

Annual Report
Public Offices Commission
1997

Ireland

Public Offices Commission
18 Lower Leeson Street,
Dublin 2.

Telephone: (01) 6785222

Fax: (01) 6610570

Foreword

I hereby present the second 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 1998.

Contents

Introduction

The Ethics Act and the Electoral Act - An Overview

The Role of the Commission

The Ethics Act

- Statutory Guidelines
- Statutory Advice
- Statements
- Material Influence Distinction
- Disclosure of Information
- Observance of Dates

The Electoral Act

- Disclosure of Donations
- Limitation of Election Expenditure
- Reimbursement of Election Expenses
- Public Funding of Political Parties
- Regulations
- Provisions of the Electoral Act in Operation on May 15th, 1997
- Provisions of the Electoral Act in Operation on January 1st, 1998
- Statutory Guidelines
- Statutory Advice
- Dáil Éireann General Election of June 6th, 1997
- Seanad Éireann General Election of August 6th, 1997
- Presidential Election of October 30th, 1997

- Members of the Oireachtas, Representatives
in the European Parliament and Political Parties

Contacts with other Bodies in 1997

Appendices

- Appendix 1: Commission Costs in 1997
- Appendix 2: Statements Furnished to the Commission (Ethics)
- Appendix 3: Requirements in Relation to Statements (Ethics)
- Appendix 4: Investigation Procedure (Ethics)

Introduction

This is the second Annual Report of the Public Offices Commission (the Commission) which was established on November 1st, 1995 under the Ethics in Public Office Act (the Ethics Act).

In the past year the Commission's responsibilities, as existed under the Ethics Act, have been significantly extended by the provisions of the Electoral Act, 1997 (the Electoral Act), as amended by the Electoral (Amendment) Act, 1998. During 1997 certain parts of that legislation applied to the Dáil general election of June, 1997, the Seanad general election of August, 1997 and the presidential election of October, 1997. The Electoral Act, which came fully into operation on January 1st, 1998, provides, inter alia, for a transparent system of allocating public funds to qualified political parties, the reporting of political donations above certain thresholds, the limitation of expenditure at elections and the recoupment by candidates of certain election expenses.

The retirement of Mr. Séan Treacy from the position of Ceann Comhairle of Dáil Éireann during 1997 meant, by virtue of section 21 of the Ethics Act, that his tenure as a member and first Chairman of the Commission also came to an end. The Commission is indebted to Mr. Treacy for his commitment and dedication to the work of the Commission and wishes him well in his retirement.

Mr. Treacy was automatically succeeded as a member of the Commission by the incoming Ceann Comhairle, Mr. Séamus Pattison, T.D. The current Chairman of the Commission is Mr. Kevin Murphy, Ombudsman. The other members are the Comptroller and Auditor General, Mr. John Purcell, the Clerk of the Dáil, Mr. Kieran Coughlan and the Clerk of the Seanad, Ms. Deirdre Lane. The Commission is supported administratively by a Secretariat seconded from the Office of the Ombudsman which is headed by Mr. Brian Allen, Senior Investigator. The costs incurred by the Commission in 1997 are set out at Appendix 1.

The Ethics Act and the Electoral Act - An Overview

Public service ethics is no more and no less than the practical application of desirable norms and values to activities in the public sector.

The broad focus of the Ethics Act is towards the disclosure of registrable interests including any material factors which could influence a public servant or the holder of public office in discharging their official duties. This embraces the adoption of position, persuasion, negotiation and decision-making and any other action which constitutes the performance of a function. The Ethics Act is an important element of the legislative response of the Oireachtas to a public demand for transparency in public life. The essence of any system of ethics in the public service is that it serves to assure the public that government, in the broadest sense, is working only in the public interest. The objective is to demonstrate that those who are participating in the public domain are not seeking to derive personal advantage from the outcome of their actions. The mechanism employed to achieve that objective is a statutory code requiring voluntary disclosure of interests to public scrutiny with provisions for sanction in the event that appropriate disclosure has not been observed. The legislation is founded on the presumption of integrity but recognises that specific measures should exist to ensure compliance.

The passage of the Electoral Act was based on similar principles and serves to reassure the public that there is openness and accountability in the relationships that exist between, on the one hand, political parties and individual politicians and, on the other, those who would support them politically, whether by way of financial assistance or otherwise. The legislation also seeks to achieve equity in the electoral process by limiting expenditure at elections and by providing a system whereby candidates at elections can, in certain circumstances, recoup election expenses. The provisions relating to the public funding of qualified political parties allow those parties to apply the funding to the development of their administrative structures, to research, education and training, to the formulation of policy and to the promotion of participation by women and young people in political activity.

The Role of the Commission

The Ethics Act assigned to the Commission a supervisory role in so far as the legislation applies to office holders, including Ministers and Ministers of State, the civil service, Ministerial special advisers and persons in the semi-state sector.

A similar role, in relation to members of the Dáil and Seanad who are not office holders, is performed by the Select Committees on Members' Interests of each House of the Oireachtas. The principal functions of the Commission under the Ethics Act are to provide advice and issue guidelines on the steps which are needed to ensure compliance with the legislation and to investigate possible contraventions of the legislation.

The Electoral Act requires the Commission to monitor and, where appropriate, report on matters relating to the public funding of qualified political parties, the disclosure of donations received by political parties, individual politicians and candidates at elections, the recoupment by candidates of election expenses and the limiting of election expenditure. The Commission is obliged to provide guidelines and advice on compliance with the legislation and to conduct whatever enquiries are necessary in the discharge of its statutory functions. Additionally, the Commission is charged with facilitating the inspection and copying, by any person, of donation statements, statements of election expenses, etc., furnished under the legislation.

The Ethics Act

The Ethics Act, which came into operation on July 22nd, 1995, was a new and comprehensive piece of legislation providing transparency mechanisms in the form of disclosure of interests. It applies to all members of each House of the Oireachtas and to specified categories in the public service. Notably, it provided for the establishment of:

- a Dáil and a Seanad Select Committee on Members' Interests and
- a Public Offices Commission.

The remits of the Select Committees under the Ethics Act apply to members of the Houses of the Oireachtas who are not office holders. The Commission's remit applies to office holders and also to public servants. The principal functions of these bodies, within their respective remits, are to provide advice and guidelines on steps to be taken in order to comply with the requirements of the legislation and to investigate complaints alleging contraventions of those requirements.

In addition, the Commission receives and considers annual statements of the registrable interests of the Attorney General, Ministerial special advisers and persons who hold designated directorships in the wider public service. It also receives annual statements of the interests of the spouses or children of persons in those categories and of office holders which could materially influence them in the performance of their official functions.

Such persons must furnish to the Commission ad hoc statements where a material interest arises in a function falling to be performed by them. In circumstances where a material interest does arise, special advisers and designated directors should not perform the function unless there are compelling reasons for doing so which must be notified to the Commission.

The Ethics Act provides for secondary legislation to give effect to a number of broad provisions. In the course of 1996/7 the following regulations were thus enacted:

- Ethics in Public Office (Designated Positions in Public Bodies) Regulations, 1996 (S.I. No. 57 of 1996) which prescribed the positions within Government Departments and Offices, the occupiers of which would be deemed to have obligations under Section 18 of the Ethics 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 prescribed those directorships and positions in bodies in the wider public service, the holders and occupiers of which would be deemed to be have obligations under Sections 17 or Section 18 of the Ethics 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 Limited, whose ownership changed, from its previous specification as a "public body" under the Ethics Act.
- Ethics in Public Office Act, 1995 (Section 3(1)(b)) Regulations, 1997 (S.I. No. 320 of 1997) which prescribed that, where an office holder leaves office in the course of a registration year, any special adviser in his/her employment whose employment is simultaneously terminated as a consequence, has 7 days within which to furnish to the office holder 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.

Statutory Guidelines

The Commission has obligations, under Section 25 of the Ethics Act, to publish guidelines and to give advice to persons covered by the legislation. The Guidelines for Office Holders, which were published by the Commission for the first time in February, 1996, have now been updated, in consultation with the Dáil and Seanad Select Committees on Members' Interests,

to reflect the experience gained operating the legislation. Both Irish and English versions of these updated guidelines have been published. The Guidelines for the Public Service, also published in February, 1996, are in the process of being similarly updated and will be published in due course.

There was a change of government in mid-1997 while the updated Guidelines for Office Holders were being prepared. In the circumstances, the Commission issued an aide-memoire to all newly appointed office holders outlining their main responsibilities under the Ethics Act. They were also supplied with a copy of the Commission's Annual Report for 1996. The office holders were advised that the Commission has a statutory role in the giving of advice and, as such, was available to provide advice relating to the Ethics Act or the application, in a particular case, of any of its provisions

It is understood that amendments to the Ethics Act are being considered by the Minister for Finance. The Commission will be happy to respond to any consultation process that might take place in advance of the enactment of amending legislation.

Statutory Advice

This year, as last year, the Commission again received many requests for advice on compliance with the Ethics Act. The requests covered a wide range of issues and were from persons in all of the categories within the Commission's remit. The Commission recognises that the disclosure of interests and other requirements of the legislation represent a new departure and that the obligations to be discharged are complicated and it has tried to be as helpful as possible in dealing with requests for advice and other enquiries.

The Commission considers, however, that the answers to many requests for advice by individuals are clearly set out in its published guidelines which have been drafted to provide general guidance on compliance with the Ethics Act and to respond to commonly asked questions. Ideally, the Commission should be contacted only where an individual is unclear about the specific application of the legislation in particular circumstances. In most such cases, it would also be more appropriate to request advice of a particular nature in writing.

The Commission is obliged to respond to all requests for advice within 21 days.

Statements

At the time of writing, a total of 577 statements of interests relating to the year 1997/98 have been received by the Commission. Details of the statements received since the Ethics Act was enacted are set out in Appendix 2 showing the different categories involved. In this context it is worth pointing out that the legislation obliges the Commission to retain all statements for a period of fifteen years.

The Commission is concerned at the large number of improperly completed and/or incomplete statements it has received in the past year. It has been necessary to return the statutory forms to the sender for amendment in many cases.

In relation to the validity of the statements, the following points concerning the forms are important :

- The field entitled "Period Comprehended by this Statement" should always be completed. From 1999 onwards this period will span February 1st to January 31st each year.
- The field entitled "Position Held" should indicate the category in which a statement is occasioned i.e. the office/directorship/position as designated by the Act.
- The statement should always be signed and dated.

Material Influence Distinction

With the exception of the members of each House of the Oireachtas who are obliged to declare all registrable interests for publication, the annual disclosure obligation on persons covered by the Ethics Act is confined to those interests which could materially influence them in relation to the performance of the functions of their directorship or position. [The

requirements are set out in full Appendix 3.] The Ethics Act, as outlined earlier, seeks to ensure the disclosure of any known interest in the outcome of any action; it is not intended to provide an inventory of all the interests of an individual. In addition to the annual disclosure requirement, the Ethics Act provides for ad hoc declarations of interests at any time during the year in a situation where an interest could constitute an influence in the performance of a function.

Disclosure of Information

The annual statements of their own registrable interests furnished by members of both Houses of the Oireachtas (including office holders) are laid before the Dáil and the Seanad and are published in *Iris Oifigiúil*. The information is, therefore, in the public domain. Similarly, the statements of Ministerial special advisers' own registrable interests, and other information relating to special advisers, which are laid by office holders before each House of the Oireachtas, are in the public domain as are the statements made by members of the Oireachtas concerning a material interest in proceedings of the House(s) or a Committee of the House(s).

The legislation provides that the disclosure by any person of information obtained under the Ethics Act, or by being present at a sitting of the Commission, or a Select Committee on Members' Interests, held in private (other than information which has to be published), constitutes an offence.

However, this does not apply to information:

- disclosed, in the public interest, by a Minister of the Government,
- contained in certain statements and disclosed, by the person to whom the statements were furnished, to specified parties in circumstances where the person disclosing is of the opinion that a conflict may exist between an interest specified, or an undisclosed interest, and the public interest,
- disclosed by a person in the course of the performance of the person's functions or disclosed to a Minister of the Government, the Secretary to the Government, a Select Committee on Members' Interests, the Commission or a relevant authority where it is in

the public interest or

- disclosed to comply with an order of a court for the purpose of proceedings in that court.

Neither does the prohibition apply to disclosure by, or with the consent of, the person to whom the information relates, of information contained in a report of an investigation by the Commission or a Select Committee on Members' Interests which has not been laid before either House.

Observance of Dates

The Commission notes that the annual deadline for the furnishing of statements of registrable interests is not being observed in many cases. This is not an ideal situation and impacts negatively on the work of the Commission. There may have been some confusion surrounding dates in the past but, as people become more familiar with their obligations under the Ethics Act, it is intended that the norm will be that statements are furnished by the due date. That date is fixed by the legislation as 30 days from January 31st which, 3 years out of 4, will be March 2nd. In a leap year it will be March 1st.

The Electoral Act

The Annual Report of the Commission for 1996 briefly outlined the role proposed for the Commission under the Electoral Bill, 1994. It was noted then that progress of the Bill during 1996 was delayed to allow for consideration of the implications of the Supreme Court judgement in the McKenna case. The proposals contained in the Electoral Bill, 1994 were significantly revised by the Government during the first few months of 1997 and a revised Bill was enacted as the Electoral Act, 1997 on May 15th, 1997. Section 1(6) of the Electoral Act provides that its provisions come into operation in three ways :

- (a) upon the passage of the Act on May 15th, 1997;
- (b) on January 1st, 1998 and
- (c) by order of the Minister for the Environment and Local Government.

The responsibilities of the Commission under the Electoral Act arise primarily in relation to the disclosure of political donations, the limitation of election expenditure, the reimbursement of election expenses and the public funding of political parties. A more comprehensive account of the areas in which the Commission has a supervisory role is provided in the following paragraphs.

Disclosure of Donations

The Commission oversees the

- disclosure by unsuccessful candidates at Dáil, Seanad and European elections of donations received for political purposes;
- disclosure by candidates at presidential elections of donations received for the purpose of promoting their election;
- annual disclosure by political parties of donations received for political purposes;

- annual disclosure by members of both Houses of the Oireachtas and representatives in the European Parliament of donations received for political purposes;
- annual disclosure by companies, trade unions, societies (registered under the Industrial and Provident Societies Acts 1893 to 1978 or the Friendly Societies Acts 1896 to 1977) and building societies of political donations made by them during a year.

Limitation of Election Expenditure

The Commission monitors the limitation of expenditure incurred by

- candidates and political parties at Dáil elections;

Reimbursement of Election Expenses

The Commission provides certification in relation to the

- reimbursement of election expenses to candidates at Dáil elections;

Public Funding of Political Parties

The Commission monitors and provides certification in relation to the

- public funding of qualified political parties for the purposes of general administration, research, policy formulation and the promotion of participation by women and young people in political activity.

Regulations

Regulations setting expenditure limits by political parties and candidates at European elections and by candidates at a presidential election have not yet been made. The Electoral Act also provides that regulations may be made by the Minister for the Environment and

Local Government to provide for :

- disclosure of donations received for political purposes by candidates at a local election;
- disclosure of donations received for political purposes by members of a local authority;
- limitation of election expenditure incurred by candidates and political parties at local elections;
- reimbursement of election expenses incurred by candidates at European elections;
- reimbursement of election expenses incurred by candidates at a presidential election.

European and local elections are due to be held in the early summer of 1999 and the Commission hopes that any regulations will be made in good time to enable it to put in place arrangements to cater for its responsibilities in regard to these elections.

Provisions of the Electoral Act in Operation on May 15th, 1997

On May 15th, 1997, the following Parts of the Electoral Act came into operation either fully or in part :

Part I	-	Preliminary and General
Part IV	-	Disclosure of donations
Part VI	-	Disclosure of donations at a presidential election
Part VIII	-	Miscellaneous

Part I of the Act, Preliminary and General, contains the usual provisions in relation to the short title of the Electoral Act, collective citations, construction and commencement and the interpretation of various terms used in the legislation. Part I also requires the Commission to publish guidelines and to give advice on the application of the provisions of the Electoral Act and provides that it may furnish a report to the Ceann Comhairle of Dáil Éireann on any matter arising from its consideration of donation statements and other material furnished to it under the legislation.

Part IV is concerned with the disclosure of donations and the surrender of anonymous

donations received by political parties, members of either House of the Oireachtas, representatives in the European Parliament and candidates at Dáil, Seanad and European elections.

The provisions of Part VI which came into operation on May 15th, 1997 relate to the disclosure of donations and the surrender of anonymous donations received by candidates at a presidential election. The provisions of Part VIII which came into operation on that date provide for the public inspection of documents furnished to the Commission relating to donations received by unsuccessful candidates at Dáil and Seanad elections, members of both Houses of the Oireachtas, representatives in the European Parliament, political parties and candidates at presidential elections. Part VIII also requires each political party to appoint an appropriate officer. This person is responsible for the disclosure to the Commission of donations received for political purposes by a political party.

The provisions which commenced on May 15th, 1997, and their application to the Dáil, Seanad and presidential elections which were held during 1997, are discussed in greater detail later in this report.

On September 30th, 1997, Part II (Constituency Commission) came into operation by way of Ministerial Order.

Provisions of the Electoral Act in Operation on January 1st, 1998

The legislation provides for the commencement of the following parts on January 1st, 1998 :

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

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 occur throughout the Electoral Act. In general, these monetary amounts relate to disclosure and reimbursement thresholds, limits on election expenditure and penalties for offences committed under the legislation.

Part III provides for the public funding of qualified political parties for the purposes of general administration, research, policy formulation and the promotion of participation by women and young people in political activity. In order to secure public funding, a political party has to be registered in the Register of Political Parties under the Electoral Act, 1992 and it must have secured in excess of two per cent of the total first preference votes at the last preceding general election. The first payment to qualified political parties cannot be made until three months after the commencement of Part III (i.e. after March 31st, 1998). Part III also provides for the reimbursement of election expenses incurred by candidates at Dáil and (subject to regulations) at European elections.

All of the provisions of Part V and the remaining provisions of Part VI became operative on January 1st, 1998. Part V is concerned with the limitation of expenditure by candidates and political parties at Dáil and European elections. The remaining provisions of Part VI deal with the limitation of expenditure by candidates at a presidential election.

The remaining provisions of Part VIII, which also commenced on January 1st, 1998, include the making of arrangements for inspection by the public at large of documents furnished to the Commission in connection with the funding of political parties and the limitation of election expenses incurred by political parties and candidates at Dáil and European elections. Documents furnished in regard to the election expenses of candidates at a presidential election are also covered by this Part.

Statutory Guidelines

Section 4(6)(a) of the Electoral Act provides that the Commission shall draw up and publish guidelines to ensure compliance with the legislation. These guidelines concern the steps to be taken by persons covered by a provision of Parts III, IV, V and VI of the Electoral Act.

In 1997, the Commission published two sets of guidelines. The first was published in May, 1997 and was entitled: *Guidelines for political parties, members of either House of the Oireachtas, representatives in the European Parliament and candidates at Dáil, Seanad and European elections on steps to be taken concerning donations, anonymous donations and the appointment of officers under Part IV and Section 71 of the Act.* These guidelines were issued to political parties and all candidates at the Dáil general election held on June 6th, 1997 and the election to Seanad Éireann on August 6th, 1997. In the Introduction to the guidelines, it was emphasised that they were intended to ensure that political parties, elected representatives and candidates were informed of the duties and responsibilities attaching to them in light of the commencement of, inter alia, Part IV and Section 71 of the Electoral Act. (Section 71 is concerned with the appointment by each political party of an appropriate officer who is responsible for the disclosure to the Commission of donations received for political purposes by that political party.)

The second set of guidelines was published in September, 1997 and was entitled: *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.* These guidelines were issued to political parties and to the five candidates and their election agents at the presidential election of October 30th, 1997. The Introduction to the guidelines pointed out that they were intended to ensure that presidential election agents and candidates at the presidential election were informed of the duties and responsibilities attaching to them in light of the commencement of Part VI of the Electoral Act.

Statutory Advice

Under Section 4(6)(b) of the Electoral Act, the Commission may give advice at the request of a person to whom a provision of Parts III, IV, V or VI applies. The request may relate to the legislation in general, or to the application of a specific provision in particular circumstances. Section 4(8) provides that the Commission should provide the advice within 21 days of a request having been received by it or that it may decline to give the advice.

During the course of the year the Commission issued advice on the application of the legislation in response to a large number of queries from political parties, members of the Oireachtas, representatives in the European Parliament and from candidates and agents at the 1997 Dáil, Seanad and presidential elections. Most requests for advice related to the requirements applying to the treatment and disclosure of donations.

Dáil Éireann General Election of June 6th, 1997

Part IV of the Electoral Act which covers the disclosure of donations received for political purposes by political parties, members of both Houses of the Oireachtas, representatives in the European Parliament and candidates at elections came into operation with the passing of the Act on May 15th, 1997. As polling day for election to the twenty-eighth Dáil was held on June 6th, 1997, that election was the first to be covered by the provisions of the legislation.

In May, 1997 a copy of the Commission's *Guidelines for political parties, members of either House of the Oireachtas, representatives in the European Parliament and candidates at Dáil, Seanad and European elections on steps to be taken concerning donations, anonymous donations and the appointment of officers under Part IV and Section 71 of the Act* was sent to all 484 candidates standing for election.

The Commission provided the 317 unsuccessful candidates (one candidate stood in two constituencies, thus reducing the total from 318 to 317 individuals) at the Dáil general election with a donation statement and statutory declaration form (Form ELAD - 1U) on July 8th, 1997. The legal requirements in relation to the donation statement and statutory declaration of an unsuccessful Dáil candidate are as follows:

- Section 24(2)(a) of the Electoral Act provides that an unsuccessful candidate at a Dáil election shall furnish to the Commission, not later than the fifty-sixth day after the polling day at the election, a written statement indicating whether the candidate received a donation in relation to the election which exceeded £500 in value. For each such donation, a candidate's statement must indicate the value of the donation as well as the name, description and postal address of the person who made or on whose behalf the donation was made.
- Section 24(3) provides that each donation statement shall be accompanied by a statutory declaration made by the person by whom the statement is furnished that, to the best of the person's knowledge and belief, the statement is correct in every material respect and that the person has taken all reasonable action in order to be satisfied as to the accuracy of the statement.
- Sections 25(1)(c) and 25(2)(a) of the Electoral Act provide that a person who fails to furnish a donation statement and make a statutory declaration shall be liable, on summary conviction, to a fine not exceeding £1,000. Under section 25(2)(c), if that person, following a conviction, continues to fail to furnish a donation statement and statutory declaration to the Commission, he/she shall be guilty of a further offence and shall be liable to a further fine not exceeding £100 for each day that the donation statement and statutory declaration remain outstanding.
- Section 25(3) of the Act provides that legal proceedings for an offence shall not be instituted except by or with the consent of the Director of Public Prosecutions.

The unsuccessful candidates were informed that the donation statement and statutory declaration form must be completed and returned to the Commission by August 1st, 1997. This date was the statutory deadline of fifty-six days after polling day at the Dáil election.

A total of 194 donation statement and statutory declaration forms were received by the Commission by August 1st, 1997. In a number of these cases it was necessary to correspond with the candidate to achieve full and correct completion of the form. On August 25th, 1997

a letter was sent by registered post to 85 candidates who, by that time, had failed to return their donation statement and statutory declaration form to the Commission. It was pointed out to these candidates that an offence was being committed by their failure to return the form.

On September 5th, 1997 the Commission requested advice from the Office of the Director of Public Prosecutions on the treatment of the candidates who had failed to return their donation statement and statutory declaration forms. On September 24th the Commission was advised by the Office of the Director of Public Prosecutions that in cases where a donation statement and statutory declaration was not furnished to the Commission, the relevant files should be referred by the Commission to Garda Headquarters for investigation. Following discussions with the appropriate Chief Superintendent, the Commission, on October 24th, 1997, sent copies of files to Garda Headquarters in respect of the 18 unsuccessful Dáil candidates who still had not furnished a donation statement and statutory declaration. Prosecutions have been taken in a number of these cases.

Copies of completed donation statement and statutory declaration forms received from unsuccessful Dáil candidates were laid before the Houses of the Oireachtas in accordance with section 24(7)(a) of the Electoral Act. Public notices were placed in newspapers and a Press Release was issued by the Commission advising that copies of these forms were available for public inspection at the offices of the Commission, in accordance with section 73(b).

Seanad Éireann General Election of August 6th, 1997

The election of August 6th, 1997 to Seanad Éireann was the first Seanad election to be covered by the provisions of the Electoral Act. On July 11th, 1997 a copy of the Commission's *Guidelines for political parties, members of either House of the Oireachtas, representatives in the European Parliament and candidates at Dáil, Seanad and European elections on steps to be taken concerning donations, anonymous donations and the appointment of officers under Part IV and Section 71 of the Act* was sent to all 137 candidates standing for election. (The guidelines were subsequently issued to the Taoiseach's

11 nominees to the Seanad.)

The Commission provided the 88 unsuccessful candidates at the Seanad election with a donation statement and statutory declaration form (Form ELAS - 1U) on September 5th, 1997. The legal requirements in relation to the donation statement and statutory declaration of an unsuccessful Seanad candidate are the same as those applying to unsuccessful Dáil candidates as outlined above.

The candidates were requested to complete and return the form to the Commission by October 1st, 1997, the statutory deadline of fifty-six days after polling day at the Seanad election.

A total of 70 donation statement and statutory declaration forms were received by the Commission by October 1st. In a number of these cases it was necessary to correspond with the candidate to achieve full and correct completion of the form. On October 7th, 1997 a letter was sent by registered post to the 18 candidates who had failed to return their donation statement and statutory declaration form. The letter pointed out that it was an offence to fail to return the form.

On October 24th, 1997 copies of files in respect of two unsuccessful Seanad candidates who still had not furnished a donation statement and statutory declaration were sent by the Commission to Garda Headquarters for investigation. These candidates subsequently furnished a donation statement and statutory declaration and no further action was taken.

In accordance with section 24(7)(a) of the Electoral Act, the Commission laid copies of completed donation statement and statutory declaration forms received from unsuccessful Seanad candidates before both Houses of the Oireachtas. In addition, public notices were placed in newspapers and a Press Release was issued advising that copies of these forms were available for public inspection, in accordance with section 73(b) of the Electoral Act.

Presidential Election of October 30th, 1997

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

On September 30th, 1997 a copy of the Commission's *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* was sent to the five presidential election candidates and their election agents. A copy of the guidelines was also sent to each political party registered to contest elections in the State.

A donation statement and statutory declaration form (ELAP1) was sent on September 30th, 1997 to each of the five presidential election agents for completion and transmission to the Commission within the fifty-six day period after polling day at the election, as specified in section 48(1) of the Electoral Act. The statutory deadline of fifty-six days after polling day at the presidential election was December 25th, 1997.

The legal requirements in relation to the donation statement and statutory declaration of a candidate at a presidential election are as follows:

- Section 48(1) of the Electoral Act provides that the presidential election agent of each candidate at a presidential election shall furnish to the Commission, not later than the fifty-sixth day after the polling day at the election, a written statement, known as a presidential election donation statement, indicating whether or not the candidate received a donation in relation to the election which exceeded £500 in value. For each such donation, the presidential election agent must indicate the value of the donation as well as the name, description and postal address of the person who made, or on whose behalf, the donation was made.
- Section 48(2) provides that each donation statement shall be accompanied by a statutory declaration made by each presidential election agent stating that, to the best of the

person's knowledge and belief, the donation statement is correct in every material respect and that the person has taken all reasonable action in order to be satisfied as to the accuracy of the statement.

As required by section 50(5) of the Electoral Act, the presidential returning officer notified the Commission of the names and office addresses of the presidential election agents.

Following consideration by the Commission of the donation statement and statutory declaration forms, and other information requested from the presidential election agents, the appropriate material will be laid before the Houses of the Oireachtas and will be put on public display. Public notices will be placed in newspapers advising that copies of these forms are available for public inspection, in accordance with section 73(b).

Members of the Oireachtas, Representatives in the European Parliament and Political Parties

Part IV of the Electoral Act provides that members of both Houses of the Oireachtas, representatives in the European Parliament and political parties have to disclose, on an annual basis, donations received for political purposes. The legal requirements in relation to the donation statement and statutory declaration of a member of the Oireachtas or a representative in the European Parliament are as follows:

- Section 24(1)(a) provides that a member of the Oireachtas or a representative in the European Parliament shall furnish to the Commission, not later than January 31st in every year, a written statement in respect of the preceding year indicating whether the person received a donation which exceeded €500 in value. For each such donation, the statement must indicate the value of the donation as well as the name, description and postal address of the person who made or on whose behalf the donation was made.
- Section 24(3) provides that each donation statement shall be accompanied by a statutory declaration made by the person by whom the statement is furnished that, to the best of the person's knowledge and belief, the statement is correct in every material respect and

that the person has taken all reasonable action in order to be satisfied as to the accuracy of the statement.

In relation to a political party, the requirements are:

- Section 24(1)(b) provides that each political party shall furnish to the Commission, not later than March 31st in every year, a written statement in respect of the preceding year indicating whether the party received a donation which exceeded £4,000 in value. For each such donation, the party's statement must indicate the value of the donation as well as the name, description and postal address of the person who made or on whose behalf the donation was made. The donation statement of a political party is made by an appropriate officer appointed in accordance with section 71(1).
- Section 24(3) provides that each donation statement shall be accompanied by a statutory declaration made by the person by whom the statement is furnished that, to the best of the person's knowledge and belief, the statement is correct in every material respect and that the person has taken all reasonable action in order to be satisfied as to the accuracy of the statement.

The first annual donation statements and statutory declarations furnished to the Commission by political parties, members of the Houses of the Oireachtas and representatives in the European Parliament will be laid before each House and will be available for viewing and copying by the public as soon as they have been examined and the Commission is satisfied that they are satisfactory.

Contacts with other bodies in 1997

In November and December, 1997 the Commission's Secretariat attended meetings of a number of the parliamentary parties in Dáil and Seanad Éireann and provided a briefing on the obligations attaching to members of the Houses and political parties under the Electoral Act.

The Chairman and the Secretary to the Commission met a Ministerial delegation from the People's Republic of China to discuss, inter alia, Ireland's ethics and electoral legislation. A meeting on the same topic also took place with a delegation from the Office of the President of the Republic of South Africa.

The Secretary participated in an expert group on the development of ethics legislation which was established under the auspices of the United States National Democratic Institute for International Affairs.

The Secretary represented the Commission at a conference held by the OECD in Paris entitled "Ethics in the Public Sector : Challenges and Opportunities for OECD Countries".

Appendix 1

Commission Costs in 1997

The following costs were incurred by the Commission in 1997. The expenditure is provided for in Subhead B of Vote 17 [Office of the Ombudsman]:

	£'000s
Staff Salaries	129
Travel and Subsistence	1
Incidental Expenses	42
Postal and Telecommunications	5
Office Machinery and other office supplies	25
Office Premises Expenses	3
Legal Fees and Consultancy	<u>7</u>
	212

Appendix 2

Statements Furnished to the Commission (Ethics)

Statements Received	1995/ 1996	1996/ 1997	1997/ 1998
Annual Statements under Section 13 (Office Holders' Additional Interests)	35	34	32
Annual Statements under Section 16 (Interests of the Attorney General)	1	1	0
Annual Statements under Section 17 (Interests of Designated Directors)	-	222	480
Annual Statements under Section 19 (Interests of Special Advisers)	64	56	65 *
Annual Statements under Sections 14,16, and 19 (Material Interest)	5	-	-

* includes 42 Statements on Leaving of Special Advisers.

Appendix 3

Requirements in Relation to Statements (Ethics)

Office holders

The Clerk of each House is required, within 60 days of the annual registration

date, or as soon as possible thereafter, to provide to the Commission a copy of the register of interests established for members of each House. The registers, which are laid by each Clerk before the appropriate House and published in *Iris Oifigiúil*, contain the annual statements of members' (including office holders) own registrable interests. Each Clerk is also required to provide to the Commission a copy of the annual statements of office holders' additional interests (i.e. registrable interests of spouses and children which could materially influence the office holders in performing their functions). It should be noted from this that office holders should furnish both statements to the appropriate Clerk and not to the Commission. The standard form to be used by office holders for declaring their own interests as a member of a House of the Oireachtas is supplied by the appropriate Clerk. The form for additional interests is available from the Department of Finance.

Each Clerk also furnishes to the Commission a copy of any statement of:

- a change in an office holder's additional interests;
- an office holder's additional interests not already declared;
- an office holder's additional interests declared as a result of guidelines or advice issued by the Commission;
- the additional interests of a person who becomes an office holder after a registration date.

There is also an obligation to furnish a statement where an office holder proposes to perform a function of the office and he/she, or a connected person, has a material interest in a matter to which the function relates. The statement in that case is furnished by the office holder to the Commission. In circumstances where an office holder, or a connected person, has a material interest and the office holder proposes to make a request to another office holder in relation to the performance of a function by the other office holder, the second office holder (who must be made aware of the facts) is required to furnish a statement to the Commission and to the Taoiseach.

It may be useful, in this context, to explain that a person, or a connected person, has a "material interest" in a matter if the consequence or effect of the performance by the person of a function of his/her office, or any decision made in relation to, or in the course of, or as a result of, the performance of such a function by the person, concerning that matter may be to confer on, or withhold from, the person, or a connected person, a significant benefit without also conferring it on, or withholding it from, persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person, or the connected person, is a member.

The Attorney General

An Attorney General, who is not a member of either House, must furnish to the Commission (and to the Taoiseach) an annual statement of his/her own registrable interests and additional interests. These are the registrable interests by which he/she could be materially influenced in performing his/her functions. The single standard form for disclosing the Attorney's own and additional interests is supplied by the Department of Finance. A second requirement arises where a function falls to be performed by the Attorney and he/she, or a connected person, has a material interest in a matter to which the function relates. In those circumstances, a statement of the facts and of the nature of the interest must be furnished to the Taoiseach and to the Commission. This second statement would be required whether or not the interest had been disclosed in the annual statement.

Designated directors and special advisers

Designated directors and special advisers must also furnish to the Commission (and to an officer of the body in the case of the former and the relevant office holder in the case of the latter) an annual statement of their own registrable interests and additional interests by which they could be materially influenced in performing their functions. The standard forms for disclosing these interests are supplied by the Department of Finance. They must also furnish a statement where a function falls to be performed by them in which they, or a connected person, have a material interest. Such a statement would be furnished by a designated director to the other directors of the body and, if they proposed to perform the function, to the Commission. Special advisers would furnish their statements of a material interest to the Commission and to the relevant office holder whether or not they proposed to perform the

function. It is worth pointing out that designated directors and special advisers should not perform a function where a material interest arises unless there are compelling reasons for doing so which are notified to the appropriate parties outlined above.

Designated positions

In the case of holders of designated positions, e.g. senior civil servants, senior management in State bodies, annual statements are required to be furnished to the relevant authority within the body and not to the Commission (but are available to the Commission). The standard form for disclosing these interests is supplied by the Department of Finance. Where a function falls to be performed by them in which they, or a connected person, have a material interest they should furnish statements to the relevant authority within the body only. As in the case of designated directors and special advisers, persons in designated positions should not perform a function where a material interest arises unless there are compelling reasons for doing so which are notified to the relevant authority.

The legislation requires the Attorney General, designated directors, persons in designated positions and special advisers to furnish a statement of registrable interests when leaving a position. The statement should cover the period from the last previous registration date, or the date of appointment if this was later, to the date on which the appointment ended. It is worth pointing out also that provision is made in the legislation for furnishing, on a voluntary basis, statements relating to interests or additional interests (spouses and children) that are not registrable interests as specified in the Second Schedule to the Ethics Act .

It is a requirement of the Act that statements of interests furnished under the Act be retained for a period of 15 years, with the exception of statements of their own interests furnished to each Clerk, as appropriate, by members of each House, including office holders, which are entered in a register. The Commission can request and have furnished to it a copy of any such statements. The same provision applies to any information furnished to the Secretary of the Government relating to gifts to office holders or property or services offered or supplied to office holders.

The table below clarifies to whom annual statements under the Act should be sent:

Category	Statement of Registrable Interests	Statement of Additional Interests (spouses and children)	Other
Office Holder	Clerk of House	Clerk of House	Registrable Interests published in Register of Members' Interests. Copy of Additional Interests forwarded to POC* by Clerk.
Special Adviser	Office Holder & POC	Office Holder & POC	Registrable Interests laid before Houses of the Oireachtas by Office Holder.
Designated Position	Relevant Authority [Civil Service: Secretary General or equivalent] [Wider Public Service: specified in appendix to POC guidelines for public servants]	Relevant Authority	
Designated Director	Appropriate Officer in Body [specified in appendix to POC guidelines for public servants] & POC	Appropriate Officer in Body & POC	

* Public Offices Commission

Appendix 4

Investigation Procedure (Ethics)

In circumstances where the Commission might decide that it was appropriate to carry out an investigation, there are a number of provisions in the Ethics Act which would govern the conduct of the investigation. The following paragraphs outline the main features of those provisions, including the powers of the Commission to compel witnesses and documents.

The Commission would hold sittings for the purpose of an investigation where it would receive submissions and such evidence as it thought fit. The legislation provides that sittings of the Commission for the purposes of an investigation may be held in private.

The subject of the investigation would be given a statement of the alleged contravention of the Ethics Act, the names of proposed witnesses, a copy of each statement intended to be used at the Commission sitting and a written indication of the nature and source of any information which may be favourable to the subject and of which he/she may be unaware.

The subject of the investigation and the complainant would be entitled to be present at the relevant sitting of the Commission and the subject would be entitled to present his/her case in person or through a legal or other representative. Written statements would be admissible as evidence to the Commission with the consent of the subject.

At the investigation hearing, provision would be made for examination by the Commission of witnesses called by the Commission and for their cross-examination by the subject of the investigation. Provision would also be made for the examination by the subject of his/her own witnesses and for their cross-examination by the Commission. The Commission would determine whether such examination would occur under oath. A witness before the Commission would be entitled to the same privileges and immunities as a witness in a court.

For the purpose of an investigation hearing, the Chairman of the Commission would be entitled to :

- direct the subject of an investigation to attend before the Commission as specified in relation to date, time and place;
- direct any other person whose evidence is required to attend before the Commission to give evidence and to produce any specified item;
- direct any person who is before the Commission, other than the subject of the investigation, to produce any specified item;
- direct any person to send to the Commission any specified item;

and to give any other directions that appear to the Chairman to be reasonable and just.

The Commission would be required to pay the reasonable expenses of any witnesses whom it directs to attend before it. In addition, with certain exceptions, the Commission would be entitled, where it determined following an investigation that a complaint was frivolous, vexatious or without reasonable grounds, to order that amounts (not exceeding £1,500), being the reasonable costs and expenses incurred by any person before it, be paid to the person by the complainant.

A person who failed to co-operate with the Commission would be guilty of an offence. This would include refusal to attend before the Commission, to take the oath, to answer questions, to produce any item or to fail to send to the Commission any such item, or any other action or inaction which in a court would be regarded as contempt. A person who gave false evidence before the Commission would be guilty of the offence of perjury. A person found guilty of an offence under the Ethics Act would be liable, on summary conviction, to a fine of up to £1,000 and/or imprisonment for up to 6 months and, on indictment, to a fine of up to £20,000 and/or imprisonment for up to 3 years.

Investigation Reports

The Commission would be required to report in writing on the result of an investigation under the Ethics Act. The report would be furnished by the Commission to :

- the subject of the investigation;
- the person who made the complaint;
- in the case of an office holder determined by the Commission as having contravened the legislation, the appropriate Select Committee on Members' Interests;
- in any other case, the Minister for Finance or the relevant Minister where the subject of the investigation occupied a position within a Department of State or Office.

The report of an investigation would set out the findings of the Commission including its determination as to whether there had been a contravention of the Ethics Act and whether the contravention was continuing. If the contravention was continuing the report would indicate the steps required to be taken to secure compliance with the legislation and the timescale for taking such steps. A report, where a contravention had been determined, would indicate :

- whether the contravention was inadvertent, negligent, reckless or intentional;
- whether, in all the circumstances, the contravention was serious or minor;
- whether the person acted in good faith and in the belief that his/her action accorded with guidelines published or advice given in writing.

Where a report of an investigation was furnished by the Commission to a Select Committee, the Committee would be required to lay a copy of the report before the House concerned.

The House could :

- (a) take note of the report;
- (b) censure the office holder or other member concerned or
- (c) suspend the office holder or other member concerned from the service of the House for up to 30 days or, if the contravention was continuing, for a longer period as may be required to secure compliance with the Ethics Act.

If the Commission's report determined that the office holder or member acted in good faith and in the belief that his/her actions were in line with guidelines issued or advice given in writing, the taking of the actions referred to in (b) and (c) above would not be recommended.

In a case where a report of the Commission was furnished to a Minister of the Government, and it included a determination that there had been a contravention of the Ethics Act by a public servant, and that the contravention was a serious matter, the Minister would be required to lay a copy of the report before each House.

If the Commission, during or after an investigation, formed the opinion that the person being investigated may have committed an offence relating to the performance of his/her functions, it would report, in writing, to the Director of Public Prosecutions. This could arise, for instance, if evidence of corruption was disclosed by the investigation. The Commission would attach to its report any relevant item in its possession. The Director of Public Prosecutions would notify the Commission as to whether or not proceedings had been brought and of the outcome (including any appeal, rehearing or retrial). In those circumstances the Commission's investigation report would include the report to the Director of Public Prosecutions and the notification received by the Commission from the Director.

If the Commission adjourned or postponed investigation proceedings or was advised by the Director of Public Prosecutions that proceedings had been taken in response to its report, the Ethics Act provides that it may prepare an interim report and furnish it to the relevant parties as it saw fit.

Where a contravention of the legislation was not determined, the investigation report would state whether the Commission was of the opinion that the complaint was frivolous, vexatious or without reasonable grounds. As pointed out earlier, if such a conclusion was reached the Commission could, in certain circumstances, order that amounts (not exceeding £1,500), being the reasonable costs and expenses incurred by any person before it, be paid to the person by the complainant.