

# **Guidelines for the Dáil Bye-Elections 29 November 2019 [Candidates and Election agents]**



**Coimisiún um Chaighdeáin in Oifigí Poiblí**  
**Standards in Public Office Commission**

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**November 2019**

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## Introduction

1. These guidelines for the Dáil Bye-Elections have been published by the Standards in Public Office Commission under section 4 of the Electoral Act 1997, as amended (the Act).
2. The Guidelines cover the main requirements of the above legislation relating to:
  - disclosure of political donations;
  - limits on the value of donations which may be accepted;
  - prohibited donations;
  - limits on election spending;
  - reimbursement of election expenses to qualified candidates.
3. The Standards Commission was established in December 2001 by the Standards in Public Office Act 2001. The members of the Standards Commission are:
  - The Hon. Mr. Justice Daniel O’Keeffe, Chairperson of the Standards Commission;
  - Mr Seamus McCarthy, Comptroller and Auditor General;
  - Mr Peter Tyndall, Ombudsman;
  - Mr Peter Finnegan, Clerk of Dáil Éireann;
  - Mr Martin Groves, Clerk of Seanad Éireann; and
  - Mr Jim O’Keeffe, former member of Dáil Éireann.

The Standards Commission has a permanent Secretariat, which is located at 18 Lower Leeson Street, Dublin 2.

## Useful information about donations

<b>Political donations account</b>	On receipt of a donation of <b>€100</b> , a political donations account must be opened (if one has not already been opened) by a candidate.
<b>Cash donations</b>	<b>€200</b> is the maximum cash donation that may be accepted by a candidate in any calendar year from a donor.
<b>Corporate donors</b>	<b>€200</b> is the maximum donation that may be accepted by a candidate 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 the donation is accompanied by a statement of approval made by the corporate donor.
<b>Individual donors</b>	<ul style="list-style-type: none"> <li>• All donations received by a candidate exceeding <b>€600</b> must be disclosed on the Donation Statement.</li> </ul>
<b>Donation limits</b>	<ul style="list-style-type: none"> <li>• <b>€1,000</b> is the maximum donation that may be accepted by a candidate in a particular year from an individual or a registered corporate donor</li> </ul>
<b>Multiple donations</b>	Where a donor makes a donation to two or more recipients (multiple members of the same party or to one or more party members and the party itself), the aggregate value of which exceeds <b>€1,500</b> , he/she is required to submit a donation form to the Commission under section 24(1)(a). Donation limits still apply.
<b>Prohibited donations</b>	<ul style="list-style-type: none"> <li>• Any donation that exceeds the above noted limits</li> <li>• An anonymous donation exceeding <b>€100</b> cannot be accepted</li> <li>• Foreign donations, of any value, cannot be accepted, other than from an Irish citizen or from a business that maintains an office on the island of Ireland from which at least one of its principal activities is directed.</li> </ul>

## Relevant dates & spending limits

7 November 2019 to 29 November 2019 (inclusive)	Election Period
€45,200 €37,650	Spending Limit for a 5 seat Constituency Spending Limit for a 4 seat Constituency
13 January 2020	Claims for payment of election expenses, from suppliers, must be received by the election agent by this date
24 January 2020	Date by which all Election Expenses Statements must be furnished to the Standards Commission (applies to successful and unsuccessful candidates).
24 January 2020	Date by which unsuccessful candidates must furnish to the Standards Commission their donation statements, certificate of monetary donations and bank statements.
31 January 2020	Date by which all TDs (i.e. successful candidates in the election) must furnish to the Standards Commission their annual returns, including donation statements, certificate of monetary donations, and bank statements.
€8,700	Maximum amount of reimbursement of allowable election expenses that a qualifying candidate may claim.

<b>4 Seat Constituency</b> <b>€37,650 spending limit</b>	<b>5 Seat Constituency</b> <b>€45,200 spending limit</b>
<ul style="list-style-type: none"> <li>• Cork North-Central</li> <li>• Dublin Mid-West</li> </ul>	<ul style="list-style-type: none"> <li>• Dublin Fingal</li> <li>• Wexford</li> </ul>

## Tax clearance requirements

Successful candidates will be required to provide:

a Tax Clearance Certificate\* (or Application Statement) issued not more than nine months either side of the bye-election date (i.e., the date on which the returning officer declares the person elected),

**and**

a Statutory Declaration, made not more than one month either side of the bye-election date, to the effect that, to the best of their knowledge, their tax affairs are in order and that nothing prevents the issue of a Tax Clearance Certificate.

**\*Please note:** there is a specific application form that must be used for tax clearance for the Standards Commission. Please ensure the correct form has been used so that you are issued with the appropriate clearance by Revenue.

## Chapter 1: Candidates

The following are the key issues of which candidates should be aware in order to ensure compliance with the requirements of the legislation.

- 1.1. Appointment of an election agent
- 1.2. Assignment of a portion of a candidate's spending limit to his/her political party
- 1.3. Donations
- 1.4. Opening and maintaining a political donations account
- 1.5. Prohibited donations
- 1.6. Persons who may be incurring unauthorised expenditure
- 1.7. Furnishing the required statutory documentation after the election
- 1.8. Claiming a reimbursement of election expenses
- 1.9. Offences and penalties

## 1.1 Appointment of an election agent

- 1.1.1 Each candidate shall appoint an election agent [*Section 28(2)(a)*]. The election agent, for the purposes of this Act, is the person who will be responsible for accounting for expenditure on the candidate's campaign. The election agent appointed under this Act is not necessarily the same person who will be present on the candidate's behalf for the counting of votes and who acts on the candidate's behalf for other specific purposes set out in the 1992 Electoral Act.
- 1.1.2 A candidate may act as his/her own election agent [*Section 28(2)(b)*]. If a candidate does not notify the Returning Officer of the appointment of an election agent by the last day for receiving nominations he/she will be deemed to be acting as his/her own election agent [*Section 28(3)(b)*]. A candidate who acts as his/her own election agent will also be required to comply with the provisions of the Act applying to election agents [*Section 28(2)(b)*] (see Chapter 2).
- 1.1.3 Ideally, the appointment of the candidate's election agent should be made before any election expenses are incurred. If election expenses are incurred before the election agent is appointed, the candidate must give the election agent details of any such expenses together with all relevant invoices/receipts [*Section 31(8)*]. It is an offence for a candidate to fail to comply with this requirement [*Section 31(8A)*].
- 1.1.4 Candidates should give careful consideration to the appointment of an election agent. The election agent should be comfortable with keeping accounts. He/she must maintain proper records of all transactions relating to spending on the candidate's election campaign and retain receipts, invoices or vouchers for inspection, and for public display, by the Standards Commission.
- 1.1.5 The candidate must notify the Returning Officer for the constituency, in writing, of the name of the election agent and the address of the office of the agent. This must be done not later than the last day for receiving nominations at the election, 12 noon, Friday 15 November 2019 [*Section 28(2)(a)*].

There is no provision on the nomination papers for the candidate to give details of his/her election agent. The Standards Commission has issued a form to the Returning Officers which a candidate may use to give details of his/her election agent. The Returning Officer will inform the Standards Commission of the name and address of the election agent appointed. It is very important that candidates ensure that the person notified to the Returning Officer is the person they intend having as their election agent (i.e., the person who will be responsible for accounting for expenditure on the candidate's campaign). The Standards Commission will accept an election expenses statement only from the person notified to it by the Returning Officer as the candidate's election agent.

- 1.1.6 A candidate's election agent can authorise other people, including the candidate, to incur expenses or make payments in connection with the candidate's campaign. A person who is authorised in this way is entitled to incur expenses or make payments only within the specific financial limit laid down by the election agent [*Section 31(5)*]. The national agent of a candidate's political party, the candidate's election agent or a person authorised by the candidate's election agent are the only persons who can incur expenses or make payments in connection with the candidate's election



campaign [Section 31(4)]. The election agent must subsequently account for such expenses or payments.

- 1.1.7 A candidate may, at any time, revoke the appointment of an election agent (including his/her own appointment as election agent) [Section 28 (4)(b)]. Where the appointment of an election agent has been revoked, it is the candidate who must notify the Returning Officer in writing of the name and address of the new election agent [Section 28(5)(a)] (including the candidate's own details if he/she intends to act as his/her own election agent [Section 28(6)(b)]).

The Returning Officer must then advise the Standards Commission in writing of the change of election agent and his/her contact details.

The Standards Commission cannot accept an election expenses statement (EES) if the election agent notified to it by the Returning Officer does not match the name of the election agent on the EES.

- 1.1.8 The same person may act as election agent for more than one candidate. In such circumstances the election agent is separately responsible for each candidate. Great care must be taken to ensure that separate records and accounts are kept for each candidate and that it is possible to apportion expenses between the different candidates where this is necessary. Separate Election Expenses Statements must be submitted in respect of each candidate.

**Non-party candidates may proceed to Paragraph 1.3**

## 1.2 Assignment of a portion of a candidate's spending limit to his/her political party

- 1.2.1 If a candidate is contesting the bye-election on behalf of a political party, he/she must agree in writing with the party the amount of the candidate's spending limit that the candidate is assigning to the party [Section 32(1)(b)(i)]. The candidate is not legally required to make any assignment to the party. If, however, an assignment is made by a candidate to the party, the spending limit of the candidate's own election agent is reduced by that amount. The national agent of the candidate's political party can, out of the amount which has been assigned by the candidate to the party, incur expenses or make payments on behalf of the candidate or on the party's national campaign [Section 32(1)(b)(ii)]. Under no circumstances can total spending on a candidate exceed the statutory spending limit for the candidate [Section 32(1)(a)].

The following is an example of how the spending limit is calculated following assignment by the candidate to the party:

Statutory Spending Limit	<b>€37,650 (4 seat Constituency)</b>
Amount Assigned to Party	<b><u>€10,000</u></b>
Amount Election Agent Can Spend	<b>€27,650</b>

- 1.2.2 The Act does not specify when the agreed assignment between the candidate and the political party should be made. Similarly, the Act does not preclude a re-negotiation of the agreed assignment. The Standards Commission strongly advises, however, that

the agreed assignment should be finalised before any expenses are incurred by either the candidate's election agent or the party's national agent.

- 1.2.3 The Act provides that the amount assigned to a political party must be agreed in writing between the candidate and the party [*Section 32(1)(b)(i)*]. The written agreement, therefore, should clearly state the amount assigned to the party and should be signed by the candidate and the appropriate party official. Where assignments are re-negotiated, a new written agreement must be made. A copy of the written agreement should be given to the candidate's election agent. The election agent will be required to furnish a copy of the written agreement along with his/her election expenses statement [*Section 36(1)(c)*].

## 1.3 Donations

### (a) Keeping a record of donations

- 1.3.1 It is the candidate who is required to comply with the requirements of the Act regarding the recording and disclosure of donations. It is important, therefore, that candidates keep a record of donations received in relation to the election for the purposes of furnishing a donation statement to the Standards Commission after the bye-election (see paragraph 1.7). Candidates should know the name, description, citizenship and postal address of the donor, date on which donation was received, whether the donation was requested (and, if so, the name and address of person who requested it) and whether a receipt issued in respect of the donation (and, if so, the date of receipt and name of receipt issuer) [*Section 24(2)(a)*].
- 1.3.2 The candidate is also responsible for ensuring that donations accepted by him/her are not prohibited under the Act (see paragraph 1.5). This is particularly important where donations are received online. Where a candidate is accepting donations through a website, he/she must be able to properly identify the source of the donation and ensure that the donation is not prohibited. It is also important for disclosure purposes and for the purposes of adhering to the maximum acceptance limit that the candidate has a system in place which will aggregate all donations from the same donor, whether received online (by credit card, debit card etc.) and/or by other means.
- 1.3.3 The Standards Commission advises that, if a candidate is using a crowd funding service, they should make it clear to donors that the acceptance of prohibited donations is not permitted. The candidate may seek to work with the service to put in place measures to support this.

### (b) What is a donation?

- 1.3.4 A donation as defined in the Act [*Section 22(2)(a)*] includes any contribution given for political purposes by any person, whether or not a member of a political party, to, among others, a candidate at a Dáil bye-election and includes all or any of the following, namely:
- a donation of money;
  - a donation of property or goods, e.g. a donation in kind;

- the free use of property or goods without payment in money or in kind;
- a free supply of services without payment in money or in kind;
- 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 third party or by a financial institution at terms and conditions which are more favourable than that provided by a financial institution to other individuals in the normal course of business);
- a contribution made by a person to a fund-raising event organised for the purpose of raising funds for a candidate or a political party. The donation is the net profit from the event. Donations are deemed to have been received on the date of the actual fund-raiser (and not when actually received). A detailed explanation of this is in Chapter 3;
- a payment by the 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 fees/levies/subscriptions paid to any sub-unit of a political party and should be accounted for when aggregating donations);

1.3.5 Notional donations or donations in kind are where a person/organisation pays for work/expenses from its own resources (i.e. not party funds). This is considered a donation of the notional value/cost of the work/expenses. 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 any service donated.

1.3.6 A donation made to a candidate at a Dáil bye-election through an intermediary, agent or other person acting for the candidate shall be deemed to be a donation made to the candidate directly, unless the donation is passed on to the political party of which he/she is a member and a written acknowledgement is received by the candidate, in which case the donation is deemed to be a donation to the political party [*Section 22(2)(c)(ii)*].

1.3.7 If the same person makes more than one donation to a Member, candidate, sub-unit or political party, the values of the donations must be aggregated and treated as a single donation for the purpose of observing disclosure limits and the maximum limits applying to donations {*Section 22(2)(d)*}

1.3.8 If more than one member of the same family, or other group, make donations to the same Member, candidate and/or election agent, sub-unit or political party, including where donations of money are made from a joint account in a financial institution, it must be clear that these are separate donations from each of the individuals/party concerned. Otherwise, the values of the donations must be aggregated and treated as a single donation for disclosure purposes and for the purpose of observing the maximum limit applying to the acceptance of donations.

Similarly, if a company and any of its directors make a donation to the same Member, candidate or Dáil bye-election agent, sub-unit or political party it must be clear that these are separate donations. In such circumstances the Standards Commission may request information to verify that the donations are from separate legal entities. In each case, the election agent and/or candidate, sub-unit or political party must make whatever enquiries are necessary in order to be satisfied as to the position with regard to the donation. [*Section 22(2)(d)*]

Details on prohibited donations are at paragraph 1.5.

1.3.9 A "person" [*Section 2(1)*] can be:

- an individual;
- a body corporate (e.g., a public or private company) and any subsidiary thereof. Where donations are received from associated companies the candidate should enquire from the donors whether one or other of the companies is a subsidiary of the other;
- an unincorporated body of persons, e.g., a political party, a partnership, a residents association, a lobby group.

A "corporate donor" is defined [*Section 22(2)(aa)*] 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.

1.3.10 Donations with a value, or donations from the same person with an aggregate value, of more than **€600** must be disclosed [*Section 24(4)*]. Where the same person makes more than one donation to a candidate in relation to the election, the values of the donations must be aggregated and treated as a single donation for disclosure purposes [*Section 22(2)(d)*].

1.3.11 A donation to a candidate also includes money given to a candidate by his/her political party [*Section 22(2)(b)(vi)*].

1.3.12 Where expenses are incurred on a candidate's behalf by an individual or body other than a political party as defined in the Act and the expenses are borne by the individual/body, the expenses may be regarded as a donation to the candidate.

### **(c) What is not a donation?**

1.3.13 Items that are not regarded as donations to a candidate include [*Section 22(2)(b)*]:

- free post service provided to candidates by An Post [*Section 22(2)(b)(i)*];
- any payment, service or facility provided to the candidate out of public funds or moneys provided by an institution of the European Communities or other intergovernmental organisation to which the State is a party, pursuant to specified legislation, by virtue of the candidate being:

- a representative in the European Parliament;
- a member of Dáil or Seanad Éireann;
- the holder of a qualifying office or position;
- the holder of an elective or other public office; or
- a member of, delegate to, or representative in a body established by or under an agreement or arrangement to which the State is a party; (*Section 22(2)(b)(ii)*)

It is important to note that this provision only applies where the candidate, by virtue of his/her position or office, is entitled to use the services/facilities provided out of public funds. Holders of elected/public office are reminded that facilities provided to them e.g. prepaid envelopes, stationery, office accommodation, telephones, etc. are provided solely for their own use for representational purposes. Any use for electoral purposes must be accounted for in accordance with Chapter 3 of these guidelines.

- a free service provided by an individual, including use of the individual's motor vehicle, private telephone, etc., where the service provided is not part of the individual's work or business [*Section 22(2)(b)(iii)(I)*].

It is important to note that the reference in this particular provision of the Act [*Section 22(2)(b)(iii)(I)*] is specific to an individual and to the use of an individual's motor vehicle (singular). If more than one vehicle is provided by an individual, the additional vehicles may be regarded as donations and as election expenses. If a vehicle which is in the ownership of a company, partnership, business etc., is provided to a candidate, it is not regarded as a free service provided by an individual. In such circumstances the use of the vehicle is regarded as both a donation and an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of disclosing its value.

- a service provided at an election by an employee of a political party, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit-in-kind other than his/her normal remuneration (including recoupment of expenses) for that service [*Section 22(2)(b)(iii)(II)*];
- normal media coverage and the transmission on radio or television of a broadcast on behalf of the candidate [*Section 22(2)(b)(iv)&(v)*]; [This does not cover any production, or other costs associated with such a broadcast.];
- expenses incurred or payments made by a political party on behalf of the candidate, other than a donation of money [*Section 22(2)(b)(vi)*];
- the services of an accountant, or other person, who is engaged for the specific purpose of assisting compliance with the requirements of the legislation;
- the services of personation officers on polling day.

**(d) Expenses incurred by an organisation or body (other than a registered political party)**

1.3.14 As stated in paragraph 1.3.13 above, expenses incurred by a political party on behalf of a candidate are not regarded as a donation to the candidate [Section 22(2)(b)(vi)]. Only expenses incurred by a registered political party are not regarded as a donation to a candidate. If an organisation is not registered in the Register of Political Parties as a party organised to contest a Dáil or European election, it is not regarded as a political party for the purposes of the Act. In that regard, therefore, expenses incurred by "third parties" for a candidate are regarded as donations to the candidate and are subject to disclosure limits and to the rules regarding prohibited donations (see paragraph 1.5 below).

**(e) Loans to candidates**

1.3.15 Where a loan is provided to a candidate by a financial institution, and the normal rules attaching to such loans apply, the loan is not regarded as a donation to the candidate. However, where a loan is provided to a candidate by a financial institution in circumstances where either the interest charged is less than the lowest rate available from the financial institution or the loan is not repaid in accordance with the terms and conditions under which the loan was issued or is only partially repaid, the benefit to the candidate may be regarded as a donation and may be subject to the disclosure and maximum limits applying to the acceptance of donations.

1.3.16 Where an individual or body, who or which is not a financial institution, gives a loan to a candidate, it must be evident that the loan offered is a bona fide loan. In that regard the following would apply:

- as with a loan from a financial institution, the terms and conditions applying to the loan and its repayment must be stated clearly in writing.
- interest is chargeable on the loan at a rate (whether fixed or variable) which reflects the interest charged by financial institutions on loans of a similar amount and duration. Where the interest charged is less than the lowest rate available from a financial institution, the benefit accruing from the difference in rates is regarded as a donation to the candidate.
- the Standards Commission may require sight of the terms and conditions, including the interest charge, applying to the loan and may require confirmation that the loan has been repaid in accordance with these terms and conditions. If the loan is not repaid in accordance with the terms and conditions, or is only partly repaid, the benefit of such non-repayment may be regarded as a donation to the candidate.

**(f) Cross-canvassing**

1.3.17 A donation to a candidate also includes a situation where another candidate ("running mate" or otherwise) includes in his/her election material an endorsement which solicits support for the candidate. The value of the reference to the candidate in the other candidate's election material is regarded as a donation to the candidate [In this regard see paragraph 2.2.7 on cross-canvassing].

## 1.4 Opening and maintaining a political donations account

- 1.4.1 If a candidate receives, in any particular calendar year, a monetary donation, the value of which exceeds €100, he/she must open and maintain a political donations account in a financial institution in the State [*Section 23B(1)*]. A credit union is not regarded as a "financial institution" for the purposes of the legislation [*Section 22(2)(aa)(a)*]. The candidate must lodge that donation and any further monetary donations, of whatever value, received by him/her to that account. The account should be separate from any other personal account held by the candidate. The account should be in the candidate's name and he/she should be the authorised signatory on the account. All monies withdrawn from the account must be used for political purposes [*Section 23B(4)(b)*].
- 1.4.2 If a candidate already operates a political donations account, he/she should not open a separate political donations account specifically for the bye-election. The candidate should ensure, instead, that all monetary donations, of whatever value, received in relation to the bye-election are lodged to his/her existing political donations account. If the candidate wishes to open a specific "election account" he/she can transfer money from his/her political donations account to the election account. Monies transferred to an election account could be regarded as having been used for electoral purposes.
- 1.4.3 It should be noted that a candidate who is elected will have an ongoing requirement to maintain his/her political donations account and will be required, on an annual basis, to furnish documentation relating to the account to the Standards Commission.
- 1.4.4 The Standards Commission recommends that, where possible, you should obtain and keep a record of the names and addresses of all donors even where the donation does not exceed €100, regardless of the value of the donation made. This will assist you in complying with the donation limit from a single donor of aggregate donations of no more than €1,000 in a calendar year.

The Standards Commission reviews statutory documentation submitted to it and will make enquiries in relation to statements received should clarification be required.

## 1.5 Prohibited donations

### (a) Anonymous donations

- 1.5.1 Acceptance of an anonymous donation exceeding a value of €100 is prohibited [*Section 23(1)*].

A donation is anonymous if a candidate does not know the name and address of the donor. The onus is on the recipient to ensure that the name and address of the donor is known. If a prohibited anonymous donation is received by a candidate, the Standards Commission must be notified by the candidate within fourteen days of its receipt. The donation or its value must also be remitted by the candidate to the Standards Commission [*Section 23(2)*].

### **(b) Cash donations in excess of €200**

1.5.2 Acceptance of a cash donation exceeding €200 in value is prohibited [*Section 23A(1)(c)(iii)*].

1.5.3 If a cash donation exceeding that amount is received, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor (or the part of it exceeding the limit) and keep a written record of the return to furnish to the Standards Commission, if required;

**or,**

the recipient must, within fourteen days of receipt, notify the Standards Commission of receipt of the donation and remit the donation (or the amount over the limit) to the Standards Commission [*Section 23A(5)*].

### **(c) Donations by non-registered corporate donor in excess of €200**

1.5.4 It is prohibited to accept a donation exceeding €200 in value from a corporate donor [*Section 23AA(1)(c)*] **unless**

- the corporate donor is registered in the Register of Corporate Donors maintained by the Commission [*Section 23AA(1)(i)*] **and**
- a statement is made on behalf of the corporate donor (and furnished with the donation to the donee) confirming that the making of the donation was approved by the corporate donor [*Section 23AA(1)(ii)*].

The statement must be accompanied by a statutory declaration that, to the best of the knowledge and belief of the person concerned, the 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 statement [*Section 23AA(2)*].

1.5.5 If a donation is received from a non-registered corporate donor, the recipient of the donation must, within 14 days of receipt of the donation, return the donation to the donor, or, if it is a monetary donation, the amount over the limit, and keep a written record of the return to furnish to the Standards Commission, if required;

**or,**

the recipient must, within fourteen days of receipt, notify the Standards Commission of receipt of the donation and remit the donation, or, if it is a monetary donation, the amount over the limit, to the Standards Commission [*Section 23AA(6)*].

### **(d) Donations from outside of Ireland**

1.5.6 A candidate must not accept a donation of whatever value, given by an individual (other than an Irish citizen) who resides outside the island of Ireland or by a body corporate or unincorporated body of persons which does not keep an office in the island of Ireland from which the carrying out of one or more of its principal activities is directed [*Section 23A(2)*].



The onus is on the recipient of the donation to satisfy him/herself that the donation is acceptable.

1.5.7 A prohibited donation from outside of Ireland must be notified and remitted to the Standards Commission by the candidate within 14 days of its receipt.

As an alternative, the candidate may return the donation to the donor [*Section 23A(5)*]. If the donation is returned, the candidate must keep a written record of that return to furnish to the Standards Commission, if required.

#### **(e) Donations in excess of the prescribed limit**

1.5.8 The maximum value of donation(s) which may be accepted by a candidate from a particular person in a particular calendar year, either directly or through an intermediary, is €1,000 [*Section 23A(1)(i)*].

Where a person makes more than one donation to a candidate in a particular year the values of the donations must be aggregated for the purpose of observing the maximum limit [*Section 23A(3)*].

1.5.9 The maximum limit of €1,000 does not apply to a constituency office provided to the candidate by a person or, if more than one such office is provided, to whichever of the offices is nominated in writing by the candidate [*Section 23A(4)*].

It is important to note that although the maximum limit may not apply to a donation of a constituency office, such a donation must be disclosed if the value exceeds €600 [*Section 24(4)*].

1.5.10 The maximum limit does, however, apply to monetary donations received by a candidate from his/her political party [*Section 22(2)(b)(vi)*].

Donations of money from any branch of the party (including party headquarters) must be aggregated for the purpose of observing the maximum limit and treated as a single donation from the party [*Section 22(2)(c)* and *22(2)(d)(ii)*].

1.5.11 Where a donation is received and is prohibited because its value is over the limit, the candidate must notify the Standards Commission within 14 days of its receipt and remit the donation, or the amount over the limit, to the Standards Commission [*Section 23A(5)(b)*].

As an alternative, the candidate may return the donation, or the amount over the limit, to the donor and keep a written record of that return to furnish to the Standards Commission, if required [*Section 23A(5)(a)*].

#### **(f) Other prohibited donations**

1.5.12 A candidate is prohibited from accepting a donation if he or she knows or has reason to believe that the person making the donation does not intend to comply with his/her obligations under the Electoral Act.

Section 24(1A) of the Act provides that individual donors who make donations with a total value in excess of €1,500 in any calendar year to two or more members of the same political party (or to a political party and one or more of its members), are

themselves required to furnish a donation statement and statutory declaration to the Standards Commission disclosing details of the donations. If the donor in question does not intend to comply with this requirement, and if a candidate is aware of this, the candidate is prohibited from accepting a donation from the donor [*Section 24A(2)*]

1.5.13 If such a prohibited donation is received by a candidate, the Standards Commission must be notified by the candidate within 14 days of its receipt. The donation, or its value, must also be remitted by the candidate to the Standards Commission [*Section 24A(3)*].

1.5.14 **Failure to notify, remit or return, as appropriate, a prohibited donation is an offence [*Section 25(1)*].**

## 1.6 Persons incurring unauthorised expenditure

1.6.1 It is an offence for a candidate, or anybody else, including, for example, a local branch of a political party, to incur expenses or make payments in connection with a candidate's campaign if this is not authorised by the candidate's election agent or the national agent of the candidate's political party. This includes accepting a donation of election material or a service, e.g., leaflets or advertising, either free or below commercial price.

1.6.2 Notices or advertisements in newspapers, magazines or other periodical publications which promote or oppose the interests of a political party or a candidate may be placed only if requested by a candidate, a candidate's election agent, a national agent of a political party or a person authorised in writing by the candidate or either agent [*Section 31(10)*].

1.6.3 "Third parties" or "other persons" may place notices or advertisements in newspapers, magazines or periodical publications if they produce to the publisher a Certificate of Authorisation from the Standards Commission confirming that they have complied with their legal obligations [*Section 31(10)*]. This Certificate is issued by the Standards Commission when all the relevant information is received from the third party/other person. The Standards Commission will notify publishers of the requirements of the Act in this regard.

1.6.4 Each candidate is advised to be aware of any such expenditure being incurred on his/her behalf by directors of elections or other persons. If a candidate becomes aware that a person, other than his/her election agent or the national agent of the political party, is incurring expenses on his/her behalf at the election, the candidate should ensure that this has been authorised by either such agent. If it has not been authorised, the person incurring the expenses would be committing an offence unless a certificate to incur the expenses has been issued to the person by the Standards Commission. If necessary, the candidate should bring the matter to the attention of the Standards Commission and appropriate action will be taken.

## 1.7 Furnishing the required statutory documentation after the election

### (a) Unsuccessful candidates

1.7.1 If a candidate is unsuccessful at the bye-election, he/she must, within 56 days after polling day (i.e., by 24 January 2020), furnish to the Standards Commission a donation statement and statutory declaration. This is a statutory requirement and must be returned in the form provided by the Standards Commission [*Section 24(2)(a)* and *Section 24(3)*].

The donation statement must give details of all donations received in relation to the bye-election with a value greater than €600 [*Section 24(4)*]. Donations made by the same person to the same candidate in relation to the election must be aggregated and treated as a single donation [*Section 22(d)*]. It should be noted that "in relation to the election" means donations received at any time before the issue of the writ [*Section 24(2)(a)*], and is not limited to the year in which the election took place.

1.7.2 The donation statement and statutory declaration must be furnished whether or not the candidate received a donation. If no donation was received, a "nil" return must be made to the Standards Commission.

1.7.3 If a monetary donation in excess of €100 was received and the candidate was required to open a political donations account (see paragraph 1.4.1), or if the candidate already had a political donations account, the donation statement must be accompanied by a statement provided by the financial institution where the account is held (bank statement) [*Section 23B(4)(a)*].

If a new political donations account was opened, the bank statement must specify the transactions (i.e. lodgements and withdrawals) that have taken place during the period beginning on the date of opening of the account and ending on polling day at the election. If an existing political donations account was used, the bank statement must specify the transactions that have taken place on the account since the candidate accepted a donation in relation to the campaign or since 1 January 2019. The donation statement must also be accompanied by a certificate of monetary donations certifying that all monetary donations received after the account was opened were lodged to the account and all amounts debited from the account were used for political purposes [*Section 23B(4)(b)*]. The certificate must be signed by the candidate and accompanied by a statutory declaration [*Section 23B(6)*].

1.7.4 Failure to send a donation statement and all accompanying documentation to the Standards Commission within 56 days of polling day is an offence [*Section 25(1)(c)*].

1.7.5 The Standards Commission Secretariat will contact unsuccessful candidates after the bye-election and will make available the relevant forms, which include the following:

- a donation statement,
- a certificate of monetary donation, and
- a statutory declaration.

Assistance in completing the forms, including advice in relation to what is or is not a donation in any particular case, will also be available on request.

- 1.7.6 Minor omissions or errors found by the Standards Commission in a donation statement will be notified to the candidate. If requested to amend his/her donation statement, the candidate must do so within 14 days [*Section 4(2)*].
- 1.7.7 The Standards Commission can request additional information from a candidate in relation to his/her donation statement. Where such additional information is requested, it must be provided in a form determined by the Standards Commission and may have to be accompanied by a statutory declaration [*Section 24(6A)*].
- 1.7.8 Copies of donation statements and statutory declarations furnished by unsuccessful candidates will be laid by the Standards Commission before both Houses of the Oireachtas and will be made available for a period of three years for public inspection at the offices of the Standards Commission [*Section 24(7)(a)* and *Section 73*]. Summary details of the donations disclosed are also included in a report to the Chairman of Dáil Éireann [*Section 4(1)*], laid before each House of the Oireachtas [*Section 4(5)*] and published on the website of the Standards Commission.
- 1.7.9 Certificates of monetary donations/statutory declarations and statements from financial institutions are retained by the Standards Commission and are not put on public display or otherwise disclosed, unless ordered by a court to do so or disclosure is required in connection with an investigation held by the Standards Commission [*Section 23B(8)*].

<p><b>The unsuccessful candidate will be required to complete a donation statement even if no donations were received.</b></p>
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#### **(b) Successful candidates**

- 1.7.10 If a candidate is elected at the bye-election, he/she will not be required to submit a donation statement, statutory declaration and certificate of monetary donation within 56 days after polling day. Instead, he/she will be required, as a member of Dáil Éireann, to furnish an annual donation statement, statutory declaration and certificate of monetary donation to the Standards Commission by 31 January of the year following the bye-election, covering the previous year and annually thereafter. [*Section 24(1)(a)*]. Forms for this purpose will be provided to TDs by the Standards Commission in early January each year.
- 1.7.11 The donation statement submitted by TDs must include donations with a value, or aggregate value from the same person, greater than €600 received during the previous calendar year. The statement from the financial institution must specify the transactions that have taken place on the account during the previous calendar year. Supporting documentation may be required.

### (c) Tax clearance requirements

1.7.12 Pursuant to section 21 of the Standards in Public Office Act 2001, successful candidates must provide the following to the Standards Commission within nine months of the date in which the returning officer declares their election:

- a Tax Clearance Certificate (or Application Statement) issued not more than nine months either side of the election date, and
- a Statutory Declaration, made not more than one month either side of the election date, to the effect that, to the best of their knowledge, their tax affairs are in order and that nothing prevents the issue of a Tax Clearance Certificate.

A Tax Clearance Certificate/Application Statement is issued by the Collector General, Office of the Revenue Commissioners. More detailed instructions will be provided by the Standards Commission to the successful candidate after the election.

If there are possible contraventions of the Act, the Standards Commission may investigate the matter and draw up a report of the result of the investigation. Investigation reports are provided to the Committee on Members' Interests of Dáil Éireann, and laid before Dáil Éireann.

## 1.8 Claiming a reimbursement of election expenses

1.8.1 A qualified candidate is entitled to apply for a reimbursement of election expenses. In order to qualify for a reimbursement, a candidate must either:

- be elected [*Section 21(1)(a)(i)*]; or
- if not elected, have exceeded one quarter of the quota at any stage of the counting of the votes [*Section 21(1)(a)(ii)*].

1.8.2 The maximum amount which may be reimbursed is the lesser of €8,700 or the actual amount of the election expenses incurred on behalf of the candidate [*Section 21(1)(b)(i)* and *Section 21(2)(b)(ii)* and *Section 3(1)*]

1.8.3 In calculating the amount of the reimbursement it should be noted that account may be taken of:

- expenses incurred on behalf of the candidate and accounted for by the candidate's election agent [*Section 21(1)(b)(ii)*]; and
- expenses incurred on behalf of the candidate by the candidate's political party and accounted for by the national agent [*Section 32(4)*].

1.8.4 In order to certify a reimbursement of a qualified candidate's election expenses, the Standards Commission must have received the following documentation [*Section 21(1)(d)*]:

- completed election agent's election expenses statement/statutory declaration;
- completed national agent's election expenses statement/statutory declaration;
- supporting invoices, vouchers or receipts and

- in the case of an unsuccessful candidate, the candidate's completed donation statement, statutory declaration and certificate of monetary donations.

1.8.5 When the Standards Commission has received the relevant statutory documentation and is satisfied it is complete and accurate it will issue a reimbursement application to the candidate. The Standards Commission will not issue any application for a reimbursement of election expenses until the correctly completed documentation has been received.

1.8.6 On receipt of the completed application, the Standards Commission will certify to the Department of Public Expenditure and Reform the amount which should be reimbursed to the candidate. The Department of Public Expenditure and Reform pays the reimbursement of election expenses by electronic funds transfer. To facilitate this payment to the candidate's bank account, the Department requires the candidate's bank account and contact details. This information is not made available to the public.

1.8.7 The reimbursement is made to the candidate by the Department of Public Expenditure and Reform and is not regarded as a donation to the candidate.

1.8.8 A candidate who qualifies for a reimbursement of election expenses may pass the reimbursement on to his/her political party. However, if the amount returned to the party is in excess of the amount spent by the party on the candidate, the excess will be subject to donation limits. If the donation amount exceeds €1,500 it must then be declared by the party in their annual donation statement returns.

For example:

Amount Spent by Party on Candidate	€6,000
Amount of reimbursement given to Party by Candidate	<u>€7,750</u>
Amount of donation to the Party	€1,750

**NOTE:** €2,500 is the maximum donation that a political party can receive

## 1.9 Offences and penalties applicable to candidates at the election

1.9.1 If found guilty of an offence under the Act, the candidate may be liable, on summary conviction, to a fine, or on conviction by indictment, to a fine or imprisonment.

The following are offences under the Act:

- Failure of a candidate to furnish to the election agent relevant details of expenses incurred before the appointment of an election agent in sufficient time to enable the agent to carry out his or her duties [*Section 31(8A)*].
- For a candidate to incur election expenses unless authorised to do so by his/her election agent or the national agent of his/her political party [*Section 43(1)*]. If convicted, a fine may be levied. [*Section 43(5)(a)* & *Section 6 of Fines Act 2010*].
- Knowingly accepting a prohibited donation referred to in 1.7 above. If convicted, a fine may be levied [*Section 25(2)*].

- Failure to take the appropriate action in relation to a prohibited donation as specified in paragraph 1.5.1 (anonymous donations), or paragraph 1.5.6 (donations from outside Ireland), or paragraph 1.5.8 (donations in excess of the prescribed limit). If convicted, a fine may be levied [*Section 25(1)(a & b) & 25(2)(a) and Section 6 of Fines Act 2010*].
- Failure to furnish to the Standards Commission a donation statement, certificate of monetary donations or a statement from a financial institution, within the statutory deadline (24 January 2020, for unsuccessful candidates). If convicted, a fine may be levied. Ongoing fines may be levied for each day, after a conviction, on which the above statutory documentation is still outstanding [*Section 25(1)(c); Section 25(2)(c) & Sections 6 and 8 of Fines Act 2010*].
- Knowingly furnishing to the Standards Commission a donation statement, or statutory declaration, certificate of monetary donations, or a statement of a financial institution, which is false or misleading. If convicted, consequences may include a fine and/or up to 3 years imprisonment [*Section 25(1)(d) and Section 25(2)(b)*].

**If the Commission is of the view that an offence under the Electoral Acts may have been committed, it will refer the matter to An Garda Síochana.**

## Chapter 2: Candidates' election agents

The key issues of which the election agent of a candidate at the election should be aware in order to ensure compliance with the requirements of the legislation are as follows:

- 2.1 Appointment of an election agent
- 2.2 Main functions of an election agent
- 2.3 Spending limits for the election
- 2.4 Assignment of a portion of a candidate's spending limit to his/her political party
- 2.5 Persons who may be incurring unauthorised expenditure
- 2.6 The election period
- 2.7 What are election expenses?
- 2.8 What are not election expenses?
- 2.9 Other expenses incurred in order to facilitate a candidacy
- 2.10 Payment of invoices to suppliers
- 2.11 Furnishing an election expenses statement
- 2.12 Offences and penalties applicable to election agents



## 2.1 Appointment of an election agent

2.1.1 Each candidate shall appoint an election agent [*Section 28(2)(a)*]. For the purposes of the Act, the election agent is the person who is responsible for accounting for expenses incurred on the candidate's behalf during the bye-election campaign.

The election agent must have an office or place in or convenient to the constituency to which claims, notices, writs, summonses and other documents may be sent [*Section 29(2)*].

2.1.2 The candidate must supply the name and office address of the election agent, in writing, to the Returning Officer for the constituency in which the candidate is standing [*Section 28(2)(a)*]. This must be done not later than the last day for receiving nominations at the election, 12 noon, Friday 15 November 2019. The Returning Officer will subsequently provide the election agent's details to the Standards Commission [*Section 28(6)(b)*].

2.1.3 There is no provision on the nomination papers for the candidate to give details of his/her election agent. The candidate must, therefore, provide such details separately to the Returning Officer. The Standards Commission has issued a form to Returning Officers which a candidate may use to give details of his/her election agent. It is very important that the correct details of the person appointed as election agent (i.e., the person who will account for expenditure on the candidate's campaign) are notified to the Returning Officer on this form.

The Standards Commission will only accept an election expenses statement from the person notified to it by the Returning Officer as the candidate's election agent. The election agent should ensure that the candidate has notified his/her correct details to the Returning Officer.

2.1.4 A candidate may act as his/her own election agent [*Section 28(2)(b)*]. A candidate who does not notify the Returning Officer of the appointment of an election agent by the last day for receiving nominations is deemed to be acting as his/her own election agent [*Section 28(3)(b)*].

A candidate acting as his/her own election agent is required to comply with the requirements of the Act both as a candidate and as an election agent [*Section 28(2)(b)*]. A candidate can revoke the appointment of his/her election agent at any time [*Section 28(4)(b)*]. If this situation arises, it is the candidate only who MUST notify the Returning Officer, in writing, of the revocation of one election agent and the appointment of another, along with contact details.

Following notification of a change of election agent, the Returning Officer must notify the Standards Commission, in writing, of the revocation of one election agent and the appointment of another, along with the new contact details.

The Standards Commission cannot accept an election expenses statement (EES) if the Election Agent notified to it by the Returning Officer does not match the name of the Election Agent on the EES [*Section 28(5)(a)*].

## 2.2 Main functions of an election agent

- 2.2.1 The election agent is the key link for the Standards Commission in relation to expenditure incurred on the candidate's behalf at the bye-election. He/she should be comfortable with keeping accounts.
- 2.2.2 The same person may act as election agent for more than one candidate. In such circumstances, the election agent is separately responsible for each candidate. Great care must be taken to ensure that separate records and accounts are kept for each candidate and that it is possible to apportion expenses between the different candidates where this is necessary. Separate election expenses statements and separate receipts/vouchers/invoices (or copies thereof) must be submitted to the Standards Commission in respect of each candidate for whom the election agent acts.
- 2.2.3 The main function of the election agent is to authorise and control spending connected to the candidate's election campaign and to account for such spending.
- 2.2.4 Subject to what is stated at paragraphs 2.2.5 and 2.2.6 below, the election agent is the only person who may incur expenditure or make payments on behalf of the candidate [*Section 31(4)(b)*]. All invoices, receipts or vouchers must be provided to the election agent and retained by him/her for the purposes of completing the election expenses statement.
- 2.2.5 A candidate cannot incur any expenses or make any payments in relation to the bye-election campaign without being authorised to do so by the election agent. It is an offence for a candidate to incur expenses or make payments, other than in respect of "his/her reasonable living expenses", unless authorised to do so by the election agent. (See paragraph 2.8.1 below for an explanation of what is meant by "reasonable living expenses"). Where expenses have been incurred by or on behalf of a candidate before the appointment of an election agent, the candidate must furnish details of such expenses, together with all invoices/receipts, to the election agent once he/she has been appointed [*Section 31(8)*]. It is an offence for a candidate to fail to comply with this requirement [*Section 31(8A)*].
- 2.2.6 The election agent may authorise other persons to incur expenditure or make payments within specified financial limits [*Section 31(5)*]. The election agent must account for spending by all such authorised persons. Expenses incurred or payments made by authorised persons must be within the limit specified by the election agent. An election agent may authorise the candidate or the national agent of the candidate's political party (if applicable) to incur election expenses. The name and address of every authorised person must be included in the election expenses statement, which the election agent must furnish to the Standards Commission after the election.
- 2.2.7 Promotion of a running mate(s) in a candidate's election material, by, for example, the inclusion in the material of an endorsement which solicits votes for the running mate(s), constitutes election expenditure incurred by the candidate's election agent on behalf of the running mate(s). This is known as cross-canvassing or strip promotion - see Appendix 3. (This also applies in the event of cross-party support for candidates contesting the election, e.g., two separate political parties having a voting pact.)

- 2.2.8 Where cross-canvassing or strip promotion is likely to take place, agreements and authorisations should be put in place between the relevant election agents to agree the likely costs.
- 2.2.9 Ordinarily, a proportion of the cost SHOULD be met from within the running mate's expenditure limit. (This would be calculated on the basis of the extent to which the running mate is featured on the candidate's election material.) However, see paragraph 2.2.10 below.
- 2.2.10 In most cases the value of the cross-canvassing is exactly the same in respect of each of the candidates, i.e. the same amount of space on, for instance, a poster, is given over to Candidate A by running mate Candidate B, as Candidate B is giving over to Candidate A. In such circumstances it will not be necessary for each election agent to account separately for the various portions of the canvassing material. Instead, each election agent should account for the full cost of the material (e.g. poster) and each election agent must make a note on the election expenses statement form that there was cross-canvassing but, because the portions are exactly equal, he/she is accounting for the full cost in respect of his/her candidate only.
- 2.2.11 In the event that the proportions of cross-canvassing are not equal, or the number of copies of the item, i.e. poster, being accounted for differ, then each election agent must account for the portion of the cost of their own candidates material (e.g. poster) plus the portion of the cost associated with the material used by the running mate.

## 2.3 Spending limits for the election

2.3.1 The statutory spending limits for the bye-election are as follows [*Section 32(1)(a) & Section 3(1)*].

5 seat constituency - **€45,200**

4 seat constituency - **€37,650**

This spending limit is inclusive of VAT. All spending by the election agent and a political party (both head office and local organisation) on a candidate must be within this limit.

2.3.2 The statutory limit is for each individual candidate in a constituency.

2.3.3 No separate or additional spending by a political party on a candidate over and above that which has been assigned to the party by the candidate is allowed (see paragraph 2.4.1 below) [*Section 32(2)*]. If a candidate of a political party does not assign any part of the statutory spending limit to the party, the party cannot incur any expenses on behalf of the candidate at the bye-election, unless authorised to do so by the candidate's election agent.

**Non-party candidates may proceed to Paragraph 2.5**

## 2.4 Assignment of a portion of a candidate's spending limit to his/her political party

2.4.1 If a candidate is contesting the election on behalf of a political party, he/she may agree, in writing, with his/her political party, the amount of his/her spending limit to be assigned to the party for spending by the party's national agent [Section 32(1)(b)]. This could be up to 100% of the candidate's limit. There is, however, no legal obligation on a candidate to assign any amount to the party. The candidate's election agent can only spend, or authorise to be spent, the amount of the statutory limit for that candidate [Section 32(1)(a)] which remains after the assignment has been made. In other words, whatever amount is assigned to the party by a candidate is not available for spending by the candidate's election agent.

### Example:

	4 seat constituency	5 seat constituency
Statutory spending limit	€37,650	€45,200
Amount assigned by candidate	€10,000	€10,000
Amount election agent can spend	€27,650	€35,200

2.4.2 The Act does not specify when the written assignment must be made. Similarly, the Act does not preclude a re-negotiation of the agreed assignment. The Standards Commission strongly advises that, if an assignment to a political party is being made, it should be made and notified to the election agent before any expenses are incurred by either the election agent or the national agent of the candidate's political party.

2.4.3 The Act requires that the agreed assignment must be made in writing between the candidate and the party. Where assignments are re-negotiated, a new written agreement must be made between the candidate and the party. A copy of the written agreement should be provided to the candidate's election agent as he/she will be required to furnish a copy of the written agreement to the Standards Commission with his/her Election Expenses Statement.

2.4.4 The combined expenditure on behalf of the candidate by the candidate's election agent (including authorised persons) and the national agent of the party (including authorised persons) must remain within the statutory spending limit for the candidate.

## 2.5 Persons who may be incurring unauthorised expenditure

### (a) Expenditure by "third parties"/"other persons"

2.5.1 Expenditure by "**third parties**" and "**other persons**", i.e., those not connected to a candidate or a political party, is permitted under the Act provided the third party/other person has notified the Standards Commission of their intent to incur election expenses.

Election agents should notify the Standards Commission if they become aware of third parties or other persons incurring election expenditure either promoting or opposing a political party or candidate.

2.5.2 Notices or advertisements in newspapers, magazines or other periodical publications promoting or opposing the interests of a candidate may only be placed if requested by the candidate, the candidate's election agent, the national agent of the candidate's political party or a person authorised in writing by the candidate or either agent. "Third parties" and "other persons" may arrange newspaper advertising if they produce to the publisher a Certificate of Authorisation from the Standards Commission certifying that they have complied with the appropriate legal requirements. The Standards Commission will notify editors/publishers of the provisions of the Act in this regard [*Section 31(10)*].

2.5.3 Third parties/Other Persons who incur election expenses will also have to account for their election expenses in an Election Expenses Statement [*Section 36(1)(a)*].

**Note:** Separate guidelines have been issued for other persons and publishers, these are available on the Standards Commissions website.

**(b) Expenditure by a local party organisation**

2.5.4 No separate or additional spending by a political party over and above the statutory spending limit is allowed. Any expenditure incurred on behalf of the candidate by the local party organisation should either be:

- authorised by the national agent and taken into account in the national agent's Election Expenses Statement; or
- authorised by the election agent and taken into account in the election agent's Election Expenses Statement.

**(c) Expenditure by persons/bodies deemed to be connected to a candidate**

2.5.5 Election agents should be aware that if a person or a body, who or which is considered by the Standards Commission to be associated with, connected to, or under the influence or control of a candidate, is incurring expenses at the election to either promote the candidate or to oppose another candidate, such expenses will be regarded as part of the first candidate's election expenses and will have to be taken into account by that candidate's election agent from within the candidate's spending limit (i.e., that part of the limit which has been retained by the candidate) [*Section 31(6)*]. If this expenditure brings spending by the candidate's election agent over the relevant limit, an offence will have been committed.

2.5.6 Given that expenditure by certain individuals/groups may ultimately be deemed to be expenditure incurred on behalf of their candidates, it is important that election agents are aware of the activities of such individual/groups and, if necessary, bring such matters to the attention of the Standards Commission.

## 2.6 The election period

2.6.1 The spending limits at the bye-election apply to all expenses incurred and payments made in providing property, goods or services which are used for electoral purposes during the period commencing on the date of the issue of the writ and ending on polling day itself, both dates included [*Section 31(3)(a)(ii)*]. The election period for the bye-elections is from 7 November 2019 to 29 November 2019.

2.6.2 Regardless of when the expenses are incurred or the payments are made, they must be taken into account if they relate to property, goods or services which are used for electoral purposes during the election period. Accordingly, expenses which are incurred or payments which are made at any time before the date of the issue of the writ on property, goods or services which are used during the election period must be accounted for [*Section 31(3)(b)*].

2.6.3 If expenses are incurred or payments are made on property, goods or services which were not used, or only a part was used, during the election period it will not be necessary to account for the unused part. Similarly, it will not be necessary to account for expenses incurred or payments made in respect of property, goods or services which were used before the commencement of the election period or which were used after the election period. Some examples of this might be:

- promotional material circulated by candidates/political parties before the election period commenced;
- insurance or rent costs applying to a campaign premises in so far as the costs relate to a period before and/or after the election period;
- "Thank you" notices circulated after the election.

Please see paragraph 2.9 for further details.

2.6.4 For example, if an advertisement is published in a newspaper or other periodical publication which carries a publication date (i.e., the date printed on the paper) that is during the election period, the advertisement will be regarded as an election expense. If the publication date is before or after the election period, the advertisement is not regarded as an election expense.

2.6.5 The cost of an opinion poll or other similar survey taken within the period of 60 days before polling day will be regarded as an election expense [*Schedule paragraph 1(g)*].

## 2.7 What are election expenses?

2.7.1 The legislation provides that election expenses are those, and only those, set out in the definition of election expenses in Appendix 1, incurred in the provision of property, goods or services for use at the election during the election period [*Section 31(1)(a)* & *Schedule 1 to the Act*] (7 November 2019 to 29 November 2019) in order to:

- promote or oppose the interests of a political party or the election of a candidate;  
or

- present the policies of a political party or the comments of a political party on the policies of another political party or of a candidate at the election; or
- solicit votes for or against a candidate; or
- present the policies of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate on the policies of a political party or of another candidate at the election; or
- otherwise to influence the outcome of the election.

2.7.2 Where property, goods or services, provided free or below cost, are used during the election period, they are regarded as election expenses that must be taken into account as election spending by the relevant agent at their commercial price [*Section 31(2)*]. [An example might be where a printing company agrees to provide, free of charge, election literature that would normally cost €1,500.] This supply of material must be authorised and taken into account at its commercial price less any normal discount which may be available.

2.7.3 It should be noted that where free or below cost services are provided by a business/company, they are only permissible if below the value of €200 unless the business/company is registered as a corporate donor with the Standards Commission (see paragraph 1.5.4)

2.7.4 Election expenses include payments to paid campaign workers where receipted.

2.7.5 It is not possible to give definitive examples in these guidelines of all types of election expenses. If you are unsure as to whether an expense item should be accounted for as an election expense you should contact the Standards Commission Secretariat for advice.

### **Election expenses which are met out of public funds**

2.7.6 Where publicly funded property, services or facilities are used for electoral purposes, the cost of such use must be reimbursed to the relevant provider. Such costs must then be accounted for as an election expense. The use of any such material must be authorised by the candidate's election agent. It will be a matter for the relevant agent and the candidate, in consultation with the provider of the property, services or facilities, to determine the value of the usage for electoral purposes during the election period and to account for same in the election expenses statement. [Examples of this type of expenditure include the use of publicly funded facilities such as prepaid envelopes, telephones, staff time etc.]

2.7.7 Candidates at the bye-election who are holders of elected/public office may be required to communicate with the electorate during the election period. Where costs are met from public funds, it is necessary to differentiate between the use of public resources in carrying out their representative business and the use of public resources for electoral purposes. Any use of their publicly funded facilities for their own electoral purposes must be accounted for as an election expense.

2.7.8 If, during the election period, publicly funded materials are used by the candidate for the purpose of any form of unsolicited communication to any of the electorate, the materials will be regarded as having been used for electoral purposes and the costs will have to be accounted for as an election expense at their full commercial value.

2.7.9 Where a new enquiry is raised with a candidate in his/her capacity as a candidate (including an enquiry which had not been raised with the candidate prior to the bye-election) while he/she is canvassing and publicly funded facilities are used for the purposes of responding to the enquiry, these facilities will be regarded as having been used for electoral purposes. This includes time spent by staff in responding to the enquiry (except where such staff are working voluntarily on the candidate's campaign).

2.7.10 Members of the Oireachtas are reminded that publicly funded facilities are provided to them solely for their own use as public representatives. These facilities should not be provided to other candidates for electoral purposes. To do so may have serious consequences under the Ethics in Public Office Acts 1995 and 2001, in addition to amounting to an election expense which must be accounted for.

## 2.8 What are not election expenses?

2.8.1 Items that are not election expenses include:

- **free post service** provided to candidates by An Post (i.e., Litir Um Thoghcháin) [*Schedule paragraph 2(a); Section 22(2)(b)(i)*]. It should be noted that only the postage costs are not regarded as an election expense. The cost of producing the leaflet/election address/Litir um Thoghcháin is an election expense;
- **a free service provided by an individual**, including use of the individual's motor vehicle, telephone, etc., where the service is not provided as part of the individual's work or business [*Schedule paragraph 2(a); Section 22(2)(b)(iii)(I)*]. **[NOTE:** This provision of the Act refers specifically to an individual and to the use of an individual's motor vehicle (singular). If more than one vehicle is provided by an individual, the use of the additional vehicles may be regarded as election expenses. If a vehicle which is in the ownership of a company, partnership, business etc., is provided to a candidate it is not regarded as a free service provided by an individual. In such circumstances the use of the vehicle during the election period is regarded as an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of calculating the election expense.];
- **a service provided at an election by an employee of a political party**, including use of the individual's motor vehicle, where the employee's remuneration is paid out of party resources or out of public funds and where the employee is not in receipt of any reward or benefit-in-kind other than his or her normal remuneration (including recoupment of expenses) for that service [*Schedule paragraph 2(a); Section 22(2)(b)(iii)(II)*]. Where overtime payments are normally paid to an employee of a political party for working additional hours, this is regarded as "normal remuneration" and is not regarded as an election expense;



- **normal media coverage** and the transmission on radio or television of a broadcast on behalf of a candidate or a political party [*Schedule paragraph 2(a); Section 22(2)(b)(iv) & (v)*]. This does not cover any production, or other, costs associated with a transmission on radio or television;
- **advertising outside of election period** - advertisements which appeared in a newspaper which had a publication date which was outside the election period e.g., "Thank you" advertisements in newspapers after polling day.
- **election expenses incurred at a previous Dáil, European or local election** which were disclosed in an election expenses statement furnished to the Standards Commission or to a local authority [*Schedule paragraph 2(b)*]. There is no need to record these expenses again. This does not apply to material used in relation to a referendum.

[**NOTE:** If a candidate intends to use, or re-use, election material which has previously been recorded in an Election Expenses Statement, his/her election agent must notify the Standards Commission Secretariat and provide details of the materials being re-used and the election expenses statement on which they were previously recorded.]

- the **payment of fees incurred to secure the nomination**, for example the deposit in respect of the candidate or the travelling or other expenses incurred by a candidate in obtaining assenters to secure the nomination of the candidate [*Schedule paragraph 2(d) & (dd)*];
- the cost of purchasing **copies of the register of electors** [*Schedule paragraph 2(e)*];
- the **reasonable living expenses** (including accommodation) of a candidate and volunteers working on his/her behalf [*Schedule paragraph 2(f)*]. Under this heading, in addition to accommodation costs, spending of up to €50 per person per day on refreshments, etc., is permitted and does not have to be accounted for. (This means that accommodation costs plus other costs up to €50 per person per day are not regarded as election expenses.);
- **expenses for refreshments** for the candidate and volunteer campaign workers where the amount incurred per day on any one person did not exceed the amount determined by the Standards Commission as constituting reasonable living expenses.
- any **paid campaign worker who incurs minor expenses** (not exceeding €126.97 in any one payment) lawfully incurred in relation to the election if the said sum is not repaid to the person. (In simple terms this means that an individual may pay for small items costing less than €126.97 and these are not election expenses if the individual does not seek a reimbursement from the election agent) [*Schedule paragraph 2(g)*].

[**NOTE:** The only persons who may lawfully incur expenses or make payments at an election in relation to a candidate are the election agent of a candidate, the national agent of a political party, or a person authorised by either agent to

incur election expenses. Accordingly, any other person who incurs expenses or makes payments at an election on behalf of a candidate is committing an offence.

Election agents must maintain a record of all minor expenses which are not being accounted for as an election expense in his/her election expenses statement. In order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense in the election expenses statement, a record of all such "minor expenses" may be required to be furnished to the Standards Commission. Invoices, receipts and vouchers in respect of minor expenses may also be required and should be retained by the Election Agent. Minor expenses are not included in the calculation of the total election expenses incurred.

- **volunteers who take annual leave**, e.g. where an outgoing MEP's staff or Oireachtas Member's staff (such as a personal assistant, research assistant, etc.) takes annual leave and works on a candidate's election campaign on a voluntary basis during the election period, the work carried out by the member of staff will be deemed to have been carried out as a free service and the cost of his/her salary while working voluntarily will not be regarded as election expenses for the purpose of the Act;
- **finances imposed** by organs of the State, e.g., parking and litter fines;
- the **services of an accountant**, or other person, (whether paid or not) employed for the specific purpose of ensuring compliance with the requirements of the Act;
- the **use of offices which are owned by a political party** and are made available to a candidate for use at the election. It is not necessary to attribute a notional rental cost to the use of such offices. However, the costs of heat, light, telephones, etc., incurred for electoral purposes at such offices during the election period are election expenses.
- **removal of election posters** (if removed after polling day).
- **other election material outside the election period**, such as "Thank you" cards, leaflets, newsletters, etc., which were distributed outside of the election period.
- **use of private telephones** (including mobile phones) where the expense incurred was not reimbursed to the person.
- **transport and travel**, including diesel/petrol costs not reimbursed to the person.
- **"close of poll" party**.

This list is not exhaustive. If you have any queries relating to expense items which you may incur during the election period, the Standards Commission Secretariat is available to assist.

## 2.9 Other expenses incurred in order to facilitate a candidacy

2.9.1 Certain expenses may have to be incurred on behalf of the candidate in order to facilitate his/her participation in the election process or an understanding of the relevant legislation. The Standards Commission does not regard such expenses as being part of a candidate's or a political party's election spending. Examples might include:

- additional child care costs;
- cost of work replacements;
- leave of absence with pay;
- loan interest and bank charges;
- costs associated with meetings convened to familiarise election participants with the requirements of the electoral legislation (e.g., room hire, documents, refreshments, travel).

## 2.10 Payment of invoices to suppliers

2.10.1 Claims for payment of election expenses, from suppliers, must be received by the election agent within 45 days after polling day (i.e., 13 January 2020). Claims received after this date cannot be paid by the election agent [Section 34]. It is an offence to make a payment if the claim is received after the 45 days have elapsed. To avoid disputes, it is very important that agents advise their suppliers of this requirement when placing orders for property, goods or services. Even though such claims cannot be paid, they are still regarded as election expenses and must be accounted for in the Election Expenses Statement furnished to the Standards Commission.

## 2.11 Furnishing an election expenses statement

2.11.1 The Standards Commission will send each election agent an election expenses statement and statutory declaration form [Section 36(1) & (2)]. Staff of the Standards Commission Secretariat may be contacted at [info@sipo.ie](mailto:info@sipo.ie) if assistance is required. The Standards Commission Secretariat will also be available to meet election agents to assist in the completion of the form.

The completed form must be received by the Standards Commission within 56 days after polling day (i.e. 24 January 2020).

**The election agent will be required to complete an election expenses statement even if no expenses were incurred.**

2.11.2 The following must be included in the election expenses statement:

- details of all expenses incurred and payments made by the election agent and his/her authorised persons, including supplies of property, goods or services free or below cost which were used during the election period [*Section 36(1)(a)*];
- details of authorised persons (which may include the candidate; a director of elections or the party's national agent) including the amount each authorised person was authorised to spend and the amounts actually spent;
- confirmation of the portion of the candidate's spending limit assigned by the candidate to his/her political party [*Section 36(1)(c)*]. As stated at paragraph 2.4.3, a copy of the written agreement between the candidate and the political party must be furnished by the election agent with his/her election expenses statement;
- details of any disputed claims for payment [*Section 36(1)(d)*];
- information concerning late claims for payment (i.e., claims received more than 45 days after polling day) [*Section 36(1)(d)*];
- details of expenses incurred on goods, property or services used during the election period where the costs were met out of public funds.

2.11.3 A record of minor expenses (not exceeding €126.97 in any one payment) may also be required by the Standards Commission in order to deal with any questions which may arise as to why expenses in respect of particular items used during the election period are not shown as an election expense on the election expenses statement. Minor expenses will not be included in the calculation of the total election expenses incurred (see paragraph 2.8.1 for a definition of "minor expenses").

2.11.4 Invoices, receipts or vouchers for every payment of election expenses exceeding €126.97 must be included with the election expenses statement [*Section 31(9)*]. The Standards Commission also reserves the right to request any invoice, receipt or voucher for an item of expenditure valued at less than €126.97 appearing in an election expenses statement or a record of minor expenses.

2.11.5 Minor omissions or errors found by the Standards Commission in an election expenses statement will be notified to the election agent. If requested to amend his/her election expenses statement, the election agent must do so within 14 days [*Section 4(2)*].

2.11.6 The Standards Commission may request additional information from an election agent in relation to his/her election expenses statement. Where such additional information is requested, it must be provided in a form determined by the Standards Commission and may have to be accompanied by a statutory declaration [*Section 36(2A)*].

2.11.7 After returns are submitted and verified, the election expenses statements and statutory declarations will be laid by the Standards Commission before both Houses

of the Oireachtas [Section 37(1)] and made available to the public for inspection and copying [Section 73]. Summary details of the expenditure incurred are also included in a report to the Chairman of Dáil Éireann [Section 4(1)], laid before each House of the Oireachtas [Section 4(5)] and published on the website of the Standards Commission.

## 2.12 Offences and penalties applicable to election agents

2.12.1 If found guilty of an offence under the Act, the Election Agent may be liable, on summary conviction to a fine, or, on conviction by indictment, to a fine or imprisonment.

The following are offences under the Act:

- Overspending by an election agent at the election:
  - it is an offence, punishable by a fine [Section 43(2)(a) and Section 43(5)(a) & Section 6 of Fines Act 2010];
  - a person can petition the High Court to set aside the result of the election [Section 45];
  - an election agent's overspend is deducted from the candidate's reimbursement [Section 40(b)].
- A person who is not authorised to do so incurring expenditure or making a payment in relation to the election. This may result in a fine [Section 43(1)(b) & 43(5)(a) & Section 6 of Fines Act 2010].
- Payment of claims received more than 45 days after polling day (i.e., after 13 January 2020). This may result in a fine [Section 43(2)(b) & 43(5)(a) & Section 6 of Fines Act 2010].
- Failure to make such enquiries and maintain such records as are necessary for the purpose of furnishing an election expenses statement and making a statutory declaration. This may result in a fine [Section 36(4) & 43(2)(e) & 43(5)(a) & Section 6 of Fines Act 2010].
- Failure to furnish an election expenses statement and statutory declaration to the Standards Commission by the statutory deadline (i.e., by 24 January 2020). This may result in a fine and an on-going fine for each day, after a conviction, on which the statement and declaration are still outstanding [Section 43(2)(c) & 43(5)(a) & (c) & Sections 6 and 8 of Fines Act 2010].
- Failure to provide supplementary information relating to an election expenses statement as requested by the Standards Commission. This may result in a fine [Section 36(2A) & 43(2)(e) & 43(5)(a) & Section 6 of Fines Act 2010].
- Knowingly furnishing a false or misleading election expenses statement to the Standards Commission. This may result in a fine and/or up to three years imprisonment [Section 43(2)(d) & 43(5)(b)].

- Failure to furnish to the Standards Commission, within 7 days after the date of the order, a copy of a court order for the payment of a disputed claim. This may result in a fine [*Section 36(3) & 43(2)(e) & 43(5)(a) & Section 6 of Fines Act 2010*].

**If the Commission is of the view that an offence under the Electoral Acts may have been committed, it will refer the matter to An Garda Síochana.**

## Chapter 3: Advice on Particular Matters

3.1 Fundraisers

3.2 Advertising on vehicles

3.3 Free use of vehicles

3.4 Use of staff whose salaries are met out of public funds

3.5 Accounting for the use of offices during the election period

3.6 Vandalised or damaged posters

## 3.1 Fundraisers

### 3.1.1 Determining the net value of a contribution to a fund-raising event

In accordance with the provisions of sections 22(2)(a)(vi) & (vii) of the Act, a donation includes the net value of a contribution to a fund-raising event. A contribution to a fund-raising event is deemed to have been made on the date the fund-raising event is held (and not the date on which the contribution is actually received).

The net value of a contribution to an event is arrived at by first calculating the net profit from the event (i.e., by deducting the cost of running the event from the total amount raised by the event). The net profit is then attributed to the number of people contributing to the event in proportion to the contribution made by each person. This gives the net value (donation) of each person's contribution to the fund-raising event.

Donations cannot exceed the maximum allowable limit per person i.e. €1,000.

For example, if a person had paid €1,000 in respect of the entry fee for 10 people, his/her gross contribution to the event would be €1,000. If the cost of running the event was €20 per person attending, a sum of €200 would be deducted from his/her gross contribution, leaving a net donation of €800. If the person made other contributions to the event (e.g., buying horses at a race night, sponsoring a hole at a golf classic), it would be necessary to add the value of such contributions to the net donation of €800 for the purposes of determining the aggregate net value of his/her donation to the fund-raising event.

The following paragraphs set out the legislative requirements in relation to different types of fund-raising events which may be organised in the context of an election.

### 3.1.2 Fund-raisers organised by a political party for the purposes of raising funds for the party

Where a fund-raising event is organised by a political party for the purposes of raising funds for the party, the net value of a contribution made by a person to the fund-raising event is regarded as a donation to the party. This applies even if the funds are subsequently used by the party for the purposes of supporting one or more of its candidates at an election [*Sections 22(2)(a)(vii)*].

If some or all of the proceedings of the event are given in the form of money to the party's candidate(s), it is regarded as a donation by the party to the candidate(s). If the proceeds are used by the party to pay election expenses incurred on the candidate's behalf, it is not regarded as a donation by the party to the candidate(s). The party will not be required to disclose in a Donation Statement the total value of the proceeds of the fund-raising event. The party will be required to disclose any donation(s) from a person which exceeds a net value of €1,500. The maximum limit of €2,500 for acceptance by political parties of donations from the same person in the same year applies to the net value of contributions to fund-raising events. The limit of €200 on acceptance of donations from non-registered corporate donors also applies. Where the net value of any individual monetary donation to the fund-raising event exceeds €100, the accounting unit of the party, (i.e., branch or head office) which organised the event will, if it does not already have one, be required to open a political donations account. If the net value of any individual monetary donation to the event does not exceed €100, the accounting unit of the party will not be required to open a political



donations account. If the accounting unit already has a political donations account, all monetary donations, of whatever value, received in relation to the event must be lodged to the political donations account.

### 3.1.3 Fund-raisers organised by a political party for the purposes of raising funds for its candidate(s) at the election

Where a fund raising event is organised by a political party for the purposes of raising funds for its candidate(s) at the election and proceeds of the event are passed to the candidate(s), the party is regarded as an intermediary accepting donations on behalf of the candidate(s). The net contribution made by a person to the fund-raising event is regarded as a donation to the candidate(s). The candidate(s) (i.e., not the party) is responsible for the donation and must ensure that he/she complies with the legislative requirements (set out at 3.1.4 below).

If it is the case, however, that the party retains control of the proceeds, the donations may be regarded as having been made to the party and the party will be responsible for ensuring that the legislative requirements (set out at 3.1.2 above) are complied with.

### 3.1.4 Fund-raisers organised by a candidate

Where a fund-raising event is organised by a candidate for the purposes of raising funds for his/her election campaign, contributions to the event are deemed to be donations to the candidate [*Sections 22(2)(a)(vi)*].

The candidate will not be required to disclose in a Donation Statement the total value of the proceeds of the fund-raising event. The candidate will be required to disclose any donations from a person contributing to the event which exceed a net value of €600. The maximum limit of €1,000, for donations from any one person in the same year, applies to the net value of contributions to fund-raising events. If the net value of any monetary donation to a fund-raising event organised by a candidate exceeds €100, the candidate, if he/she does not already have one, will be required to open a political donations account and lodge the donation and all subsequent monetary donations to the account. If the net value of an individual monetary donation to the event does not exceed €100, the candidate will not be required to open a political donations account. If the candidate already has a political donations account, all monetary donations, of whatever value, received in relation to the event must be lodged to the account.

### 3.1.5 Fund-raisers organised on behalf of a candidate by a person or group other than the candidate or his/her political party

Where a fund-raising event is organised on behalf of a candidate by a person or group other than the candidate or his/her political party (e.g., "Friends of ... groups") and the proceeds of the event are handed over to the candidate, the fund-raising person/group is regarded as an intermediary accepting donations on the candidate's behalf. The donations are deemed to have been received by the candidate and he/she is responsible for ensuring that the legislative requirements (set out at 3.1.4 above) are complied with.

If the proceeds of the event are not handed over to the candidate and are retained by the fund-raising group, the following applies:

- if the net value of any donation to the fund-raising event exceeds €100, the person/group will be required to register as a "third party" with the Standards Commission. The person/group will be required to comply with the provisions of the Act applying to third parties with regard to the opening of a political donations account and the acceptance of certain donations,
- all money subsequently given to the candidate and all election expenses incurred or payments made by the fund-raising group on behalf of the candidate are regarded as donations to the candidate,
- if the aggregate value of donations from the fund-raising group to the candidate exceeds €600, the candidate will be required to disclose details of same in his/her Donation Statement;
- the maximum value of donations which the candidate can accept in any year from a fund-raising person/group which is regarded as a third party (and not as an intermediary accepting donations on the candidate's behalf) is €1,000.

## 3.2 Advertising on vehicles

3.2.1 The adaptation ("wrapping") of cars, jeeps, vans, etc., with a candidate's or a political party's livery is an election expense as it promotes a person's candidacy and/or a political party's interests at the election. If such vehicles are used during the election period the full costs of producing the advertising on the vehicles is an election expense.

3.2.2 The Standards Commission is aware, however, that some public representatives use mobile constituency clinics which are already "wrapped" in the public representative's or political party's livery. The Standards Commission is of the view that where such vehicles have been used on an ongoing basis and are "wrapped" with livery which is of a general nature and is not explicitly seeking to promote a person's candidacy and/or a political party's interests at the election, the costs of adapting these vehicles will not be regarded as an election expense even if the vehicles are used during the election period.

3.2.3 If, however, a mobile office is being used purely for the election or has been "wrapped" with livery which explicitly promotes a person's candidacy, a party's interests or which solicits votes for a candidate and/or a political party at the election, then the cost of adapting the vehicle is regarded as an election expense and, if the vehicle is used during the election period, the full cost of adapting the vehicle must be accounted for.

3.2.4 Where it is intended not to account for advertising / livery on a campaign vehicle on the basis that the advertising / livery is not for electoral purposes the relevant agent should contact the Standards Commission for confirmation that the advertising / livery is not an election expense.

### 3.3 Free use of vehicles

- 3.3.1 Part 1(f) of the Schedule to the Act provides that election expenses on transport and travel include "*expenses incurred on transport and travel (by any means), petrol and diesel, rental or use of campaign vehicles, rental or use of vehicles for transport of voters on polling day, accommodation costs, taxi and hackney services and courier services.*"
- 3.3.2 Part 2(a) of the Schedule to the Act provides that any of the matters referred to in Section 22(2)(b)(i) and 22(2)(b)(iii - v) of the Act will not be regarded as an election expense. The Act also provides that the matters at section 22(2)(b) (i - vii) shall not be regarded as donations.
- 3.3.3 Section 22(b)(iii)(l) of the Act provides that a service rendered by an individual, including the use of the individual's motor vehicle, is not regarded as a donation or as an election expense where the service is not provided as part of the individual's work or business. Section 22(b)(iii)(l) specifically refers to an individual and an individual's motor vehicle. Therefore, where an individual provides a candidate with the free use of a single vehicle at the election it is not regarded as either a donation to the candidate or as an election expense. If, however, the individual normally charges for use of the vehicle in question it would be regarded as a donation and an election expense. If more than one vehicle is provided by the individual, the additional vehicles may be regarded as donations and as election expenses.
- 3.3.4 As stated above, the reference in section 22(b)(iii)(l) is specifically to an individual. If a vehicle which is in the ownership of a company, partnership, business etc. is provided to a candidate it is not regarded as a free service provided by an individual. In such circumstances, therefore, use of the vehicle is regarded as a donation and as an election expense. The commercial cost of hiring a similar vehicle for a similar period must be ascertained for the purposes of disclosing its value as a donation and for the purposes of disclosing its use during the election period, as an election expense.

### 3.4 Use of staff whose salaries are met out of public funds

- 3.4.1 The Electoral Act 1997 as amended (the Act) provides that goods, property or services where the costs are met from public funds and which are used for *electoral purposes* during the election period shall be reimbursed and regarded as election expenses.
- 3.4.2 If a member of staff (i.e., special advisor, constituency secretary, driver, personal assistant, research assistant, etc.) of a holder of elected/public office is engaged in his/her normal duties during the election period and is not providing a service which is for electoral purposes, then the cost of carrying out such activities is not regarded as an election expense. Where such staff are engaged in activities which are for electoral purposes, their costs will be regarded as an election expense. It will be a matter for the holder of public office, in conjunction with his/her election agent and the provider of the services, to determine the extent to which such staff have been engaged for electoral purposes during the election period and to account for it on the election agent's Election Expenses Statement.

- 3.4.3 Certain holders of public office are provided with State cars and Garda drivers for security reasons. Accordingly, the use of State cars in these cases, including drivers, during the election period is not an election expense as the cars and drivers are provided as a security measure and these office holders are required to use them at all times.
- 3.4.4 However, some holders of elected/public office provide their own cars and appoint civilian drivers who are paid out of public funds. The use of cars and drivers by such persons for electoral purposes during the election period is an election expense. While they can claim travel expenses when the car is used for official business, its use for electoral purposes would not qualify as official business for the purposes of such claims.
- 3.4.5 Where a member of staff of a holder of elected/public office takes annual leave to work on an election campaign on a voluntary basis during the election period, the work carried out by them will be deemed to have been carried out as a free service and, notwithstanding the fact that this work may be similar to their normal work, the cost of their salaries while working voluntarily will not be regarded as election expenses for the purposes of the Act.
- 3.4.6 The Standards Commission recommends, however, that, in case there is a challenge to the election expenses statement submitted by a holder of elected/public office, such candidates should ensure that proper records of holidays accrued and taken by staff are maintained. The Standards Commission may require written confirmation that the staff concerned have taken leave during the election period.

## 3.5 Accounting for the use of offices during the election period

### a) General

In relation to office and stationery, the Act provides that election expenses include *"costs incurred in the rental or use of an office premises or meeting rooms for election purposes (other than for the purposes of annual or other party conferences) and the costs of heating, electricity, insurance, purchase or rental of office equipment, telephones, stationery and postage"*.

Accordingly, expenses incurred in the rental of an office are regarded as election expenses. Rental paid in respect of the election period must be accounted for on the Election Expenses Statement.

Where use of an office is provided free or below cost, the full commercial value of the use of the office for election purposes during the election period is regarded as an election expense and must be accounted for. In determining the commercial value, account may be taken of the condition of the office. Allowances may also be made for any discount which is normally given or generally available.

The provision without charge of an office in a person's private dwelling, where the room provided is not available for renting in the normal course, is not an election expense. Any expense incurred, however, in carrying out alterations to facilitate its use for election purposes during the election period is an election expense.

## **b) Use of public representative offices**

The use by a holder of elected/public office of his/her publicly funded office location for electoral purposes is regarded as an election expense. The extent to which the office has been used for electoral purposes during the election period should be taken into account. Ancillary costs such as salaries, heat, light, phones, fax, copying, printing, stationery, postage, envelopes, etc. which such costs have been incurred for electoral purposes must be taken into account.

The use of publicly funded offices for election purposes during the election period is also an election expense. This includes the costs of salaries and expenses of civil servants or special advisers, where they are engaged in activities for election purposes during the election period, as well as other ancillary costs such as heat, light, phones, fax, copying, printing, stationery, postage, envelopes, etc. where such costs have been incurred for electoral purposes.

## **c) Accounting for offices which are owned by a candidate or political party**

Notional rental costs for the use of an office which is owned by a candidate are not required to be accounted for as election expenses. Similarly where a political party owns an office in a constituency which is used by its candidate(s) during an election campaign, neither the party nor the candidate are required to apply notional rental costs for the use of these offices. Any expenses, however, incurred in carrying out alterations to facilitate its use for election purposes during the election period are required to be accounted for.

## **d) Notional costs of site rental for posters or other election material**

Notional costs of site rental where posters or other material are erected/displayed in or around private properties or commercial premises which are not recognised sites for such purpose are not required to be accounted for as election expenses.

## **3.6 Vandalised or damaged posters**

3.6.1 If a poster is erected during the election period (7 November 2019 to 29 November 2019), it is regarded as having been used during the election period and must be accounted for as an election expense even if the poster falls down, is vandalised, etc. before polling day. The cost of replacing vandalised or damaged posters is also an election expense if the replacement posters are used during the election period.

## Appendix 1: Definitions

'**account**' means an account in an institution in the State for the purpose of crediting and debiting money received in respect of donations [*Section 22(2)(aa)*];

'**candidate**' means a person who on or before the date of movement of a writ in relation to a Dáil general election or bye-election or the date of the making of the order appointing polling day in relation to a Seanad election or an election to the European Parliament is declared by himself or herself or by others to be a candidate at the election concerned [*Section 22(2)(aa)*];

'**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 [*Section 22(2)(aa)*].

'**donation**' means any contribution given for political purposes by any person, whether or not a member of a political party, 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 -

- a donation of money [*Section 22(2)(a)(i)*];
- a donation of property or goods [*Section 22(2)(a)(ii)*];
- conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods [*Section 22(2)(a)(iii)*];
- the supply of services without payment or other consideration therefor [*Section 22(2)(a)(iv)*];
- the difference between the commercial price and the 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 [*Section 22(2)(a)(v)*];
- In the case of a contribution made by a person in connection with an event organised for the purpose of raising funds for 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, the proportion attributable to that contribution of the net profit, if any, deriving from the event [*Section 22(2)(a)(vi)*];
- in the case of a contribution made by a person in connection with an event organised for the purpose of raising funds for a political party, the proportion

attributable to that contribution of the net profit, if any, that is derived from the event and that, although not specifically raised for the purpose of supporting one or more of the political party's candidates at a Dáil, Seanad or European election, is used for the latter purpose [*Section 22(2)(a)(vii)*], or

- a payment by the 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 [*Section 22(2)(a)(viii)*];

**'election expenses'** election expenses shall be those, and only those, listed hereunder:

**(a) Advertising (whatever the medium used).**

Includes agency fees, design costs and other costs incurred in connection with the preparing, producing, distributing or otherwise disseminating such advertising [*Schedule 1(a)*]

**(b) Publicity.**

Includes expenses incurred in respect of party political broadcasts, the provision of any services or facilities in connection with press conferences or other dealings with the media, media advice and training and photography [*Schedule 1(b)*].

**(c) Election posters.**

Includes the costs of the design, production, printing, erection and removal of election posters (if removal takes place during the election period) [*Schedule 1(c)*]

**(d) Other election material.**

Includes the design, production, printing and disseminating of such material (other than posters), including canvas cards, election leaflets, election manifestos, newsletters and other promotional election material [*Schedule 1(d)*]

**(e) Office and Stationery.**

Includes costs incurred in the rental or use of an office premises or meeting rooms for election purposes (other than for the purposes of annual or other party conferences) and the costs of heating, electricity, insurance, purchase or rental of office equipment, telephones, stationery and postage [*Schedule 1(e)*]

**(f) Transport and travel.**

Includes expenses incurred on transport and travel (by any means), petrol and diesel, rental or use of campaign vehicles, rental or use of vehicles for transport of voters on polling day, accommodation costs, taxi and hackney services and courier services [*Schedule 1(f)*]

**(g) Market research.**

Includes expenses incurred in the taking of an opinion poll or other similar survey relating to an election within the period of 60 days before polling day at

the election by or on behalf of a political party, a political group or a candidate at the election [*Schedule 1(g)*]

**(h) Campaign workers.**

Includes payments to campaign workers, insurance and other costs [*Schedule 1(h)*]

'**institution**' means [*Section 22(2)(aa)*]:

- a) the holder of a licence under section 9 of the Central Bank Act 1971,
- b) a building society incorporated or deemed to be incorporated under the Building Societies Act 1989, or a body incorporated in a corresponding manner under the law of any other member State of the European Communities,
- c) a trustee savings bank within the meaning of the Trustees Savings Bank Act 1989,
- d) ACC Bank plc,
- e) An Post, or
- f) a person authorised in accordance with the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992) to carry on business in the State;

(Note: this definition does not include a credit union.)

"**person**" can be [*Section 2(1)*]:

- an individual;
- a body corporate (e.g., a public or private company) and any subsidiary thereof.  
Where donations are received from associated companies the candidate should ask the donors to clarify any relationship between the companies;
- an unincorporated body of persons, e.g., a political party, a partnership, a residents association, a lobby group.

'**political group**' means a group formed in accordance with the rules of procedure of the European Parliament [*Section 22(2)(aa)*];

'**political party**' means a political party registered in the Register of Political Parties in accordance with section 25 of the Electoral Act 1992 as a party organised to contest a Dáil election or a European election or both such elections [*Section 2(1)*];

'**political purposes**' means any of the following purposes namely [*Section 22(2)(aa)*];

- (i) (I) 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
- (II) 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
- (III) 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, a member of either House of the Oireachtas, representative in the European Parliament, third party or candidate at an election or referendum or otherwise, or

(IV) 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;

(ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad 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;

(iii) otherwise to influence the outcome of the election or a referendum or campaign referred to in paragraph (i)(IV) of this definition.

**'responsible person'** in relation to an accounting unit, means the treasurer or any other person responsible for dealing with donations to the unit, or, in relation to a third party, the person or persons responsible for the organisation, management or financial affairs of the third party [*Section 22(2)(aa)*] ;

**'third party'** means any person, other than a political party registered in the Register of Political Parties under Part III of the Electoral Act, 1992, or a candidate at an election, who accepts, in a particular year, a donation the value of which exceeds €100 [*Section 22(2)(aa)*].

## Appendix 2: Checklist

### **Before and during the election period:**

- Have you appointed an election agent?
  
- Have you notified the returning officer of who your election agent is?
  
- Have you provided the election agent with any funds for expenditure prior to his/her appointment?
  
- Have you a spending assignment agreement in writing with your party (if applicable)?
  
- Have you received a donation in excess of €100? If yes, have you opened a political donations account?
  
- Have you checked the guidelines to ensure you do not accept prohibited donations?
  
- Have you put in place measures to verify whether a donation is allowed?
  
- If you have received a prohibited donation, have you notified the Standards Commission and/or returned this donation?
  
- Are you keeping a record of your election expenditure including invoices, vouchers or receipts in excess of €126.97?

### **After the election period:**

- Have you checked the deadline to file your returns with the Commission?
  - \_\_\_If not elected: you are required to furnish both a donation statement and an election expenses statement by 24 January 2020.
  - \_\_\_If elected: you are required, at this time, to submit only an election expenses statement by 24 January 2020. Donation statements for all of 2019 must be filed by the deadline for TDs of 31 January 2020.

- Have you received all invoices from suppliers within 45 days of the end of the election period (i.e. 13 January 2020)?
  
- If a bank account was opened, have you included the relevant statements?
  
- When completing the forms have you and your qualified witness signed in the proper places (where highlighted)?
  
- Have you taken note that 24 January 2020 is the last day for completed forms and supporting documentation to reach the Standards Commission?

If you have any queries, please refer to the guidelines and/or contact the Standards Commission. We will be pleased to assist you.

### Appendix 3: Example of cross-canvassing

<b>Party X</b>		
<b>Candidate A</b>	<b>Candidate B</b>	<b>Candidate C</b>
<b>Vote</b>	<b>Vote</b>	<b>Vote</b>
<b>No. 1</b>	<b>No. 1</b>	<b>No. 1</b>
<b>A</b>	<b>B</b>	<b>C</b>
<b>Give next preferences to B &amp; C</b>	<b>Give next preferences to A &amp; C</b>	<b>Give next preferences to A &amp; B</b>