

Guidelines for Donors

Section 24 (1A)



Coimisiún um Chaighdeán in Oifigí Poiblí
Standards in Public Office Commission

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Introduction

These guidelines have been published by the Standards in Public Office Commission (the “Standards Commission”) under section 4(6)(a) of the Electoral Act 1997 (the “Act”)¹.

These guidelines contain information for persons who make donations for political purposes, exceeding an aggregate value of €1,500, during any calendar year –

- to two or more persons who, when the donations were made, were members of the same political party, or
- to a political party and to one or more persons who were members of that political party when the donations were made to them.

The Guidelines are legally binding. However, where there is a discrepancy between the guidelines and the Act, the Act prevails.

Advice

The Standards Commission recommends that donors should read the guidelines in full. The Standards Commission may under section 4(6)(b) of the Act provide advice on compliance to persons who are covered by the provisions of the Act.

Advice is provided at the discretion of the Standard Commission. The circumstances where advice may not be provided include:

- where there is insufficient information to advise the requester;
- where the request for advice relates to a matter which is outside the expertise of the Standards Commission e.g. accountancy queries.
- where the request for advice relates to a matter which is under examination by the Standards Commission.

The Standards Commission recommends that advice should be sought immediately if a matter arises about which there is uncertainty. By doing so, it is less likely that the issue will cause a difficulty later.

A person must act in accordance with guidelines or advice published or given by the Standards Commission unless, by so doing, they would be contravening another provision of the Act.

¹ A reference to the 1997 Act refers to the Electoral Act 1997 as amended by the Electoral (Amendment) Act 1998, Local Elections (Disclosure of Donations and Expenditure) Act 1999, Electoral (Amendment) Act 2001, Local Government Act 2001, Electoral (Amendment) Act 2002, Local Government (No. 2) Act 2003, Electoral (Amendment) Act 2004, Electoral (Amendment) Act 2005, Electoral (Amendment) Act 2007, Electoral (Amendment) Act 2009, Ministers and Secretaries (Amendment) Act 2011, Electoral (Amendment) Act 2011, Electoral (Amendment) (Political Funding) Act 2012, Gaeltacht Act 2012, Electoral, Local Government and Planning and Development Act 2013, Local Government Reform Act 2014, Court of Appeal Act 2014, Electoral (Amendment) Act 2015 and the Electoral Reform Act 2022.

Inquiry

The Standards Commission is entitled to make such inquiries or on commencement of section 183 of the Electoral Reform Act 2022, to carry out such investigation as it considers appropriate and may require any person to furnish any information, document or thing in the possession or procurement of the person which the Standards Commission may require for the purpose of its duties under the legislation.

Where a person fails to comply with an inquiry request within a reasonable time, the Standards Commission may direct the person to comply with the inquiry within a particular period of time. Information provided as part of a direction by person is not admissible in proceedings brought against that person for an offence.

Failure to comply with a direction of the Commission is an offence.

Where a person is charged with the offence of failing to comply with a direction of the Commission, it is a defence to show that the information, document or thing which was the subject of the direction was not in that person's possession or control and it was not reasonably practicable for them to comply with the direction.

Reporting a contravention of the Act

Where a person wishes to provide the Standards Commission with information regarding a potential contravention of the Act, they may do so by contacting the Secretariat of the Standards Commission at info@sipo.ie. Reports of information will be acknowledged and reviewed. Such reports may form part of the Standards Commission's consideration as to whether it will exercise its powers under the Act.

The Act does not provide for a complaints mechanism regarding a potential contravention of the Act. Reporters of information will not be provided with the outcome of the Standards Commission's considerations.

Where a contravention has been committed by a specified person with the meaning of section 4 of the Standards in Public Office Act 2001, a person may submit a complaint to the Standards Commission under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 and will be dealt with in accordance with the Standards Commission's complaints process.

Scope

The requirement to provide a Donation Statement applies to any person persons who make donations for political purposes, exceeding an aggregate value of €1,500, during any calendar year –

- to two or more persons who, when the donations were made, were members of the same political party, or

- to a political party and to one or more persons who were members of that political party when the donations were made to them.

This requirement does not apply to:

- donations made by a company, trade union, society or building society who are required to disclose all donations exceeding €200 their reports and annual returns.
- donations (other than money) made by a political party to its members whether to individuals or any part of the party

Donation Statement

Not later than 31 January of the following year, such donors are required by the Act to furnish a Donation Statement to the Standards Commission providing details of all such donations. The Donation Statement must be accompanied by a Statutory Declaration made by the person furnishing the Donation Statement, declaring that, to the best of the person's knowledge and belief, the Donation Statement is correct in every material respect and the person has taken all reasonable action in order to satisfy him/herself as to the accuracy of the Donation Statement.

The Donation Statement is available to download on the Commission's website at this [link](#). Completed copies of the application form can be emailed to info@sipo.ie. The hard copy of the application form should be posted to the Standards Commission.

A Donation Statement should be furnished whether or not the recipient of the donation(s) is also required to disclose such donations in a Donation Statement furnished to the Standards Commission.

The Standards Commission will consider every Donation Statement furnished to it. Where the Standards Commission finds a minor error or omission in a Donation Statement, it will furnish details of the error or omission to the donor and will notify the donor that he/she has 14 days from the date of the notice in which to correct the error or make good the omission.

Where additional or supplemental information in relation to a donor's Donation Statement is required by the Standards Commission, it must be provided by the donor in the form specified by the Standards Commission and may be accompanied by a statutory declaration, if the Standards Commission so requires.

Where, following consideration by it of a Donation Statement, the Standards Commission is of the opinion that a contravention of the Act may have occurred, it is required to notify the donor of the possible contravention and afford him/her 14 days to furnish any comments he/she may have. The Standards Commission will consider the comments provided by the donor and, if it is still of the opinion that a contravention of the legislation has occurred, the current position is that the Standards Commission will furnish a report on the matter, together with any relevant documentation, to the Director of Public Prosecutions. On

commencement of section 182 of the Electoral Reform Act 2022, the Standards Commission will consider whether in its opinion there is sufficient evidence to justify criminal proceedings under the Act, or where there is no sufficient evidence whether to direct the carrying out of any investigation.

The Donation Statement and Statutory Declaration will be laid by the Standards Commission before the Houses of the Oireachtas. Statements are laid before the Houses once the Commission has completed its considerations outline above. Where there is a subsequent amendment to a statement, the amended statement will be laid before the Houses once the Commission has completed its considerations. It will also be made available for inspection by the public at the offices of the Standards Commission once the Commission has completed its considerations and such statement is laid before the Houses. Details of the donations disclosed will be published on the website of the Standards Commission.

The following particulars should be included in the Donation Statement:

- the aggregate value of the donations,
- the name of the political party concerned, and
- the name, description and postal address of each person to whom the donations were made.

Definitions

A **person** includes an individual, a body corporate and an unincorporated body of persons. A body corporate and any subsidiary thereof is deemed to be one person.

A **corporate donor** is defined as including:

- a body corporate;
- an unincorporated body of persons; or,
- a trust,

which makes a donation. A body corporate and any subsidiary thereof are deemed to be one person. For further information please refer to the Guidelines for the Register of Corporate Donors <http://www.sipo.gov.ie/en/Reports/Register-of-Corporate-Donors/> at www.sipo.ie

A **third party** means any individual or group, other than a registered political party or election candidate, who or which accepts, in a particular calendar year, a donation for political purposes exceeding the value of €100.

A **donation** means any contribution given within or outside the State for political purposes by any person (including a subsidiary organisation that has an office outside the State) to a political party, a member of either House of the Oireachtas, a representative in the European Parliament or a third party or a candidate at a Dáil, Seanad or European election and includes all or any of the following, namely:

1. a donation of money;
2. a donation of property or goods;

3. the free use of property or goods (i.e., conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods);
4. a free supply of services (i.e., the supply of services without payment or other consideration therefor);
5. the difference between the usual commercial price and the (lower) price charged for the purchase, acquisition or use of property or goods, or the supply of any service, where the price, fee or other consideration is less than the usual commercial price (this can include a loan provided by a financial institution or by a third party at terms and conditions which are more favourable than that provided by the financial institution to others);
6. a contribution made by a person to a fund-raising event organised for the purpose of raising funds for the benefit of a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, Presidential candidate/election agent, political party, accounting unit of a political party, or third party. The donation is that proportion of the contribution which is attributable to the net profit, if any, deriving from the event. Donations are deemed to have been received on the date of the actual fund-raiser (and not when the funds are actually received);
7. a payment by a person on their own behalf, or on behalf of one or more than one other person, of a fee or subscription for membership or continued membership of a political party (membership fees include any membership fee/levy/subscription paid to any sub unit of a political party);
8. a notional donation/donation in kind. This means that where a person/organisation pays for work/expenses from its own resources (i.e., not party funds) then this is considered a donation of the notional value/cost of the work/expenses to the donee. Donations in kind or notional donations are to be valued at the usual commercial price charged for the purchase, use or acquisition of the property or goods or the supply of the services donated.

The Act provides that the following items shall not be regarded as a donation:

- i. free postage facilities provided, under statute, for candidates at elections;
- ii. any payment, service or facility provided to a member/MEP out of public funds or moneys provided by an institution of the EU or other intergovernmental organisation to which the State is a party, pursuant to specified legislation, by virtue of the recipient being:
 - a. a member/MEP;
 - b. the holder of a qualifying office or position;
 - c. the holder of an elective or other public office; or
 - d. 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 the use of the individual's motor vehicle, where that service is not part of that individual's work or business and provided that the individual is not, directly or indirectly, paid by any other person for that service or to facilitate the provision of the service;

- iv. a service provided at an election by an employee of a political party (other than an individual in the employment of a subsidiary organisation of that party that has an office outside the State), including use of the employee's motor vehicle, whether the employee's remuneration is paid out of party resources or public funds, and the employee is not in receipt of any additional reward or benefit in kind for carrying out that service;
- v. normal media coverage and the transmission on radio or television of a broadcast on behalf of a member, MEP or candidate at an election. This does not cover any production or other costs associated with such a broadcast;
- vi. expenses incurred by a political party on behalf of a member, or MEP other than a donation of money;
- vii. election expenses incurred by a political party on behalf of a candidate of the political party at a Seanad Election or funds provided to such candidate by the political party in relation to those expenses;
- viii. election expenses incurred by a political party on behalf of a candidate authenticated by the political party at a Dáil or European election or funds provided to such candidate by the political party in relation to those expenses;
- ix. any payment, contribution or supply of goods or services (without payment or other consideration or at less than the commercial price) given outside the State by a person to a political party and accepted by that political party in accordance with the laws of the state in which it is accepted and, where it is a monetary payment or contribution, is kept or retained in a separate designated fund.

When considering what constitutes a donation the following matters are also relevant:

Political purposes means any of the following purposes, namely:

1. to promote or oppose, directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or
2. to present, directly or indirectly, the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party, or
3. to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party with regard to the policy or policies of another political party, political group, member of either House of the Oireachtas, representative in the European Parliament, third party or candidate at an election or referendum or otherwise, or
4. to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority;

5. to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad, Presidential or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;
6. otherwise to seek to influence the outcome of the election or a referendum or a campaign.

A **donation by an intermediary** must be accompanied by:

A donation by an Intermediary is a donation to political party, member of either House of the Oireachtas, representative in the European Parliament, or candidate a Dáil, Seanad or European election by a person through another person.

- notification that the donation is made on behalf of a person other than the person making the donation, and,
- the name, description and postal address of the person on whose behalf the donation is made.

'Cryptocurrency' means any form of digital currency that is not regulated, and in relation to which encryption techniques are used to regulate the generation of units of currency and verify the transfer of monies;

Limits on Donations

A recipient of a donation may not accept:

- a donation exceeding the value of €100, if the name and address of the donor are not known;
- a cash donation exceeding the value of €200;
- a donation exceeding the value of €200 in any calendar year from a corporate donor **unless** the corporate donor is registered in the register of Corporate Donors maintained by the Standards Commission **and** a statement, on behalf of the corporate donor confirming that the making of the donation was approved by the corporate donor, is furnished with the donation to the donee;
- a donation, of whatever value, from an individual (other than an Irish citizen) who resides outside the island of Ireland;
- a donation from a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which one or more of its principal activities is directed; a donation, or donations from the same donor, in any calendar year exceeding, in the case of a TD, Senator, MEP, candidate at a Dáil, Seanad or European election or Presidential candidate/election agent, an aggregate value of €1,000 or, in the case of a political party, accounting unit of a political party or a third party, an aggregate value of €2,500.
- A donation, of any value, in the form of cryptocurrency.

Offences

A donor will be guilty of an offence if he or she

- Fails to provide the Standards Commission with a donation statement and/or statutory declaration on or before 31 January; or
- Knowingly provides a statement or makes a statutory declaration which is false or misleading in any material respect.

On commencement of section 187 of the Electoral Reform Act 2022, the following will also be considered a separate offence

- Failure to provide the donation statement and/or statutory declaration.

A donor who fails to furnish the required Donation Statement is liable to a fine not exceeding €2,500.

A donor who knowingly furnishes a false or misleading Donation Statement is liable, on summary conviction, to a fine not exceeding €25,394.76 and/or imprisonment up to 3 years.

Where the conviction relates to a failure to furnish a donation statement the person shall be guilty of a further offence on every day in which the failure continues, after such conviction, and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €500 per day.

On commencement of section 193 of the Electoral Reform Act 2022, the Standards Commission may serve “fixed penalty notice” with a fixed payment of €200 on a person who provides the donation statement and/or statutory declaration after 31 January of the preceding year.

Where a fixed penalty notice is served on a person, no prosecution in respect of the offence shall be initiated if payment is made on or before the date specified in the fixed penalty notice.

Powers of Investigation

At the time of writing the Standards Commission’s powers of investigation as set out in part 4B of the Act and as set out below, have not been commenced. On commencement, the following will apply.

Where the Standards Commission reasonably believes that a person may have contravened certain parts of the Act including Part IV of the Act (Donations), the Standards Commission may direct the carrying out of an investigation by an authorised officer.

Investigations are carried out by an authorised officer who is appointed by the Standards Commission. On request, an authorised officer will provide any person affected by an investigation, with a copy of their authorisation.

In order to carry out an investigation:

- (i) The authorised officer may require any person to provide any information or explanation which they may reasonably require for the investigation.
- (ii) The authorised officer may require any person to produce any document or other thing of which the person has control, or to which the person has access, and which the authorised officer may reasonably require for the purposes of the investigation. The authorised officer may inspect and take copies of, or extracts from, any document or other thing produced as part of this requirement.
- (iii) The authorised officer may require any person to attend before them to answer questions, and to make a declaration of the truth of the answers to the questions for the investigation.
- (iv) With the consent of the occupier or pursuant to a warrant under section 4B(6) of the Act, the authorised officer may enter and search any premises at, on or in which they reasonably believe there may be any document or other thing which they may reasonably require for the investigation. The authorised officer may inspect and take copies of, or extracts from, any document or other thing found on a search. The authorised officer may be accompanied by a member of An Garda Síochána where necessary.
- (v) The authorised officer may require a person to make available in a legible form any documents so produced or found otherwise than in a legible form.
- (vi) The authorised officer may require a person to give to them such assistance as they may reasonably require for the investigation and make available to the authorised officer such reasonable facilities as are necessary to exercise his or her powers.

The Standards Commission may authorise the authorised officer to make interim reports to the Standards Commission.

The Commissioner will consider the report and where it is satisfied that a contravention of the Act has taken place, it may bring summary proceedings for an offence under the Act.

Useful information

Value of donation	Net Valuation of donation (from fundraising events, etc.) determines disclosability. Section 22(2)(vi) & Section 46(2)(a)(vi)
€100	An anonymous donation exceeding this amount cannot be accepted in any calendar year. Section 23(1) & Section 47(1)
€100	On receipt of a donation of this value, a political donations account must be opened by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, Presidential candidate/election agent, political party, accounting unit of a political party (e.g. branches, cumann, a Comhairle Dáil Ceantair or any other sub-unit), or a third party, if one has not already been opened. Section 23B(1) & Section 48B(1)
€200	Maximum cash donation that may be accepted by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, Presidential candidate/election agent, political party, accounting unit of a political party, or a third party in any calendar year from a donor. Section 23A(1)(iii) & Section 48A(1)(iii)
€200	Maximum donation that may be accepted by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, Presidential candidate/election agent, political party, accounting unit of a political party, or third party in any calendar year from a corporate donor unless the corporate donor is registered in the Register of Corporate Donors maintained by the Commission and a statement, on behalf of the corporate donor confirming that the making of the donation was approved by the corporate donor, is furnished with the donation to the donee. Section 23AA(1)(i) & (ii) and Section 48AA(1)(i) & (ii)
€200	Maximum aggregate donation that a company, trade union, society or building society can give before reporting it in annual returns made under the Companies Act 1963, or to the Registrar of Friendly Societies or the report of a building society (under the Building Societies Act 1989). Section 26
€600	All donations received by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, or Presidential candidate/election agent exceeding this amount must be disclosed on the Donation Statement. Section 24(4) & Section 48(1)
€1,000	Maximum donation that may be accepted by a TD, Senator, MEP, candidate at a Dáil, Seanad or European election, or Presidential candidate/election agent from an individual or a registered corporate donor in any calendar year. Section 23A(1)(i) & Section 48A(1)(i)
€1,500	All donations received by a political party exceeding this amount must be disclosed on the Donation Statement. Section 24(4)
€1,500	Reporting threshold/maximum aggregate amount in any calendar year that a donor can give to multiple candidates of the same party or to one or more party members and to the party itself before the donor is required to submit a donation statement. Section 24(1A)(a)
€2,500	Maximum donation that may be accepted by a political party, accounting unit of a political party, or a third party from an individual or a registered corporate donor in any calendar year. Section 23A(1)(ii) & Section 48A(1)(ii)