a tax clearance certificate and a related statutory declaration by those elected to either House of the Oireachtas,
- the creation of offences for certain contraventions of the Ethics Act,
- technical adjustments to the Ethics Act to address implementation issues and to secure a better alignment between it and the Electoral Acts.

The proposals were referred, by order of the Dáil and Seanad, to the Joint Committee on Finance and the Public Service to be considered in consultation with the Select Committees on Members' Interests of both Houses, each of whom has reported to the Joint Committee. On 2 December, 1998, representatives of the Commission met with the Joint Committee to offer views to the Committee arising out of the Commission's experience in overseeing the operation of the Ethics and Electoral Acts. Particular observations on the part of the Commission included:

- acknowledgement of the difficulty in achieving a balance between public accountability and excessive intrusion on individual privacy;
- a recommendation that the question of introducing a code of conduct for public officials in the form of a signed undertaking be considered;
- a reservation about the capacity of part-time Commissioners to carry out the investigation process envisaged by the existing Ethics Act while retaining full-time responsibilities for their other roles;
- views on the structure and membership of the proposed Commission including reference to the merits of including a judge of the Superior Courts;
- observations on the powers and remit of the proposed Commission and the need for specific legal authority for every assigned function and power;
- reservations about the proposal that the Commission's investigations would not be confined to possible contraventions of the Ethics Act;
- views on the reception of complaints, including anonymous complaints, and the continued desirability of the Commission having reason-able discretion in relation to the investigation of complaints;
- questions on the classification and treatment of offences under the Ethics Act;
- possibility of changes in the Prevention of Corruption Acts, 1889 to 1916;

- views on the operational difficulties concerning the proposed requirement for tax clearance certificates for members of the Dáil and Seanad.

One of the issues discussed in some detail with the Joint Committee was the question of investigations that might be undertaken by the Commission. The Ethics Act empowers the Commission to investigate allegations of contraventions of the Act on the part of office holders or public servants. Any investigation of a complaint against a member of either House of the Oireachtas who is not an office holder is reserved to the relevant Select Committee on Members' Interests. The conduct of an investigation by the Commission, which may follow a complaint or may be undertaken on the Commission's own initiative, requires the Commission to hold sittings wherein submissions and evidence would be received. The investigation forum envisaged, which may be in public or in private, is one of oral hearing where the complainant and the subject, together with witnesses and representatives, would appear before the Commission. In effect, the Commission would sit as a tribunal with power to summon people, to procure documents and to examine and allow the cross examination of witnesses. The Commission's report on the result of an investigation would include a determination on the alleged contravention and would be furnished to the complainant, the subject and, as appropriate, the Select Committee on Members' Interests of the Dáil or Seanad or, in the case of a public servant, the relevant Minister of the Government. The Select Committee would cause a copy of the report to be laid before the House concerned. Where the subject of an investigation was a public servant and a finding was made by the Commission that a contravention of the Act on the part of that public servant was a serious matter, the Minister in question is obliged to cause a copy of the Commission's report to be laid before each House of the Oireachtas.

The Commission would invoke the investigation process where it became aware that a person might have contravened the Ethics Act. The Act came into effect on 22 July, 1995, and the Commission has no jurisdiction in matters which occurred prior to that date. In the period since commencement of the Act up to the end of 1998, the Commission has not received any complaint alleging a contravention nor has it considered that circumstances existed where it should commence an investigation without having received a complaint.

It would seem that the application of the provisions of the Act relating to investigations could involve the Commission in areas similar to those which are currently the subject of Tribunals of Inquiry established by the Houses of the Oireachtas. If the proceedings of these Tribunals and particularly their increasingly adversarial nature were to be the model for the Commission's investigation process, the Commission, whose members have full-time duties to perform in their other capacities, has reservations about its ability to provide the high level of on-going commitment which would attach to the conduct of a major investigation. There is also the question of the skills which would be required in dealing with such an investigation. The process of investigation under the Ethics Act is procedurally analogous to that of a tribunal of inquiry where representation of all parties by Senior Counsel would be likely and

witnesses before the Commission would be entitled to the same privileges and immunities as witnesses in a court of law.

The Act includes the designation of criminal offences in a number of areas associated with the process of investigation, where conviction on indictment could result in a maximum fine of £20,000 or imprisonment for up to three years, or both. This level of deterrent underlines the importance which the Oireachtas attaches to the investigation process. Offences under the Act can be committed where a breach of the process occurs i.e.

- where a direction to attend before the Commission is disobeyed;
- where a person in attendance before the Commission refuses to take the oath/to answer questions / to produce any document or thing in his or her possession;
- where a person does any other thing in relation to the proceedings before the Commission which, if done in a court, would be in contempt of that court;
- where a person discloses information obtained by attending at a private sitting of the Commission;
- where a person commits perjury before the Commission.

Given that its powers of investigation are such as to be virtually indistinguishable from a tribunal of inquiry, the Commission would wish to ensure that its structure and expertise would fully satisfy the requirements of the Act. The appointment of a Judge of the Superior Courts as a Chairperson, for example, would strengthen the legal dimension of the Commission. The other functions of the Commission (putting to one side for the moment the investigative role) are capable of being carried out effectively by the present part-time Commission with members who can pool their individual expertise and skills when needed, supported by an efficient Secretariat.

However, to perform the investigation function, it is, as indicated earlier, essential that the Commission would be adequately equipped, or could at very short notice be equipped, to conduct the formal and rule-bound procedures attached to hearing submissions and evidence. Even if this could be done, however, the Commission continues to have doubts as to whether the model envisaged in the Ethics Act is the right model for the purpose of the investigative role assigned to the Commission, ie. the determination of whether or not a contravention of the Ethics Act has occurred in a particular case. A possible alternative which the Commission put forward for consideration at its meeting with the Joint Committee envisaged a statutory arrangement which would allow the present Commission, on reaching a decision to investigate, to engage an Inspector, with all the necessary powers to investigate on its behalf, who would report to the Commission on his / her findings on the facts of a case. Having considered those findings, the Commission would then furnish its own report and findings to the relevant authority.

Overall, the Commission is acutely aware of its central investigative role and is committed to ensuring that if an investigation is called for, even as the law stands, it will be carried out with competence and adherence to the principles of natural justice. However, in the light of developments which have occurred elsewhere, the proposals now under consideration for a Standards in Public Office Bill have provided the Commission with a timely and welcome opportunity to have its observations on membership and the investigation procedure taken into account in the deliberations of the Joint Committee on Finance and the Public Service.

# Electoral Acts

## Electoral Act, 1997

The Annual Report of the Commission for 1997 outlined how the provisions of the Electoral Act, 1997, came into operation in three ways, namely:

- (i) on passage of the Act on 15 May, 1997;
- (ii) on 1 January, 1998; and
- (iii) by order of the Minister for the Environment and Local Government.

The provisions which came into operation, either fully or in part, on 15 May, 1997, are summarised in Table 3. It should be noted that Part II (Constituency Commission) came into operation on 30 September, 1997, by way of an order of the Minister for the Environment and Local Government.

**Table 3: Provisions of the 1997 Act which commenced on 15 May, 1997**

Part	Title	Provisions
I	Preliminary and General	Publication of guidelines by Commission Provision of advice by Commission Reports to the Ceann Comhairle
IV	Disclosure of donations	Disclosure of donations and surrender of anonymous donations at Dáil and Seanad elections  Annual disclosure of donations by political parties  Annual disclosure of donations by members of either House of the Oireachtas and representatives in the European Parliament
VI	Disclosure of donations at a presidential election	Disclosure of donations and surrender of anonymous donations at a presidential election
VIII	Miscellaneous	Public inspection of Donation Statements furnished to the Commission under Parts IV and VI

On 1 January, 1998, the remaining provisions of the Act commenced. These were as follows:

- Part I - Preliminary and General (remaining provision)
- Part III - Public funding of political parties and the reimbursement of election expenses of candidates at Dáil and European elections
- Part V - Limitation of expenditure by political parties and candidates at Dáil and European elections
- Part VI - Limitation of expenditure at presidential elections
- Part VIII - Miscellaneous (remaining provisions)

The remaining provision in Part I gives the Minister for the Environment and Local Government the power to vary, by Ministerial Order, the monetary amounts that appear throughout the Act. These monetary amounts generally relate to disclosure and reimbursement thresholds, limits on election expenditure and penalties for offences committed under the legislation.

The Exchequer funding of political parties is provided for in Part III. In order to qualify for funding, parties 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 previous Dáil general election. Funding is provided for general administration, research, policy formulation as well as the promotion of participation by women and young people in political activity. Further information on the Exchequer funding of political parties is included later in this report. Part III also provides for the reimbursement of election expenses incurred by candidates at Dáil and, subject to regulations to be made by the Minister for the Environment and Local Government, at European elections. The operation of the provisions relating to the reimbursement of Dáil election expenses is considered later in this report in the discussion of the three Dáil bye-elections which were held during 1998.

All of the provisions of Part V and the remaining provisions of Part VI became operative on January 1, 1998. Part V is concerned with the limitation of expenditure by candidates and political parties at Dáil and European elections. The discussion later of the 1998 Dáil bye-elections also considers the operation of this Part of the Act. The provisions of Part VI which commenced on 1 January, 1998 deal with the limitation of expenditure by candidates at a presidential election.

The remaining provisions of Part VIII include the making of arrangements for public inspection of documents furnished to the Commission in connection with the Exchequer funding of political parties and the limitation of election expenditure at Dáil and European elections. Documents furnished in relation to the election expenses of candidates at a presidential election are also covered by this Part.

## Electoral (Amendment) Act, 1998

A problem with the application of the legislation emerged with the commencement on 1 January, 1998, of Part V of the 1997 Act which covers,

inter alia, the limitation of election expenditure. This Part of the Act introduced for the first time a limit on the amount of expenditure that could be incurred at a Dáil election.

Through contacts with political parties and individual public representatives, the Commission became aware of difficulties created by the effective commencement date of the provisions in question. The Commission was concerned that these difficulties might lead to candidates and political parties either failing to comply with the legislative requirements or, at the very least, encountering serious problems in endeavouring to comply with them. The difficulties were exacerbated by the fact that two bye-elections (Limerick East - death of Mr. Jim Kemmy, T.D., and Dublin North - resignation of Mr. Ray Burke, T.D.) were pending at the beginning of 1998 and resolution of the problem had an important bearing on the conduct of those elections.

Careful examination, including the taking of legal advice, appeared to give the Commission no discretion to determine a date other than 1 January, 1998, as the effective date for the commencement of the relevant provisions. Indeed, the legal position appeared to be that all election expenses incurred from that date until polling day at the next Dáil election would be taken into account in determining the extent of election expenditure. The Commission's view was supported by section 31(3) of the Act which provided that **all** election expenses incurred and payments made at any time **before** the issue of the writ or writs in relation to an election for the provision of property, goods or services for use at the election "shall be reckoned for the purposes of this Part". It seemed, therefore, that candidates and political parties would, in accounting for election expenditure, have to include all such expenditure incurred from 1 January, 1998, (the commencement date of the relevant provisions) until the close of polling at the next Dáil election, whether that was a bye-election or a general election.

This scenario would have resulted in the following problems:

- (1) it would be an impossible task to determine, on an ongoing basis, what was election expenditure, as distinct from other expenditure, incurred by any prospective candidate over a possible five year period between elections;
- (2) the use of a period from 1 January, 1998, until the next Dáil general election (any time up to June 2002) would require prospective candidates and political parties to maintain records over a lengthy period of what might be deemed to be election expenditure;
- (3) if (2) above was not observed, persons such as sitting Dáil deputies (assuming that they would be candidates at the next Dáil election) would be placed at a clear disadvantage in comparison to candidates who might emerge closer to an election;
- (4) the limit on election expenditure would be quite restrictive (e.g. £2,800 per candidate per annum in a three seat constituency) given the maximum period of five years permissible between general elections; and
- (5) expenses incurred on 1 January, 1998, might not be reimbursed to a candidate until August 2002 if a general election was not held until June 2002 (reimbursement occurs 56 days after polling day).

The Commission drew attention to the difficulties with the commencement date of 1 January, 1998, in correspondence with the Minister for the Environment and Local Government. A number of possible solutions were suggested which the Commission felt could only be achieved "in the context of immediate amending legislation". Discussions and correspondence subsequently took place at political level about this issue and a number of other difficulties which had arisen with the application of the legislation. These included a requirement on political parties to aggregate, for disclosure purposes, all donations by the same person given to the party at any level of the party or to any of its individual members and a requirement for candidates of a party to disclose as donations expenditure incurred on them by the party at elections.

In dealing with these matters, the Commission stated its approach to be "that while it (the Commission) must comply fully with the terms of the legislation as enacted by the Oireachtas, it should try to be as helpful as possible when difficulties surrounding the implementation of certain administrative features of the Act, which do not impinge on the principles of the legislation, are brought to its attention, especially when these features necessitate such strict monitoring conditions that compliance with them by the Commission on the one hand, and by political parties and individuals on the other, could result in a situation in which the legislation might be brought into disrepute". It was further pointed out that "the Commission does not have any power to amend the Act which is a matter solely for the Oireachtas. Nevertheless, the Commission recognises that certain amendments may make the Act more workable while at the same time maintaining the spirit of what the Act was designed to achieve".

In regard to the three areas of difficulty, the Commission suggested that the Oireachtas might wish to consider amending the legislation to clarify the position in regard to the commencement date of the period applying to the limitation of election expenditure. On the second issue, the Commission took the view that the Act clearly intended that there would be aggregation of donations given to a political party regardless of the level of the party at which the donations were received. On the question of donations from a political party to its election candidates, the Commission considered that, given the overall intention of the Act (i.e. that the public should be informed of the source of donations, over particular financial thresholds, given to candidates, elected representatives or political parties), there was validity in the contention that a donation of election material given by a political party to one of its candidates during an election was unlikely to be of public interest.

Arising from the foregoing, a number of amendments were contained in the Electoral (Amendment) Act, 1998 (the 1998 Act) which passed with all party support in the Dáil and Seanad and became operative on 31 March, 1998. The main features of the 1998 Act were:

- replacement of the requirement for political parties to aggregate and disclose multiple donations made by the same donor to different organs of the party by a requirement that political parties disclose donations

exceeding a value, or an aggregate value, of £4,000 made by the same donor to a specific organ of the party;

- introduction of a new requirement for certain donors (primarily private individuals) to disclose to the Commission donations exceeding an aggregate value of £4,000 where the donations are made in the following circumstances:
  - to two or more persons who, when the donations were made, were members of the same political party, or
  - to one or more persons and to the political party of which such person(s) were members when the donations were made to them;
- amendment of the provisions relating to the disclosure of donations to the effect that expenditure on election candidates by their political party in connection with an election is not regarded as a donation, unless the donation consists of money of more than £500;
- clarification of the period applying to the limitation of election expenditure;
- establishment of a basis for determining whether a donation is regarded as having been made to election candidates and public representatives or to the political party of which they are members;
- amendment of the definitions of donations and election expenses to exclude services provided at an election by persons in the employment of a political party;
- removal of a ceiling of 50% as the proportion of the election expenditure limit of a candidate which could be incurred by the candidate's political party;
- amendment of the conditions to be satisfied by candidates at a Dáil bye-election in order to qualify for a reimbursement of election expenses.

## **Dáil and Seanad General Elections in 1997**

In the Commission's Annual Report for 1997, it was mentioned that the Commission had sent files to the Garda' for investigation of 18 (out of 317) unsuccessful candidates at the Dáil general election of 6 June, 1997, who had failed to furnish a Donation Statement and Statutory Declaration to the Commission. Prosecution was directed by the Director of Public Prosecutions in 6 of these cases. The Commission can report that, following referral of files to the Gardaí, all but one of the 18 outstanding Donation Statements were received.

In the case of the Seanad general election, two files were referred to the Gardaí. Both Donation Statements were subsequently received and there was no prosecution in either case.

## Presidential Election of 30 October, 1997

Part VI of the 1997 Act which covers the disclosure of donations received by candidates at a presidential election became operative with the passing of the Act on 15 May, 1997. The presidential election of 30 October, 1997, was the first presidential election to be covered by the Act.

The Commission issued statutory guidelines (*Guidelines for Presidential Election Agents and Candidates at the Presidential Election, 1997 on steps to be taken concerning donations, anonymous donations and the appointment of presidential election agents under Part VI of the Act*) to the five presidential election candidates, their election agents and to the registered political parties. (Table 4)

Having considered the Donation Statements furnished by the five presidential election agents by the statutory deadline of 25 December, 1997, the Commission sought additional information in relation to the documentation provided in respect of Ms. Banotti, President McAleese, Ms. Roche and Ms. Scallon. The information was requested in order that the Commission could be satisfied that the disclosure requirements of the legislation had been fully complied with. In particular, the Commission was concerned to ensure that all donations made by a person exceeding a value, or an aggregate value, of £500 were shown separately in the relevant Donation Statement, regardless of whether such donations were part of a larger, composite donation which had been included in the statement by the election agents. Composite donations to the candidates came from either of two sources: fund-raising campaigns or committees associated with a particular candidate, or contributions from the political party which supported the candidate.

In a report to the Ceann Comhairle under section 4 of the 1997 Act, the Commission commented on, inter alia, the protracted nature of the correspondence which was necessary in order to secure the full extent of information required from some of the election agents. Copies of this report and the statutory returns were laid before the Houses of the Oireachtas and the returns were put on public display by the Commission. Notices to the effect that the material disclosed to the Commission is available for public inspection and copying were placed in national and local newspapers. A synopsis of the information furnished to the Commission is contained in Table 5.

**Table 4:**  
**Presidential election candidates and election agents**

Presidential Election Candidate	Presidential Election Agent	Donation Statement received by Commission

Ms. Mary Banotti, MEP	Mr. Colm Brophy	22 December, 1997*
President Mary McAleese	Mr. Brian Lenihan, T.D.	23 December, 1997**
Mr. Derek Nally	Mr. John Dunne	22 December, 1997
Ms. Adi Roche	Mr. Greg Sparks	22 December, 1997***
Ms. Dana Rosemary Scallon	Ms. Elizabeth Bruton	23 December, 1997****

\* Further Donation Statements furnished on 5 January and 10 March, 1998.

\*\* Further Donation Statement furnished on 19 May, 1998.

\*\*\* Further Donation Statement furnished on 4 March, 1998.

\*\*\*\* Further Donation Statement furnished on 4 February, 1998.

**Table 5: Summary of donations received by presidential election candidates**

<b>Presidential Candidate</b>	<b>Total Donations (£)</b>	<b>Total Number of Donations</b>	<b>Largest Donation (£)</b>
Ms. Mary Banotti, MEP	393,901.91	8	303,230.21
President Mary McAleese	473,719.98	51	268,645.72
Mr. Derek Nally	51,048.00	24	8,170.00
Ms. Adi Roche	136,012.62	9	97,467.88
Ms. Dana Rosemary Scallon	19,229.29	9	6,728.38

## **Members of the Dáil and Seanad and Representatives in the European Parliament: Donation Statements for 1997**

Part IV of the 1997 Act requires members of both Houses of the Oireachtas and representatives in the European Parliament to make an annual disclosure to the Commission of any donations received for political purposes which exceed a value, or an aggregate value from the same person, of £500.

Guidelines setting out the general provisions of the Act and specifying the particular requirements to be met by the persons concerned were issued by the Commission in May of 1997. As already outlined, the passage and commencement of the 1998 Act on 31 March, 1998, changed a number of the legal requirements relating to the extent of disclosure necessary when furnishing

a Donation Statement. Accordingly, in April 1998, the Commission invited those who had already furnished a Donation Statement to review their statement to take account of the revised requirements. A number of statements were subsequently amended and the donations disclosed in the final returns are set out in Tables 6 and 7, below. The returns are in relation to the period from the commencement date of the 1997 Act, 15 May, 1997, to 31 December, 1997.

The Donation Statements and a report thereon by the Commission to the Ceann Comhairle were laid before the Houses of the Oireachtas. Notices were placed in national and local newspapers advising that the material furnished to the Commission is available for public inspection and copying at the offices of the Commission.

**Table 6:  
Donation statements received from members of the Dáil and Seanad and representatives in the European Parliament for 1997**

Political Parties	Dáil Éireann		Seanad Éireann		European Parliament	
	Donations disclosed	No Donations disclosed	Donations disclosed	No Donations disclosed	Donations disclosed	No Donations disclosed
Fianna Fáil	32	45	3	26	-	7
Fine Gael	14	40	2	14	-	4
Labour	11	5	3	1	-	1
Green Party	2	-	-	-	-	2
Democratic Left	1	3	-	-	-	-
Progressive Democrats	2	2	-	4	-	-
Socialist Party	-	1	-	-	-	-
Sinn Féin	1	-	-	-	-	-
Non-Party	3	3	1	6	-	1
<b>TOTAL</b>	<b>66</b>	<b>99*</b>	<b>9</b>	<b>51</b>	<b>0</b>	<b>15</b>

\*Excludes Mr. Jim Kemmy, T.D., who died in September 1997.

As will be seen from Table 6, the category who disclosed most donations exceeding a value of £500 were members of the Dáil. Sixty-six Dáil deputies (40% of the total members) received donations in excess of £500 while only nine Senators (15%), all of whom were individuals who had contested the June 1997 Dáil general election, disclosed donations above this threshold. None of the fifteen Irish representatives in the European Parliament disclosed donations valued above £500.

The total value of donations exceeding a value of £500 disclosed by members of the Dáil was £253,378, almost 10 times greater than the combined amount disclosed by members of the Seanad and representatives in the European Parliament (Table 7). Members of Fianna Fáil accounted for the largest portion of this amount with donations to the value of £136,514 (or 53.88% of the total).

Members of the Labour Party and Fine Gael had the next highest totals of £50,202 (19.81%) and £31,190 (12.31%), respectively. These were followed by non-party members with £20,585 (8.12%), members of Sinn Féin with £4,997 (1.97%), members of the Progressive Democrats on £4,980 (1.97%) and of the Green Party with £3,910 (1.54%).

The total value of donations exceeding a value of £500 disclosed by members of the Seanad for 1997 was £25,690. Of this total, non-party members disclosed donations with a total value of £10,000, which equates to almost 40% of all donations disclosed by members of that House. Of the political parties, members of Fine Gael disclosed the highest value of donations with £7,000 (or 27.25% of the total) followed by Fianna Fáil members with £4,850 (18.87%) and members of the Labour Party on £3,840 (14.95%).

**Table 7: Value of donations received by members of the Dáil and Seanad and representatives in the European Parliament for 1997**

Political Party	Dáil Éireann (£)	Seanad Éireann (£)	European Parliament (£)	Overall Totals (£)
Fianna Fáil	136,514	4,850	-	141,364
Fine Gael	31,190	7,000	-	38,190
Labour	50,202	3,840	-	54,042
Green Party	3,910	-	-	3,910
Democratic Left	1,000	-	-	1,000
Progressive Democrats	4,980	-	-	4,980
Socialist Party	-	-	-	-
Sinn Féin	4,997	-	-	4,997
Non-Party	20,585	10,000	-	30,585
<b>TOTAL</b>	<b>253,378</b>	<b>25,690</b>	<b>0</b>	<b>279,068</b>

In terms of the overall value of donations exceeding a value of £500 disclosed by members of the Dáil and Seanad and representatives in the European Parliament, members of Fianna Fáil accounted for the highest amount with £141,364 (50.66% of the total). The Labour Party received the second highest level of such donations with £54,042 (19.37%), followed by Fine Gael on £38,190 (13.68%), non-party members on £30,585 (10.96%), Sinn Féin with £4,997 (1.79%), the Progressive Democrats on £4,980 (1.78%), the Green Party with £3,910 (1.40%) and Democratic Left on £1,000 (0.36%).

## Dáil Bye-Elections in 1998

There were three Dáil bye-elections during 1998. The first two bye-elections, in the constituencies of Dublin North and Limerick East, were held on 11 March while the third bye-election, in the constituency of Cork South Central, was held on 23 October. (Table 8)

The three 1998 bye-elections were the first Dáil elections to be subject to the provisions of the legislation, which commenced in January 1998, covering the limitation and reimbursement of election expenditure. Candidates at the

bye-elections were also subject to the requirements, which had been in place since May 1997, covering the disclosure of donations.

Although the 1998 Act commenced on 31 March of that year, a transitional provision, which applied to Donation Statements and Election Expenses Statements furnished to the Commission for elections which had taken place prior to that date, allowed such statements which met the requirements of the 1997 Act, either before or after the passage of the 1998 Act, to be accepted by the Commission. This applied to the bye-elections on 11 March in Dublin North and Limerick East. As the transitional provisions of the 1998 Act did not apply to the Cork South Central bye-election of 23 October, that contest was the first Dáil election to which the provisions of the 1997 Act, as amended by the 1998 Act, were applied in full.

The limitation of election expenditure at a Dáil bye-election relates to the number of seats in the constituency where the bye-election is being held. In the case of the 1998 bye-elections, there was a limit of £20,000 per candidate for the five seat constituencies of Limerick East and Cork South Central while Dublin North, which is a four seat constituency, had an expenditure limit of £17,000 for each candidate. The 1997 Act provided that the political party of a Dáil election candidate could, with the agreement in writing of the candidate, incur any proportion up to 50% of a candidate's expenditure limit. An amendment contained in the 1998 Act allows a political party to incur up to 100% of a candidate's limit.

**Table 8: Dáil bye-elections in 1998**

Dáil Constituency	Reason for bye-election	Bye-election date	Successful candidate
Dublin North	Resignation of Mr. Ray Burke T.D.	11 March, 1998	Mr. Seán Ryan (Labour)
Limerick East	Death of Mr. Jim Kemmy T.D.	11 March, 1998	Ms. Jan O'Sullivan (Labour)
Cork South Central	Death of Mr. Hugh Coveney T.D.	23 October, 1998	Mr. Simon Coveney (Fine Gael)

### **Dublin North and Limerick East: 11 March, 1998**

Details of the 30 bye-election candidates (19 in Dublin North and 11 in Limerick East) and the 19 election agents (some candidates acted as their own agents, as permitted by the legislation) were notified to the Commission by the Returning Officers for the two constituencies. As required, the Commission published, in Iris Oifigiúil, the names and office addresses of the national agents of the 11 political parties who contested the bye-elections. There was no notification to the Commission under section 31(7) of the 1997 Act of any persons (other than national agents, candidates' election agents or persons authorised by those agents) who intended to incur expenditure at the bye-elections. The bye-election candidates and their election agents are set out in Table 9 (Dublin North) and Table 10 (Limerick East). The Commission issued three sets of statutory

guidelines for the Dublin North and Limerick East bye-elections to the candidates, their election agents and the political parties who contested the elections. The guidelines were as follows:

- Guidelines for candidates at the March 1998 Dáil Bye-Elections in Limerick East and Dublin North on steps to be taken concerning donations and anonymous donations.
- Guidelines for Candidates and Election Agents of Candidates on the Reimbursement and Limitation of Election Expenditure at the Limerick East and Dublin North Dáil Bye-Elections of March, 1998.
- Guidelines for Political Parties and National Agents of Political Parties on the Reimbursement and Limitation of Election Expenditure at the Limerick East and Dublin North Dáil Bye-Elections of March, 1998.

A representative of the Commission visited both constituencies during the course of the bye-election campaigns. Meetings were held with candidates and agents to provide advice and assistance, particularly in relation to the provisions of the legislation covering the disclosure of donations, the limitation of election expenditure and the reimbursement of candidates' election expenses. Calls were made to the campaign offices of candidates and samples of election material were provided to the Commission. The Commission would like to thank the candidates, election agents and national agents for their courtesy and assistance during the course of the constituency visits.

The Commission produced four statutory forms to cover the requirements of the legislation relating to the disclosure of donations by unsuccessful candidates, the limitation of candidates' and political parties' election expenditure and the reimbursement of candidates' election expenses. All of the forms had to be completed and returned to the Commission by the statutory deadline (56 days after polling day) of 6 May, 1998.

**Table 9: Dublin North Dáil bye-election of 11 March, 1998**

<b>Candidate (Political Party)</b>	<b>Election Agent</b>	<b>Donations Disclosed £</b>	<b>Election Expenditure £</b>	<b>Reimbursed Expenses £</b>
Rena Condrot-Ruigrok (Independent)	Candidate	NIL	1,889	Not qualified
Benny Cooney (Independent)	Lisa Herald	NIL	Return not furnished	Election Expenditure return not furnished
Clare Daly (Socialist Party)	Joe Higgins T.D.	600	6,498	5,000
Paul Donnelly (Sinn Féin)	Brian Dowling	NIL	4,336	Not qualified
Finian Fallon (Progressive Democrats)	Candidate	NIL	5,565	Not qualified
Peter Farrelly (Independent)	Candidate	NIL	1,200	Not qualified
Ciaran Goulding (Independent)	Jean Bayliss	NIL	3,183	Not qualified
Joe Holohan (Democratic Left)	John Gallagher	NIL	9,233	Not qualified
Philip Jenkinson (Fine Gael)	Richard Fullam	6,353	14,348	5,000
Angela Keaveney (Christian Solidarity)	Martin O'Reilly	NIL	3,475	Not qualified
Michael Kennedy (Fianna Fáil)	John Moran	NIL	16,408	5,000
Paul Martin (Green Party)	Trevor Sargent	1,255	1,454	Not qualified
John McDonald (Independent)	Candidate	NIL	992	Not qualified
Alan Nagle (Independent)	Candidate	NIL	2,730	Not qualified
Noel O'Neill (Natural Law Party)	Candidate	NIL	60	Not qualified
Elaine Rooney (Independent)	Candidate	NIL	NIL	Not qualified
Sean Ryan (Labour)	Henry Haughton	Return as TD due by 31/1/99	17,497	4,503
Gertrude Shields (Independent)	Candidate	NIL	NIL	Not qualified
Jim Tallon (Independent)	Candidate	Return not furnished	Return not furnished	Election Expenditure return not furnished
<b>Totals</b>		<b>8,208</b>	<b>88,868</b>	<b>19,503</b>

**Table 10: Limerick East Dáil bye-election of 11 March, 1998**

<b>Candidate (Political Party)</b>	<b>Election Agent</b>	<b>Donations Disclosed £</b>	<b>Election Expenditure £</b>	<b>Reimbursed Expenses £</b>
Nora Bennis (National Party)	Candidate	NIL	1,727	Not qualified
John Gilligan (Independent)	Mary Guilfoyle	NIL	2,500	Not qualified
Noel Hannon (Independent)	Joe Bennett	NIL	300	Not qualified
Mary Jackman (Fine Gael)	Siobhán Fahy	NIL	21,947	5,000
Sandra Marsh (Fianna Fáil)	Patrick Meghen	NIL	19,757	5,000
Timothy O'Malley (Progressive Democrats)	Michael O'Malley	NIL	17,694	5,000
Jan O'Sullivan (Labour Party)	Niall Greene	Return as TD due by 31/1/99	18,990	5,000
John Ryan (Democratic Left)	Fiachra Ó Céilleacháir	NIL	16,050	5,000
Jenny Shapland (Sinn Féin)	Padraig Malone	NIL	4,186	Not qualified
Bernard Sheehan (Independent)	Candidate	NIL	760	Not qualified
Eric Sheppard (Green Party)	Larry De Cléir	NIL	914	Not qualified
<b>Totals</b>		<b>NIL</b>	<b>104,825</b>	<b>25,000</b>

### **Donation Statements**

Of the 18 unsuccessful candidates in the Dublin North bye-election, 17 furnished a Donation Statement to the Commission. Three of the candidates disclosed that they had benefited from donations which exceeded £500 in value. Initially, four of the candidates had not furnished their Donation Statements to the Commission which is an offence under the legislation. Files were forwarded to the Garda' with a request that the offences be investigated. Three of the candidates in question subsequently furnished their Donation Statements. The Commission is not a prosecutory authority and it is a matter for the Director of Public Prosecutions to decide on the question of initiating proceedings in cases involving failure to provide a Donation Statement. All 10 of the unsuccessful Limerick East candidates furnished the required Donation Statement. None of these candidates disclosed a donation valued in excess of £500. (Tables 9 and 10)

No candidate at either bye-election reported receipt of an anonymous donation. Acceptance of an anonymous donation valued in excess of £100 is prohibited and, if received, the donation, or the value thereof, must be remitted to the Commission.

The successful candidates in the two constituencies are required to make an annual Donation Statement, as members of the Dáil, by 31 January each year.

## **Election Expenditure Statements**

Election Expenses Statements were furnished to the Commission by the election agents of 17 of the 19 Dublin North candidates (including the successful candidate). Initially, Election Expenses Statements had not been received in respect of four of the candidates. Accordingly, files were referred to the Garda' with a request that this failure to comply with the legislation be investigated. Election Expenses Statements were subsequently received in relation to two of these candidates. It is a matter for the Director of Public Prosecutions to decide on the question of initiating proceedings for failure to provide an Election Expenses Statement to the Commission in the remaining two cases. (Table 9)

Election Expenses Statements in respect of the 11 candidates in the Limerick East bye-election were furnished to the Commission by the relevant election agents. The national agents of the political parties who nominated candidates to contest the two bye-elections all furnished Election Expenses Statements to the Commission. (Table 10)

The Commission considered the Election Expenses Statements furnished by the 28 election agents and by the 11 national agents of the political parties whose candidates had contested the bye-elections. There were two instances where the election expenditure incurred exceeded the limits set down in the legislation - one in Dublin North and one in Limerick East.

In the case of Dublin North, where the limit on expenditure was £17,000, an overspend of £497 was incurred by the election agent of the successful Labour Party candidate, Mr. Seán Ryan, T.D. After considering comments furnished by Deputy Ryan's agent, and taking into account that the two bye-elections were the first Dáil elections to be governed by expenditure limits, the Commission formed the view that the overspend had not knowingly been incurred and that the amount of the overspend was not material. Nonetheless, given that the Commission does not have discretion under the legislation, it was necessary to refer a file on the matter to the Director of Public Prosecutions. The Director subsequently confirmed that there would not be a prosecution. However, in accordance with the terms of the legislation, the Commission recommended to the Minister for Finance that the £497 excess expenditure be deducted from the reimbursement of £5,000 due to the Deputy in respect of his election expenses. This deduction was made.

An overspend of £2,047 was incurred by the Fine Gael national agent in regard to that party's bye-election campaign in Limerick East. The Commission considered the explanation for the overspend proffered by the national agent. The same considerations as were taken into account in the case of the overspend in Dublin North arose in this instance. The Commission referred the matter, with its views, to the Director of Public Prosecutions who subsequently confirmed that there would not be a prosecution. The Commission recommended to the Minister for Finance that the amount of the overspend be deducted from the Exchequer funding under the 1997 Act which is paid to Fine

Gael every quarter. The deduction was made from the payment in respect of the fourth quarter of 1998.

### **Reimbursement of Election Expenses**

The legislation makes provision for the reimbursement of the election expenses of certain qualified candidates at a Dáil election up to a maximum of the lesser of £5,000 or the actual expenses incurred. The reimbursements are made by the Minister for Finance on the recommendation of the Commission, which must include certification by the Commission that the election agents of the qualified candidates have furnished an Election Expenses Statement which complies with the statutory requirements and that the statement has been completed in accordance with the Commission's guidelines.

Nine candidates (four in Dublin North and five in Limerick East) qualified for a reimbursement of their expenditure at the bye-elections. These candidates were either elected or they were unsuccessful but, at any stage of the counting of votes, they secured in excess of one quarter of what would have been the quota in the relevant constituency had the bye-elections been a general election (that is, approximately 5% of the valid poll in Dublin North and 4.17% in Limerick East). Tables 9 and 10 give details of the candidates who received a reimbursement.

Copies of the Donation Statements and Election Expenses Statements furnished to the Commission in respect of the two bye-elections were laid by the Commission before each House of the Oireachtas. The documents, along with the relevant invoices and receipts, are available for public inspection and copying at the offices of the Commission. A public notice to this effect was placed in the national newspapers and in local newspapers in the two constituencies.

#### ***Cork South Central: 23 October, 1998***

Nine candidates and seven political parties contested the Cork South Central Dáil bye-election to fill the vacancy created by the death of Fine Gael Deputy Hugh Coveney. Four of the candidates appointed election agents and the remaining five acted as their own agent. The candidates and election agents are set out in Table 11.

Three sets of statutory guidelines for the bye-election were issued by the Commission to the candidates, their election agents and the national agents of the seven political parties. The guidelines were:

- Guidelines for candidates at the October 1998 Dáil Bye-Election in Cork South Central on steps to be taken concerning donations and anonymous donations under Part IV of the Act.
- Guidelines for Candidates and Election Agents of Candidates on the Reimbursement and Limitation of Election Expenditure at the Cork South

Central Dáil Bye-Election of October, 1998.

- Guidelines for Political Parties and National Agents of Political Parties on the Reimbursement and Limitation of Election Expenditure at the Cork South Central Dáil Bye-election of October, 1998.

As in the case of the two earlier bye-elections, representatives of the Commission visited the constituency during the bye-election campaign. Advice and assistance about the requirements of the legislation relating to the disclosure of donations, the limitation of election expenditure and the reimbursement of candidates' election expenses were provided at a number of meetings which were held with candidates and agents. Candidates' campaign offices were visited and the Commission was provided with samples of election material. The Commission is grateful to the candidates, election agents and national agents for their courtesy and assistance during the course of the constituency visit.

Statutory forms were produced by the Commission to cover the requirements of the legislation relating to the disclosure of donations by unsuccessful candidates, the limitation of candidates' and political parties' election expenditure and the reimbursement of candidates' election expenses. All of the forms had to be completed and returned to the Commission by the statutory deadline of 18 December, 1998 (56 days after polling day).

Donation Statements were received by the Commission from seven of the eight unsuccessful candidates in Cork South Central. The successful candidate, Mr. Simon Coveney, T.D., is required to make an annual Donation Statement, by 31 January, as a member of the Dáil. Five candidates disclosed having received donations valued in excess of £500 (Table 11). The Commission was not notified of any candidate having received an anonymous donation valued at more than £100.

**Table 11: Cork South Central Dáil bye-election of 23 October, 1998**

Candidate (Political Party)	Election Agent	Donations Disclosed £	Election Expenditure £	Reimbursed Expenses £
Sinéad Behan (Fianna Fáil)	Gerard O'Mahoney	16,000	19,080	5,000
Dan Boyle (Green Party)	Candidate	1,720	6,841	5,000
Benny Cooney (Independent)	Candidate	NIL	NIL	Not qualified
Simon Coveney (Fine Gael)	John Collins	Return as TD due by 31/1/99	16,500	5,000
Henry Cremin (Sinn Féin)	Don O'Leary	1,000	4,649	Not qualified
Peter Kelly (Progressive Democrats)	Candidate	1,650	12,174	Not qualified
Brian McEnery (Natural Law)	Candidate	NIL	382	Not qualified

Toddy O'Sullivan (Labour)	Michael Ahern	605	18,809	5,000
Jim Tallon (Independent)	Candidate	Return not furnished	Return not furnished	Election Expenditure return not furnished
<b>Totals</b>		<b>20,975</b>	<b>78,435</b>	<b>20,000</b>

The national agents of the seven political parties who contested the election all furnished an Election Expenses Statement. An Election Expenses Statements was also furnished to the Commission in respect of eight of the nine candidates (including the successful candidate). The remaining candidate, who acted as his own election agent, did not furnish an Election Expenses Statement. This is the same candidate who failed to furnish a Donation Statement. Files in relation to that candidate were sent to the Garda' with a request that his failure to provide both an Election Expenses Statement and a Donation Statement be investigated. Following a Garda investigation, it is a matter for the Director of Public Prosecutions to decide on the question of initiating proceedings against that candidate.

The candidate referred to in the previous paragraph has persistently refused to furnish statutory documentation to the Commission. Since the commencement of the legislation in May 1997 he has been a candidate at the Dáil general election in June 1997 and the Dáil bye-elections in Dublin North and Cork South Central in 1998. In determining the action to be taken in any particular case, it is appropriate that all of the pertinent factors should be taken into account. However, the Commission is somewhat concerned at this situation having regard to the fact that the vast bulk of election candidates and agents comply with the various requirements of the legislation and that its constant flouting by a particular individual may ultimately bring the legislation into disrepute. The Commission is of the view that, subject to consideration of any Constitutional impediments which may exist, some thought ought to be given to amending the legislation so that persistent offenders would be disbarred from standing at elections if they have failed to comply with the legal requirements attaching to them in relation to a previous election. This may be the only reasonable course if the possibility of prosecution and the penalties arising from same do not serve as a sufficient encouragement to such persons to comply with the legislation. The Commission is aware of proposals to deal with matters of this sort in the case of candidates at local elections.

There were no instances where election expenditure exceeded the statutory £20,000 limit for the Cork South Central bye-election. Four candidates qualified for a reimbursement of their expenditure at the bye-election (Table 11).

Copies of the Donation Statements and the Election Expenses Statements furnished to the Commission were laid before both Houses of the Oireachtas. A public notice was placed in the national newspapers and in local newspapers in the constituency advising that the material, together with relevant invoices and receipts, is available for public inspection and copying at the Commission's

offices.

An analysis of the expenditure at the three bye-elections (Table 12) demonstrates that of the 39 candidates who contested the bye-elections, one-third (13) of them had part of their election expenses reimbursed. An amount of £64,503 was reimbursed, in comparison to a total spend at the bye-elections of £272,128 which, in turn, was almost ten times the figure of £29,183 for donations valued in excess of £500 disclosed by candidates - an amount which excludes such donations received by the three successful candidates.

In terms of political parties (Table 13), the Labour Party and its candidates spent the highest amount of money at the bye-elections, £55,296 (or 20.32% of the overall total expenditure), followed by Fianna Fáil with £55,245 (20.30%) and Fine Gael on £52,795 (19.40%). The Progressive Democrats spent £35,433 (13.02%), Democratic Left £25,283 (9.29%), Independents £13,554 (4.98%) and Sinn Féin £13,171 (4.84%).

The Labour Party spent the highest amount in Dublin North while Fine Gael had the highest figure for Limerick East. Fianna Fáil recorded the largest total for Cork South Central.

**Table 12: Expenditure, Donations and Reimbursements at the Dáil bye-elections in 1998**

Item	Dublin North	Limerick East	Cork South Central	Totals
Disclosed Donations	£8,208	NIL	£20,975	£29,183
Election Expenditure	£88,868	£104,825	£78,435	£272,128
Expenditure limit per candidate	£17,000	£20,000	£20,000	
Average Expenditure per candidate	£4,677.26	£9,529.55	£8,715.00	
Expenditure per vote cast	£2.69	£2.46	£1.82	
Expenditure per constituency seat	22,217.00	20,965.00	15,687.00	
Reimbursed Election Expenses	£19,503	£25,000	£20,000	£64,503
Number of candidates	19	11	9	39
Reimbursed candidates	4	5	4	13

**Table 13: Political Party and candidate expenditure at the Dáil bye-elections in 1998**

Political Party	Dublin North £	Limerick East £	Cork South Central £	Total Expenditure £
Fianna Fáil	16,408	19,757	19,080	55,245
Fine Gael	14,348	21,947	16,500	52,795
Labour Party	17,497	18,990	18,809	55,296
Progressive Democrats	5,565	17,694	12,174	35,433
Democratic Left	9,233	16,050	N/A	25,283
Sinn Féin	4,336	4,186	4,649	13,171
Green Party	1,454	914	6,841	10,209
Socialist Party	6,498	N/A	N/A	6,498
Christian Solidarity Party	3,475	N/A	N/A	3,475
Natural Law Party	60	N/A	382	442
National Party	N/A	1,727	N/A	1,727
Independents	9,994	3,560	N/A	13,554
<b>Totals</b>	<b>88,868</b>	<b>104,825</b>	<b>78,435</b>	<b>272,128</b>

As members of Dáil Éireann, the three successful candidates were not required to disclose donations until 31 January, 1999. Donations exceeding in value £500 disclosed by unsuccessful candidates at the three bye-elections were highest in Cork South Central (Table 14) where the figure was £20,975 (71.87%

of all disclosed donations). Dublin North recorded the next highest amount at £8,208 (28.13%) while no donations over the £500 disclosure threshold were disclosed by unsuccessful candidates in Limerick East. Fianna Fáil's unsuccessful candidates received the highest amount of disclosable donations with £16,000 (54.83% of the total) followed by Fine Gael at £6,353 (21.77%) and the Green Party with £2,975 (10.19%).

**Table 14: Donations valued in excess of £500 received by Candidates at the Dáil bye-elections in 1998**

<b>Political Party</b>	<b>Dublin North £</b>	<b>Limerick East £</b>	<b>Cork South Central £</b>	<b>Total Donations £</b>
Fianna Fáil	Nil	Nil	16,000	16,000
Fine Gael	6,353	Nil	*	6,353.
Labour Party	*	*	605	605
Progressive Democrats	Nil	Nil	1,650	1,650
Democratic Left	Nil	Nil	N/A	0
Sinn Féin	Nil	Nil	1,000	1,000
Green Party	1,255	Nil	1,720	2,975
Socialist Party	600	N/A	N/A	600
Christian Solidarity Party	Nil	N/A	N/A	0
Natural Law Party	Nil	N/A	Nil	0
National Party	N/A	Nil	Nil	0
Independents	Nil	Nil	Nil	0
<b>Totals</b>	<b>8,208</b>	<b>0</b>	<b>20,975</b>	<b>29,183</b>

\* Successful candidates are required to disclose donations as Dáil deputies by 31 January each year.

## **Seanad Bye-Election in 1998**

There was one Seanad bye-election in 1998 which was held on 23 June to fill a vacancy on the Labour Panel following the election of Mr. Seán Ryan, T.D., in the Dublin North Dáil bye-election of 11 March. There are no provisions in the legislation which limit or permit reimbursement of election expenditure at a Seanad election. Accordingly, the bye-election was subject only to those provisions of the legislation which deal with the disclosure of donations, including the treatment of anonymous donations.

The Commission issued statutory guidelines (Guidelines for candidates at the Seanad bye-election of June, 1998 on steps to be taken concerning donations and anonymous donations) to the two bye-election candidates, Mr. John Cregan and Mr. Sam McAughtry.

A Donation Statement completed by the unsuccessful candidate, Mr McAughtry,

by the statutory deadline of 18 August, 1998, showed that Mr McAughtry did not receive any donations valued in excess of £500 in relation to the bye-election. A copy of his Donation Statement was laid by the Commission before each House of the Oireachtas and was made available for public inspection. As a sitting member, Senator Cregan is required to disclose on an annual basis, by 31 January, any donations valued in excess of £500 received by him during the preceding calendar year.

## **Donation Statements of Political Parties for 1997**

The legislation requires the Appropriate Officer of each registered political party to furnish a Donation Statement to the Commission by 31 March each year indicating whether, during the preceding calendar year, the party received any donations exceeding in value £4,000. An Appropriate Officer must be appointed by each political party for this purpose and to account for Exchequer funding received by the party under the legislation.

The first annual Donation Statements of political parties covering the period 15 May to 31 December, 1997, (the commencement date of the 1997 Act to the end of that year) were due to be furnished to the Commission by the statutory deadline of 31 March, 1998. The steps to be taken by parties concerning the disclosure of donations were outlined in guidelines published by the Commission to the 16 political parties registered in the State to contest a Dáil or European Parliament election.

On 26 March, 1998, the Commission notified the Appropriate Officers of the political parties that, subject to the passage of legislation through the Oireachtas, the 31 March deadline for furnishing the 1997 Donation Statements would be extended to 30 April, 1998. This change was subsequently provided for in the 1998 Act as a once-off measure for 1998 only. Donation Statements of political parties for all subsequent years must be furnished to the Commission by 31 March.

As already outlined earlier in this report, the requirement in the 1997 Act for political parties to aggregate and disclose multiple donations from the same donor, regardless of the level of the party at which they were received (including branches, members and public representatives), was amended by the 1998 Act. The current position is that political parties are required to disclose any individual donation exceeding in value £4,000, or donations from the same donor to the same entity of the party which have an aggregate value exceeding £4,000. The 1998 Act introduced a provision whereby certain (multiple) donors are required to disclose directly to the Commission, for public display, details of donations which they make with an aggregate value in excess of £4,000.

### **Donations disclosed by political parties**

Donation Statements were received by the Commission from all of the registered parties. A synopsis of the information contained in the statements is provided in

Table 15, below.

Six of the 16 political parties disclosed donations valued in excess of £4,000 which were received during the period in question. Fianna Fáil disclosed the highest number of such donations, 29, and the highest total amount of donations, £238,500. The single largest donation received by the party, £30,000, was from Waterford Crystal Limited (a donation of £80,250 from DCD Builders was the actual largest donation disclosed by the party, but this composite donation consisted of eleven smaller amounts). Sinn Féin recorded the second highest number of donations as well as the largest single donation, US\$59,688.87, which was one of five donations received by the party from Friends of Sinn Féin America. Fine Gael disclosed a total of £27,500 comprising two donations, one of which was for £22,500 from Irish Distillers. Apart from Friends of Sinn Féin America, who donated a total of US\$122,933 plus £7,229 to Sinn Féin, the largest disclosed contributor to political parties, during the period 15 May to 31 December, 1997, was Irish Distillers who made donations with a total value of £70,000 distributed amongst Fianna Fáil (£25,000), Fine Gael (£22,500), Labour (£12,500) and the Progressive Democrats (£10,000).

**Table 15: Disclosure of donations by political parties for 1997**

Political Party	Amount of donations (£)	Number of donations	Largest donation (£)
Fianna Fáil	238,500*	29*	30,000
Sinn Féin	7,229 + US\$122,933	5	US\$59,688.87
Fine Gael	27,500	2	22,500
Labour Party	17,500	2	12,500
Progressive Democrats	10,000	1	10,000
Democratic Left	5,000	1	5,000
Christian Solidarity Party	Nil		
Communist Party of Ireland	Nil		
Green Party	Nil		
Muintir na hÉireann	Nil		
National Party	Nil		
Natural Law Party	Nil		
Socialist Party	Nil		
Socialist Workers Party	Nil		
South Kerry Independent Alliance	Nil		
Workers Party	Nil		

\*Does not include donation disclosed on 31 July, 1998; see below re 'pick me up' payments.

The Commission is satisfied that the requirements of the legislation in relation to the disclosure of donations are quite clear and that political parties fully understand that Donation Statements should clearly identify any individual donations valued in excess of £4000 which are included in a larger composite donation received by the party.

Copies of the Donation Statements received from the parties were laid by the Commission before each House of the Oireachtas and are available for public inspection at the offices of the Commission. A public notice to this effect was placed by the Commission in the national and local newspapers.

### **'Pick me up' payments to political parties**

During 1998 the Commission was concerned that political parties should be absolutely clear of the requirement that so called 'pick me up' payments must be disclosed if their value exceeds £4,000. Accordingly, the Commission sought written confirmation from the Appropriate Officer of each registered political party that any political contribution exceeding the £4,000 threshold received by their political party in the form of a 'pick me up' payment during the period from 15 May to 31 December, 1997, had been included in the Donation Statement

already furnished to the Commission.

A 'pick me up' payment occurs where a third party makes a payment to a creditor of a political party for a service rendered to that party by the creditor in question. In the replies received by the Commission from each of the political parties, it was confirmed that either no such donations had been received by them or that any such donations were included in the Donation Statements already furnished to the Commission by the parties in question.

However, on 30 July, 1998, a further letter was received from the Appropriate Officer of Fianna Fáil stating that "in the course of a very in-depth trawl of the party's records, which is being conducted in the context of a request for information received by the party from the Revenue Commissioners concerning so called 'pick me up' payments, it had come to light that an invoice which the party had been advised was paid prior to 15 May, 1997, (commencement date of the 1997 Act) was not in fact paid until 30 May, 1997". The Appropriate Officer also stated that Fianna Fáil had "just become aware of the matter which had been inadvertently omitted from the Donation Statement previously furnished to the Commission".

On receipt of the Appropriate Officer's letter, the Commission requested that details of the donation be entered on a supplementary Donation Statement. The previous Fianna Fáil Donation Statement had been laid by the Commission before both Houses of the Oireachtas and put on public display on 5 June, 1998. The completed supplementary Donation Statement was received from Fianna Fáil on 31 July, 1998. It indicated that the donation in question was by way of part sponsorship of a fund-raising event, the net value of which to Fianna Fáil was £5,625. The Donation Statement was subsequently laid, on 6 August, by the Commission before both Houses of the Oireachtas and was put on public display. A report on the matter from the Commission to the Ceann Comhairle under section 4(1) of the 1997 Act was also laid before the Houses on the same date. The report stated, inter alia, that the Commission was considering the matter pursuant to the relevant provisions of the legislation.

In a subsequent statement, the Commission confirmed that, having considered the circumstances surrounding receipt of the donation, it was satisfied, on the basis of the information available, that the Appropriate Officer "did not contravene section 25(1)(d) of the Electoral Act, 1997 by knowingly furnishing a Donation Statement or making a Statutory Declaration which was false or misleading in any material respect". The Commission also said that it was "satisfied that the donor's recollection, of the circumstances which gave rise to the late disclosure of the donation, corroborate the account provided by the Appropriate Officer". The Commission drew the Appropriate Officer's attention to section 24(6) of the 1997 Act which provides that "it shall be the duty of every person who is required to furnish a Donation Statement and to make a declaration to undertake such enquiries and maintain such records as are necessary for the purpose of furnishing the said statement and making the declaration". The Commission further advised the Appropriate Officer of its concern that this provision should be strictly adhered to when furnishing future

Donation Statements to the Commission.

The inclusion of the donation disclosed in Fianna Fáil's supplementary Donation Statement increased the number of disclosable donations received by the party during 1997 to 30 with a total value of £244,125.

## Exchequer Funding of Political Parties in 1998

Exchequer payments to political parties under Part III of the 1997 Act were made for the first time in respect of the 1998 calendar year. To qualify for funding, a political party must be included in the Register of Political Parties and it must have secured at least two per cent of the first preference votes at the last previous Dáil general election (i.e. the general election of 6 June, 1997). The amount of funding payable to each qualified party is determined by the proportion it secured of the total first preference vote received by all qualified parties. The qualified parties must apply the Exchequer funding received to all, or any, of the following areas:

- (1) general administration of the party;
- (2) research, education and training;
- (3) policy formulation;
- (4) co-ordination of the activities of branches and members of the party.

The funding is also deemed to include provision in respect of spending by the qualified parties on the promotion of participation by women and young persons in political activity. The funding may not be used to offset election expenses.

Under the legislation, total payments to qualified parties may not exceed one million pounds annually, subject to an automatic increase in line with any general increase of remuneration in the civil service. During 1998, two civil service general pay increases, due under the terms of Partnership 2000, came into effect. Accordingly, the total Exchequer funding payable to qualified parties was increased to £1,030,347 (Table 16). The actual amount paid was reduced to £1,028,299 to take account of the deduction for the overspend by Fine Gael at the Limerick East bye-election referred to earlier in this report.

The Act provides that no payment shall be made to a qualified political party after 30 April in any year, unless and until that party has furnished a Donation Statement and an Expenditure Statement with an Auditor's Report to the Commission. The Expenditure Statement must show how the Exchequer payments received in respect of the preceding year were applied to any or all of the purposes as set out in the legislation. As 1998 was the first year in which the payments were made, Expenditure Statements will be due to be furnished to the Commission by 30 April, 1999.

**Table 16: Exchequer funding of qualified political parties for 1998**

Qualified Parties	First preference votes as a % of total first preference votes	Column 2 as a % of qualified parties' total first preference votes	Total Exchequer Funding for 1998 (£)
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Fianna Fáil	39.33	43.62	449,437.36
Fine Gael	27.95	30.99	*317,257.42
Labour	10.40	11.53	118,799.00
Progressive Democrats	4.68	5.19	53,475.01
Green Party	2.76	3.06	31,528.62
Sinn Féin	2.55	2.83	29,158.81
Democratic Left	2.51	2.78	28,643.64
<b>Totals</b>	<b>90.18</b>	<b>100.00</b>	<b>1,028,299.86</b>

\* The Fine Gael overspend of £2,047.12 at the Limerick East bye-election of 11 March, 1998, was deducted from its payment for the final quarter of 1998

An issue which will impact on the Exchequer funding of political parties in 1999 is the merger of the Labour Party and Democratic Left. On ceasing to be registered in the Register of Political Parties, Democratic Left will not meet one of the qualifying conditions under the 1997 Act and, therefore, will no longer be eligible for Exchequer funding under the legislation. The Commission will be examining the possibility that the legislation may permit a redistribution of the total funding available amongst the six remaining qualified parties, which would result in an increased level of funding for those parties, including the Labour Party, in 1999.

## **Preparations for the European Parliament Election on 11 June, 1999**

The Commission's preparations for the European Parliament election, scheduled for mid-June of 1999, commenced during the closing months of 1998. One of the tasks to be undertaken by the Commission is the production and distribution of a comprehensive handbook covering the legal obligations which arise in relation to the election. The handbook will deal primarily with the provisions relating to the disclosure of donations and the limitation and reimbursement of election expenditure and it will be directed at election candidates, their election agents and the national agents of political parties. The handbook will replace the guidelines issued for previous elections. The European election will be the first national election to be covered by the full scope of the 1997 and 1998 Acts and the Commission intends to be actively involved in discharging its supervisory role under the legislation.

## **Costs in 1998**

The expenditure outlined below was incurred in 1998. The expenditure is provided for in Subhead B of Vote 17 [Ombudsman]. The figure for staff salaries includes the cost of staff who were assigned during 1998 on duties in support of the Referendum Commission in dealing with the referenda relating to the Amsterdam Treaty and the Northern Ireland Agreement. The figure for incidental expenses covers the cost of public notices in national and local newspapers advertising the availability of material for public inspection. The

figure for office premises includes costs associated with the relocation of the Commission Secretariat to 18 Lower Leeson Street, Dublin 2, in March 1998.

<b>Staff Salaries</b>	<b>£265,000</b>
<b>Travel &amp; Expenses</b>	<b>£2,000</b>
<b>Incidental Expenses</b>	<b>£75,000</b>
<b>Postal and Telecommunications</b>	<b>£8,000</b>
<b>Office Machinery and other office supplies</b>	<b>£26,000</b>
<b>Office Premises</b>	<b>£53,000</b>
<b>Legal Fees and Consultancy</b>	<b>£7,000</b>
<b>Total</b>	<b>£436,000</b>