

integrity  
codes of conduct

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ethics  
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standards  
transparency

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Coimisiún um Chaighdeán in Oifigí Poiblí  
Standards in Public Office Commission

Annual Report 2010

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Coimisiún um Chaighdeán in Oifigí Poiblí  
Standards in Public Office Commission

## Annual Report 2010

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## Foreword

In accordance with the provisions of section 27(2)(a) of the Ethics in Public Office Act 1995, I am pleased to furnish the Annual Report of the Standards in Public Office Commission for 2010 to the Minister for Finance.

A handwritten signature in black ink, which appears to read "M. P. Smith". The signature is written in a cursive style.

---

Justice M. P. Smith  
Chairman  
Standards in Public Office Commission  
June 2011

## The Members



**Justice M.P. Smith**  
Chairman



**Michael Smith**  
Former member of  
Dáil Éireann



**Deirdre Lane**  
Clerk of Seanad  
Éireann



**John Buckley**  
Comptroller and Auditor  
General



**Emily O'Reilly**  
Ombudsman



**Kieran Coughlan**  
Clerk of Dáil Éireann

## Introduction by the Chairman

Over the years, the Standards Commission has made many recommendations for amendments to both the Electoral and Ethics legislation. Some of these recommendations are again highlighted in Appendix I to this annual report. The Standards Commission welcomes the proposals in the government's Programme for National Recovery 2011 - 2016 for wide-ranging changes in both areas which will address several of the Commission's concerns.

The Ethics legislation, which embraces both the Ethics in Public Office Acts and the Local Government Act 2001, is complex and contains many anomalies. For example, Part 15 of the Local Government Act 2001 which deals with the ethical framework for local authority members and employees, provides for a wide range of offences for certain contraventions, e.g., failure to disclose a registrable interest, while the Ethics Acts do not provide for criminal sanctions for similar contraventions.

Furthermore, there is no clear complaints mechanism specified in Part 15 of the Local Government Act and this serves to confuse and frustrate members of the public who may become aware of improper activity in local government. Defects in the complaints mechanism were highlighted in a case involving a complaint against a Mayo County Council employee which is described in more detail later in this report. Following the Commission's investigation in this case, I wrote to the Minister for Environment, Heritage and Local Government about the lack of a specific complaints mechanism and about other concerns of the Commission arising from the case.

A major concern arising from that County Mayo case was the almost complete absence of records relating to the use of significant public resources. Such poor practices ought not to be tolerated and must be eliminated. Accordingly, I requested that the Minister review the use of discretionary funds by local authority members on a national basis with a view to ensuring that scarce public resources are used by local authorities in the public interest and not in the interest of private individuals, whether they be local authority employees, members of local authorities or any other persons.

In 2008, the Commission suggested to the Minister for Finance, who is responsible for the Ethics legislation, that the law be amended to enable the Commission to sit for the purposes of an investigation hearing or for the purposes of a decision relating to an investigation with a quorum of 3 of the 6 members of the Commission. The current law requires the presence of all 6 members of the Commission for such sittings. This is in contrast to routine Commission meetings where a quorum of 3 members is sufficient. Given the already heavy demands on the time of the *ex officio* members of the Commission - the Comptroller and Auditor General, the Ombudsman and the Clerks of Dáil and Seanad Éireann - arising from their official duties, it is very difficult, sometimes at very short notice, to find dates and times on which all members are free to attend. The reduced number required would also be more in line with current demands for ensuring efficiency whenever possible.

The requirement that all six Commissioners attend an investigation sitting can therefore lead to delays in finalising investigations; this is unfair to all concerned, not least the person against whom the complaint has been made. The Commission would welcome an indication that its 2008 suggestion is being favourably considered. It may also be opportune to provide for other more flexible means of investigation, particularly for minor cases, and reserve the full public hearing for the more serious matters.

The independence of the Commission is mandated by statute - section 33 of the Ethics in Public Office Act 1995 provides that the Commission and its members shall be independent in the performance of their functions under the legislation. The annual reports of the Commission, however, are furnished to the Minister for Finance who must lay the annual report before each House of the Oireachtas within 2 months. It is the act of laying the report that triggers publication and circulation of the report to the members of the Oireachtas and to the public. The Commission does not therefore control the date of publication of its own report and this is not appropriate for an independent body. This is recognised in the Electoral Acts where the Commission reports to the Oireachtas and not the Minister. In contrast to the Commission, independent office holders, such as the Comptroller and Auditor General and the Ombudsman, submit their reports directly to the Oireachtas. The Commission believes that it also should report under the Ethics Acts directly to the Oireachtas.

Finally, I would like to thank my fellow Commissioners for their contributions during the year. I would also like to thank the staff of our secretariat and our secretary for their efficiency, dedication and commitment to their work during 2010.



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# Chapter 01

## Chapter I - The Work of the Standards Commission

The Standards Commission has a supervisory role under -

- the Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, (the Ethics Acts);
- the Electoral Act 1997, as amended, (the Electoral Acts);
- the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001, (the Party Leaders Allowance Act).

This chapter provides a brief description of the main features of the legislation and the functions of the Standards Commission.

### Ethics Acts

#### Overview of the Ethics Acts

The broad focus of the Ethics Acts is to provide for disclosure of interests, including any material factors which could influence a Government Minister or Minister of State, a member of the Houses of the Oireachtas or a public servant in performing their official duties. The principal objective of the legislation is to demonstrate that those who are participating in public life do not seek to derive personal advantage from the outcome of their actions. To meet this objective, a statutory framework has been put in place to regulate the disclosure of interests and to ensure that other measures are taken to satisfy the broad range of obligations arising under the legislation. The legislation is founded on the presumption of integrity but recognises that specific measures should exist to underpin compliance.

Evidence of tax compliance must be furnished to the Standards Commission by all members of both Houses of the Oireachtas, the Attorney General and appointees to senior office in public bodies. The legislation requires the drawing up of codes of

conduct for ordinary members of the Houses, for office holders (see definition in Appendix 3) and for public servants.

The Standards Commission has a role in relation to the Ethical Framework for the Local Government Service provided for in Part 15 of the Local Government Act 2001. The Commission must be consulted by the Minister for the Environment, Heritage and Local Government in relation to the codes of conduct for local authority members or for local authority employees. It can also examine complaints about contraventions of Part 15 by local authority members or employees.

### **Functions of the Standards Commission under the Ethics Acts**

The main functions of the Standards Commission are to provide advice and guidelines on compliance with the Ethics Acts, to administer the disclosure of interests and tax clearance regimes and to investigate and report on possible contraventions of the legislation. These functions of the Standards Commission apply to office holders and to public servants and, in relation to tax compliance measures, to all members of the Houses. Apart from matters relating to tax clearance, the Committees on Members' Interests of both Houses have functions similar to those of the Standards Commission in relation to members of the Houses who are not office holders.

### **Statements of Interests**

Under the disclosure of interests provisions of the Ethics Acts, the Standards Commission provides annual statement of registrable interests forms to members of the Oireachtas, who are required to furnish a statement of any registrable interests to the Commission. The Commission forwards these statements to the Clerk of Dáil Éireann or the Clerk of Seanad Éireann as appropriate, who publish registers of members' interests.

The Ethics Acts require statements of interests to be furnished to the Standards Commission by office holders (in relation to the interests of a spouse, a child or a child of a spouse), the Attorney General, designated directors (see definition in Appendix 3) and special advisers. The secretariat administers the receipt and retention of these statements, including returning incorrectly completed statements to individuals for amendment.

### **Codes of Conduct**

The Standards Commission is consulted on proposed Codes of Conduct under the Standards in Public Office Act 2001 and is required to publish any such codes adopted under the legislation.

### **Tax Clearance**

Members of the Oireachtas on election and senior public servants and directors on appointment to 'senior office' are required to provide a statutory declaration and either a tax clearance certificate or an application statement to the Standards Commission within 9 months of election or appointment. The secretariat administers the tax clearance provisions, informs elected members and appointees to senior office notified to it by public bodies of their obligations under the legislation and ensures compliance with the requirements. The legislation provides for investigation and report in relation to contraventions.

### **Guidelines**

The Standards Commission publishes statutory guidelines on compliance with the provisions of the Ethics Acts for persons who have obligations under the legislation. Such persons are required to act in accordance with the guidelines unless by so doing, the act concerned would constitute a contravention of another provision of the Ethics Acts. The guidelines are revised periodically to take account of amended legislative provisions or to clarify matters which have arisen since the previous edition. The Standards Commission has published guidelines for office holders and for public servants. These are available on its website. Guidelines for members of the Oireachtas who are not office holders are published by the relevant Committee on Members' Interests.

### **Advice**

Designated members of the staff of the secretariat have responsibility delegated to them by the Standards Commission to provide advice to persons who request it in relation to their statutory obligations under the Ethics Acts. Such persons are required to act in accordance with advice given unless by so doing, the act concerned would constitute a contravention of another provision of the Ethics Acts. Where requested, advice must be provided within 21 days or, alternatively, it may decline to give advice. Normally, all advice of a substantive nature will be provided in writing.

### **Complaints**

The Standards Commission may receive complaints about a contravention of the Ethics Acts by an office holder, the Attorney General, a designated director, a designated employee or a special adviser. It can receive complaints about a 'specified act' by a 'specified person' (see definitions in Appendix 3). It can also receive complaints about a contravention of Part 15 of the Local Government Act 2001 by a local authority member or employee. It cannot accept complaints about a member of the Oireachtas who is not an office holder, as the legislation provides that such a complaint must be made to either the Clerk of Dáil Éireann or the Clerk of Seanad

Éireann as appropriate, who will consider whether the complaint should be referred to the relevant Committee on Members' Interests.

Any person may make a complaint to the Standards Commission under the above headings, although the legislation makes particular provision for complaints by certain categories of persons, such as members, Ministers or heads of bodies.

On receipt of a complaint, the Standards Commission may consider whether an investigation is warranted under the legislation. It may do so on the basis of the evidence available to it. It may appoint an Inquiry Officer to assist it in its consideration by carrying out a preliminary inquiry. The Inquiry Officer can seek a statement from and/or interview the complainant and/or the person against whom the complaint has been made or from any other person whose evidence would or might, in the opinion of the Inquiry Officer, be relevant to the inquiry. He or she may also request the production of any documents considered to be relevant to the inquiry. Following such an inquiry, the Officer is required to prepare a report of the results of the inquiry and to furnish that report, together with any statements and other documents furnished to the officer in the course of the inquiry. The report must not contain any "determination or findings" but, if the Commission so requests, it shall contain an expression of the opinion of the officer as to whether there is *prima facie* evidence to sustain the complaint.

### Own Initiative Inquiries

In addition to receiving complaints, the Standards Commission can decide to initiate an investigation into a contravention of the Ethics Acts or of Part 15 of the Local Government Act or a 'specified act', where it considers it appropriate to do so. While the legislation is not specific in this regard, it would only do so if it considered that there was *prima facie* evidence of a contravention or a 'specified act'. When considering whether an investigation is warranted in the absence of a complaint, the Standards Commission does **not** have the power to appoint an Inquiry Officer to assist it in its deliberations.

### Investigations

Where it decides to do so, the Standards Commission will carry out an investigation in accordance with the provisions of the Ethics Acts. The legislation provides that it shall hold sittings for the purpose of an investigation and that it may receive submissions and evidence as it thinks fit at such sittings. Provision is made for cross-examination of witnesses. At the conclusion of an investigation, the Standards Commission prepares a report of the result of the investigation, which is provided to the relevant parties and others specified in the legislation.

## Electoral Acts

### Overview of the Electoral Acts

Among the purposes of the Electoral Acts are to make provision for disclosure of donations for political purposes, to regulate spending by candidates and political parties at elections, and to provide for payments to political parties and candidates.

### Functions of the Standards Commission under the Electoral Acts

The Electoral Acts require the Standards Commission to monitor and, where it considers it appropriate to do so, report to the Chairman of Dáil Éireann on matters relating to -

- the acceptance and disclosure of donations received by political parties, members of both Houses of the Oireachtas and of the European Parliament and candidates at Dáil, Seanad, European Parliament and presidential elections;
- the opening and maintenance of political donations accounts;
- the limitation, disclosure and reimbursement of election expenses;
- State financing of qualified political parties;
- the registration of "third parties" (i.e., campaign/lobby groups or individuals which accept a donation for political purposes which exceeds €126.97 in value) and other persons.

The Standards Commission may conduct whatever inquiries are necessary in the discharge of its statutory functions under the Electoral Acts.

The Standards Commission is required, from time to time, to draw up and publish guidelines and provide advice on compliance to persons who are covered by the provisions of the Electoral Acts. A person must act in accordance with guidelines published or advice given by the Standards Commission, unless, by doing so, he or she would be contravening another provision of the Electoral Acts.

The Standards Commission is required to facilitate the inspection and copying, by any person, of Donation Statements, Election Expenses Statements, etc., furnished to it under the legislation.

## **Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 (the Party Leaders Allowance Act)**

### **Overview of the Party Leaders Allowance Act**

The Party Leaders Allowance Act provides for the payment of an annual allowance to the leaders of parliamentary parties in relation to expenses arising from the parliamentary activities, including research, of the party. The amount paid is based on the party's representation in Dáil and Seanad Éireann. The allowance is reduced where a party forms part of the government. The "parliamentary activities" to which the funding may be applied are set out in the legislation. The funding may not be used for electoral or referendum purposes.

The Party Leaders Allowance Act requires the party leader to prepare, or cause to be prepared, a statement of expenditure from the allowance received in respect of the preceding year. The statement must set out, under specific headings, the items on which the funding was spent. The statement must be audited by a public auditor and must be furnished together with the auditor's report to the Standards Commission within 120 days of the end of the financial year for which the allowance has been paid (i.e., by 30 April). Failure to furnish the statement within this timeframe can result in a suspension of the Allowance.

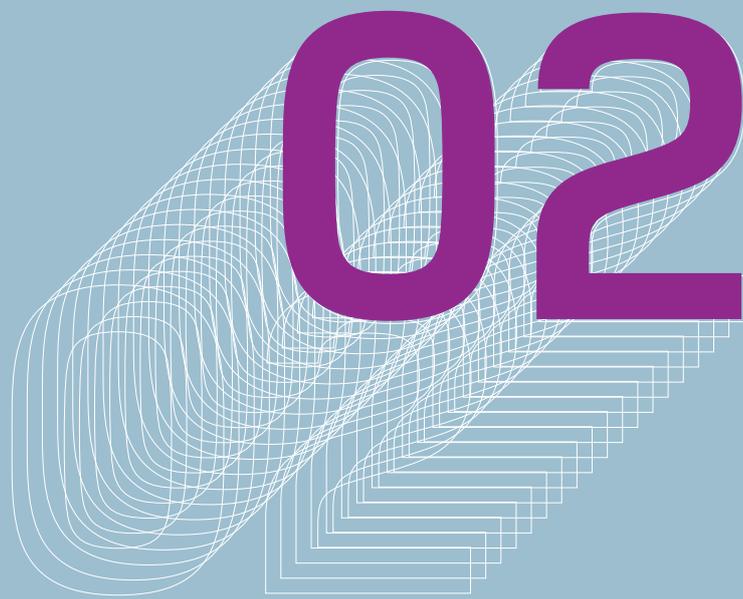
### **Functions of the Standards Commission under the Party Leaders Allowance Act**

The Standards Commission must consider each statement and auditor's report furnished to it and, if necessary, consult with the party leader on any matter contained in the statement. The Standards Commission is required to furnish a report to the Minister for Finance indicating whether the statement and auditor's report have been submitted within the specified period. It must indicate whether any unauthorised expenditure is disclosed and whether the statement is adequate or inappropriate.

The Standards Commission must cause a copy of the report to the Minister for Finance to be laid before each House of the Oireachtas.

A copy of the statements and auditors' reports must be retained by the Standards Commission for 3 years and must be made available for public inspection and copying.





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## Chapter 02

## Chapter 2 - Ethics

### Complaints

While the number of complaints received by the Standards Commission remains low, 2010 saw an increase from 32 complaints in 2009 (six of which were valid within the terms of the Ethics Acts) to 56 of which 31 were valid. The Standards Commission found that two of the complaints provided a basis on which to initiate an investigation. In both of those cases, as reported below, it had appointed an Inquiry Officer to conduct preliminary enquiries into the complaints.

It also appointed an inquiry officer on two other occasions during 2010 and once to date in 2011. Given that before 2010 the Standards Commission had only appointed an Inquiry Officer on two occasions (in 2006 and 2008), four such appointments in a single year indicates a significant increase in the Standards Commission's work in relation to complaints under the Ethics Acts. The Standards Commission wishes to express its gratitude to Mr Paddy Walsh who has performed his functions as Inquiry Officer on each occasion with efficiency and effectiveness.

#### Mayo County Council Investigation

The Commission received a complaint concerning Mr Kieran Lynn, Senior Executive Engineer, Mayo County Council. The complaint centred on alleged contraventions of Part 15 of the Local Government Act 2001 in relation to disclosures of interests and to Mr Lynn's actions regarding works carried out to improve an access to his lands at Cushalogurt, Westport, County Mayo. Mr Lynn had approached three local councillors seeking the allocation of public monies by them under a notice of motion procedure to carry out works removing a bend in a road which would improve access to his lands.

The Standards Commission appointed an Inquiry Officer to conduct a preliminary enquiry into the complaint. Following consideration of the Inquiry Officer's report, the Commission decided that it was appropriate to carry out an investigation under

section 23 of the Ethics Act to determine whether Mr Lynn had contravened Part 15 of the Local Government Act or had done a 'specified act' within the meaning of the Ethics Acts. Investigation hearings were held on 8 November and 13 December 2010.

The Standards Commission published its report of the investigation in March 2011. The report set out its findings and determinations in respect of each alleged contravention. It found that Mr Lynn had contravened the provisions of Part 15 of the Local Government Act 2001 and had acted in disregard of the Code of Conduct for Employees (of local authorities). Four of the alleged contraventions related to failures by Mr Lynn to disclose interests in property in his annual declaration of interests. The Standards Commission found that Mr Lynn had contravened the Local Government Act in each of the four cases, that two of these were committed inadvertently, that two were committed negligently and that each was, in all the circumstances, minor in nature. In relation to these contraventions, the Standards Commission found Mr Lynn had acted in good faith.

The Standards Commission also found that Mr Lynn had contravened section 168 of the Local Government Act 2001 and acted in disregard of the provisions of the Code of Conduct for Employees, by using his official position in Mayo County Council, and the resources of the Council, for personal gain in that works were carried out to improve an access to his lands at Cushalogurt, Westport, County Mayo.

The Commission is satisfied that the contravention was committed intentionally and was, in all the circumstances, a serious matter. In relation to this contravention, the Standards Commission found Mr Lynn had not acted in good faith.

The Standards Commission sent its report to the complainant, to Mr Lynn, to the local authority and also to the Minister for Finance and to the Minister for the Environment, Heritage and Local Government.

The report of the investigation, including the transcript of the investigation hearing, is available on the website of the Standards Commission.

Following receipt by him of the Standards Commission's report, Mr Peter Hynes, Mayo County Manager, reported on the matter to the elected members of the Council. Mr Hynes reported that the Standards Commission had reached "essentially the same" conclusions as had been reached in a previous examination of the complaints for the Council by a former Mayo Assistant County Manager. Mr Hynes had forwarded his report to the Minister for the Environment, Heritage and Local Government. Mr Hynes also informed the council that he had revised the procedures to be used where an employee has an interest in land which is the subject of a notice of motion proposal.

The Standards Commission wrote to the Minister and to Mr Hynes pointing out that its conclusions were not essentially the same as the Council's. The Council's investigation had not found that Mr Lynn had failed to disclose any interests. By contrast, the Standards Commission concluded that he had failed to do so on four occasions. In relation to the fifth contravention, the council's investigation found that while Mr Lynn had not acted in accordance with the code of conduct for employees, it did not find any evidence of financial gain for Mr Lynn. The Standards Commission not only found a failure to have regard to the code, but also found that Mr Lynn contravened section 168 of the Local Government Act 2001 by using his official position in Mayo County Council, and the resources of the Council, for personal gain in that works were carried out to improve an access to his lands. The Standards Commission was satisfied that the contravention was committed intentionally and was, in all the circumstances, a serious matter. The Commission was concerned that Mr Hynes had appeared to misapprehend the Commission's findings and determinations.

The Standards Commission also expressed its view to the Minister that this case illustrates serious deficiencies in the operation of the notice of motion procedure as operated by Mayo County Council. It expressed its concern at the almost complete absence of records in the case relating to the use of significant public resources. It stated that while the new procedure adopted by Mayo County Council may result in some improvements as far as the use of the procedures by employees of that body, the notice of motion procedure itself does not appear to represent best practice in the disbursement of public funds and that the Standards Commission considers that it, and any other discretionary funds allocated to individual local authority members, ought to be reviewed on a national basis by the Minister, with a view to the adoption of procedures which are designed to ensure that scarce public resources are expended by local authorities in the public interest and not in the interests of private individuals, be they employees or members of local authorities or any other persons.

### **Donegal County Council Investigation**

The Commission received a complaint from Councillor Brendan Byrne, then Mayor of Donegal County Council and Mr Michael McLoone, then County Manager, concerning Councillor Terence Slowey. The complaint centred on alleged contraventions of Part 15 of the Local Government Act 2001 in relation to the claiming of expenses from both Donegal County Council and the Border Regional Authority for attendance at conferences in Killarney and Clonakilty which took place over the weekend of 16-18 October 2008.

The Standards Commission appointed an Inquiry Officer to conduct a preliminary enquiry into the complaint. Following consideration of the Inquiry Officer's report,

the Commission decided that it was appropriate to carry out an investigation under section 23 of the Ethics Act to determine whether Councillor Slowey had contravened Part 15 of the Local Government Act or had done a 'specified act' within the meaning of the Ethics Acts. An investigation hearing was held on 14 March 2011.

The Standards Commission published its report of the investigation in April 2011. The report set out its findings and determinations in respect of each alleged contravention.

It found that Councillor Slowey contravened the provisions of Part 15 of the Local Government Act 2001, had acted in disregard of the Code of Conduct for Councillors and had done a 'specified act' within the meaning of the Standards in Public Office Act 2001 by claiming travelling expenses from Donegal County Council in respect of his attendance at the Third Sector Forum Seminar on Local Authority Financing Conference on 16 to 18 October 2008 in Killarney, Co. Kerry while also claiming travelling expenses from the Border Regional Authority in respect of his attendance at the Association of Irish Regions Conference on 17 October 2008 in Clonakilty, Co. Cork, in contravention of directions issued by the Minister for the Environment, Heritage and Local Government under article 16 of the Local Government (Expenses of Local Authority Members) Regulations 2006 (SI 668 of 2006) made pursuant to section 142(1) of the Local Government Act 2001. It also found that Councillor Slowey contravened the provisions of Part 15 of the Local Government Act 2001 and acted in disregard of the Code of Conduct for Councillors by not attending the whole of the seminar in Killarney.

The Standards Commission found that Councillor Slowey committed the contraventions recklessly and that they were, in all the circumstances, serious matters. In relation to these contraventions, the Standards Commission found Councillor Slowey had not acted in good faith.

In its report, the Commission stated that it regards the claiming of unwarranted expenses to be unacceptable and to be a serious matter.

It forwarded its report to Councillor Slowey, to the Manager and Mayor of Donegal County Council, to the Minister for Finance and to the Minister for the Environment, Heritage and Local Government. The report of the investigation, including the transcript of the investigation hearing, is available on the website of the Standards Commission.

### **Former Senator Ivor Callely Investigation**

The Committee on Members' Interests of Seanad Éireann resolved at its meeting on 13 October 2010, pursuant to section 22(5) of the Ethics in Public Office Act 1995

as amended, that two complaints it had received concerning claims made by former Senator Ivor Callely under the Members' Mobile Phones Direct Purchase Scheme should be investigated by the Standards in Public Office Commission.

On 16 November 2010, the Standards Commission appointed an Inquiry Officer to conduct a preliminary inquiry under Section 6 of the Standards in Public Office Act 2001 in relation to the complaints.

The Inquiry Officer presented a report to the Standards Commission which was considered by it at its meeting of 11 April 2011. Having considered the report, the Standards Commission formed the opinion that Senator Callely may have committed an offence relating to the performance of his functions as a member. Section 24(2) of the Ethics in Public Office Act 1995 provides:

*where the (Standards) Commission, either during or at the conclusion of an investigation under section 23, is of opinion that the person the subject of the investigation may have committed an offence relating to the performance of his or her functions as a... member..., it shall prepare a report in writing in relation to the matter and furnish it together with any relevant document or other thing in its possession to the Director of Public Prosecutions...*

Accordingly, the Standards Commission furnished a report in the matter to the Director of Public Prosecutions. Mr Callely ceased to be a member of Seanad Éireann on 25 April 2011.

### **Complaint against former Minister John Gormley**

The Standards Commission received a complaint from Deputy Phil Hogan, (now Minister for the Minister for the Environment, Heritage and Local Government) in July 2010 in relation to the actions of the then Minister for the Environment, Heritage and Local Government, Mr John Gormley. The Standards Commission appointed an Inquiry Officer to conduct a preliminary inquiry into the matters complained of. At the time of writing, the preliminary inquiry was ongoing.

### **Complaint against Councillor Oisín Quinn**

The Standards Commission received a complaint in November 2010 regarding alleged contraventions of Part 15 of the Local Government Act 2001 by Councillor Oisín Quinn, Dublin City Council. The Standards Commission appointed an Inquiry Officer to conduct a preliminary inquiry into the complaint. At the time of writing, the preliminary inquiry was ongoing.

### Codes of Conduct

In its annual report for 2009, the Standards Commission noted that almost a decade after the enactment of the Standards in Public Office Act 2001, the adoption of a code of conduct for the wider public service under that Act is still awaited. It indicated that it had been made aware that the Department of Finance was actively pursuing the issue and that it expected that a draft code would be provided to the Standards Commission for consultation in accordance with the provisions of the legislation.

Despite that indication, there has been no movement on this matter in the intervening twelve months. The Standards in Public Office Act 2001 provides for the adoption of codes of conduct, which would set down the standards of conduct and integrity to be followed by public servants and public representatives in the performance of their functions. To date, codes have been published for office holders, TDs, Senators and civil servants. The intention of the Oireachtas in enacting the Standards in Public Office Act 2001 was that each public servant would be provided with a clear statement of the standards of conduct and integrity which they are required to follow in the course of their duties. It is the view of the Standards Commission that that intention should be given effect as a matter of urgency.

### Ethical Framework for the Local Government Service

In April 2008, the Minister for the Environment, Heritage and Local Government published a Green Paper, *Stronger Local Democracy - Options for Change*, which included several suggestions for reform in the ethical area. These were reported on in the Commission's annual report for 2008. The Department of the Environment, Heritage and Local Government had confirmed to the Standards Commission that its view was that the implementation of the ethical framework should be kept within local authorities as much as possible and that the role of the Standards Commission would be restricted to matters of significant concern. The Standards Commission's view is that there should be an explicit complaints procedure in the ethical framework clearly setting out the responsibilities at local level and those of the Standards Commission. It was noted that there is provision under the Ethics Acts for statutory guidelines and advice to be given by the Standards Commission, which could usefully be applied under the ethical framework.

To date, no such legislation has been introduced. The Commission remains of the view that the procedures for examination and investigation under the framework are inadequate and that an explicit statutory procedure for complaints about local authority members and employees should be introduced as a priority.

## **Meeting with Northern Ireland Assembly Committee on Standards and Privileges and Committee on Members' Interests of Dáil Éireann**

In November 2009, the Northern Ireland Assembly Committee on Standards and Privileges wrote to the Standards Commission informing it that it had initiated an inquiry on the appointment of an Assembly Commissioner for Standards, on maintaining the Northern Ireland Assembly's Code of Conduct and Guide to Rules Relating to the Conduct of Members (the Code of Conduct) and on handling alleged breaches in relation to the Code of Conduct. It invited the Standards Commission to provide any observations in relation to its inquiry. While the Standards Commission did not have any specific observations to make, the Chairman accepted a subsequent invitation to meet the Assembly Committee in February 2010 together with Ms Emily O'Reilly (Ombudsman) and the Committee on Members' Interests of Dáil Éireann in Leinster House. The Chairman and officials of the Commission's Secretariat provided information on the Commission's role under the Ethics Acts in relation to complaints and codes of conduct. The meeting proved a useful forum for the exchange of views. The Standards Commission would welcome any future opportunity to meet with the Assembly Committee and the Committees on Members' Interests.

## **Disclosure of interests**

### **Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 was commenced with effect from 1 January 2011. The legislation amended the Ethics Acts in a number of respects to provide that in certain circumstances a person must disclose the interests of a 'civil partner' (see definition in Appendix 3). The Standards Commission will draft amended guidelines for office holders and public servants to reflect the amendments.

### **'Nil' Statements**

The Ethics in Public Office Acts require certain categories of person (an office holder in relation to the interests of a spouse, civil partner, child or child of a spouse, the holder of a designated directorship or the occupier of a designated position of employment in a public body, the Attorney General, or a special adviser) to prepare and furnish a statement of any registrable interests which could materially influence him or her in the performance of his or her official functions by reason of the fact that such performance could so affect those interests as to confer on or withhold

from him or her or the spouse or child a substantial benefit. Where such a person has no such interests, no statement is required under the Ethics Acts.

Notwithstanding the fact that no statement was required in such circumstances, the Public Offices Commission considered in its annual report for 1998 that a statement of 'nil' interests be provided. Accordingly, that Commission in its guidelines for public servants recommended that a 'nil' statement, rather than no statement, should be furnished in such circumstances.

The Standards Commission reviewed this recommendation when drafting its eighth edition of the guidelines for public servants in 2010. It decided that, as there is no statutory basis for such 'nil' statements and as there was an undue administrative burden placed upon it and on other persons to whom statements are furnished, it would withdraw its recommendation. Accordingly, where a person has no interests which could materially influence him or her in the manner specified above, no statement is required under the Ethics Acts and no 'nil' statement is requested.

### **Special Advisers' Statements of Interests**

A special adviser is required under the Ethics Acts to prepare and furnish to the office holder who appointed him or her a statement of any registrable interests held by him or her which could materially influence him or her in the performance of his or her official functions by reason of the fact that such performance could so affect those interests as to confer on or withhold from him or her or his or her spouse or civil partner or child or child of a spouse a substantial benefit. The office holder is required under the Ethics Acts to lay any such statement before each House of the Oireachtas within 60 days of its receipt by him or her (a separate statement of any registrable interests of spouse or civil partner or child or child of a spouse is also required to be furnished, but is not laid before the Oireachtas).

Unlike statements of registrable interests furnished by members of the Oireachtas, which are published by the Clerk of Dáil Éireann or of Seanad Éireann as appropriate in a register of members' interests, special advisers' statements are not published. However, under the Standing Orders for each House, all documents laid before each House shall be considered public.

Accordingly, statements which have been furnished to the Standards Commission by special advisers may be viewed and copied by request to the Commission's Secretariat.

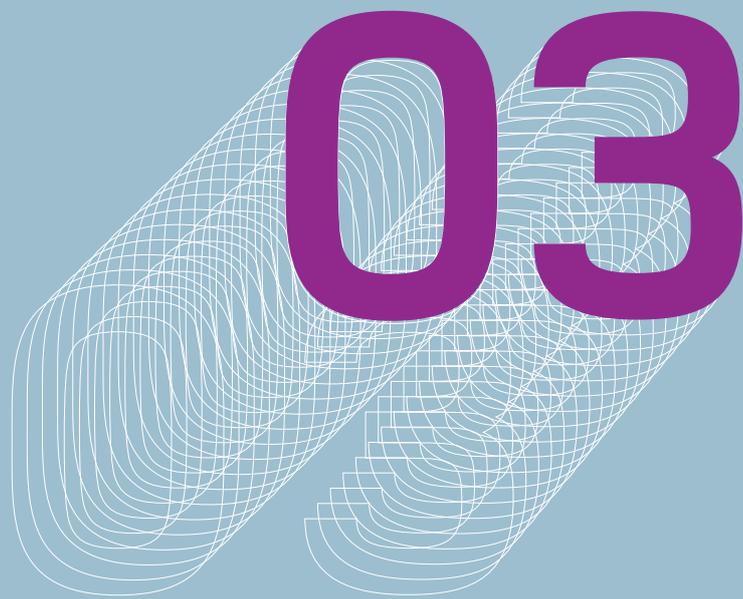
## Scope of the Ethics Acts

The Standards Commission has reported in each of its annual reports since 2004 on the large increase in the scope of the Ethics Acts in terms of the numbers of public bodies in the public service in which the Minister for Finance has prescribed designated directorships and designated positions of employment. In 2009, there were over 870 public bodies including subsidiaries within remit.

Further regulations made by the Minister for Finance came into effect on 1 January 2011. As a result of these regulations, 68 bodies (including 43 subsidiaries) were included within the remit of the Ethics Acts, while 48 bodies (including 8 subsidiaries) were removed. Accordingly, there are now over 890 public bodies within the scope of the legislation.

In view of the ongoing process of rationalisation of bodies within the public service, the Standards Commission trusts that the Minister for Finance will ensure that the scope of the Ethics Acts is applied to all new public bodies in a timely manner.

donations  
electoral



Chapter 03

## Chapter 3 - Electoral

### Disclosure of Donations in respect of 2010 by TDs, Senators and MEPs

A person who was a TD, Senator or MEP during 2010 was required to furnish a Donation Statement to the Standards Commission by 31 January 2011. Donations (see definition in Appendix 3) received during 2010 which exceeded a value of €634.87 were required to be disclosed. Donations from the same person in the same year must be aggregated for the purposes of observing the disclosure threshold and the maximum acceptance limit (€2,539.48).

#### Donation Statements received from TDs, Senators and MEPs

In early January 2011 the Standards Commission wrote to all 237 Members enclosing a Donation Statement/Statutory Declaration form for completion and return by 31 January 2011.

All of the statutory documentation was returned to the Commission by mid-February 2011 with the exception of three members. The 3 Members in question were:

Party	Documentation not returned by mid February 2011
Fianna Fáil	Mr Noel Treacy, TD
Fine Gael	Senator Liam Twomey Mr George Lee, former TD

Mr Noel Treacy submitted the required documentation on 24 February 2011; Senator Liam Twomey did so on 2 March 2011 and Mr George Lee did so on 3 March 2011.

### Donations Disclosed

A total of 237 Donation Statements and Statutory Declarations in respect of 2010 were received. Donations were disclosed as follows:

Party	Category	No. with donations	Cash (€)	Non-cash (€)
Fianna Fáil	Senator	1	nil	1,200.00
	TD	6	11,729.42	34,000.00
Fine Gael	Senator	1	2,500.00	nil
	TD	3	22,050.00	750.00
Green Party	TD	2	3,739.00	nil
Labour Party	MEP	1	10,980.50	nil
	TD	4	2,300.00	660.00
Non Party	Senator	1	9,934.05	nil
<b>Grand Total</b>		<b>19</b>	<b>63,232.97</b>	<b>36,610.00</b>

15 TDs disclosed donations with a total value of €75,228.42 while three Senators disclosed a total of €13,634.05. Donations with a total value of €10,980.50 were disclosed by 1 MEP. The total of donations disclosed was €99,842.97.

For each donation exceeding a value of €634.87, the person furnishing the Donation Statement must indicate the value and nature of the donation as well as the name, a description and postal address of the donor. Section 22(2)(d) of the Electoral Act 1997 (the Electoral Act), as amended, provides that donations from the same person in the same year must be aggregated for the purposes of observing the disclosure threshold and the maximum acceptance limit. Section 24(3) of the Electoral Act provides that the Donation Statement must be accompanied by a Statutory Declaration made by the person furnishing the Donation Statement, stating to the effect that, to the best of his/her knowledge and belief, the Donation Statement is correct in every material respect and he/she has taken all reasonable action in order to be satisfied as to the accuracy of the Donation Statement.

Details of the donations disclosed in respect of 2010 are available in a report to the Ceann Comhairle which was published in May 2011. The report is also available on the Standards Commission website.

## **Donation Statements received from individual donors**

Section 24(1A) of the Electoral Act provides that an individual must furnish a Donation Statement/Statutory Declaration to the Standards Commission, if he/she, in a particular year, makes donations exceeding €5,078.95 in aggregate value to two or more persons who were members of the same political party when the donations were made, or to a political party, and to one or more of its members. The Donation Statement/Statutory Declaration, must give details of the donations and the persons to whom they were made and must be furnished by 31 January of the following year.

If a donor does not intend to comply with this requirement and a Member or candidate at an election is aware of this, he/she is prohibited from accepting a donation from that individual. If such a donation is received, the Standards Commission must be notified within 14 days and the donation or its value remitted to the Standards Commission.

No Donation Statements from individual donors were received for 2010.

## **Donations disclosed by political parties**

Each political party was required to furnish a Donation Statement to the Standards Commission by 31 March 2011. Donations received by a political party exceeding an aggregate value of €5,078.95 are required to be disclosed. The maximum value of donations which a political party can accept from the same person in the same calendar year is €6,348.69. Donations received from the same donor in the same calendar year must be aggregated for the purposes of observing the disclosure and maximum acceptance limits. The total value of donations disclosed by parties during 2010 was €67,907.55, the lowest amount disclosed since the introduction of the disclosure requirement 14 years ago. None of the three main political parties (Fianna Fáil, Fine Gael nor the Labour Party) disclosed any donations in 2010.

Details of the donations disclosed by political parties in respect of 2010 are available in a report which the Standards Commission furnished to the Ceann Comhairle in May 2011. The report is also available on the Standards Commission website.

## Supervision of the Donegal South West Dáil bye-election

### Spending

The report relating to the Donegal South West Dáil bye-election, published by the Standards Commission in April 2011, shows that candidates disclosed total election spending of €115,042.73. The spending limit was €30,150 per candidate (3 seat constituency). Five of the six election agents furnished their Election Expenses Statements by the statutory deadline. One unsuccessful candidate (Ms Ann Sweeney) did not return an Election Expenses Statement. She had withdrawn her candidature after the latest date for doing so but was still legally required to provide an Election Expenses Statement. Failure to furnish an Election Expenses Statement and Statutory Declaration within 56 days of polling day is an offence under the Electoral Act. On 9 March 2011 the Standards Commission referred the matter to the Gardaí as the Election Expenses Statement remained outstanding. On 9 May 2011, Ms Sweeney furnished an Election Expenses Statement to the Standards Commission, disclosing spending of €1,331.00. The Gardaí were advised that the statement had been received. In total therefore, candidates disclosed election spending of €116,373.73.

Three of the four Election Expenses Statements furnished by national agents were received by the statutory deadline, while the remaining National Agent Election Expenses Statement (from Sinn Féin, and a “nil” return) was received later.

Below is a summary of the information provided by election agents and national agents in their Election Expenses Statements. Expenditure opposite the candidate's name represents expenditure incurred by the candidate's election agent.

Candidate	Total (€)
Doherty, Pearse (SF)	24,939.23
National Agent	nil
Total	24,939.23
McBrearty, Frank (Lab)	11,485.53
National Agent	18,431.23
Total	29,916.76

Candidate	Total (€)
Ó'Domhnaill, Brian (FF)	1,609.53
National Agent	25,594.18
Total	27,203.71
O'Neill, Barry (FG)	nil
National Agent	28,987.16
Total	28,987.16
Pringle, Thomas (NP)	3,995.87
Sweeney, Ann (NP)	1,331.00
<b>Total</b>	<b>116,373.73</b>

### Donations

Four of the five unsuccessful candidates returned their Donation Statements by the statutory deadline. One unsuccessful candidate (Ms Ann Sweeney) did not return a Donation Statement. Failure to furnish a Donation Statement and Statutory Declaration within 56 days of polling day is an offence under section 25 of the Act. On 9 March 2011 the Standards Commission decided to refer the matter to the Gardaí as the Donation Statement remained outstanding. On 9 May 2011, the Standards Commission received the required documentation from Ms Sweeney and advised the Gardaí of this.

One of the four unsuccessful candidates, Mr Frank McBrearty Junior, disclosed a donation of €1,470.00.

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

The elected candidate, Deputy Pearse Doherty is required, as a member of the Dáil, to furnish to the Standards Commission, by 31 January each year, an annual Donation Statement and accompanying documentation. The Donation Statement which was furnished by Deputy Doherty by 31 January 2011, in respect of 2010, did not disclose any donation.

## Accounting Unit returns for year ending 31 December 2009

As highlighted in previous Annual Reports, the Standards Commission continues to experience difficulties in supervising the provisions of the legislation relating to accounting units (see definition in Appendix 3).

It is an offence for the responsible person of an accounting unit to fail to furnish, by 31 March each year, a Certificate of Monetary Donations and Bank Statement to the Standards Commission. Only a small percentage of accounting units comply with their statutory requirements in this regard, as the following table shows. The documentation was required to be furnished to the Standards Commission by 31 March 2010.

Party	Number of Accounting Units	Returned on time
Fianna Fáil	57	27
Fine Gael	45	17
Green Party	34	17
Labour	34	19
Progressive Democrats	18	6
Sinn Féin	15	6

Following a number of reminders, all but three accounting units had furnished the required statutory documentation by early June 2010. On 2 June 2010 and 18 June 2010 respectively, the following accounting units were referred to the Gardaí.

Party	Accounting units
<b>The Labour Party</b>	Thomastown; Trinity College
<b>Green Party</b>	Cork South Central

These three accounting units furnished the relevant documents after the intervention of the Gardaí. It is a matter of regret that it was necessary to refer three accounting units to the Gardaí. However, there was a major improvement on the level of compliance by accounting units in respect of 2009 and the Standards Commission wishes to acknowledge the efforts of the political parties in bringing about this improvement. However, there is still room for further improvement and the Standards Commission restates its intention to refer non-compliant accounting units to the Gardaí in the future, if necessary.

## Third Parties

On receipt of a donation exceeding €126.97 in value, a third party (see definition in Appendix 3) must register with the Standards Commission and is subject to the same rules about **acceptance** of donations as political parties.

A third party must, by 31 March each year, furnish the Standards Commission with -

- a Certificate of Monetary Donations/Statutory Declaration (CMD/DS) confirming that all donations were lodged to that account and that payments from the account were used for political purposes, and
- a bank statement from the financial institution where its political donations account is held.

One of the main differences between a third party and a political party, insofar as donations are concerned, is that a third party is not obliged to submit a Donation Statement/Statutory Declaration, whereas a political party is obliged to submit one.

In early March 2010, the Standards Commission wrote to ten third parties that had been in existence prior to that time seeking a Certificate of Monetary Donations/Statutory Declaration and a bank statement, if appropriate, in relation to their political donations accounts. The Standards Commission also wrote to 35 new third parties which had registered for the second referendum on the Treaty of Lisbon which was held on 2 October 2009. **All 45 third parties were required to submit the relevant documents by 31 March 2010 in respect of 2009.**

The tables below identify the third parties that were registered in 2009 and indicate whether documentation was received from them by the statutory deadline. The third column indicates their status at the end of 2009, i.e., whether they continued to be registered as third parties and therefore active, or were no longer active and opted to be de-registered.

A letter issued on 13 April 2010, to all third parties that had failed to furnish the required documentation by 31 March, advising that the Commission would refer the matter to the DPP if the outstanding documentation was not received by 14 May 2010. All but two third parties furnished the documentation by 14 May 2010.

<b>Existing Third Parties</b>	<b>Statutory Documentation received by 31 March 2010</b>	<b>Status at 31 December 2009</b>
Campaign Against EU Constitution	No (but received by 14 May 2010)	De-registered
CÓIR	Yes	Registered
Democratic Alliance	Yes	Registered
Immigration Control Platform	Yes	Registered
The Irish Alliance for Europe	No	Did not reply to correspondence and the Commission formed the view that it had disbanded
Libertas	No (but received by 14 May 2010)	De-registered
The National Platform	Yes	De-registered
Peace and Neutrality Alliance	No (but received by 14 May 2010)	Registered
Pro Life Campaign	Yes	Registered
Tipperary Against the Lisbon Treaty	No (but received by 14 May 2010)	De-registered

<b>New Third Parties</b>	<b>Statutory Documentation received by 31 March 2010</b>	<b>Status at 31 December 2009</b>
Business for Europe	No (but received by 14 May 2010)	De-registered
Cork Chamber of Commerce	Yes	De-registered
European Youth for Ireland	No (but received on 19 July 2010)	Registered

<b>New Third Parties</b>	<b>Statutory Documentation received by 31 March 2010</b>	<b>Status at 31 December 2009</b>
Generation Yes	No (but received by 14 May 2010)	Registered
IBEC	Yes	De-registered
Ireland's Future	Yes	De-registered
Ireland for Europe - Clare	Yes	De-registered
Ireland for Europe - Cork	Yes	De-registered
Ireland for Europe - Dublin West	Yes	De-registered
Ireland for Europe - Dun Laoghaire	Yes	De-registered
Ireland for Europe - Farmers	Yes	De-registered
Ireland for Europe - Fingal	Yes	De-registered
Ireland for Europe - Galway	No (but received on 14 June 2010)	De-registered
Ireland for Europe - Kildare	Yes	De-registered
Ireland for Europe - Limerick	Yes	De-registered
Ireland for Europe - Louth	Yes	De-registered
Ireland for Europe - Meath	Yes	De-registered
Ireland for Europe - Midlands	Yes	Registered
Ireland for Europe - Sligo	Yes	De-registered

<b>New Third Parties</b>	<b>Statutory Documentation received by 31 March 2010</b>	<b>Status at 31 December 2009</b>
Ireland for Europe - Tipperary	Yes	De-registered
Ireland for Europe - Wicklow	Yes	De-registered
Ireland for Europe - Seniors	Yes	De-registered
Ireland for Europe and The Treaty	Yes	Registered
Ireland in Europe	Yes	De-registered
Irish Society for Christian Civilisation	Yes	Registered
Irish Vote Yes Limited	No	Did not reply to correspondence (company was struck off)
Kerry No To Lisbon	No (but received by 14 May 2010)	De-registered
Lisbon Treaty Information Services	No (but received by 14 May 2010)	De-registered
Mayo No 2 Lisbon	No (but received by 14 May 2010)	De-registered
No 2 Lisbon 2 Campaign	No (but received by 14 May 2010)	De-registered
Peoples Movement	No (but received by 14 May 2010)	Registered
The Charter Group	No (but received by 14 May 2010)	Registered
The Liberal Society	Yes	Registered
We Belong Ltd	No (but received by 14 May 2010)	Registered
Women for Europe	No (but received by 14 May 2010)	Registered

### **Referrals to the Director of Public Prosecutions (DPP)**

Two third parties, European Youth for Ireland and Ireland for Europe - Galway, were referred to the DPP on 19 May 2010 for failure to submit the required documentation in respect of 2009, by the statutory deadline of 31 March 2010, in accordance with section 25(1)(c) of the Electoral Act 1997, as amended. The Responsible Person for European Youth for Ireland, Mr Patrick Carroll, subsequently furnished the documentation on 19 July 2010. Mr Paul Mee, the Responsible Person for Ireland for Europe - Galway, furnished the documentation on 14 June 2010. The Standards Commission advised the DPP of the receipt of the documentation.

### **Exchequer funding of political parties**

The Electoral Acts and the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 (Party Leaders Allowance Act) provide for the Exchequer funding of qualified political parties. Political parties received a total of €13,480,749 in state funding for 2010. The money was paid to the parties under the Electoral Acts and under the Party Leaders Allowance legislation.

Five parties (Fianna Fáil, Fine Gael, Labour, Sinn Féin and the Green Party) received funding of €5,438,385 under the Electoral Acts and those five parties also received €8,042,364 under the Party Leader's Allowance legislation. The funding is not subject to income tax and may not be used for electoral or referendum purposes. The level of funding is linked to pay increases in the civil service; however, the legislation which governs the funding is silent on pay decreases. Qualified political parties must furnish to the Standards Commission Statements of Expenditure of the funding received.

Non-party members of Dáil and Seanad Éireann also receive funding under the Party Leaders Allowance legislation. The amount payable to each non-party member elected to Dáil Éireann during 2010 was €41,152 and the amount payable to each non-party member elected or nominated to Seanad Éireann during the same period was €23,383. The total paid to non-party members was €304,905. Non-party members are not required, however, to provide a Statement of Expenditure of the allowance to the Standards Commission, or to any other authority.

Reports on the exchequer funding received in 2010 by political parties under both pieces of legislation are available on the Standards Commission's website.



# Appendices

## Appendix I - Recommendations for change

In previous Annual Reports, the Standards Commission summarised its recommendations for changes to ethics and electoral legislation. The major proposals are summarised in this Appendix, along with updates on any progress which may have taken place in the meantime. Minor proposals, such as technical amendments, are referred to in previous annual reports.

### Proposed procedural amendments to the Ethics Acts

- The Standards Commission should directly lay its annual report before each House of the Oireachtas rather than furnishing it to the Minister for Finance who then lays it; ([Introduction, Annual Report 2010](#))
- power to appoint an Inquiry Officer to conduct a preliminary inquiry into a matter in the absence of a complaint under the Ethics Acts ([Chapter 1, 'Own initiative inquiries', Annual Report 2004](#));
- provision for a quorum of not less than three members (including in all cases, the Chairman) be provided for the hearing of an investigation under the Ethics Acts ([Chapter 4, 'Proposed amendments to the Ethics Acts', Annual Report 2008](#)).

### Other proposed amendments to the Ethics Acts and related legislation

- a comprehensive act consolidating the Ethics Acts and all other legislation providing for disclosure of interests and related provisions for public officials ([Chapter 2, 'Overlapping Ethics Frameworks' Annual Report 2009](#));
- amendment of the provisions for complaints about a 'specified act' to allow reference to a high level statement of the ethical principles to be followed by public servants and public representatives ([Chapter 2, 'High Level Statement of Ethical Principles', Annual Report 2009](#));
- amendment of the definition of 'connected person' (see definition in Appendix 3)

to provide that a person is a “connected person” to a company (see definition in Appendix 3) of which he or she is a director and that the other directors of that company are also “connected persons” to that person ([Chapter 2, ‘Connected Persons’, Annual Report 2009](#));

- requirement that liabilities be disclosed as ‘registrable interests’ ([Chapter 2, ‘Disclosure of Liabilities’, Annual Report 2009](#));
- proposal that motions be initiated in the Houses of the Oireachtas to designate the Chairpersons of Oireachtas Committees as office holders for the purposes of the Ethics Acts ([Chapter 1, ‘Ethics Acts’ Annual Report 2005](#)); the Minister for Finance decided not to move the resolutions ([Chapter 4, ‘Proposed amendments to the Ethics Acts’, Annual Report 2008](#));
- amendments to the time limits within which statutory declarations, tax clearance certificates and application statements are to be made or issued and furnished to the Standards Commission by elected members and by appointees to senior positions and directorships in the public service ([Chapter 1, ‘Tax Clearance Provisions - observations to the Minister for Finance’ Annual Report 2003](#));
- the Civil Law (Miscellaneous Provisions) Act 2008 amends the deadline for the making of a statutory declaration by a person recommended for appointment to judicial office from one month to three; a similar provision for elected members and senior public servants is required ([Appendix 4, ‘Proposed amendments to the Ethics Acts and related legislation’, Annual Report 2009](#));
- adoption of a code of conduct for public servants and members of state boards in the wider public service ([Chapter 1, ‘Codes of Conduct for Public Servants’, Annual Report 2003](#)).

### Proposed legislation regarding public interest disclosure

- a comprehensive public interest disclosure and whistleblower protection law ([Chapter 2, ‘Whistleblowing’, Annual Report 2009](#)).

### Proposed procedural amendment to the Electoral Acts

- As the body with responsibility for supervising the Electoral Acts, the Standards Commission should have a statutory basis on which to review the legislation and report on its findings ([Review of the Electoral Acts 2003](#)).

## Proposed amendment to the Electoral Acts relating to the election period

- consideration should be given to imposing some accountability, in the context of the spending limits, in respect of a specified period prior to commencement of the legally defined election period (i.e., that the election period might be extended to include a period prior to the dissolution of the Dáil or moving of the writ at an election) ([Review of the Electoral Acts 2003](#)).

## Proposed amendment to the Electoral Acts relating to Third parties

- the definition of what constitutes a “third party” should not be determined on the basis of whether an individual/group has received a donation but should focus on spending by individuals/groups and to regard them as third parties if they intend to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes as defined in the legislation ([Review of the Electoral Acts 2003](#); and [2009 Report on third parties at the Referendum on the Treaty of Lisbon](#));
- the registration process for “third parties” and for “other persons” (who intend to incur election expenses) should be amalgamated. (There should be no need for an individual/group to register as a “third party” and to also register as an “other person”.) ([Review of the Electoral Acts 2003](#));
- registration of third parties should be allowed for a particular campaign or on an on-going basis. ([2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008](#)).

## Proposed amendment to the Electoral Acts relating to spending at referendums

- to provide for transparency in funding and expenditure on referendum campaigns, third parties and political parties should be required to disclose details of expenditure on referendum campaigns. Similarly, information should be made available on the sources of funding available to both third parties and political parties ([2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008](#)).

## Other proposed amendments to the Electoral Acts

- sanctions for non-cooperation with the Standards Commission should be reviewed. In particular, failure to cooperate with enquiries made by the Standards Commission under section 4(4) of the Electoral Act should constitute an offence ([2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008](#));
- to ensure a level playing field between candidates, and a degree of transparency, the use of public funds for electoral purposes should form part of the electoral code rather than other legislation which patently has quite a separate purpose. This would involve a consequential repeal of the provisions dealing with the provision of services and facilities following a dissolution of Dáil Éireann by the Houses of the Oireachtas Commission [Section 4(4A) of the Houses of the Oireachtas Commission Act 2003 (as amended by Section 4(c) of the Houses of the Oireachtas Commission (Amendment) Act 2009)] ([Report on the Dáil general election of 2007](#)).

## Proposed amendment to the Party Leaders Allowance legislation relating to the giving of advice

Either the Standards Commission or the Minister for Finance should be able to publish guidelines or give advice on the appropriate use of the Party Leaders Allowance and for such guidelines and advice to be legally binding on the persons to whom they apply ([Annual Report 2007](#)).

## Appendix 2 - Standards Commission Publications in 2010

1. Report on donations disclosed by TDs, Senators and MEPs for 2009 (March 2010)
2. Report regarding Donation Statements furnished by Political Parties for 2009 (May 2010)
3. Report on Expenditure of the Party Leaders Allowance 2009 (May 2010)
4. Report on Exchequer Funding received by Political Parties for 2009 (May 2010)
5. Annual Report 2009 (July 2010)
6. Guidelines on compliance with the provisions of the Ethics in Public Office Acts 1995 and 2001 Public Servants (8th Edition) (September 2010)
7. Guidelines for the Dáil Bye-Election in Donegal South West 2010 (Candidates and Election Agents) (November 2010)
8. Guidelines for the Dáil Bye-Election in Donegal South West 2010 (National Agents) (November 2010)

## Appendix 3 - Glossary of Terms

### Accounting unit

an “accounting unit” of a political party is a branch or other subsidiary organisation of the party which, in any particular year, receives a donation the value of which exceeds €126.97. The appropriate officer of a political party is required to provide the Standards Commission with the name and address of each accounting unit of the party, including the name of its “responsible person”. (The responsible person is the treasurer or any other person responsible for dealing with donations to the unit.) (Section 22(2)(aa) of the Electoral Act 1997, as amended)

### Civil partner

‘civil partner’, in relation to a person, means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 but does not include a civil partner who is living separately and apart from the person” (Section 97(2) and Part One of the Schedule, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010);

“For the purposes of this Act a civil partner is either of two persons of the same sex who are (a) parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity, or (b) parties to a legal relationship of a class that is the subject of an order made under section 5 that has not been dissolved or the subject of a decree of nullity” (Section 3, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010)

### Connected person

“Any question whether a person is connected with another shall be determined in accordance with the following provisions of this paragraph (any provision that one person is connected with another person being taken to mean also that that other person is connected with the first-mentioned person) -

- (i) a person is connected with an individual if that person is a relative of the individual,

- (ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,
- (iii) a person is connected with any person with whom he or she is in partnership,
- (iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,
- (v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company". (Section 2(2) (a) of the Ethics in Public Office Act 1995)

## Control

"has the meaning assigned to it by Section 157 of the Corporation Tax Act 1976, as amended, and any cognate words shall be construed accordingly" (section 1, Ethics in Public Office Act 1995). Section 157 of the Corporation Tax Act 1976, as amended, in turn refers to section 102 of that Act, which has subsequently been re-enacted in section 432 of the Taxes Consolidation Act 1997, which provides -

"a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire-

- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or
- (b) such part of the issued share capital of the company as would, if the whole of the income

- of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or
- (c) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators. (Section 2(2)(b) of the Ethics in Public Office Act 1995)

**Designated directorship** “in relation to a public body, means a prescribed directorship of that body” (Section 2(1) of the Ethics in Public Office Act 1995)

**Designated position** “in relation to a public body, means a prescribed position of employment in that body” (Section 2(1) of the Ethics in Public Office Act 1995)

**Director** “means a director within the meaning of the Companies Acts 1963 to 1990, but includes, in the case of a public body that is not a company (within the meaning of the Companies Act 1963) and is specified in subparagraph (8), (9), (10), (11) or (12), or stands prescribed for the purposes of subparagraph (13), of paragraph 1 of the First Schedule, a person who is a member of it or a member of any board or other body that controls, manages or administers it, and any cognate words shall be construed accordingly”. (Section 2(1) of the Ethics in Public Office Act 1995)

**Donation** a donation means “*any contribution given for political purposes by any person, whether or not a member of a political party.....*” [A “person” means an individual, a body corporate or an unincorporated body of persons. An unincorporated body of persons includes a political party and any of its subsidiary organisations.] A donation can include -

(i) a donation of money (including money given by a

political party to a TD, Senator or MEP or a candidate at an election);

- (ii) a donation of property or goods;
- (iii) the free use of property or goods;
- (iv) a free supply of services;
- (v) the difference between the commercial price and the (lower) price charged for property, goods or services;
- (vi) a donation received by way of a contribution made to the net profit from a fund-raising event organised for the benefit of a candidate. (Section 22(2)(a) of the Electoral Act 1997, as amended)

### Material interest

“A person or a connected person has a **material interest** in a matter if the consequence or effect -

- (a) of the performance by the person of a function of his or her office, directorship, designated position, or position as a special adviser, as the case may be, or
- (b) of any decision made in relation to or in the course 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 the 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”. (Section 2(3) of the Ethics in Public Office Act 1995) (NB. this definition applies other than in relation to a material interest of a member of the Oireachtas in Oireachtas proceedings where the provisions of section 7(3) of the Ethics in Public Office Act 1995 apply.)

### Office holder

A Minister of the Government; a Minister of State; the Attorney General; the Ceann Comhairle; the Leas Ceann Comhairle; the Cathaoirleach of Seanad Éireann and the Leas Cathaoirleach of Seanad Éireann (Section 2(1) of the Ethics in Public Office Act 1995)

**Special adviser**

“special adviser” has the meaning assigned to it by section 19 (1) of the 1995 Act, namely a person who -

- (a) occupies or occupied a position to which section 7(1)(e) of the Public Service Management (Recruitment and Appointments) Act 2004 relates, having been selected for appointment to that position by an office holder personally otherwise than by means of a competitive procedure, or
- (b) is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive procedure,

and whose function or principal function as such a person is or was to provide advice or other assistance to or for the office holder (Section 19 of the Ethics in Public Office Act 1995)  
(A special adviser also includes a person appointed, by order of the Government, pursuant to section 11 of the Public Service Management Act 1997).

**Specified act**

an act or an omission that is, or the circumstances of which are, such as to be inconsistent with the proper performance by the specified person of the functions of the office or position by reference to which he or she is such a person or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance. (Section 4(1)(a) of the Standards in Public Office Act 2001)

**Specified person**

an office holder or the holder of the office of Attorney General who is not a member of the Oireachtas; a special adviser; a designated director or a designated employee of a public body; a director or an employee of a public body. (Section 4(6)(a) of the Standards in Public Office Act 2001)

**Third party**

a “third party” is defined as any person, other than a political party or a candidate at an election, who accepts, in a particular year, a donation, the value of which exceeds €126.97. (A contribution given in support of a campaign at a referendum is regarded as a contribution for political purposes.) (Section 22(2)(aa) of the Electoral Act 1997, as amended)

## Appendix 4 - Costs in 2010

The table below outlines the expenditure attributed to the Standards Commission in 2010. The figures for 2009 are also shown for comparison purposes. The expenditure is provided for in Subhead B of Vote 18 [Office of the Ombudsman].

	2010 €000	2009 €000
Staff Salaries	584	685
Travel and Expenses	6	3
Incidental Expenses	76	65
Postal Telecommunications	17	19
Office Machinery and Other Office Supplies	48	39
Office Premises	36	30
Consultancy Fees	19	8
Legal Fees	76	6
<b>Total</b>	<b>862</b>	<b>855</b>

## Appendix 5 - Annual Energy Efficiency Report

The secretariat to the Standards Commission is provided by the Office of the Ombudsman at its offices in 18 Lower Leeson Street, Dublin 2, which also houses the Office of the Information Commissioner, the Office of the Commissioner for Environmental Information and the Commission for Public Service Appointments. This report itemises energy usage specifically by the Standards Commission in 2010 and provides an overview of actions undertaken in 2010 and planned for 2011 across the whole office.

### Overview of Energy Usage in 2010

In 2010, the Standards Commission consumed 111.98 MWh of energy, consisting of:

74.77 MWh of electricity;  
37.21 MWh of fossil fuels.

### Actions undertaken in 2010 and planned for 2011

The procurement unit in the Office of Public Works (OPW) ran a tender last year for energy providers, which the Office of the Ombudsman asked to be included in. On foot of the tender, the Office has changed both its gas and electricity suppliers in an attempt to reduce costs. The OPW will also monitor bills to ensure the tender achieves the required savings.

Vector Enterprises has been nominated by the Office of Public Works to implement an Energy Conservation Initiative across OPW managed facilities. The aim of the initiative is to reduce the Office's energy usage, and that of all OPW managed buildings, by 20%.

The plans consist of four stages.

#### Planning:

They will begin by auditing the Office's energy systems (building energy audit) using a generic building plan. An after-hours audit which is used to determine energy consumption during non-working hours will also be undertaken;

#### Operation:

Staff awareness of energy consumption and the methods of reducing it will be increased. A general presentation will be made to all staff regarding how the

Office will progress energy reduction. It is intended that a poster campaign to highlight energy consumption, and monthly reports, will be delivered to all staff. An awards scheme may be introduced to encourage staff participation;

**Communication:**

Vector's plans include regular meetings (every six weeks) with an appointed energy officer to go over issues that may arise, and to assess the ongoing monitoring of the building. This monitoring is provided by remote access. The electricity and gas feeds into this building have now been linked to a central computer which will record weekly and monthly energy consumption. Profiles of these recordings will be shown to an appointed energy officer in the relevant building;

**Review:**

A review will be undertaken to ensure continual improvement, which is aimed at achieving a saving of 20% in CO2 emissions in 2011, which in turn will reduce the Office's energy bills.

