

# **Dáil General Election**

**17 May 2002**

**Election Expenses Statements and Statutory Declarations  
received from election agents of candidates, national agents  
of political parties and other persons at the above election**

**Report by the Standards in Public Office Commission  
to the  
Chairman of Dáil Éireann (Ceann Comhairle)  
in accordance with  
section 4(1) of the Electoral Act, 1997**

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# Chapter 1.

## Introduction

This report is being furnished to the Chairman of Dáil Éireann (Ceann Comhairle) pursuant to the provisions of section 4(1) of the Electoral Act, 1997 (the 1997 Act).

The report deals with expenditure on behalf of candidates, political parties and other persons at the Dáil general election of 2002 and the reimbursement of election expenses to qualified candidates.

For the purpose of the report,

- the 1997 Act,
- the Electoral (Amendment) Acts, 1998, 2001, 2002 and
- the Electoral (Amendment) (No. 2) Act, 2002

are referred to collectively as the Electoral Acts.

The 28th Dáil was dissolved on 25 April 2002. Polling for the general election to the 29th Dáil took place on 17 May 2002. This was the second Dáil general election to have taken place since the introduction of the 1997 Act. It was, however, the first Dáil general election to which the full provisions of the Electoral Acts, relating to the disclosure and limitation of donations and the limitation, disclosure and reimbursement of election expenses, applied.

In accordance with the provisions of Part IV of the Electoral Acts, unsuccessful candidates at the Dáil general election were required, within 56 days after polling day (i.e. by 12 July 2002), to furnish to the Standards in Public Office Commission (the Standards Commission) a Donation Statement, and accompanying documentation, giving details of all donations, with a value greater than €634.87, received by them in relation to the election. The Standards Commission furnished a report to the Ceann Comhairle on 31 October 2002 regarding Donation Statements and accompanying documentation received from unsuccessful candidates at the Dáil general election.

Successful candidates at the election are required, as members of Dáil Éireann, to furnish to the Standards Commission, by 31 January each year, an annual Donation Statement and accompanying documentation. The Donation Statements furnished to the Standards Commission in respect of 2002 by members of Dáil Éireann included details of any donations received by them during 2002 in relation to the Dáil general election. The Standards Commission furnished a report to the Ceann Comhairle on 30 April 2003 concerning Donation Statements furnished, in respect of 2002, by members of the Houses of the Oireachtas and representatives in the European Parliament.

The Electoral Acts also provide that the election agent of each candidate (successful and unsuccessful) at a Dáil election is required to furnish an Election Expenses Statement to the Standards Commission within 56 days after polling day. The

Election Expenses Statement must include details of all expenses incurred and payments made by the election agent on behalf of the candidate at the election. An Election Expenses Statement is also required from the national agent of each political party with candidates contesting the election.

As a result of the State's appeal to the Supreme Court in the case of *Desmond Kelly and the Minister for the Environment and Local Government, Ireland and the Attorney General* (the Kelly case - see Chapter 7 below), the date by which Election Expenses Statements for the Dáil general election were required to be furnished to the Standards Commission was extended. The Electoral (Amendment) (No. 2) Act, 2002 provided that the date for furnishing Election Expenses Statements would be 31 October 2002, or 21 days following the date of the Supreme Court judgment in the Kelly case, whichever was the later. The judgment was delivered on 29 November 2002. Accordingly, the date by which Election Expenses Statements were required to be furnished to the Standards Commission was 20 December 2002.

In addition to reporting on the information contained in the Election Expenses Statements, the Standards Commission will be commenting in this report on issues which impacted on its supervision of spending at the Dáil general election, in particular:

- the definition of the election period,
- amendments to the legislation introduced by the Electoral (Amendment) Act, 2001 and
- the further implications of the Kelly case.

## Chapter 2.

### Relevant sections of the legislation

**Part V** of the Electoral Acts provides a framework for spending on behalf of political parties and candidates at Dáil elections. The provisions which are relevant to the supervisory role of the Standards Commission are set out below.

#### a) Definition of Election Expenditure:

**Section 31(1) of the Electoral Acts**, by reference to **paragraph 1 of the Schedule to the Electoral Acts**, provides a definition of what constitutes election expenditure (see Chapter 3 below).

**Section 31(2) of the Electoral Acts** provides that a donation of property, goods or services, which is received free or below cost, and is used at the election during the election period, is an election expense which must be accounted for at its full commercial price, subject to an allowance for any normal or general discount.

**Paragraph 2 of the Schedule to the Electoral Acts** provides a list of items which are not regarded as election expenses (see Chapter 4 below).

#### b) Appointment of agents:

Each political party with candidates contesting a Dáil general election is required under **section 28(1) of the Electoral Acts** to appoint a national agent for the purpose of incurring expenditure on the party's behalf at the election. The party must notify the Standards Commission of the name and office address of the national agent. The Standards Commission publishes details of the national agents appointed by each political party in *Iris Oifigiúil*.

Each candidate at the general election is required under **section 28(2) of the Electoral Acts** to appoint an election agent for the purpose of incurring expenditure on the candidate's behalf at the election. A candidate may act as his / her own election agent. In such circumstances, the candidate will be subject to the provisions of the legislation both as a candidate and as an election agent. The returning officer for each constituency is required **under section 28(6)(b)** to notify the Standards Commission of the names and addresses of the candidates standing for election in the constituency together with details of the election agents appointed by those candidates.

Pursuant to **section 28(4) of the Electoral Acts** a candidate or a political party may revoke the appointment of an election agent or a national agent and, in accordance with **section 28(5) of the Electoral Acts**, appoint another person to act as election agent or as national agent.

In accordance with **section 31(5) of the Electoral Acts**, election agents and

national agents may authorise (within specified financial limits) other persons to incur expenditure on their behalf at the general election. Election agents and national agents must account for expenditure incurred by such authorised persons.

**c) Spending limits for the Dáil general election:**

**Section 32(1)(a) of the Electoral Acts** provides that the spending limits at a Dáil general election are:

- €25,394.76 per candidate in a 3 seat constituency
- €31,743.45 per candidate in a 4 seat constituency
- €38,092.14 per candidate in a 5 seat constituency

**In accordance with section 32(1)(b) of the Electoral Acts**, a candidate of a political party may assign part, or all, of his / her expenditure limit to a political party for spending by the party's national agent. The amount assigned to the party must be agreed in writing between the party and the candidate. It should be noted that the legislation is not specific in regard to when this assignment should be made. It is assumed that the agreed amount would be assigned before the election.

The total amount available to the national agent of a political party to spend at the election is the sum of the amounts assigned by each of the party's candidates to the party (**section 32(2) of the Electoral Acts**). Whatever amount is assigned to the party by a candidate is not available for spending by the candidate's election agent. Total expenditure in respect of a candidate by both the candidate's election agent and the party's national agent may not exceed the constituency spending limit applying to the candidate.

**d) Election Expenses Statements:**

The national agent of a political party, the election agent of a candidate and any person incurring election expenses pursuant to section 31(7), referred to below, is required under **section 36 of the Electoral Acts** to furnish an Election Expenses Statement to the Standards Commission. The Election Expenses Statement must normally be provided within 56 days after polling day at the election.

The Election Expenses Statement must show all election expenses incurred by the agent or person at the election. It must include details of items which were provided free of below cost, i.e. benefits-in-kind, as well as details of any claims which are in dispute and details of claims for payment which were not received within 45 days after polling day and must not, therefore, be paid.

**Section 31(9) of the Electoral Acts** provides that a receipt, invoice or voucher must be provided for every payment of an election expense exceeding €126.97.

**Section 36(2) of the Electoral Acts** provides that an Election Expenses Statement must be accompanied by a Statutory Declaration stating that, to the best of the agent's knowledge and belief, the Election Expenses Statement is correct in every

material respect and that all reasonable action has been taken to ensure its accuracy.

**e) Overspending:**

In accordance with sections **40(b) and 43(2)(a) of the Electoral Acts** an election agent will have overspent at the election if the amount of expenditure incurred by him / her exceeds the amount of the expenditure limit retained by the candidate pursuant to section 32(1)(b) above.

The national agent of a political party will have overspent if the total amount of expenditure incurred by him / her exceeds the total sum assigned to the party by the party's candidates pursuant to section 32(2) above. A national agent will also be deemed to have overspent if the amount of expenditure incurred by him / her on a particular candidate exceeds the amount assigned to the party by that candidate.

The consequences of an overspend by an election agent or a national agent at the election are:

- i) it is an offence punishable by a fine of up to €1,269.74 (**section 43(2)(a) and 43(5) of the Electoral Acts**);
- ii) a person can petition the High Court to set aside the result of the election (**section 44 of the Electoral Acts**);
- iii) where the overspend has been incurred by the candidate's election agent the amount of the overspend may be deducted from any reimbursement of election expenses due to the candidate under section 21 of the Electoral Acts (**section 40 of the Electoral Acts**);
- iv) where the overspend has been incurred by the national agent of a political party the amount of the overspend may be deducted from any payment which may be due to the party from the Exchequer under the Electoral Acts (**section 40 of the Electoral Acts**).

**f) Reimbursement of election expenses:**

**Section 21 of the Electoral Acts** provides for the reimbursement of election expenses to qualified candidates. In order to qualify, candidates at a Dáil general election must either:

- (i) have been elected, or
- (ii) if not elected, have exceeded, at any stage of the counting of votes at the election, one quarter of the quota for the constituency.

The Minister for the Environment and Local Government is required under **section 17(4) of the Electoral Acts** to provide to the Standards Commission and the

Minister for Finance, as soon as may be after the result in each constituency is announced, details of those candidates elected or otherwise qualified for a reimbursement of their election expenses.

The maximum amount which may be reimbursed to a qualified candidate is the lesser of €6,348.69 or the actual expenses incurred on the candidate. Expenses incurred by a political party on a qualified candidate in his / her constituency are reckonable under **section 32(4)** of the Electoral Acts for the purposes of calculating the amount which may be reimbursed to the candidate. In order to obtain payment a candidate must apply to the Standards Commission for the amount of the reimbursement.

**g) Responsibilities of the Standards Commission with regard to Part V of the Electoral Acts:**

**Section 4(1) of the Electoral Acts** requires the Standards Commission to consider every Election Expenses Statement furnished to it and, where it considers it appropriate to do so, to furnish a report in writing to the Ceann Comhairle on any matter arising in relation to such statements. The Standards Commission considered that, as a matter of public record, it was appropriate to furnish such a report. In accordance with **section 4(5) of the Electoral Acts** all such reports furnished by the Standards Commission must be laid before the Houses of the Oireachtas.

Where, following consideration of an Election Expenses Statement, the Standards Commission considers that there may be a minor error or omission, it may, pursuant to **section 4(2) of the Electoral Acts**, notify the person who furnished the statement of the error or omission and afford him / her 14 days to rectify the error or make good the omission.

Where, following consideration of an Election Expenses Statement, the Standards Commission considers that a contravention of the legislation may have occurred, it is required **under Section 4(3) of the Electoral Act 1997** to notify the person who furnished the statement of the possible contravention and afford him / her 14 days to furnish any comments he / she may have. The Standards Commission must consider any comments provided by the person. If, having considered such comments, the Standards Commission continues to be of the opinion that a contravention of the legislation may have occurred, it must furnish a report on the matter, together with any relevant documentation, to the Director of Public Prosecutions.

**Section 4(4) of the Electoral Acts** provides that the Standards Commission may make such inquiries as it considers appropriate and may require any person to furnish any information, document or thing which the Standards Commission may require for the purposes of carrying out its duties under the Electoral Acts.

**Sections 4(6) and 4(7) of the Electoral Acts** provide that the Standards Commission may publish guidelines or give advice to any person to whom a provision of the Electoral Acts applies. In accordance with **section 4(11) of the**

**Electoral Acts** a person must act in compliance with the advice given or guidelines published, unless by so doing he / she would be contravening another provision of the Electoral Acts.

**Section 21(d) of the Electoral Acts** provides that the Standards Commission must certify to the Minister for Finance that a reimbursement of election expenses may be paid and must provide details to the Minister of the amount to be reimbursed.

The Standards Commission is required under **section 28(6)(a) of the Electoral Acts** to publish, in *Iris Oifigiúil*, details of the national agents appointed by each political party.

The Standards Commission is required under **section 37(1) of the Electoral Acts** to lay a copy of each Election Expenses Statement received by it before the Houses of the Oireachtas.

In accordance with **section 73 of the Electoral Acts** the Election Expenses Statements received by the Standards Commission, together with any relevant invoices or receipts, must be retained at its office for a period of 3 years and be made available to the public for inspection and copying.

#### **h) Other relevant provisions**

**Section 31(6) of the Electoral Acts** provides that where election expenses are incurred at a Dáil election by a body which -

- i) was established by or on behalf of a political party or candidate for the purposes of incurring election expenses or making payments in respect of election expenses, or
- ii) is a member of or is a branch or subsidiary organisation of a political party, or
- iii) is effectively controlled by a political party or candidate or is or appears to be so connected with or associated with a political party or candidate that a reasonable person would believe that it is controlled or substantially influenced by that political party or candidate,

the expenses will be deemed to have been incurred on behalf of the candidate or party concerned and must be accounted for by the relevant election agent or national agent.

A person (including a "third party") who intends incurring expenditure at a Dáil general election and who is not the national agent of a political party, the election agent of a candidate or a person authorised by either agent to incur election expenses, must, pursuant to **section 31(7) of the Electoral Acts**, notify the Standards Commission of the proposed expenditure and provide details of the person proposing to incur the expenditure.

A "third party" is defined under **section 22(2)(aa) of the Electoral Acts** as a person,

*other than a registered political party or a candidate at an election who receives a contribution for political purposes which exceeds € 126.97 in value. As soon as may be after the receipt by it of a donation valued in excess of € 126.97 a third party is required under **section 23(c) of the Electoral Acts** to register with the Standards Commission.*

**Section 31(10) of the Electoral Acts** provides that the publisher of a newspaper, magazine or other periodical publication shall not publish any advertisement or notice in relation to the general election purporting to promote or oppose, directly or indirectly, the interests of a political party or a candidate at the election, unless requested to do so by one of the following people:

- the national agent of a political party, or a person authorised in writing by such agent.
- a candidate at the election, a candidate's election agent or a person authorised in writing by such candidate or agent.
- a person who produces to the publisher a certificate from the Standards Commission confirming that the person has complied with section 31(7) of the Electoral Acts.

**Section 34 of the Electoral Acts** provides that election expenses incurred at a Dáil general election may not be paid if a claim for payment has not been received by the relevant agent within 45 days of the date of the election. The election expense must, however, be accounted for in the Election Expenses Statement.

**Section 35 of the Electoral Acts** provides for the resolution of disputes relating to claims for payment of election expenses which were received within the 45 day period.

#### **i) Offences and penalties:**

The following offences and penalties are provided for in **section 43 of the Electoral Acts**:

If a person who is not authorised to do so incurs expenditure or makes a payment in relation to the election, he or she, on conviction, can be fined up to €1,269.74.

The penalty if an election agent or national agent is found guilty of the offence of breaching the expenditure limits is a fine of up to €1,269.74.

Payment of claims by an election agent or national agent which were received more than 45 days after polling day can result in a fine of up to €1,269.74.

Failure by an election agent, a national agent or other person (notified to the Standards Commission in accordance with section 31(7)) to furnish an Election Expenses Statement and Statutory Declaration to the Standards Commission by the statutory deadline can result in a fine of up to €1,269.74 and an on-going fine of up to €126.97 per day for each day, after a conviction, on

which the Statement and Declaration are still outstanding.

If an election agent, a national agent or other person (notified to the Standards Commission in accordance with section 31(7)) knowingly furnishes a false or misleading Election Expenses Statement to the Standards Commission the penalty is a fine of up to €25,394.76 and / or up to 3 years imprisonment.

The penalty in the case of a publisher of a newspaper, etc., who is found guilty of publishing any advertisement or notice in relation to the general election in contravention of section 31(10) of the Electoral Acts, is a fine of up to €1,269.74.

## Chapter 3.

### Definition of what constitutes election expenses

Section 31(1) of the Electoral Acts provides that election expenses are those and only those set out in paragraph 1 of the Schedule to the Electoral Acts, which are incurred on the provision of property, goods or services for use at the election during the **election period** (see Chapter 5 below for a definition of the election period) in order:

- (i) to promote or oppose the interests of a political party or the election of a candidate, or
- (ii) to present the policies of a political party or the comments of a political party on the policies of another political party or a candidate at the election, or
- (iii) to solicit votes for or against a candidate at an election, or
- (iv) to present the policies of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate on the policies of a political party or another candidate at the election, or
- (v) otherwise to influence the outcome of the election.

The provision of property, goods or services free or below cost which are used at the election during the election period is regarded as an election expense which must be accounted for at full commercial price, subject to an allowance for any normal or general discount.

The expenses set out in paragraph 1 of the Schedule to the Electoral Acts are as follows:

- (a) Advertising (whatever the medium used).**  
Expenses in respect of such advertising include agency fees, design costs and other costs incurred in connection with preparing, producing, distributing or otherwise disseminating such advertising.
- (b) Publicity.**  
Expenses in respect of that matter include expenses incurred in respect of party political broadcasts, the provision of any services or facilities in connection with press conferences or other dealings with the media, media advice and training and photography.
- (c) Election posters.**  
Expenses in respect of such material include the costs of the design, production, printing, erection and removal of election posters.
- (d) Other election material.**  
Expenses in respect of such material include the design, production, printing

and dissemination of such material (other than posters), including canvas cards, election leaflets, election manifestos, newsletters and other promotional election material.

**(e) Office and stationery.**

Expenses in respect of those matters include costs incurred in the rental or use of an office premises or meeting rooms for election purposes (other than for the purposes of annual or other party conferences) and the costs of heating, electricity, insurance, purchase or rental of office equipment, telephones, stationery and postage.

**(f) Transport and travel.**

Expenses in respect of those matters include expenses incurred on transport and travel (by any means), petrol and diesel, rental or use of campaign vehicles, rental or use of vehicles for transport of voters on polling day, accommodation costs, taxi and hackney services and courier services.

**(g) Market research.**

Expenses in respect of that matter include expenses incurred in the taking of an opinion poll or other similar survey relating to an election within the period of 60 days before polling day at the election (*which in the case of the Dáil general election was 18 March 2002*) by or on behalf of a political party, a political group or a candidate at the election.

**(h) Campaign workers.**

Expenses in respect of that matter include payments to campaign workers, insurance and other costs.

## Chapter 4.

### Matters which are not regarded as election expenses

Paragraph 2 of the Schedule to the Electoral Acts provided that the following shall not be regarded as election expenses:

- (a) any of the matters referred to in subparagraphs (i) to (v) of section 22(2)(b) of the Electoral Acts as follows:
- (i) free post service provided to candidates (i.e. Litir um Thoghcán);
  - (ii) any payment, service or facility provided to a person out of public funds or moneys provided by an institution of the European Communities or other intergovernmental organisation to which the State is a party, pursuant to specified legislation, by virtue of the person being:
    - *a representative in the European Parliament;*
    - *a member of either House of the Oireachtas;*
    - *the holder of a qualifying office or position;*
    - *the holder of an elective or other public office; or*
    - *a member of, delegate to or representative in a body established by or under an agreement or arrangement to which the State is a party;*
  - (iii) a free service provided by an individual, including use of the individual's motor vehicle, where the service is not part of the individual's work or business, or  
  
a service provided at an election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit in kind other than his or her normal remuneration (including recoupment of expenses) for that service;
  - (iv) normal media coverage on radio or television or in newspapers, magazines, etc.;
  - (v) the transmission on radio or television of a broadcast on behalf of a candidate or a political party;
- (b) election expenses incurred at a previous Dáil, European Parliament or local election which were disclosed in an Election Expenses Statement furnished to the Standards Commission (or its predecessor the Public Offices Commission) or to a local authority;
- (c) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds;

- (d) necessary travelling expenses incurred by a candidate or an assessor in meeting the requirements of section 46(4A) and (4B) of the Electoral Act of 1992 and section 12(1A) and (1B) of the Electoral Act of 1997;
- (e) the cost of purchasing copies of the register of electors;
- (f) the reasonable living expenses (including accommodation) of a candidate and volunteers working on his or her behalf (*the Standards Commission determined that an amount of €20 per person per day (not including accommodation) would be regarded as reasonable living expenses*);
- (g) any sum disbursed by any individual out of the individual's own resources for any minor expenses (not exceeding €126.97 in any one payment) lawfully incurred in relation to the election if the said sum is not repaid to the person.

## Chapter 5.

### Definition of the election period

Section 31(3) of the Electoral Acts provides that in the case of a Dáil general election, the "election period" is from the date of the dissolution of the Dáil up until polling day. All election expenses incurred by, or on behalf of, a political party or a candidate on property, goods or services which are "for use" at any time during this period must be included in an Election Expenses Statement furnished to the Standards Commission. Section 31(3) further provides that any election expenses **incurred before the election period commences** on property, goods or services which are "for use" during the election period are also subject to the expenditure limits and must be included in the Election Expenses Statement.

The issue of what constitutes the parameters of "for use" during the election period arose at the Dublin South-Central Dáil bye-election of 27 October, 1999. In relation to that election, it was reported by the former Public Offices Commission (the Commission) that an election agent had exceeded the spending limit. The overspend occurred because of costs incurred on the rental of a campaign office. The rental agreement had entered into force eight days prior to commencement of the election period. The Commission took the view that, because the office was specifically for use at the bye-election, the cost of rent and insurance on the premises from the actual date of renting should be regarded as an election expense. The election agent's position was that only costs incurred in respect of the use of the premises during the election period should apply and, accordingly, that an overspend had not occurred.

As overspending at a Dáil election is an offence, a file was referred by the Commission to the Director of Public Prosecutions (DPP). The DPP found that there was ambiguity in the statute which could be construed against the prosecution. A prosecution was not taken.

Because of the importance it attached to this issue, in the context of determining when election spending actually commences, the Commission engaged in a round of consultations with the DPP, the Minister for the Environment and Local Government and the Minister's Department. It should be pointed out that, even at that early stage, there was evidence that some prospective candidates at the next Dáil general election were already distributing literature which could be regarded as promoting them as candidates at the election. In that regard, the Commission had taken the position that spending on, for example, printed material, which was then being circulated and which identified a person as a candidate at the general election and which sought support for his / her candidacy, should be regarded as election expenditure.

At the request of the Commission, and in the light of correspondence between the Commission and the DPP, the advice of the Attorney General was sought by the Department of the Environment and Local Government. The Minister for the Environment and Local Government subsequently informed the Commission that, having considered the views of the Commission and following consultations with the Attorney General, he did not propose to amend the legislation relating to this matter. In light of this, the Standards Commission decided that, for the purpose of determining what

constituted election spending at the Dáil general election, the following would apply:

- expenditure incurred and payments made would only be subject to the limits set down in the legislation if they related to property, goods or services which were actually used during the election period (**i.e. from the dissolution of the Dáil up to and including polling day - 25 April to 17 May 2002 in the case of the Dáil general election**)). If the property, goods or services were used during this period, the limits would apply regardless of when the expenditure was incurred or the payment made;
- if expenditure was incurred or a payment was made in respect of property, goods or services which were for use during the election period and the property, goods or services, or part thereof, **were not actually used** during that period, the expenditure or payment relating to the unused property, goods or services would not be subject to the limits and would not require to be accounted for in the Election Expenditure Statement furnished to the Standards Commission after the election;
- if promotional material, including election material, was being circulated by political parties or prospective candidates at any time prior to the dissolution of the 28th Dáil, any expenditure incurred or payment made in relation to same would not be subject to the limits. Similarly, if premises, advertising sites, etc., were booked in relation to the election, any cost incurred or payment made (e.g. rent/insurance) in respect of any period before the dissolution of the 28th Dáil or after polling day would not be subject to the limits;
- in any case where there was ambiguity in the records or where sufficient records to determine the matter had not been held, the Standards Commission would regard the expenditure incurred or payment made as being in respect of the election period.

The above position was adopted by the Standards Commission in recognition of the fact that to do otherwise could seriously disadvantage prospective candidates and political parties who, in light of the original position, might not have engaged in activities where they considered that the costs incurred would be subject to the spending limits. Given the views expressed by the DPP, and the fact that the relevant part of the legislation was not going to be amended, it was clear that had the Standards Commission maintained the original position there would not have been a prosecution for overspending which occurred as a result of costs incurred on property, goods or services to the extent that the costs in question were not in respect of the actual election period. It would have been unreasonable for the Standards Commission to have suggested otherwise.

The Standards Commission wrote to the General Secretaries, or equivalent, of all the registered political parties and to each serving member of the Dáil and Seanad to inform them of the position as outlined above.

Having regard to the foregoing, the position is that the expenditure accounted for by candidates' election agents and by the national agents of political parties in the Election Expenses Statements furnished to the Standards Commission relates only to property, goods, or services actually used during the election period. It is worth repeating that such expenditure was required to be accounted for, and was subject to the spending limits, regardless of when it was incurred.

## Chapter 6.

### The Electoral (Amendment) Act, 2001

The Electoral (Amendment) Act, 2001 (the 2001 Act) introduced significant amendments to the original legislation including new provisions concerning political donations and election spending. In relation to the latter, the main features of the 2001 Act were as follows:

1. It increased the spending limits of candidates at Dáil elections from € 18,351.52, €22,283.90 and €26,217.55, in relation to three, four and five seat constituencies, to €25,394.76, €31,743.45 and €38,092.14, respectively.
2. In paragraph 1 of the Schedule it provided a definitive list of items which would be regarded as election expenses.
3. In paragraph 2 of the Schedule it amended the list of items which would not be regarded as election expenses.

One such amendment caused concern to the former Public Offices Commission (the Commission). Paragraph 2(g) of the Schedule provided that any sum disbursed by an individual out of the individual's own resources for any minor expenses (not exceeding €126.97 in any one payment), lawfully incurred in relation to the election, would not be an election expense if the sum was not repaid to the person.

The original legislation had provided that minor expenses lawfully incurred and not reimbursed to a person would not be regarded as election expenses. It did not, however, define a minor expense. The Commission, in its guidelines for the Tipperary South Dáil bye-election of 2001, advised that the **total amount of minor expenses incurred in relation to the bye-election** (i.e. by the election agent and the national agent) should not exceed £100 (€126.97).

The Commission considered that the definition of a minor expense contained in the 2001 Act created a potential loophole which could be exploited in order to circumvent the expenditure limits. The Commission examined the matter and concluded that the only persons who could "lawfully" incur expenditure at an election were the election agent of a candidate, the national agent of a political party, a person authorised by either agent or a person who had registered with the Commission for the purposes of incurring expenditure at the election. Election agents and national agents would, therefore, have to be aware at all times of persons incurring minor expenses.

The Standards Commission concurred with the position adopted by the former Commission. In its guidelines for the 2002 Dáil general election the position regarding minor expenses was outlined. Election agents and national agents were advised that they would be required to maintain an account of any minor expenses where it was not intended that such expenses would be included in the Election Expenses Statement. The Standards Commission considered that

unless such an arrangement was in place it would be impossible to adjudicate in cases where complaints might be made about failure to include particular items of expenditure in the Election Expenses Statement. Where applicable, details of any minor expenses incurred have been submitted with the Election Expenses Statement and are included in the appropriate tables in the Appendices to this report.

4. The 2001 Amendment Act also addressed the issue of use of Oireachtas facilities for electoral purposes. The original legislation (section 31(b)(v) by reference to **section 22(2)(b)(ii)**) had provided that "... any payment, service or facility provided to a person out of public funds.....**by virtue** of the person being a member of either House of the Oireachtas ..." would not be regarded as an election expense incurred on the person's behalf.

The former Commission had raised this issue in its Annual Report for 2000. In the report it referred to the fact that prospective candidates at the Dáil general election, who were not members of the Dáil or Seanad, had expressed concern at the prospect of outgoing members of the Houses having an unfair advantage if the latter were allowed to use free envelopes and other Oireachtas facilities for election purposes, without having to account for the cost of this use as part of their election spending.

The Commission had also referred to the use by candidates of "free" Oireachtas envelopes at the Tipperary South bye-election of 2000. The Commission's understanding was that the Oireachtas (Allowances to Members) Acts, 1962 confined the use of Oireachtas envelopes to correspondence arising in the discharge of a member's parliamentary duties. It had, therefore, advised in its guidelines for the bye-election that Oireachtas envelopes should not be used at elections and, if used by a candidate, or on behalf of a candidate, the cost of such use would be regarded as an election expense incurred by the candidate. The propriety, or otherwise, of using Oireachtas facilities in connection with an election was, of course, a matter for the Houses as laid down in statute and was not within the remit of the Commission.

Paragraph 1 of the Schedule to the 2001 Act listed, as set out in Chapter 3, those items which would be regarded as election expenses. Paragraph 2 of the Schedule specifically provided that:

*"For the avoidance of doubt, nothing in paragraph 1 of the Schedule (i.e. the list of election expenses) extends to .....*

- (a) *any of the matters referred to in subparagraphs (i) to (v) of section 22(2)(b) .... [see above]*
- (c) *any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds;"*

In addition, also in 2001, Part 6 of the Oireachtas (Allowances to Members) Act, 1962 was amended by deleting the reference "arising out of a member's parliamentary duties" in relation to the use of Oireachtas telephone and postal

facilities.

The combined effect of these amendments was to specifically exclude the cost of use of Oireachtas facilities from being reckoned as election expenditure.

The provisions, outlined on the previous page, of the 2001 Act formed the basis of the legal action taken by Mr. Desmond Kelly against the Minister for the Environment and Local Government, Ireland and the Attorney General (the Kelly case).

## Chapter 7.

### The Kelly case

Mr. Desmond Kelly, a Fianna Fáil candidate in the Dublin Mid-West constituency at the Dáil general election, who was not an outgoing member of either House of the Oireachtas, took an action in the High Court against the Minister for the Environment and Local Government, Ireland and the Attorney General, in which he claimed that certain provisions of the Electoral Acts were repugnant to the Constitution. The provisions in question were those contained in paragraphs 2(a) and (c) of the Schedule to the 2001 Act (see Chapter 6 - point 4 on page 17) which, in essence, provided that where expenses were incurred on property, services or facilities which were used at the election and the costs were met out of public funds, they would not be regarded as election expenses. He contended that the provisions in question placed him at a disadvantage by discriminating in favour of outgoing members of the Houses and that, in relation to the spending limits, a level playing field did not exist for all candidates at the election.

The High Court judgment was delivered on 16 May 2002. It was held that the impugned provisions did give rise to disadvantage in the case of candidates who were not outgoing members of the Houses of the Oireachtas and were repugnant to the Constitution.

The High Court judgment was appealed by the State to the Supreme Court. The outcome of the appeal would ultimately determine whether, and to what extent, it would be necessary for election agents and national agents to account for election expenses where the costs were met out of public funds. On 29 November 2002 the Supreme Court affirmed the High Court judgment. The Supreme Court further held that it would not declare that the judgment of the High Court should have prospective effect. This meant that any expenses incurred on property, services or facilities, which were used at the election and the costs were met out of public funds, would have to be included in the Election Expenses Statements furnished by election agents and national agents to the Standards Commission.

Prior to final determination of the matter by the Supreme Court, the Standards Commission had considered the implications of the High Court judgment and had decided that it would not be appropriate for it to refer a file to the DPP where, specifically as a result of the judgment, an overspend occurred at the general election. In arriving at this decision, the Standards Commission was mindful of the fact that the judgment was delivered on 16 May 2002, which effectively was the last day of campaigning at the election. Up to that date, agents and candidates were entitled to assume that the rules on spending were as set out in the relevant legislation and, necessarily, reflected in the guidelines published by the Standards Commission. In making its decision the Standards Commission was aware that, in a prosecution relating to overspending, it is a defence that a person did not know, and could not reasonably have known, that he or she incurred election expenses above the statutory limit.

The Standards Commission had also decided that, if an overspend occurred specifically as a result of the judgment, it would not invoke that provision of the legislation which enabled it to recommend to the Minister for Finance that the amount of the overspend should be deducted from the reimbursement of election expenses payable to the candidate or, where an overspend was incurred by the national agent of a political party, from the Exchequer funding payable to the party.

## Chapter 8.

### Preparatory work for the general election

Activity by the Standards Commission in relation to the Dáil general election commenced in late 2000 and increased in 2001 when a programme of regional visits was arranged in conjunction with the political parties. The main focus of the visits was to brief candidates, their election agents and other party activists on the requirements of the legislation. Briefings were held in Dublin and in a number of venues throughout the country. The programme continued and expanded in the first quarter of 2002.

Work also commenced during 2001 on designing and testing an electronic recording system which would assist the Standards Commission in collating and presenting the information contained in the Donation Statements and Election Expenses Statements which would be furnished to it after the general election.

The Standards Commission intended to publish its detailed guidelines for the general election in 2001. However, it was necessary to delay publication in order that account could be taken of the amendments contained in the 2001 Act. Draft guidelines, which included reference to the amendments, were finalised in December 2001. It was agreed that discussions on the draft guidelines would be held with political parties to ensure that all relevant matters were covered. The discussions were extremely useful and gave rise to a number of improvements and additions being made to the draft document which were reflected in the final guidelines as published in March 2002.

Circulation of the guidelines began immediately to all candidates and election agents whose details had been provided to the Standards Commission by their political parties. Circulation to other candidates and their election agents continued as and when they became known to the Standards Commission through either direct contact or from details provided by the returning officers for the various constituencies (see Chapter 9 below). The published guidelines were also sent to the national agent of each political party and to persons who notified the Standards Commission of their intention to incur election expenses in accordance with section 31(7) of the Electoral Acts (see Chapter 11 below). The Standards Commission is satisfied that all persons who were required to receive the guidelines for the Dáil general election were issued with a copy of the guidelines.

To supplement its published guidelines, the Standards Commission produced a booklet of Frequently Asked Questions and Answers relating to election matters. The commencement of the Electoral (Amendment) Act, 2002 required the Standards Commission to issue an addendum to the guidelines to take account of the amendments contained in that legislation. All of the above material was published on the website of the Standards Commission ([www.sipo.ie](http://www.sipo.ie)).

In addition to the published material and briefing meetings held throughout the country, the Standards Commission responded in writing and by telephone to numerous requests for advice received from candidates and agents, both before and

during the election. Where advice given was of general application, it was published on the website and / or circulated directly to other candidates and agents. Specific advice relating to the general election which was published by the Standards Commission included:

- advice relating to newspaper advertising
- advice relating to the use of offices
- advice relating to disabled or incapacitated candidates
- advice on calculating the costs of property, services or facilities which were met out of public funds
- advice on accounting for the costs of facilities which were available to Ministers and Ministers of State and used for election purposes.

## **Chapter 9.**

### **Appointment of candidates' election agents**

In accordance with section 28 of the Electoral Acts each candidate at a Dáil election is required to appoint an election agent for the purposes on incurring election expenses on his / her behalf. A candidate may act as his / her own election agent.

Section 28 also provides that the returning officers for each Dáil constituency must notify the Standards Commission of all candidates contesting the election in the constituency and details of the election agents, if any, appointed by those candidates. Returning officers are also required to inform the Standards Commission if they are notified by a candidate that the appointment of an election agent has been revoked and a new election agent appointed.

As stated in Chapter 8 above, a number of political parties had provided the Standards Commission with details of their candidates and election agents. This allowed the Standards Commission to circulate its guidelines to these candidates and agents in good time for the election. However, in the case of candidates of some of the smaller political parties and many of the independent candidates, the first notification the Standards Commission received regarding their candidacy, or the appointment of an election agent, was from the returning officer for the constituency.

The Standards Commission wrote to each returning officer on 29 April 2002 requesting that he / she provide details of each candidate contesting the election in the constituency and details of the election agents appointed by those candidates. To ensure that the guidelines were circulated as quickly as possible to all candidates and their election agents, the Standards Commission requested returning officers to fax or e-mail the relevant information to it as soon as possible after nominations for the election closed (12.00 noon on 3 May 2002).

The Standards Commission wishes to place on the record the fact that the notification procedure provided for under section 28 of the Electoral Acts did not operate satisfactorily. Amongst the difficulties encountered by the Standards Commission were:

- delays on the part of some returning officers in providing the required information to the Standards Commission. This subsequently delayed the Standards Commission in issuing its guidelines to certain candidates and their agents
- information provided by some returning officers was unclear and / or incomplete. It was necessary to contact some returning officers a number of times to clarify the information provided. Again this delayed the Standards Commission in issuing its guidelines to the candidates and agents concerned
- there was confusion in some cases with regard to the appointment of an election agent. In a number of instances the person intended as election agent was not the person notified to the Standards Commission by the returning officer. The

Standards Commission must accept that the information provided by the returning officer is correct. Similarly, the Standards Commission may only accept an Election Expenses Statement which has been completed by the person notified to it as the candidate's election agent. It was not uncommon for the Standards Commission to receive an Election Expenses Statement which had been completed by someone other than the person notified as the candidate's election agent. Where this happened the Election Expenses Statement was returned as invalid. The candidate was advised that he / she must have the Election Expenses Statement completed by the person notified by the returning officer as his / her election agent, or have that person's appointment as election agent revoked and have the person who completed the form appointed as election agent. If candidates intended to change their election agent, they were advised to notify the returning officer accordingly

- it was apparent to the Standards Commission that some returning officers were not fully aware of their statutory responsibilities, particularly in regard to the revocation of the appointment of an election agent.

The Standards Commission is required to provide advice to candidates regarding the appointment of an election agent. It can only do so, however, when notified of a person's candidacy. As returning officers are the first point of contact for many candidates in relation to the Electoral Acts, the Standards Commission is of the view that it would be helpful if returning officers were in a position to provide some basic information to candidates concerning the appointment of an election agent.

The Standards Commission considers that it would be desirable if, in addition to submitting nomination papers to the returning officer, candidates were required to notify the Standards Commission of their candidacy and of the appointment of an election agent. Perhaps it should also be possible for a candidate to notify the Standards Commission directly of a change of election agent rather than, as at present, the candidate having to do so through the returning officer.

## Chapter 10.

### Appointment of national agents by political parties

In accordance with section 28(1) of the Electoral Acts each of the political parties with candidates contesting the Dáil general election appointed a national agent and provided the relevant details to the Standards Commission.

The legislation requires that the Standards Commission must be notified of the appointment of a national agent not later than the last day for receiving nominations at the election (3 May 2002). If a political party has not provided the relevant information by the last day for withdrawing nominations (4 May 2002), the party's appropriate officer (appointed under section 71 of the Electoral Acts) is deemed to have been appointed as the national agent. If no appropriate officer stands appointed, the leader of the party is deemed to have been appointed as the national agent.

As required under section 6(a) of the Electoral Acts, the Standards Commission published in *Iris Oifigiúil*, on 14 May 2002, the names and addresses of the national agents appointed, or deemed to have been appointed, by each of the political parties. Details are provided below:

#### National Agent

Mr. Hugh Dolan  
Mr. Tom Curran  
Mr. Ciaran O'Meara  
Mr. John Higgins  
Mr. Shane Fitzgerald  
Mr. Desmond Mackin  
Mr. John Lowry  
Mr. Kieran Allen  
Mr. Kevin McLoughlin  
Mr. Patrick Smyth

#### Political Party

Fianna Fáil  
Fine Gael  
The Labour Party  
The Progressive Democrats  
The Green Party / Comhaontas Glas  
Sinn Féin  
The Workers Party  
The Socialist Workers Party  
The Socialist Party  
The Christian Solidarity Party

## Chapter 11.

### **Notifications received under section 31(7) of the Electoral Acts**

Section 31(7) of the Electoral Acts provides that any person who intends to incur election expenses at a Dáil election, who has not been authorised to do so by either the election agent of a candidate or the national agent of a political party, must, before incurring any such expenses, provide the following information to the Standards Commission:

- (a) the name, address and description of the person proposing to incur the expenses,
- (b) a statement of the nature, purpose and estimated amount of such expenses, and
- (c) an indication of the person's connection, if any, with any party or candidate at the election.

It is an offence for a person to whom section 31(7) applies to fail to comply with the above requirements.

It should be noted that the requirements of section 31(7) apply only to persons who intend to incur election expenses and are separate and additional to any requirement to register with the Standards Commission as a "third party" under section 23C of the Electoral Acts. It should also be noted that, once a person has complied with the requirements of section 31(7), there is no statutory limit to the amount of expenses which may be incurred by that person at the election.

The Standards Commission published a public notice regarding the requirements of section 31(7) in the national and local newspapers. The public notice appeared in the national newspapers on 25 April 2002, in the Sunday newspapers on 28 April 2002 and in the provincial newspapers during the week beginning 29 April 2002. In response to the public notice, the Standards Commission received a number of enquiries from persons who intended to incur expenses at the election. Those who made contact included both individuals and groups. Also, a number of candidates at the election reported to the Standards Commission that groups or individuals were incurring expenses in opposing them, or other candidates of their party, at the election.

The Standards Commission made every effort to engage with those persons who were involved in campaigning at the election. In all cases where contact was made by persons who intended to incur expenses at the election, or where such persons came to its attention, the Standards Commission requested that it be provided with the relevant information as specified in the legislation. The Standards Commission furnished a report to the Chairman of Dáil Éireann (Ceann Comhairle) on 26 March 2003 in which it outlined the actions it had taken in relation to this matter.

Every person who incurred election expenses pursuant to section 31(7) of the Electoral Acts was required to furnish an Election Expenses Statement to the

Standards Commission by 20 December 2002. Details of the persons concerned and the expenditure incurred by them at the election are provided in Appendix 6 to this report.

It is, of course, possible that other individuals and groups incurred expenditure at the election and did not notify, or otherwise come to the attention of, the Standards Commission. If evidence of any such group or individual becomes available, the Standards Commission will consider the matter and take the appropriate action.

## Chapter 12.

### **Persons deemed to be connected to a candidate or a political party**

Section 31(6) of the 1997 Act provides that where a person who is incurring expenses at a Dáil election is considered by the Standards Commission to be associated with, connected to, or under the influence or control of a candidate or political party, the expenditure incurred by the person will be deemed to have been incurred on behalf of the candidate or party concerned and must be accounted for by either the candidate's election agent or the national agent of the political party.

The following persons who notified the Standards Commission in accordance with section 31(7) of the Electoral Acts of their intention to incur election expenses were considered by the Standards Commission to be connected to candidates at the election:

1. **Ms. Lisa Maher, Campaign Against Service Charges, 78 Whitechurch Way, Rathfarnham, Dublin 16.**

Ms. Maher wrote to the Standards Commission outlining the intention of her group to incur expenses at the election. She indicated that the Campaign intended to produce leaflets at a cost of no more than €500 to encourage residents of the Dun Laoghaire and Dublin South Dáil constituencies not to vote for Fianna Fáil, Fine Gael or Progressive Democrat candidates. As Ms. Maher, who was Secretary of the Campaign, and Mr. Richard Boyd Barrett, who was Chairperson of the Campaign, were candidates in those constituencies at the election and the leaflet advocated voting for them at the election, the Standards Commission advised that the expenses incurred on producing the leaflet should be accounted for by their respective election agents. Ms Maher's election agent subsequently informed the Standards Commission that the expenses referred to were incurred in respect of leaflets circulated prior to the dissolution of the Dáil and, accordingly, were not election expenses.

2. **Mr. Joe McManus, 42-24 Bell Blvd., Bayside, New York 11361, USA.**

Mr. Joe McManus wrote to the Standards Commission outlining his intention to incur election expenses of approximately €800, on behalf of 34 Irish citizens who were resident in the USA, on an advertisement in the Leitrim Observer newspaper, supporting the Sinn Féin candidate, Mr. Sean McManus. Mr. Joe McManus was advised that expenditure incurred by the group may be deemed to be connected to the candidacy of Mr. Sean McManus. He was asked to provide further information to the Standards Commission. The candidate's election agent, Mr. Liam McGirl, was informed of the group's intended expenditure and also advised that it might be deemed to be connected to the candidacy of Mr. Sean McManus. No reply was received from Mr. Joe McManus. However, an Election Expenses Statement was subsequently received from Mr. McGirl which accounted for the election expenses incurred by Mr. Joe McManus. Accordingly, it was not necessary for Mr Joe McManus to furnish an Election Expenses Statement.

## Chapter 13.

### Correspondence with newspapers regarding section 31(10) of the Electoral Acts

Section 31(10) of the Electoral Acts provides that the publisher of a newspaper, magazine or other periodical publication shall not publish any advertisement or notice in relation to the general election which purports to promote or oppose, directly or indirectly, the interests of a political party or a candidate at the election, unless requested to do so by either:

- the national agent of a political party, or a person authorised in writing by such agent,
- a candidate at the election, his / her election agent or a person authorised in writing by the candidate or agent, or
- a person who produces to the publisher a certificate from the Standards Commission confirming that he / she has complied with the provisions of section 31(7) of the Act.

It is an offence for the publisher of a newspaper, magazine or other periodical publication to fail to comply with the requirements of section 31(10).

On 15 April 2002, the Standards Commission wrote to the publishers of over 100 national and local newspapers and to the publishers of a number of magazines and other periodical publications informing them that the provisions of Section 31(10) of the Electoral Acts would apply at the Dáil general election.

The Standards Commission is satisfied that the majority of publishers of newspapers, etc., complied with the requirements of section 31(10). It was, however, necessary for the Standards Commission to contact the publishers of the following newspapers when it came to its attention that they may not have complied with the requirements of section 31(10):

1. *Nationalist and Leinster Times:*

The Standards Commission received a complaint that a group calling itself Elect Carlow Candidates Organisation (ECCO) was placing advertisements in the Nationalist and Leinster Times newspaper soliciting votes for Carlow-based candidates. This organisation had not, at the time, notified the Standards Commission of its intention to incur expenditure at the general election and consequently the Standards Commission had not issued a certificate of compliance (with section 31(7)) to it.

The Standards Commission wrote to the publisher of the Nationalist and Leinster Times enquiring as to why, contrary to section 31(10) of the Electoral Acts, the newspaper had accepted an advertisement from this organisation.

The editor of the newspaper stated in his reply that he was not aware of the provisions of section 31(10) of the Electoral Acts. The Standards Commission

had written to the publisher of this newspaper on 15 April 2002 regarding section 31(10). The editor apologised for accepting the advertisement and undertook not to do so again without reference to the Standards Commission. Having considered the matter, the Standards Commission decided not to take any further action.

2. *The Irish Times:*

On 25 April 2002 a full page advertisement on homelessness was placed by Focus Ireland in the Irish Times. It asked voters at the forthcoming general election to raise the issue of homelessness with candidates. This organisation had not, at the time, notified the Standards Commission of its intention to incur expenditure at the general election and consequently the Standards Commission had not issued a certificate of compliance (with section 31(7)) to it.

The Standards Commission wrote to the publisher of the Irish Times enquiring as to why, contrary to section 31(10) of the Electoral Acts, the newspaper had accepted an advertisement from this organisation. In his reply, the Managing Editor of the newspaper stated that the Irish Times aimed to follow the law on such matters scrupulously and it took very seriously any suggestion of an infringement of the legislation. He made the point that the advertisement did not, directly or indirectly, advocate voting in favour or against any political party or any candidate. He defended the publication of the advertisement on the basis that it raised an issue about which there was wide concern across the political spectrum and that it had made no reference to any candidate or political party.

Having considered the matter, and mindful of the fact that it was arguable as to whether or not the advertisement could be regarded as an election expense, (although Focus Ireland accepted that it was and have accounted for it in an Election Expenses Statement) the Standards Commission decided not to take any further action.

## Chapter 14.

### Receipt of Election Expenses Statements

Section 36(2) of the Electoral Acts provides that a statement of Election Expenses shall be in the form directed by the Standards Commission. The Election Expenses Statement form which the Standards Commission intended would be used by election agents had been prepared in advance of the general election and a sample copy was included as an Appendix in the published guidelines. The form which was subsequently produced for completion by the elections agents (GE/02/EES/EA) differed from the sample to the extent that provision was made to take account of amendments to the legislation and the court judgment in the Kelly case.

The Standards Commission also produced Election Expenses Statement forms for use by the national agents of political parties. The form in each case was tailored to include the name, and other details, of every candidate of the party who had contested the election.

Arising out of the court judgment in the Kelly case, the Election Expenses Statement forms, for both election agents and national agents, required that election expenses, where the costs were met out of public funds, would be accounted for separately. The purpose of this was twofold:

- (i) it would allow the Standards Commission to provide details of the total amount of election expenses incurred on behalf of a candidate or a political party where the costs were met out of public funds, and
- (ii) it would enable the Standards Commission to identify, in the event of an overspend, whether the overspend had occurred as a result of the election agent or national agent having to account for election expenses where the costs were met out of public funds.

An Election Expenses Statement Form was issued by registered post to each election agent and national agent on 13 June 2002. In the explanatory note which accompanied the Election Expenses Statement form, election agents and national agents were advised that, as a result of the court judgement in the Kelly case, they would have to account for any election expenses incurred during the election period where the costs were met out of public funds.

As already stated earlier in this report, to facilitate the hearing of the State's appeal to the Supreme Court in the Kelly case, the Electoral (Amendment) (No. 2) Act, 2002 (the 2002 (No. 2) Act) was enacted. The 2002 (No. 2) Act provided that 31 October 2002, or 21 days following the date of the Supreme Court judgment, whichever was the later, would be the date by which Election Expenses Statements would require to be furnished to the Standards Commission. On 29th June 2002, the Standards Commission wrote to election agents and national agents informing them of the State's appeal and the revised date for receipt of Election Expenses Statements. Election agents and national agents were advised that the outcome of the State's appeal would determine whether, and to what extent, they would have to

account for election expenses where the costs were met out of public funds. The Standards Commission also advised election agents and national agents that, if they were not affected by the court action, they should submit their Election Expenses Statement as soon as possible. One hundred and fifty seven (157) Election Expenses Statements were received in the following months.

A copy of a letter and a schedule, which had been circulated by the Members Services Office of the Houses of the Oireachtas to outgoing members after the High Court judgement in the Kelly case, was enclosed with the letter issued by the Standards Commission on 29 June 2002. The schedule set out the values of various Oireachtas facilities which may have been availed of by outgoing members for election purposes during the election period. It was considered by the Standards Commission to be an appropriate guide for election agents in determining the values of any such facilities. The Standards Commission took the view that, for the purpose of calculating the costs as election expenses, it was a matter for election agents, in consultation with the candidates concerned and any other relevant parties, to determine the extent to which such facilities were used for election purposes during the election period.

On 29 November 2002 the Supreme Court affirmed the High Court judgment and further decided that it would not declare that the judgment should have prospective effect. This meant that any expenses incurred during the election period where the costs were met out of public funds would have to be included in the Election Expenses Statements furnished by election agents and national agents. On 3 December 2002 the Standards Commission wrote to those election agents and national agents who had not yet furnished an Election Expenses Statement informing them of the position and advising them of the revised date (20 December 2002) for furnishing their Election Expenses Statements.

As stated in Chapter 7 above, the Standards Commission had decided:

- (i) that it would not be appropriate for it to refer a file to the DPP where, specifically as a result of the judgement, an overspend occurred at the general election, and
- (ii) that if an overspend occurred specifically as a result of the judgement, it would not recommend to the Minister for Finance that the amount of the overspend be deducted from the reimbursement of election expenses payable to the candidate or, where an overspend was incurred by the national agent of a political party, from the Exchequer funding payable to the party.

An Election Expenses Statement was required in respect of each of the four hundred and sixty three (463) candidates who contested the general election and the ten (10) political parties which had candidates contesting the election. A number of election agents acted for more than one candidate. In such cases, the election agent was required to furnish a separate Election Expenses Statement in respect of each candidate. As stated above, the statutory date for receipt of Election Expenses Statements was put back from 12 July 2002 to 20 December 2002.

### ***Election Agents - Election Expenses Statements:***

Three hundred and ninety (390) Election Expenses Statements were received from election agents of candidates within the statutory deadline of 20 December 2002.

As of 8 January 2003, forty nine (49) Election Expenses Statements had not been received. On that date the Standards Commission wrote to the agents concerned advising them that it is an offence to fail to furnish an Election Expenses Statement by the statutory deadline.

By 22 January 2003, there were thirty five (35) Election Expenses Statements outstanding. The Standards Commission sent a further reminder on that date to the agents concerned.

On 11 February 2003, there were twenty (20) Election Expenses Statements still outstanding. A final reminder issued on that date to the agents concerned. The agents were advised that if the Election Expenses Statement was not received within seven days, the Standards Commission would consider referring the matter to the DPP.

On 11 March 2003, the Standards Commission wrote to the Garda authorities requesting that they investigate the failure of **Mr. Mick Dunphy, Carrigrove Estate, Ballynaneashagh, Waterford**, to furnish the Election Expenses Statement required under the Electoral Acts. Mr. Dunphy acted as election agent for the Workers Party candidate, Mr. John Halligan, in the Waterford constituency. (*The Standards Commission has previously been advised by the Office of the DPP to deal directly with the Garda authorities in relation to such alleged offences under the Electoral Acts.*) The Standards Commission understands that the Gardaí are investigating the matter. On the date of going to print with this report, an Election Expenses Statement had not been received from Mr. Dunphy.

Election Expenses Statements in respect of four hundred and sixty two (462) candidates were received. A substantial number of these were, however, incorrectly completed and were returned by the Standards Commission to the agents concerned. A very considerable amount of reworking of the material received has been required on the part of the Standards Commission. It is regrettable that this, coupled with great difficulty experienced by the Standards Commission in procuring amended Election Expenses Statements from some election agents, has delayed the preparation of this report, the laying of the Election Expenses Statements before the Houses of the Oireachtas and the material being made available for public inspection and copying.

It is evident to the Standards Commission that many election agents were not fully aware of the nature of the duties which they agreed to undertake, including the fact that legal responsibility for a breach of the expenditure limits rested with them. However, having regard to the major effort made by the Standards Commission to issue guidelines and otherwise brief election agents on the requirements of the legislation, including assisting them in completing the necessary documentation, it is difficult to avoid the conclusion that the poor quality of Election Expenses

Statements received in so many cases was due to lack of care on the part of agents as well as, perhaps, an element of disregard for either the requirements of the legislation or the mandate of the Standards Commission, or both.

The Standards Commission is still pursuing a very small number of election agents who have yet to furnish a correctly completed Election Expenses Statement. In the interests of publishing this report and ensuring that details of election expenditure are put into the public domain, the Standards Commission is including the original, albeit incorrect, information provided by these election agents. The Standards Commission is satisfied that there is no prospect of any of these agents having overspent at the election and none of the candidates concerned qualify for a reimbursement of election expenses.

### ***National Agents - Election Expenses Statements:***

Six of the Election Expenses Statements furnished by the national agents were received within the statutory deadline of 20 December 2002. A further two Election Expenses Statements were received shortly afterwards. On 15 January 2003, the Standards Commission wrote to the national agents of two political parties drawing their attention to the fact that an Election Expenses Statement had not been received and advising them that it is an offence to fail to furnish an Election Expenses Statement by the statutory deadline. On 27 January 2003 the Standards Commission wrote again to one national agent regarding his Election Expenses Statement which was still outstanding. A final reminder issued on 18 February 2003 to that national agent advising him that if an Election Expenses Statement was not received within seven days, the Standards Commission would consider referring the matter to the DPP. The Election Expenses Statement was subsequently received on 25 February 2003.

Details of expenditure accounted for on behalf of individual candidates and political parties are contained in the Appendices to this report.

## Chapter 15.

### Overspending

#### *Election Agents*

The Electoral Acts provide that an election agent will be deemed to have overspent at the election if he / she:

- a) exceeds the statutory expenditure limit applicable to the candidate at the election, or
- b) exceeds the amount of the expenditure limit retained by the candidate (the candidate having assigned a portion of his / her expenditure limit to the party).

It was evident from the Election Expenses Statements received that the total expenditure accounted for by some election agents exceeded the amount of the expenditure limit retained by the candidate and, in a small number of cases, also exceeded the statutory expenditure limit applicable to the candidate. In each case, however, the amount in excess was less than, or equal to, the amount of election expenses which the election agent had accounted for in his / her Election Expenses Statement where the costs had been met out of public funds.

As stated in Chapter 7 above, the Standards Commission had decided that it would not be appropriate for it to refer a file to the DPP where an overspend had occurred at the general election specifically as a result of the court action in the Kelly case which gave rise to the requirement to account for election expenses where the costs had been met out of public funds. In other words, a file would not be forwarded by the Standards Commission for possible prosecution unless it was evident that the amount of an overspend exceeded the costs of election expenses being accounted for by the election agent which were met out of public funds. The Standards Commission did not refer any cases of overspending at the Dáil general election to the DPP.

Rule 3A of the Third Schedule to the Electoral Act, 1992 (as introduced by section 44 of the Electoral Act, 1997) provides that where a petition to set aside the result of a Dáil election alleges an irregularity or non-compliance with any provision of Part V of the Electoral Acts, leave of the High Court to present such a petition may be applied for not later than 14 days after the laying of a copy of an Election Expenses Statement before the Houses of the Oireachtas. The Standards Commission has no function in relation to an election petition to the High Court.

#### *National Agents:*

The Electoral Acts provide that the national agent of a political party will be deemed

to have overspent at the election if he / she:

- a) incurs expenditure which exceeds the total amount assigned to the party by its candidates, or
- b) incurs expenditure on a particular candidate which exceeds the amount assigned by that candidate to the party.

In considering the Election Expenses Statements furnished to it, the Standards Commission found no evidence of any national agent having overspent at the election.

## **Chapter 16.**

### **Late claims and disputed claims**

The legislation provides that all claims for payment of election expenses must be delivered to the election agent or national agent concerned within 45 days of polling day which, in the case of the Dáil general election, was 1 July 2002. Claims for payment received after this date may not be paid by the election agent or national agent concerned. It is an offence for an election agent or a national agent to pay a claim for election expenses which was not received by 1 July 2002. Although late claims may not be paid, they must be accounted for as election expenses by the agent concerned in his / her Election Expenses Statement.

Three election agents accounted for late claims in their Election Expenses Statements. The national agents of Fianna Fáil and the Labour Party also accounted for late claims in their Election Expenses Statements.

The legislation also provides that where a claim for election expenses is disputed by an election agent or national agent, details of the disputed claim should be provided in the Election Expenses Statement. The agent is not required to account for the amount which is in dispute when calculating the total amount of election expenses incurred. If and when the dispute is resolved, the agent is required to notify the Standards Commission of the amount agreed as payable by him / her and, if necessary, amend his / her Election Expenses Statement. If the dispute is resolved by means of a court order, a copy of the court order must be furnished to the Standards Commission.

#### ***Election Agents:***

Five election agents referred to a disputed election expense in their Election Expenses Statements. In three of these cases the election agents accounted for the full cost of the expenditure item in the total of election expenses incurred although two of them confirmed that no payment was, or would be, made in respect of the disputed items. The third of these agents confirmed that although the disputed amount had been paid in error, no reimbursement was being sought from the supplier. In each of these cases the amount in dispute did not materially affect the total amount of election expenses incurred by either causing an overspend to have occurred or by increasing the amount payable to the candidate as a reimbursement of his / her election expenses.

The two other election agents deducted the amounts in dispute from the total amount of expenses incurred. They have been requested to inform the Standards Commission of the outcome of the dispute and of any amount which is ultimately payable.

***National Agents:***

The national agent of the Progressive Democrats provided details of a disputed election expense in his Election Expenses Statement. The amount in dispute is not included in the total amount of expenses incurred. The national agent has been advised to inform the Standards Commission of the outcome of the dispute and of any amount which is ultimately payable.

## **Chapter 17.**

### **Reimbursement of election expenses to candidates**

In accordance with section 17(4) of the Electoral Acts, the Minister for the Environment and Local Government notified the Standards Commission of the name of each candidate elected and the name of each unsuccessful candidate who, although not elected, qualified for a reimbursement of election expenses by virtue of the fact that the number of votes received by him / her at any stage of the counting of the votes exceeded one quarter of the quota for the relevant constituency.

Three hundred (300) candidates at the Dáil general election qualified for a reimbursement of their election expenses. One hundred and sixty five (165) qualified by virtue of being elected. A further one hundred and thirty five (135) unsuccessful candidates qualified by reaching one quarter of the quota in the constituency at any stage of the counting of votes.

Before a reimbursement of election expenses may be made, the Standards Commission must certify to the Minister for Finance that the candidate's election agent has furnished a correctly completed Election Expenses Statement and, where applicable (i.e. where the candidate was unsuccessful at the election), that the candidate has furnished a correctly completed Donation Statement. The Standards Commission is also required to notify the Minister for Finance of the amount which may be reimbursed to a candidate. In calculating this amount, expenses incurred by the national agent of a political party on a candidate, in the candidate's constituency, may be taken into account. The amount which may be reimbursed is €6,348.69 or the total election expenses incurred on the candidate's behalf, whichever is less.

The Electoral Acts provide that where a candidate's election agent has overspent at the election, the Standards Commission may recommend to the Minister for Finance that the amount of the overspend be deducted from the reimbursement due to the candidate. As stated in Chapter 7 above, the Standards Commission had decided that if an overspend occurred specifically as a result of the court action in the Kelly case, it would not recommend to the Minister for Finance that the amount of the overspend be deducted from the reimbursement of election expenses payable to the candidate.

On being satisfied that the Election Expenses Statement in respect of a qualifying candidate and, where applicable, that part of the national agent's Election Expenses Statement pertaining to the candidate, were correct, the Standards Commission issued an Application for a Reimbursement of Election Expenses form (GE/02/RAC) to the candidate concerned. On receipt of the completed application form, the Standards Commission certified to the Minister for Finance that a reimbursement of election expenses should be made.

On the date of going to print with this report, the Standards Commission had certified, to the Minister for Finance, payment of two hundred and thirty two (232) applications for a reimbursement of election expenses. Reimbursement applications in respect of a further sixty eight (68) candidates have yet to be finalised. Details of

those candidates who qualified for a reimbursement of election expenses, and the amounts they are eligible to receive, are provided at Appendix 8 to this report.

## **Chapter 18.**

### **Laying of statutory documents before the Houses of the Oireachtas**

The Election Expenses Statements and Statutory Declarations furnished to the Standards Commission are being laid today before each House of the Oireachtas.

Copies of the Election Expenses Statements and Statutory Declarations are available for public inspection and copying at the office of the Standards Commission. A copy of this report and its accompanying Press Release together with summaries of the election expenses incurred will be available on the website of the Standards Commission *www.sipo.ie*.

### **Acknowledgement**

The Standards Commission would like to acknowledge the co-operation it received from a significant number of candidates, political parties, election agents and national agents in discharging its statutory functions under the Electoral Acts.

## Appendices

- Appendix 1 Expenditure on individual candidates at the general election to the 29th Dáil.
- Appendix 2 Expenditure by the national agents of political parties at the general election to the 29th Dáil.
- Appendix 3 Breakdown by category of expenditure accounted for by candidates' election agents.
- Appendix 4 Breakdown by category of expenditure accounted for by national agents' of political parties on the national campaign and on candidates in constituencies
- Appendix 5 Summary of total expenditure by political parties.
- Appendix 6 Details of election expenses incurred by persons notified to the Standards Commission pursuant to section 31(7) of the Electoral Acts.
- Appendix 7 Details of election agents (and their candidates) who accounted for election expenses exceeding the expenditure limit applicable to them at the election.
- Appendix 8 Details of candidates who qualified for a reimbursement of their election expenses.