

Annual Report 2019



Coimisiún um Chaighdeán in Oifigí Poiblí
Standards in Public Office Commission



**Independent.
Impartial.
Integrity.**

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Foreword

On behalf of the Standards in Public Office Commission, and in accordance with the provisions of section 27(2)(a) of the *Ethics in Public Office Act 1995*, I am pleased to furnish the 2019 annual report of the Standards in Public Office Commission to the Minister for Public Expenditure and Reform.



Sherry Perreault

Head of Ethics and Lobbying Regulation
Secretary to the Commission
June 2020

The Standards in Public Office Commission

The Standards in Public Office Commission is an independent body established in December 2001 by the *Standards in Public Office Act 2001*. The Commission comprises of six members and is chaired by a current or former judge of the Supreme Court or the High Court. In 2019, its members were:

- Mr Justice Daniel O’Keeffe, Chairperson;
- Seamus McCarthy, Comptroller and Auditor General;
- Peter Tyndall, Ombudsman;
- Peter Finnegan, Clerk of Dáil Éireann;
- Martin Groves, Clerk of Seanad Éireann; and
- Jim O’Keeffe, former member of Dáil Éireann.

The Secretariat to the Standards in Public Office Commission is provided by the Office of the Ombudsman.

The Commission has supervisory roles under four separate pieces of legislation:

- The *Ethics in Public Office Act 1995*, as amended by the *Standards in Public Office Act 2001*, (the Ethics Acts);
- The *Electoral Act 1997*, as amended, (the Electoral Acts);
- The *Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014*; and
- The *Regulation of Lobbying Act 2015*.

The Commission also has a role in investigating potential non-compliance with Part 15 of the *Local Government Act 2001*.

The Commission issues a separate annual report covering its activities in administering the *Regulation of Lobbying Act 2015*.

Further information about the functions of the Commission may be accessed online on our website under [the heading “What We Do”](#).

Introduction

At the time of writing, the Standards in Public Office Commission, along with many of its public and private sector stakeholders, is dealing with the consequences of the COVID-19 public health crisis. This has resulted in considerable and unavoidable disruptions to the delivery of public services, including to the work of the Commission. In particular, the Commission's office is closed to personal callers, and stakeholders have been asked to communicate with the office via email and telephone. Secretariat staff members are working remotely in order to respect the need for physical distancing. However, the work of the Commission continues.

Over the course of 2020, it is anticipated that some members of staff may be redeployed to other public bodies to assist in delivering vital front line services. Throughout the period of disruption and uncertainty, the Commission has worked to ensure the effective delivery of its mandate, in particular, timely support and guidance to stakeholders with statutory obligations. The Commission will continue to follow public health advice and its websites (www.sipo.ie and www.lobbying.ie) and Twitter accounts remain the most up-to-date source of information and news.

Activities in 2019

In 2019, the Commission published a number of statutory reports and other publications. A full list of the Commission's publications in 2019 is included at **Appendix One**.

Among its 2019 publications were several reports into investigations of non-compliance with the Ethics Acts and the *Local Government Act 2001*, including two reports from hearings held in September 2018. In December 2019, the Commission also undertook an investigation hearing into the conduct of Cllr Hugh McElvaney. A report of this investigation was published in January 2020.

The Commission oversaw political financing for the European election held in May, and Dáil bye-elections held in November. Reports on both elections are expected to be published in 2020. Publication of these reports, unfortunately, has been delayed due to competing priorities, including preparations for the office move, replacement of electronic systems and the website, and staffing gaps, which have been addressed.

In 2019, the Commission launched a completely revised and updated website, providing a more user-friendly platform for visitors to find and access the information they need. The new website uses a portal-based approach, allowing for categories of individuals (for example, members of the Oireachtas, election candidates, office holders, political parties or members of the media) to access information curated and tailored for their specific needs. The website, available in English and Irish, also provides information about the Commission, copies of reports and publications, as well as guidelines and forms.

The Office of the Ombudsman, which provides secretariat support to the Commission, developed a new strategic plan in 2019. Initiatives in support of the plan include development and delivery of enhanced management information systems, including document management, email and telephone systems. Improved knowledge management functionality is expected to support reporting and decision-making, and in turn increase the effectiveness and efficiency of internal processes.

In December 2019, the Commission relocated to new premises on 6 Earlsfort Terrace. The Office retained a convenient city centre location and the building is accessible for visitors with physical disabilities. Despite a considerable amount of work involved in developing a new open plan environment and significant ICT changes, the move was completed with the minimum amount of disruption to the Commission's work and services.

Departure of Commission members

In February 2020, the tenures of the Chairperson, Mr Justice Daniel O'Keeffe, and the ordinary member, Mr Jim O'Keeffe, ended at the conclusion of their six-year terms on the Commission. The Commission thanks them both for their dedication and service, and wishes them well.

At the time of writing, new appointments to the Commission have not been made. During this transitional phase, the four remaining members of the Commission continue to constitute a quorum. The majority of the Commission's work may therefore progress as normal. However, the Ethics Acts provide that the Commission may not hold any investigation hearings unless all six members are *in situ* and present. The Commission looks forward to welcoming a new Chairperson and ordinary member in due course.

Acknowledgements

The Commission wishes to thank the Head of Ethics and Lobbying Regulation, Sherry Perreault, for her continued dedication and leadership of the Secretariat, as well as the staff of the Secretariat and shared services of the Office of the Ombudsman, for their support over the past year.



Chapter One

Ethics



Chapter One: Ethics

This chapter provides information on the Commission's activities in 2019 under the Ethics Acts, as well as an overview of key developments in priority areas.

Disclosure of Interests – Oversight by Public Bodies

In previous annual reports, the Commission noted that certain issues had arisen regarding public bodies' oversight of adherence to the disclosure of interest provisions of the Ethics Acts by designated directors and employees in those bodies. The legislation provides persons to whom statements of interests are furnished with the right to complain to the Commission about alleged contraventions. It also provides a right for such persons to seek information from a person about their statement or any matter arising from it. There is therefore an implicit duty on public bodies to oversee compliance.

Some public bodies appear to regard the disclosure of interest framework as one based on a presumption of honesty, and that the public body's duty extends only to ensuring that individuals are made aware of their obligations and given the opportunity to comply. However, public bodies are required to be more proactive in ensuring compliance on the part of their employees and board members. The Commission decided that additional guidance to public bodies was required in this regard, and conducted a consultative process to engage public bodies on the matter prior to publishing advice.

Having consulted with a number of public bodies regarding their oversight obligations, in December 2019, the Commission published the document *Supporting Ethics Compliance: Top Ten Best Practices for Public Bodies*. The document provides best practices for public bodies to support compliance and address non-compliance with the Ethics Acts.

The document states, *inter alia*, that public bodies are

"... required to take appropriate steps to identify and address any non-compliance by designated directors and designated employees.

In fulfilling this duty, public bodies are expected to receive and manage statements of interest (annual and ad hoc), identify and manage] potential conflicts of interest, address possible instances of non-compliance, and support employees to comply with their tax clearance disclosure obligations."

The document sets out ten actions public bodies may take to support compliance, namely:

- Nominate an ethics contact in the organisation;
- Maintain a register of Designated Directorships and Designated Positions of Employment;
- Establish clear oversight procedures;
- Ensure all new appointees are aware of their obligations under the Ethics Acts;
- Establish an effective annual statements of interest process;
- Establish an effective statements of 'material interest' process;
- Issue regular reminders;
- Conduct training;
- Maintain confidentiality, and
- Observe statutory retention periods.

In particular, public bodies are advised that persons to whom statements are submitted should review them to determine if there is evidence of non-compliance or a risk of a conflict of interest. In this regard, consultation with the relevant line manager may be useful, as they may be best placed to identify issues based on their knowledge of the functions to be performed by the person.

The Commission strongly recommends that, where no interests are identified, persons be encouraged to submit a nil statement. Nil statements are not a statutory obligation, but are recommended as a good governance practice. A copy of the document may be viewed on the Commission's [website](#).

Disclosure of Interests – Ethics Acts Regulations

Regulations prescribing designated positions of employment in the civil service, and designated directorships and designated positions of employment in the wider public service, had been made on an almost annual basis between 2004 and 2013. Since then, the regulations have been made on a more intermittent basis (in 2015 and 2018). No regulations were made in 2019 to update coverage of directorships and positions of employment across the public service, despite a number of oversights noted in the Commission's 2018 annual report.

The Commission has previously reported on the difficulties that have arisen where the regulations are incomplete or inaccurate. Where public bodies are not explicitly included in the regulations, the provisions for disclosure of interests in the Ethics Acts cannot be implemented on a statutory basis in the bodies concerned. The regulatory omissions identified in the 2018 report remain outstanding.

The following is a list of bodies, of which the Commission is aware, which have yet to be included in the regulations:

- Charity Appeals Tribunal
- Children's Health Ireland
- Climate Change Advisory Council
- Counsellors and Psychotherapists Registration Board
- Home Building Finance Ireland
- International Protection Appeals Tribunal
- Irish Horseracing Regulatory Board
- Land Development Agency
- Legal Services Regulatory Authority
- Low Pay Commission
- National Oversight and Audit Commission
- National Shared Services Office
- Office of the Planning Regulator
- Policing Authority
- Public Service Pay Commission
- Technological University Dublin
- The Water Forum
- Water Advisory Body

The Commission strongly urges the Department of Public Expenditure and Reform, in conjunction with other Departments, to ensure that the regulations are updated on a regular basis and that, where a new body is being set up or existing bodies are being merged, the prescription of designated directorships and designated positions of employment be considered as part of the process of establishment.

The Commission also reiterates its request that it be directly informed of the establishment of new bodies or the merger or dissolution of existing bodies in order that the ethics obligations of employees and/or board members may be addressed, together with any implications for public bodies and designated public officials under the *Regulation of Lobbying Act 2015*.

Tax Clearance Provisions – Appointees to Senior Office

The Commission reported in its annual reports for 2017 and 2018 that it had surveyed public bodies regarding appointees to 'senior office', who are required to provide evidence of tax compliance to the Commission. Appointees to such positions are required to furnish a statutory declaration and a tax clearance certificate within nine months of appointment.

On foot of the survey and considerable follow-up work, public bodies notified the Commission of a significant number of appointments made to senior office more than nine months after the date of appointment, and therefore after the statutory deadline for compliance. There were 132 late notifications of appointment in 2017; 170 in 2018 and 255 in 2019.

However, the Commission notes with regret the time it has taken to elicit this information from public bodies, since it began seeking this information in March 2017. At the time of writing, information was still awaited from Children's Health Ireland at Temple Street (the former Children's University Hospital, Temple Street), notwithstanding repeated contact with the body.

The Commission has now established regular reminders to public bodies to ensure more timely notifications.

As noted in the annual report for 2018, late notification to the Commission has the effect of placing employees into a situation of potential non-compliance with the *Standards in Public Office Act 2001*. In the absence of information on appointments, the Commission is not in a position to follow up on non-compliance by such persons and is effectively obstructed in carrying out its statutory role under the Act.

The Commission again recommends that legislative change be introduced to place a statutory obligation on public bodies to require them to notify the Commission of all relevant appointments and to facilitate compliance by the appointees.

Complaints

During 2019, the Commission processed 38 complaints under the Ethics Acts, concluded two preliminary inquiries, and held one investigation hearing. Four investigation reports were published during the year and are available on the Commission's website.

Investigation into Councillor Joseph Queenan, Sligo County Council

Following on from an investigation hearing held on 10 September 2018, the Commission published a report on 26 March 2019 into the alleged contraventions of the Ethical Framework for Local Government Service by Councillor Joe Queenan of Sligo County Council. The report stated that the Commission found against Councillor Queenan in three of the four alleged contraventions, concluding that he had contravened section 168 (failure to maintain proper standards of integrity, conduct and concern for the public interest), section 169(3) (failure to have regard to and be guided by the *Code of Conduct for Councillors*), and section 171 (failure to set out full particulars of declarable interests in the annual declaration furnished to Sligo County Council for the year 2014) of the *Local Government Act 2001*. The Commission was satisfied that, on the balance of probabilities, two of the contraventions were committed recklessly, one negligently, and that all three were serious matters. The Commission also found that Councillor Queenan had not acted in good faith when he recklessly engaged in conduct in contravention of various provisions of the *Code of Conduct for Councillors*.

Investigation into Councillor John O'Donnell, Donegal County Council

Following on from an investigation hearing held 11 September 2018, the Commission published a report on 26 March 2019 into the alleged contraventions of the Ethical Framework for Local Government Service by Councillor John O'Donnell of Donegal County Council. The report stated that the Commission found against Councillor O'Donnell in all three of the alleged contraventions, concluding that he had contravened section 168 (failure to maintain proper standards of integrity, conduct and concern for the public interest), section 170 (seeking assurances of payment and indicating a willingness to provide assistance as a member of the local authority in return for payment), and section 169(3) (failure to have regard to and be guided by the *Code of Conduct for Councillors*) of the *Local Government Act 2001*. The Commission was satisfied that, on the balance of probabilities, all three of the contraventions were committed intentionally and all were serious matters. The Commission also found that Councillor O'Donnell had not acted in good faith when he intentionally engaged in conduct in contravention of various provisions of the *Code of Conduct for Councillors*.

Investigation into Councillor Hugh McElvaney, Monaghan County Council

The investigation hearing into the alleged contraventions of the Ethical Framework for Local Government Service by Councillor Hugh McElvaney of Monaghan County Council had initially commenced on 17 September 2018, but was adjourned at Cllr McElvaney's request, in order to enable him to apply to the High Court for judicial review. Following that unsuccessful application, the hearing resumed on 2 December 2019 at the offices of the Pharmaceutical Society of Ireland (PSI). The investigation report was published in January 2020 and is available on the Commission's website.

The report stated that the Commission found against Councillor McElvaney in all three of the alleged contraventions, concluding that he had contravened section 168 (failure to maintain proper standards of integrity, conduct and concern for the public interest), section 170 (seeking assurances of payment and indicating a willingness to provide assistance as a member of the local authority in return for payment), section 169(3) (failure to have regard to and be guided by the *Code of Conduct for Councillors*) of the *Local Government Act 2001*, and section 171 (failing to set out full particulars of declarable interests in the Annual Declaration furnished to the Council's Ethics Registrar).

The Commission was satisfied that, on the balance of probabilities, all four of the contraventions were committed intentionally and all were a serious matter. The Commission also found that Councillor McElvaney had not acted in good faith when he intentionally engaged in conduct in contravention of various provisions of the *Code of Conduct for Councillors*.

Costs Order

In previous annual reports, the Commission reported on a complaint received in May 2012 relating to duplicate travel and subsistence claims made by Mr Brian Ó Domhnaill in his former capacity as a member of Donegal County Council and of *Údarás na Gaeltachta*. The Commission published its investigation report on this matter on 15 December 2016. During the course of the investigation, Mr Ó Domhnaill initiated High Court and Court of Appeal proceedings against the Commission, following which the Commission was awarded costs. The Commission has continued to pursue these costs from Mr Ó Domhnaill and the matter is expected to be resolved in 2020.

Tax Compliance Investigations

On 22 March 2019, the Commission issued two investigation reports into non-compliance with the tax clearance provisions of the Ethics Acts on the part of senior office holders. In one of the cases, the individual subsequently complied with the obligations. In the other case, the Commission discontinued inquiries following the individual's retirement.

Ethics Registrars in Local Authorities

The *Local Government Act 2001* provides that each local authority shall appoint a person to be ethics registrar, for a period of not more than two years, to perform certain functions regarding the *Ethical Framework for the Local Government Service* provided in Part 15 of that Act. Ethics registrars are responsible for informing councillors and relevant employees of their obligations regarding declarations of interests and for the publication of the declarations in a register made available for public inspection. In some cases, registrars are also asked to investigate instances of potential non-compliance with the Act or the applicable Code of Conduct.

Given the role and the regular rotation of ethics registrars, training and support is crucial. The Commission's role regarding ethics in local authorities is limited to complaints and investigations. It has no role in publishing guidelines or providing advice on the obligations. However, given the intersection of responsibilities of the Commission and ethics registrars, the Commission considered that there was need for training to be provided to ethics registrars and sought to partner with the Local Government Management Agency (LGMA) to provide such training.

Following consultation with the LGMA throughout 2019, the Commission participated in an inaugural training session, which was held in January 2020 in the LGMA offices under the auspices of the County and City Management Association (CCMA). It covered the obligations of councillors and employees under Part 15 of the Local Government Act, the role of ethics registrars, the conduct of inquiries into alleged contraventions and the role of the Commission regarding councillors and council employees.

Following the training, the Commission wrote to the CCMA to make proposals aimed at supporting ethics registrars in performing their duties. Recommendations included the following:

- Training is essential and should be provided to all ethics registrars upon induction and on an ongoing basis.
- Documented procedures and templates should be developed to ensure consistency within and across local authorities.
- Ethics registrars should be drawn from persons in senior roles (legal officers, AP or higher) to ensure sufficient independence and accountability.
- The role should not be rotated every two years as it currently is, to allow for capacity building and the development of knowledge and expertise. This would require legislative change.

The Commission is pleased to note that the training session was well-received and there is an appetite within local authorities, the LGMA and the CCMA for ongoing training. The Commission will continue to support training as required.

Members who Leave Office

In 2019, the Commission again received queries about whether the conduct of a former member of the Oireachtas may be investigated.

Complaints may be made to the Commission about an alleged contravention of the Ethics Acts by a 'specified person', that is an 'office holder' (i.e. senior or junior minister, the Chairperson or Deputy Chairperson of Dáil or Seanad Éireann), or a director or employee of a public body. Such a complaint may be made about a person who is no longer a 'specified person' where the alleged contravention took place when the person was a 'specified person'.

Complaints under the Ethics Acts about Members of the Oireachtas who are not 'office holders' are dealt with by the Clerks of Dáil Éireann and Seanad Éireann and, where appropriate, by the Committees on Members' Interests of Dáil Éireann and Seanad Éireann. However, unlike the position above regarding 'specified persons', the Clerks and the Committees may not deal with complaints where the person has ceased to be a Member of the Oireachtas.

As noted in previous annual reports, the Commission considers this to be a lacuna in the legislation. It is a fundamental principle of public administration that public officials should be accountable for their actions. The Commission considers that it is unsatisfactory that one category of public officials should not be accountable once they have left office, while others can still be called to account.

The Commission notes that the *Public Sector Standards Bill 2015*, if enacted, would have dealt with this anomaly by providing that all former public officials would be subject to inquiry and investigation notwithstanding their departure from their previous positions. It recommends that legislation be introduced to ensure accountability of all former public officials, including those not currently covered by the Ethics Acts.

Office Holders and Directorships

The *Code of Conduct for Office Holders* provides that office holders should not engage in any activities that could reasonably be regarded as interfering or being incompatible with the full and proper discharge by them of the duties of their office.

It further states:

“Office holders should not hold company directorships carrying remuneration. Even if remuneration is not paid, it is regarded as undesirable for them to hold directorships. A resigning director may enter into an arrangement whereby a company would agree to his/her re-appointment as a director upon ceasing to be an office holder” (Paragraph 2.2.4).

The Commission considers that this provision is insufficient. It recommends that the *Code of Conduct* be amended to provide that all office holders should resign from any directorships on their appointment to office in order to avoid both real and perceived conflicts of interest with their duties.

Update on Anti-Fraud and Anti-Corruption Working Group

As reported in the 2018 annual report, the Commission is a member of the Working Group on Anti-Fraud and Anti-Corruption Measures, led by former Director for Public Prosecutions James Hamilton. The Working Group continued to meet throughout 2019. As at the time of writing, a report had not yet been finalised.

New Code of Conduct for Local Authority Members

Under Part 15 of the *Local Government Act 2001* and following consultation with the Commission, the *Code of Conduct for Councillors* was published in June 2004. In March 2019, the Department of Housing, Planning and Local Government contacted the Commission to consult with it on a revised draft of the Code. The Commission provided observations in response to the consultation.

The revised Code includes new provisions in respect of:

- Lobbying;
- Social Media and use of council equipment;
- GDPR;
- Appropriate use of council resources and a requirement not to claim reimbursement from more than one body in respect of the same expenditure;
- Clarification of the role of Chief Executives and Chairpersons in regard to investigations of possible contraventions;

- A requirement that councillors declare that they have read and understood the Code, and undertake to have regard to and be guided by the Code in the exercise of their functions; and
- The role of the Standards in Public Office Commission.

The revised Code also provides updated objectives of adherence to the principles of respect, dignity and equality. It amends the sections on satisfactory working relationships to emphasise the need for respect for council employees. Finally, it revises outdated references, and provides for the incorporation of the Code in the council's Standing Orders within six months of publication.

The Code was approved and circulated by the Department to all local authorities in June 2019.

The Department has also indicated that it intends to review the code of conduct for local authority employees and will consult with the Commission in that regard in due course.

Internal Audit of Ethics Procedures and Operations

Under the auspices of the Audit and Risk Committee of the Office of the Ombudsman, which reports to the Accounting Officer for a number of Offices, including the Commission, an internal audit of the Commission's ethics procedures and operations was conducted by the Office's auditors.

It found that generally there are appropriate and robust policies and procedures in place. A random sample of 25 files was examined. This confirmed that the policies and procedures are being adhered to on a consistent basis.

The auditors noted that there is no requirement under the Ethics Acts for office holders to furnish statements of nil interests to the Commission although Oireachtas members are required to send a statement in writing to the relevant Clerk if they have no interests). The auditors noted that it was not within the scope of their review to comment on these provisions, but suggested that consideration could be given as to whether the furnishing of statements of nil returns by office holders might be desirable or beneficial. As noted earlier in this chapter, the Commission has now made such a recommendation.

The audit recommended that the Commission should consider how complaints are processed and the stages of communication. It recommended that the Commission's published guidelines be reviewed so that they are easier to understand and are more 'user-friendly'. Finally, it recommended that there continue to be increased interactions with relevant bodies to encourage better practice from all bodies in notifying the office of appointments to 'senior office'. The Commission accepted the recommendations and will take necessary actions in the coming year.

An overall assurance level of 'reasonable' was provided.

Divided Statutory Responsibilities

The Commission is concerned at the division of responsibilities among many bodies for the oversight of ethics and related provisions, including post-employment.

Under the *Ethics in Public Office Acts 1995 and 2001*, the Commission oversees the implementation of the provisions for office holders, namely Ministers, Ministers of State, Chairpersons and Deputy Chairpersons of Dáil and Seanad Éireann. The conduct of Members of Dáil Éireann and Seanad Éireann who are not 'office holders' is overseen by the Committees on Members' Interests.

The ethics framework set out in Part 15 for councillors and council employees is overseen by cathaoirleach, chief executives and ethics registrars in local authorities.

The *Regulation of Lobbying Act 2015* restricts former 'designated public officials' from being engaged in lobbying in certain circumstances for a year after they leave their employment or office. In effect, they are subject to a "cooling-off" period in respect of involvement in particular lobbying activities.

The *Civil Service Code of Standards and Behaviour* and the *Local Authority Code of Conduct for Employees* both make provision for employees who intend to be engaged in or connected with any outside business that could give rise to a conflict of interest. In some cases, the permission of the Secretary General/Head of Office (for Civil Service Departments/Offices) or the Chief Executive of the local authority is required. For more senior staff, the permission of the relevant Outside Appointments Board is required.

An employee may therefore be required to make separate applications under the *Regulation of Lobbying Act 2015* and under the relevant code of conduct to different authorities regarding the same set of circumstances, with the potential for conflicting decisions.

The Commission views the present arrangements as potentially leading to significant consequences for the credibility of ethics frameworks across the public service. It recommends streamlining the various pieces of legislation that address ethics for elected officials and civil and public servants, including post-employment provisions, with a view to ensuring consistency and efficiency.

Public Sector Standards Bill

The *Public Sector Standards Bill 2015*, which was intended to provide a consolidated ethics framework for public officials, and which had been at Committee Stage in Dáil Éireann, lapsed on the dissolution of Dáil Éireann on 14 January 2020.

The Council of Europe's Group of States against Corruption (GRECO), which monitors States' compliance with the organisation's anti-corruption standards, recommended in an evaluation report published in 2014 that Ireland should replace the existing ethics framework with a uniform and consolidated values-based normative framework. In the absence of the passage of the *Public Sector Standards Bill 2015*, GRECO found in an interim compliance report published in May 2018 that its recommendations could not be considered to have been implemented in full. GRECO has given Ireland a rating of "globally unsatisfactory", due in part to the failure to progress the draft legislation.

The Commission recommends that the incoming government give urgent consideration to passage of revised ethics legislation at an early stage. The Commission would welcome an opportunity to engage in the development of a new comprehensive, robust and streamlined ethics framework, which is long overdue.

Chapter Two

Electoral



Chapter Two:

Electoral

This chapter provides information on the Commission's activities in 2019 under the *Electoral Act 1997* (as amended), as well as an overview of key developments in priority areas.

European Elections 2019

Fifty-nine candidates contested the European Parliament election, which took place on 24 May 2019.

In advance of the issuance of the polling order, the Commission published draft guidelines in February aimed at assisting candidates to comply with their obligations under the Electoral Act. The guidelines covered the main requirements of the Electoral Act relating to political donations, election spending and reimbursement of election expenses to qualified candidates. Stakeholders were given an opportunity to seek clarification and provide feedback on the draft guidelines. Observations provided were taken into account when the final version of the guidelines were published after the polling order was made in March 2019.

The candidates' election agents were required to provide an election expenses statement to the Commission by 19 July 2019. The spending limit per election candidate was €230,000. Total expenditure disclosed by election agents and national agents at the election exceeded €2.7 million.

Donation limits also applied. At a European Parliament election, donations with a value of more than €600 (or donations from the same person with that aggregate value) must be disclosed. The maximum donation that may be accepted by a candidate is €1,000.

All unsuccessful candidates were required to provide their donation statement to the Commission by 19 July 2019. Successful candidates at election had to adhere to the regular annual disclosure schedule for members of the European Parliament. They were therefore required to furnish an annual donation statement and accompanying documentation to the Commission by 31 January 2020.

The total donations disclosed amounted to €33,500.

A total of €851,422 was paid by the Exchequer to 23 candidates who qualified for a reimbursement of election expenses. Twenty candidates qualified for the maximum reimbursement of €38,092.

Files in respect of two candidates were referred to An Garda Síochána for failing to submit the required statutory documentation by 19 July 2019.

The Commission's report on the European Parliament election, including information on political donations, election spending and the reimbursement of election expenses, will be published in due course.

Dáil Bye-Elections 2019

Forty-six candidates contested the Dáil Éireann bye-elections, held on 29 November 2019 in the following four constituencies:

- Cork North Central;
- Dublin Mid-West;
- Dublin Fingal; and
- Wexford.

The Commission published guidelines for the bye-elections on 8 November 2019. The guidelines provided information in relation to:

- disclosure of political donations;
- limits on the value of donations which may be accepted;
- prohibited donations;
- limits on election spending, and
- reimbursement of election expenses to qualified candidates.

Election agents were required to provide details of their spending to the Commission by 24 January 2020. The spending limit per candidate in Cork North Central and Dublin Mid West was €37,650 (4 seat constituency at general election). The spending limit per candidate in Dublin Fingal and Wexford was €45,200 (5 seat constituency at general election).

Candidates in the bye-elections who were not elected were required to furnish to the Commission a donation statement and accompanying documentation within 56 days of the election, that is 24 January 2020.

Once elected, successful candidates at the bye-election had to adhere to the regular annual disclosure schedule for members of Dáil Éireann. They were therefore required to furnish an annual donation statement and accompanying documentation to the Commission by 31 January 2020. These donation statements must include details of any donations received during the year, including those received in relation to the bye-election.

The Commission's report on the Dáil bye-election will be available on its website in due course.

Political Party Accounts

Political parties registered in Ireland are required to submit their statements of accounts for the previous calendar year to the Commission by 30 June.

In October 2019, the Commission published its annual report on statements of accounts provided to it by political parties in respect of the parties' 2018 accounts. The report contains an overview of the parties' obligations, and provides information on the compliance status of all parties subject to the Act.

The Commission's report, entitled [Political Parties' Statements of Accounts 2018](#), is available on its website.

Political parties are required to provide their 2019 statement of accounts to the Commission by 30 June 2020. A report will be published and made available on the Commission's website in due course.

Donations Disclosed by Political Parties

The Commission reported in July 2019 on [donations received by political parties in 2018](#).

During 2018, there were 19 political parties registered to contest Dáil or European elections. Each of these parties was required to furnish a donation statement in respect of 2018 to the Commission by 31 March 2019, disclosing donations exceeding €1,500 in value received during 2018. The maximum value of donations that a political party may accept from the same donor in the same year is €2,500.

Political party donation statements showed that political parties received donations valued at €159,819 in 2018. The report and the party statements may be viewed on the Commission's website.

Disclosures of the donations disclosed by political parties in respect of 2019 must be submitted to the Commission by 31 March 2020. They will be published in a report on the Commission's website in due course.

Disclosure of Donations by TDs, Senators and MEPs

Under the *Electoral Act 1997* (as amended), public representatives who are members of the Houses of the Oireachtas or the European Parliament must disclose to the Commission details of donations they receive above a certain value.

In April 2019, the Commission published its report in respect of the 2018 reporting year. 158 TDs, 61 Senators and 11 MEPs were required to submit disclosures of donations received in 2019 by the deadline of 31 January 2020.

Under the Act, public representatives may not accept donations in any year of more than €200 in cash, and not more than €1,000 in total value from a single source. They must disclose any donations valued at (or totalling) €600 or more received from an individual source. There were no donations disclosed that exceeded the maximum limit of €1,000.

For the 2018 reporting year, seven public representatives disclosed donations with a total value of €6,480.

A [report on donations disclosed by TDs, Senators and MEPs for 2018](#) is available on the Commission's website. A report on donations for 2019 will be published in due course.

Donation Statements by Individual Donors

Under section 24(1A)(a) of the Electoral Act, any donor who, in a particular year, makes donations exceeding €1,500 in aggregate value to two or more persons who were members of the same political party when the donations were made, or to a political party, and to one or more of its members, must furnish a donation statement/statutory declaration to the Commission.

The Commission received donation statements in relation to 2018 from three individual donors. The donation statement provided details of donations made, the total value of which was €6,302.

Details of the donations disclosed by individual donors are published as part of the [report on Donations to TDs, Senators and MEPs](#), available on the Commission's website.

Accounting Units

An accounting unit, in relation to a political party, means a branch or other subsidiary organisation or sub-unit of the party, which in any particular year receives a donation, the value of which exceeds €100. In 2018, there were 151 political party accounting units in Ireland with reporting obligations under the Electoral Act.

Details in respect of the 2018 reporting year for accounting units were published in July 2019, as part of the Commission's [report on political party donation statements](#). The aggregate of the closing balances in their donation accounts at 31 December 2018 reported by the accounting units was €1.15 million.

As noted by the Commission in the report on political party donation statements and in previous annual reports, accounting units are not required to submit a donation statement to the Commission. This makes it difficult for the Commission to ascertain the source of monies held in accounting units' political donation accounts. The Commission continues to hold the view that further refinement of the legislation is needed to ensure that there is full transparency in respect of accounting units.

Under the Act, it is an offence for the responsible person of an accounting unit to fail to comply with the Act's reporting requirements.

The deadline for receipt of accounting unit returns in respect of 2019 was 31 March 2020.

A report on donation statements by political parties for 2019, containing details of the returns made by accounting units, will be published and made available on the Commission's website in due course.

Third Parties and Corporate Donors

Register of Third Parties

In 2019, 43 third parties were registered with the Commission. All registered third parties were obliged to provide returns for 2018 no later than 31 March 2019. These returns are not publicly disclosed, in accordance with the provisions of the Act. However, a list of registered third parties is maintained and published on the Commission's website.

A list of third parties that were registered over the course of the year in 2019 is included in **Appendix Two** of this report.

Register of Corporate Donors

Corporate donors wishing to make political donations valued at more than €200 must register with the Commission.

In 2017, there were 29 corporate donors registered with the Commission. In 2018, this figure increased to 48, and fell to 15 in 2019. The significant change is likely attributable to the fact that 2018 saw both a referendum and a presidential election. Corporate donors registered in 2018 to support either or both of those campaigns chose not to remain registered for 2019.

A list of organisations registered as corporate donors is maintained and published on the Commission's website. A list of corporate donors that were registered in 2019 is included in **Appendix Two** of this report.

Exchequer Funding of Political Parties

The Electoral Act 1997, as amended

In 2018, eight political parties qualified for Exchequer funding under the Electoral Act: Fianna Fáil, Fine Gael, the Green Party, the Labour Party, Renua, Sinn Féin, Social Democrats and Solidarity – People Before Profit. The eight parties received funding totalling €5.964 million under the electoral legislation in 2018. The funding may not be used for electoral or referendum purposes. The [report on 2018 funding](#) was published in August 2019 and is available on the Commission's website.

Parties are expected to submit their 2019 statements of expenditure of Exchequer funding by 31 March 2020. The report concerning the statements of expenditure of Exchequer funding in respect of 2019 will be published and made available on the Commission's website in due course.

The Oireachtas (*Ministerial and Parliamentary Offices*) (Amendment) Act 2014

The parliamentary leaders of eight political parties (Fianna Fáil, Fine Gael, the Green Party, Independents 4 Change, the Labour Party, Sinn Féin, Social Democrats and Solidarity/People Before Profit) qualified to receive the allowance, known as the “parliamentary activities allowance”. The parties received just under €7.6 million under the Act in 2018.

Non-party members of Dáil Éireann and Seanad Éireann also receive funding under the legislation. The total amount paid during 2018 to non-party members elected to Dáil Éireann was €703,704 and the total amount paid to non-party members elected or nominated to Seanad Éireann during the same period was €309,121.

A [report on 2018 expenditure of the parliamentary activities allowance](#) containing details of the returns made by political parties and independent Oireachtas members was published in August 2019 and is available on the Commission’s website.

Parties and non-party Oireachtas members are required to submit their 2019 statements of expenditure of the parliamentary activities allowance by 31 March 2020. The report for 2019 will be published and made available on the Commission’s website in due course.

Issues Arising in 2019

Third party provisions of the Electoral Act

The Commission has reported in previous annual reports on issues arising from the provisions in the *Electoral Act 1997*, as amended, concerning third parties. A ‘third party’ is any individual or group, other than a registered political party or election candidate, who or which accepts, in a particular calendar year, a donation for political purposes exceeding the value of €100.

The definition of political purposes encompasses, *inter alia*, support for or opposition to political parties, elected Members and candidates at Dáil, Seanad, European and Presidential elections, seeking to influence the outcome of an election or referendum, and presenting the policies or a particular policy of a political party, political group, elected Member or third party.

The element of the definition of a third party that has caused most difficulty is the following:

“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;”

The concern has been expressed by civil society organisations that the provision as currently set out encompasses campaigns run by them for policy or legislative change unconnected with an election or referendum and that it could infringe on the constitutional right to freedom of expression.

The Commission has considered this provision in previous reports on reviews of the electoral legislation. In a report in 2003, it noted that the scope of the provision was so broad that it may unintentionally cover a wide range of bodies, including local organisations such as Tidy Towns Committees, charities, representative organisations and other interest groups. It stated that it doubted that it was the intention of the legislature that such bodies, in conducting their ordinary affairs, could find themselves covered by the legislation. It noted that it would be a different matter if any of them became involved in campaigning at an election or referendum in which case they should, and would, be covered.

The Commission has previously recommended that the definition of what constitutes a “third party” should not be determined on the basis of whether an individual/group has received a donation but should focus on spending by individuals/groups and to regard them as third parties if they intend to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes as defined in the legislation. Notwithstanding the recommendations of the Commission and the observations of civil society organisations, the provision has not been amended in the Electoral Acts.

In these circumstances, the Commission is obliged to consider in any individual case whether the legislation applies. The Commission may make any inquiries it deems necessary to determine whether an activity falls within the scope of the Act. The Commission will apply the Act’s provisions in a manner consistent with the protection of constitutional rights and only where the person or organisation falls within the scope of the Act. It will take into account whether the activity supported by donations to the individual or body concerned is related to an election or referendum.

While the Electoral Acts do not include provisions for complaints to be made to it concerning possible contraventions of the legislation, the Commission is obliged to consider whether information which is made available to it provides a basis for enquiry or for referral to the appropriate authority as to whether the person or body concerned should be prosecuted. It will do so taking into account the above considerations.

Taxation and/or Disposition of Closed Political Donation Accounts

The *Electoral Act 1997* (as amended) provides that, where a member of either House of the Oireachtas, a representative in the European Parliament, a candidate at a Dáil, Seanad or European election, a political party, a third party or an accounting unit who or which receives, in any particular year, a monetary donation the value of which exceeds €100, they are required to open and maintain a political donations account in an institution in the State and to lodge that donation and any further monetary donations received to that account.

The Act is silent on what may be done with any balance left in the account when an elected member ceases to be a member. From information received to date, it would appear that individuals who leave office and/or close their political donations accounts are free to keep any unused funds, but may be subject to Capital Acquisitions Tax if the amount exceeds the personal exemptions.

The Commission's view is that, as the monies in the account were given for political purposes, it would be in keeping with the spirit and intent of the legislation to use the funds for similar political purposes as those for which they were originally given (i.e. through donations to their party and/or candidates with similar views) in accordance with statutory thresholds. The Act should be amended to explicitly address this issue.

Donations to Parties with North/South Presence

The Commission notes that there are some political parties that operate in this State and in Northern Ireland. Separate electoral regimes exist in the two jurisdictions, with separate registration and reporting requirements.

Donations are subject to different acceptance and disclosure thresholds in the two jurisdictions, and donations received in one jurisdiction may be acceptable where they would not be in the other jurisdiction. Likewise, assets and liabilities of a party organisation that is structured as a single entity may be held for reporting purposes in one jurisdiction or the other.

There is nothing illegal about a party that is, for organisational purposes, a single entity having statutory obligations in more than one jurisdiction. Given the differences in statutory requirements, this may have the practical effect of sometimes benefiting or disadvantaging a party. It is recommended that the issue be explored further by an electoral commission, once established.

Submission to Public Consultation on Creation of Electoral Commission

The Department of Housing, Planning, Community and Local Government published a Regulatory Impact Analysis on the Establishment of an Electoral Commission in December 2018 and launched a public consultation on the paper.

The Commission made a submission in March 2019, which it published on its website.

As noted in the submission, the Commission's mandate includes oversight of the *Electoral Act 1997*, which deals primarily with political and campaign finance. In recent years, the electoral landscape in Ireland has changed significantly. The rise of digital technology and the importance of the internet as a communications and campaign tool have revolutionised elections and referendums. There is potential to modernise election management using online registration and voting. Moreover, foreign political involvement has also increased, with donations, fundraising and expenditure taking place offshore for dissemination into Ireland, as well as within the State.

In its submission, the Commission expressed the view that, in light of these and other factors that are presenting challenges to the electoral legislation currently in place, and the institutions that administer it, a dedicated electoral commission should be established to combine the various disparate election and referendum oversight functions. It stated that this should be done preferably in the context of a comprehensive review of the Electoral Acts, with a view to modernisation and clarification of the Act's provisions.

The Commission considered that the option of establishing the electoral commission on a statutory basis and assigning a limited number of functions initially, with a view to assigning further functions over time, is the most desirable and logical approach.

The Commission also made the following recommendations:

- Establish the electoral commission on a statutory basis, with functions and responsibilities to be added over time, as per the recommended option 3 outlined in the Department's Regulatory Impact Analysis paper;
- Ensure any new commission is set up as a body entirely independent of government for budgetary, reporting, publications and staffing purposes;
- Structure the new commission to ensure that members are dedicated to the role on a full-time basis and not as an additional function to other statutory roles; and
- Provide secretariat support to the new commission via a stand-alone organisation, ensuring that all statutory and operational functions, including salary and non-salary expenditures, are appropriately resourced.

The Commission welcomes the subsequent decision of the Government in July 2019 to proceed with the drafting of a General Scheme of an Electoral Commission Bill. The General Scheme was approved by Government in December 2019. The Commission notes that the electoral commission's initial remit will see the transfer of several existing electoral functions, including the Register of Political Parties, the Referendum Commission, the Constituency Commission and Local Electoral Area Boundary Committees. It also notes that further functions, including those for which the Commission currently has responsibility, will be considered for transfer to the electoral commission at a later stage.

The Commission is pleased to assist in the creation of an electoral commission as and when this progresses.

Regulating Online Political Advertising (Report of Interdepartmental Group on Security of Ireland's Electoral Process and Disinformation)

In its annual report for 2017, the Commission recommended that the *Electoral Act 1997*, as amended, be reviewed with a view to addressing the issue of online political advertising and stated that this should preferably be done in the context of the creation of an electoral commission.

In its annual report for 2018, the Commission welcomed developments during that year regarding these matters. These included the giving of evidence by the Head of Ethics and Lobbying Regulation on behalf of the Commission to the Joint Oireachtas Committee on Communications, Climate Action and Environment, in the context of its scrutiny of the *Online Advertising and Social Media (Transparency) Bill 2017*. In addition, the Department of the Taoiseach was also considering the issue of online political advertising and organised a seminar on this topic in December 2018.

In 2019, the Commission Secretariat met with officials of the Department of the Taoiseach and of the Department of Housing, Planning and Local Government, to discuss the development of legislation to regulate online political advertising.

It has been proposed that the Commission (or the electoral commission, if established) would be tasked with overseeing any legislation that is introduced. The Commission is concerned that resource ramifications could be significant, and that the resource levels and the expertise required to undertake this type of oversight and to do it thoroughly and well, must be provided.

In considering any legislative amendment, the Commission is of the view that difficulties with the definition of “Political Purposes” (outlined elsewhere in this report) should be taken into account in drafting any legislation. The Commission is also of the view that any initiative should be developed along the same track as the creation of the proposed electoral commission rather than having any sort of interim arrangement. The Commission considers it logical to have this brought within the new body’s remit at the time the Standards in Public Office Commission’s existing functions under the Electoral Acts are transferred to the electoral commission, rather than assigning them in the interim to the Standards in Public Office Commission.

Investigations under the Electoral Act

The *Electoral Act 1997*, as amended, provides that proceedings for an offence shall not be instituted except by, or with, the consent of the Director of Public Prosecutions (DPP).

The Office of the DPP wrote to the then-Public Offices Commission in 1997 to request that, as that Office does not have an investigation function, any files concerning alleged offences under the Electoral Act be referred to An Garda Síochána for investigation in the first instance. That procedure has been followed in the years since. The Commission conducts various inquiries into possible contraventions of the Act, and once it has all the information it may collect using its current statutory powers, it refers the matter to An Garda Síochána.

In 2019, An Garda Síochána contacted the Commission to query whether the current practice is still desirable. Consultation with the DPP and An Garda Síochána on this matter is ongoing, with a view to reaching a common understanding of how investigations under the Electoral Act may be effectively progressed, and what role (if any) An Garda Síochána may have in supporting the Commission’s investigatory activities.

Corporate Donations – Related Companies

The *Electoral (Amendment) (Political Funding) Act 2012* provides for a register of corporate donors and places obligations on corporate donors who make political donations in excess of €200 to candidates, elected officials or political parties. The Act also provides for offences and penalties for contraventions.

A corporate donor is defined as:

- i. A body corporate;
- ii. An unincorporated body of persons; or
- iii. A trust,

which makes a donation, and for the purpose of this definition a body corporate and any subsidiary thereof shall be deemed to be one person.

Accordingly, a body corporate and a subsidiary of that body cannot both be registered as corporate donors.

In the case of bodies corporate which are companies within the meaning of the *Companies Act 2014*, the term 'subsidiary' must be interpreted in accordance with the definition in section 7 of that Act. The definition sets out a detailed test as to whether a company is a subsidiary of another company. These include whether the parent or superior company is a shareholder or member of the subsidiary or lower company and controls the composition of its board of directors, or is a shareholder or member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders' or members' voting rights. The section also includes a 'dominance test'.

The onus is on a person registering a company as a corporate donor with the Commission to ensure that the company is not a subsidiary of a company which is already registered as a corporate donor, or that another subsidiary of that parent company is not so registered.

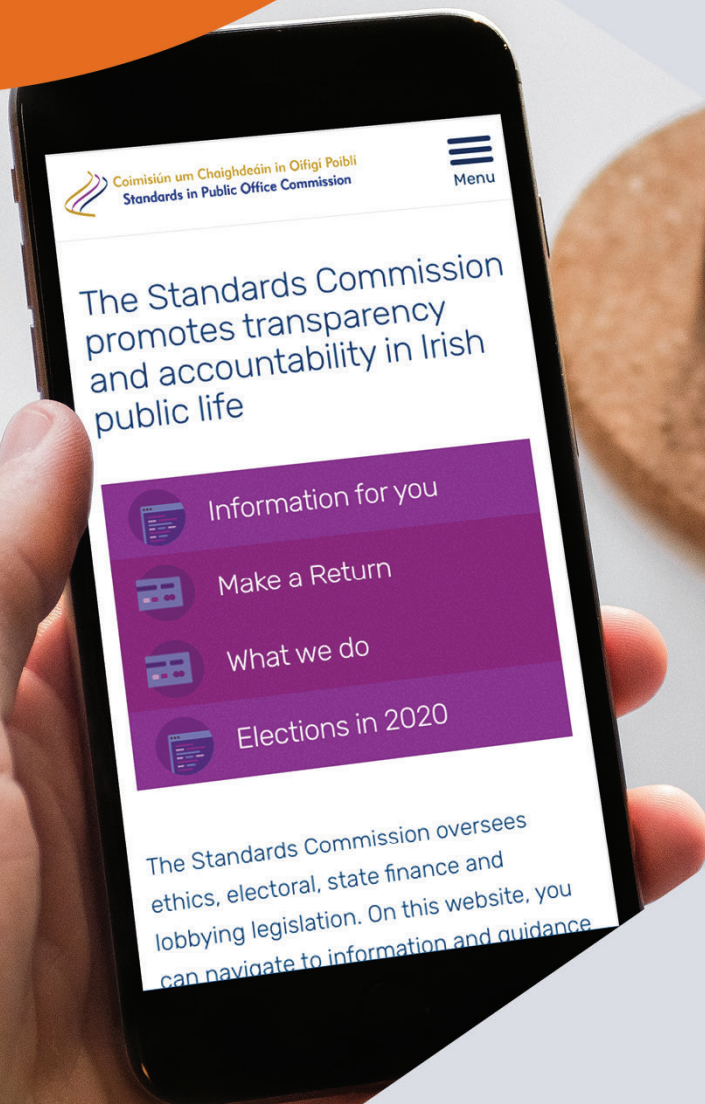
There may be circumstances where companies may be considered to be linked because, for example, an individual or individuals are shareholders or members or directors or both, but because they do not meet the tests in section 7 of the *Companies Act 2014*, are not regarded as subsidiaries.

The Commission considers that there is a risk that persons may be in a position to circumvent the restrictions set out in the Electoral Acts by arranging the making of multiple political donations by companies which are linked by common ownership, but which do not meet the test of a subsidiary in the *Companies Act 2014*.

As the Electoral Acts place restrictions on the level of political donations by individuals and corporate donors in order to prevent undue influence on politicians and political parties, the Commission recommends that the definition of a corporate donor be amended to include companies that are linked by common ownership.

Chapter Three

Communications and Outreach



Chapter Three:

Communications and Outreach

As part of its communications strategy, the Commission continues to undertake outreach activities designed to improve understanding of, and compliance with, the legislation within its remit. The Commission uses tools such as its website, social media channels, presentations, training events and information products, to implement its communications strategy. The Commission also continues to engage with international stakeholders as needed.

The following provides highlights of communications and outreach activities undertaken by the Commission in 2019.

New Website

In July, the Commission launched its [new website](#), which is designed to be more user-friendly and accessible. Using a portal-based approach, the new website allows users to access information tailored for their specific needs. Election candidates and agents, office holders, members of the Oireachtas or local authorities, civil servants and others can access information tailored for them, such as guidelines, information notices, publications and forms.

The new website is mobile-friendly and improves the way the user can interact with the information on a range of devices. Along with the Commission's [Twitter account](#), it remains a dynamic and frequently updated source of information about the Commission's activities.

Meetings and Presentations

In January and October, Secretariat staff gave a presentation and held a drop-in clinic for members of the Oireachtas and their staff. These bi-annual events allow members and support staff the opportunity to improve their understanding of their statutory obligations under the ethics and electoral legislation, and to seek assistance with their own queries. As annual disclosure deadlines for most members fall at the end of January, the earlier session is particularly important to ensure returns are completed accurately and in a timely manner.

In April, a delegation from the German Ministry of the Interior visited the Office to learn about the Commission's role and functions, particularly in respect of lobbying regulation. In July, the Head of Ethics and Lobbying Regulation met with a researcher from the New South Wales (Australia) Independent Commission against Corruption studying anti-corruption systems in other countries.

In August, a delegation from the Palestinian embassy studying ethics systems in Ireland met with the Head of Ethics and Lobbying Regulation and the Ombudsman.

Finally, in November, staff met with a delegation from Transparency International Latvia that was interested in studying lobbying systems.

Other presentations throughout the year were made to Tallaght Hospital, the Office of the Chief State Solicitor, the Houses of the Oireachtas, and the Bar Council of Ireland.

Publications

In 2019, the Commission published a number of statutory reports. A complete list is available at **Appendix One**.

The Commission also published three information notices, designed to support compliance with the Acts. These included:

- Supporting Ethics Compliance: Top Ten Best Practices for Public Bodies;
- Information Notice: Gifts to Office Holders; and
- Information Notice: Gifts to Civil Servants.

Council of Europe's Group of States against Corruption (GRECO)

Fourth Round evaluation:

In 2014, the Council of Europe's Group of States against Corruption (GRECO) carried out a Fourth Round evaluation on corruption prevention in respect of members of Parliament, judges and prosecutors in Ireland and made a number of recommendations for improvements in Ireland's ethics framework. GRECO continues to monitor Ireland's compliance with its evaluation recommendations, rated again in June 2018 as "globally unsatisfactory". In September 2019, Ireland provided GRECO with an update on progress on the implementation of the recommendations.

While the Commission has no statutory role in respect of the application of, or guidance on, the Ethics Acts relating to members of the Oireachtas who are not office holders, the Commission offered to provide training to all members in concert with already scheduled training initiatives for members under the Electoral Act. The Houses of the Oireachtas have included the Commission as part of its new member induction training program, and facilitates the Commission to host bi-annual information sessions for both the Ethics and Electoral Acts. On foot of discussions with the Houses of the Oireachtas it has been agreed that this training, which is not mandatory, will be offered annually after every general election and as part of all future induction training for new Oireachtas members.

Fifth Round evaluation:

GRECO's Fifth Round evaluation process was launched on the 20 March 2017. The focus of the Fifth Round is on corruption prevention in relation to the top executive functions of the State (ministers and senior government officials) and law enforcement agencies (excluding customs bodies). Ireland is scheduled to be evaluated under the Fifth Round in 2020.

The Department of Justice is leading the Government's response on both the Fourth and Fifth Round evaluations. An interdepartmental/agency group was established, under the direction of the Department of Justice, to prepare for the next evaluation. The Commission sits on this working group and participated in a number of planning meetings in 2019. The evaluation is ongoing.

Council on Governmental Ethics Laws (COGEL)

The Commission remains a member of COGEL, a US-based non-profit organisation for practitioners in ethics fields, including conflict of interest, campaign finance, elections, freedom of information and privacy. No significant activities involving the Commission took place in 2019.

United Nations Convention against Corruption (UNCAC)

Ireland is a signatory to the United Nations Convention against Corruption (UNCAC). As part of its regular evaluation programme, the UN is studying Ireland's compliance with the Convention and launched its most recent evaluation in 2018, which is ongoing. The Commission sits on the working group, led by the Department of Justice, and is providing input to the evaluation as needed.

Chapter Four

Recommendations for Change



Chapter Four:

Recommendations for Change

In previous annual reports, the Commission summarised its recommendations for changes to ethics and electoral legislation. Major outstanding proposals are summarised below, along with updates on any progress which may have taken place in the meantime. Minor proposals, such as technical amendments, are referred to in previous annual reports. Proposals that have previously been actioned and reported on in last year's report have been removed.

Recommendations applying to Ethics Acts

Recommendation	Year Made	Update
Proposed procedural amendments to the Ethics Acts		
The Commission should be granted the power to appoint an Inquiry Officer to conduct a preliminary inquiry into a matter in the absence of a complaint under the Ethics Acts. <i>(Chapter 1, 'Own initiative inquiries', Annual Report 2004)</i>	2004	The <i>Public Sector Standards Bill 2015</i> would meet this recommendation.
Provision should be made for a quorum of not less than three members (including in all cases, the Chairperson) for the hearing of an investigation under the Ethics Acts. <i>(Chapter 4, 'Proposed amendments to the Ethics Acts', Annual Report 2008)</i>	2008	The <i>Public Sector Standards Bill 2015</i> would establish a Public Sector Standards Commissioner in place of the Commission.
The Commission should directly lay its annual report before each House of the Oireachtas rather than furnishing it to the Minister for Public Expenditure and Reform who then lays it. <i>(Introduction, Annual Report 2010)</i>	2010	The <i>Public Sector Standards Bill 2015</i> would meet this recommendation.

Recommendation	Year Made	Update
<p>Legislation should be introduced to ensure accountability of all former public officials, including those not currently covered by the Ethics Acts. <i>(Chapter One, Ethics, Annual Report 2019)</i></p>	2019	New
Other proposed amendments to the Ethics Acts and related legislation		
<p>There should be amendments to the time limits within which Statutory Declarations, Tax Clearance Certificates and Application Statements are to be made or issued and furnished to the Commission by elected members and by appointees to senior positions and directorships in the public service. <i>(Chapter 1, 'Tax Clearance Provisions - observations to the Minister for Finance, Annual Report 2003)</i></p>	2003	<p><i>The Civil Law (Miscellaneous Provisions) Act 2008</i> amended the deadline for the making of a statutory declaration by a person recommended for appointment to judicial office from one month to three; a similar provision for elected members and senior public servants would be required in order to meet the recommendation.</p> <p>The <i>Public Sector Standards Bill 2015</i> would meet this recommendation and would provide for annual compliance.</p>
<p>A code of conduct should be adopted for public servants and members of state boards in the wider public service. <i>(Chapter 1, 'Codes of Conduct for Public Servants', Annual Report 2003)</i></p>	2003	<p>The <i>Public Sector Standards Bill 2015</i> would introduce a model code of conduct applicable to all public officials and provide for individual codes in each public body. The Commission recommends provision be made for sectoral codes.</p> <p>An amendment passed at Committee Stage in Dáil Éireann in April 2017 would provide for sectoral codes for civil servants and special advisers and for members and employees of local authorities.</p>
<p>Motions should be initiated in the Houses of the Oireachtas to designate the Chairpersons of Oireachtas Committees as office holders for the purposes of the Ethics Acts. <i>(Chapter 1, 'Ethics Acts', Annual Report 2005)</i></p>	2005	<p>The <i>Public Sector Standards Bill 2015</i> would remove the distinction between office holders and other Oireachtas members.</p>
<p>There should be a comprehensive act consolidating the Ethics Acts and all other legislation providing for disclosure of interests and related provisions for public officials. <i>(Chapter 2, 'Overlapping Ethics Frameworks', Annual Report 2009)</i></p>	2009	<p>The <i>Public Sector Standards Bill 2015</i> would meet this recommendation.</p>

Recommendation	Year Made	Update
<p>There should be an amendment of the provisions for complaints about a 'specified act' to allow reference to a high level statement of the ethical principles to be followed by public servants and public representatives. <i>(Chapter 2, 'High Level Statement of Ethical Principles', Annual Report 2009)</i></p>	2009	Nothing to report.
<p>There should be an amendment of the definition of 'connected person' (see definition in Appendix 3) to provide that a person is a "connected person" to a company (see definition in Appendix 3) of which he or she is a director and that the other directors of that company are also "connected persons" to that person. <i>(Chapter 2, 'Connected Persons', Annual Report 2009)</i></p>	2009	The <i>Public Sector Standards Bill 2015</i> would meet this recommendation.
<p>There should be a requirement that liabilities be disclosed as 'registrable interests'. <i>(Chapter 2, 'Disclosure of Liabilities', Annual Report 2009)</i></p>	2009	The <i>Public Sector Standards Bill 2015</i> would meet this recommendation.
<p>A whole of public service approach to preventing and detecting double claiming of travelling and subsistence expenses should be adopted. <i>(Chapter 2, Complaints, Annual Report 2014)</i></p>	2014	The Department for Public Expenditure and Reform issued guidance on this in October 2015. The Department provided procedures to follow in the event an employee of a public service body travels for official business and has the potential to claim for the refund of travel and subsistence costs from more than one body.
<p>Explicit provision should be made to allow complaints against members of the Oireachtas in circumstances where the matter comes to light after the member has left office. <i>(Chapter 1, Ethics, Annual Report 2017)</i></p>	2017	Nothing to report.
<p>The Act should be amended to require that public bodies notify the Commission of new appointments to senior office, to facilitate the effective implementation of tax compliance requirements. <i>(Chapter 1, Ethics, Annual Report 2017)</i></p>	2017	Nothing to report.

Recommendation	Year Made	Update
<p>That future regulations prescribing designated positions of employment be made effective on 1 January of the year following their promulgation. <i>(Chapter 1, Ethics, Annual Report 2018)</i></p>	2018	Minister has agreed with recommendation; no new regulations since recommendation made.
<p>That regulations prescribing designated positions of employment be updated regularly and that the prescription of new positions in a body to be established (whether entirely new or bodies being merged) be considered as part of the process of establishment. In addition, the Commission should be informed of the creation/merger/dissolution of such bodies. <i>(Chapter 1, Ethics, Annual Report 2018)</i></p>	2018	Nothing to report.
<p>Various pieces of legislation that address ethics for elected officials and civil and public servants, including post-employment provisions, should be streamlined with a view to ensuring consistency and efficiency. <i>(Chapter 1, Ethics, Annual Report 2019)</i></p>	2019	New
<p>The incoming government should give urgent consideration to passage of revised ethics legislation at an early stage. <i>(Chapter 1, Ethics, Annual Report 2019)</i></p>	2019	New
Recommendation regarding the Local Government Act 2001		
<p>The role of ethics registrar in local authorities should be rotated less frequently than the current two years, to allow for capacity-building and the development of knowledge and expertise, and should be at a senior level within the organisation. <i>(Chapter 1, Ethics, Annual Report 2019)</i></p>	2019	New

Recommendations applying to Electoral Acts

Recommendation	Year Made	Update
Proposed review of Electoral Acts		
<p>An electoral commission should be established, and a comprehensive review of the Electoral Acts should take place. Provisions should be included to provide for regulation of digital means of influence in an electoral or referendum campaign.</p> <p><i>(Chapter 2, Electoral, Annual Report 2017)</i></p>	2017	The Department of Housing, Planning and Local Government published a Regulatory Impact Analysis on the establishment of an electoral commission and launched a public consultation on the document in December 2018.
<p>New electoral commission should be established:</p> <ul style="list-style-type: none"> - On a statutory basis - Entirely independent of government for budget, reporting, publications and staffing - Ensure that members are dedicated to role on full-time basis and not as additional function to other statutory roles - Provide secretariat support via a stand-alone organisation, ensuring that all statutory and operational functions, including salary and non-salary expenditures, are appropriately resourced. <p><i>(Chapter 2, Electoral, Annual Report 2019; Submission to public consultation on creation of Electoral Commission)</i></p>	2019	New
Proposed procedural amendment to the Electoral Acts		
<p>As the body with responsibility for supervising the Electoral Acts, the Commission should have a statutory basis on which to review the legislation and report on its findings.</p> <p><i>(Review of the Electoral Acts 2003)</i></p>	2003	Nothing to report.

Recommendation	Year Made	Update
Proposed amendment to the Electoral Acts relating to the election period		
<p>Consideration should be given to imposing some accountability, in the context of the spending limits, in respect of a specified period prior to commencement of the legally defined election period (i.e., that the election period might be extended to include a period prior to the dissolution of the Dáil or moving of the writ at an election).</p> <p><i>(Review of the Electoral Acts 2003)</i></p>	2003	Nothing to report.
Proposed amendment to the Electoral Acts relating to Third Parties		
<p>The definition of what constitutes a “third party” should not be determined on the basis of whether an individual/group has received a donation but should focus on spending by individuals/groups and to regard them as third parties if they intend to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes as defined in the legislation.</p> <p><i>(Review of the Electoral Acts 2003; and 2009 Report on third parties at the Referendum on the Treaty of Lisbon)</i></p>	2003 and 2009	Nothing to report.
<p>The registration process for “third parties” and for “other persons” (who intend to incur election expenses) should be amalgamated. (There should be no need for an individual/group to register as a “third party” and to also register as an “other person”).</p> <p><i>(Review of the Electoral Acts 2003)</i></p>	2003	Nothing to report.
<p>Registration of third parties should be allowed for the duration of a particular campaign only, or on an on-going basis.</p> <p><i>(2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008)</i></p>	2009	Nothing to report.

Recommendation	Year Made	Update
Proposed amendment to the Electoral Acts relating to spending at referendums		
<p>Provision should be made for transparency in funding and expenditure on referendum campaigns, third parties and political parties should be required to disclose details of expenditure on referendum campaigns. Similarly, information should be made available on the sources of funding available to both third parties and political parties.</p> <p><i>(2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008)</i></p>	2009	Nothing to report.
<p>Expenditure limits should apply at referendums as well as elections.</p> <p><i>(Chapter 2, Electoral, Annual Report 2017)</i></p>	2017	Nothing to report.
Other proposed amendments to the Electoral Acts		
<p>To ensure a level playing field between candidates, and a degree of transparency, the use of public funds for electoral purposes should form part of the electoral code rather than other legislation which patently has quite a separate purpose. This would involve a consequential repeal of the provisions dealing with the provision of services and facilities following a dissolution of Dáil Éireann by the Houses of the Oireachtas Commission [section 4(4A) of the Houses of the Oireachtas Commission Act 2003 (as amended by section 4(c) of the Houses of the Oireachtas Commission (Amendment) Act 2009)].</p> <p><i>(Report on the Dáil general election of 2007)</i></p>	2007	Nothing to report.
<p>Smaller political parties, particularly those not in receipt of Exchequer funding, should be exempt from the requirement to submit audited accounts. (Chapter 3, Electoral, Annual Report 2016)</p>	2016	Nothing to report.
<p>Provide for offences and penalties for failure to comply with parts IV, V, VI of the 1997 Act.</p>	2005	Nothing to report.

Recommendation	Year Made	Update
Provide for disposal of surplus donations in situations where person no longer required to maintain a political donations account and there are unused funds remaining.	2003	Nothing to report.
Offence should be provided for failure to open political donations account.	2004	Nothing to report.
Provide for the furnishing of a single Donation Statement in situations where a person holds a dual mandate or where, in a particular year he/she as a sitting TD, Senator or MEP unsuccessfully contested a Dáil, Seanad or European election.	2005	Nothing to report.
Provide for offence for failure to provide necessary information to election agent or national agent for purposes of facilitating agent's Election Expenses Statement (EES).	2005	Nothing to report.
Review whether it is necessary to furnish, as a matter of course, supporting documentation in relation to the maintenance of a political donations account.	2003	Nothing to report.
Consider setting aside specific funding to support the operation and development of less prominent political organisations, which, under the current legislative provisions, are unlikely to qualify for receipt of Exchequer funding. Such funding would be subject to suitable controls being put in place to ensure that the funding is fully accounted for and is used for its proper purposes.	2003	Nothing to report.
Consider whether definition of political purposes should be modified to include only campaigns relating to elections or referendums, rather than campaigns that seek to influence decisions or functions of public bodies.	2009	Nothing to report.
Amend definition of corporate donor to include companies that are linked by common ownership. <i>(Chapter 2, Electoral, Annual Report 2019)</i>	2019	New

Recommendation	Year Made	Update
Amend Act to address issue of remaining funds on closure of political donations accounts. <i>(Chapter 2, Electoral, Annual Report 2019)</i>	2019	New
Any new legislation to address online political advertising should: - take into account difficulties with current definition of political purpose - be developed on same track as electoral commission and not assigned on interim basis to Standards Commission <i>(Chapter 2, Electoral, Annual Report 2019)</i>	2019	New
Technical recommendations		
Amend Act to reflect the fact that members of local authorities and candidates at local elections have their own reporting requirements under the <i>Local Elections (Disclosure of Donations and Expenditure) Act 1999</i> , as amended.	2003	Nothing to report.
Consolidate provisions from other legislation relating to use of public funds for electoral purposes. This would involve a consequential repeal of the provisions dealing with the provision of services and facilities following a dissolution of Dáil Éireann by the Houses of the Oireachtas Commission [Section 4(4A) of the <i>Houses of the Oireachtas Commission Act 2003</i> (as inserted by the <i>Houses of the Oireachtas Commission Act 2006</i>) (now Section 4(c) of the <i>Houses of the Oireachtas Commission (Amendment) Act 2009</i>).	2005	Nothing to report.
Clarify Act to specify whether expenditure of Exchequer funding is allowable in respect of capital and/or current spending.	2014	Nothing to report.
Amend definition of “financial institution” to include credit unions.	2005	Nothing to report.
Definition of “minor expenses” at an election should be limited to €126.97 per candidate.	2005	Nothing to report.

Recommendation	Year Made	Update
Modify term “election agent” to “election spending agent” or “election spending accounting officer”.	2007	Nothing to report.
Candidates should be required to notify Commission directly of change to election agent.	2007	Nothing to report.
Provide for discretion by Commission in allowing expenses such as refreshments for volunteer workers and candidate petrol costs.	2007	Nothing to report.
Amend section 31(10) of 1997 Act to include phrase “seeks to influence the outcome of an election”.	2007	Nothing to report.
Shorten interval between the making and the submission of the Statutory Declaration.	2003	Nothing to report.
Provide a statutory deadline by which candidates, who wish to do so, must finally assign part of their spending limits to their political parties.	2003	Nothing to report.
Allow for registration of third parties for a particular campaign or on an on-going basis.	2009	Nothing to report.
Clarify duration of third party registration.	2003	Nothing to report.

Recommendations applying to the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2014, (the Parliamentary Activities Allowance Act)

Recommendation	Year Made	Update
Proposed amendment to the Parliamentary Activities Allowance legislation relating to the giving of advice		
The Commission should be able to give advice on the appropriate use of the Parliamentary Activities Allowance and for such advice to be legally binding on the persons to whom they apply. (Annual Report 2007)	2007	The passing of the <i>Oireachtas (Ministerial and Parliamentary offices) (Amendment) Act 2014</i> does not provide for the Commission to give advice.

Chapter Five

Office Operations



Chapter Five:

Office Operations

Move to New Premises

After many years located in Lower Leeson Street, the Standards in Public Office Commission moved to new premises in December 2019. The Secretariat is co-located with the Office of the Ombudsman, the Office of the Information Commissioner, the Office of the Environmental Information Commissioner, the Commission for Public Service Appointments, and the Referendum Commission (when established). All of these statutory functions are supported by staff provided by the Office of the Ombudsman.

The new offices, located at 6 Earlsfort Terrace, Dublin 2, are energy efficient, and wheelchair accessible. The Commission Secretariat continues to maintain its previous office hours and all other contact information, including telephone and email addresses, remain unchanged.

Irish Human Rights and Equality Commission Act 2014

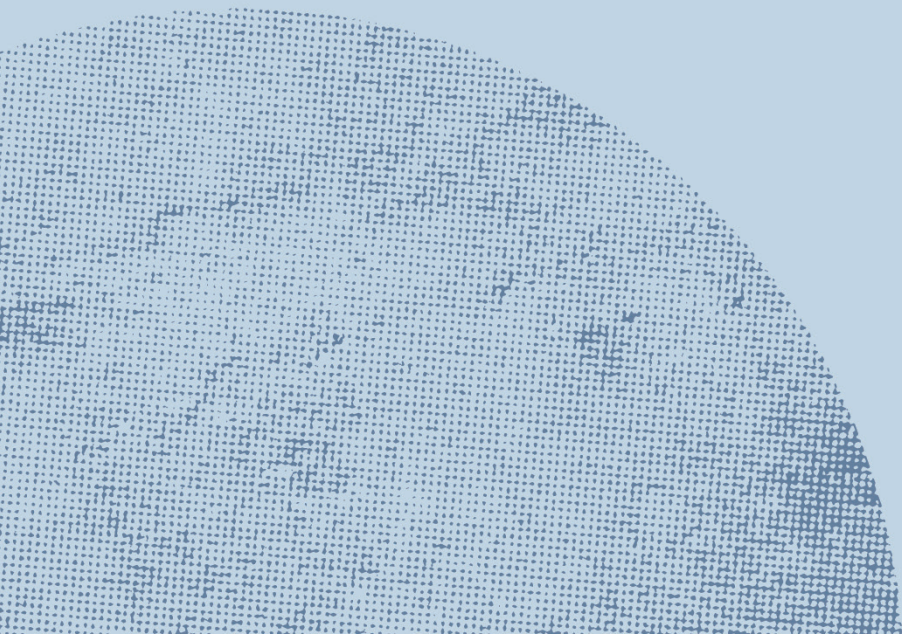
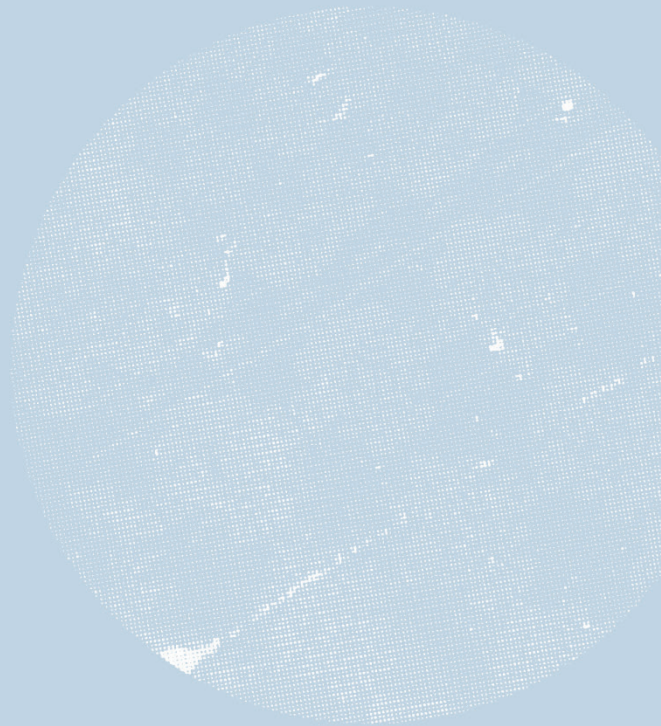
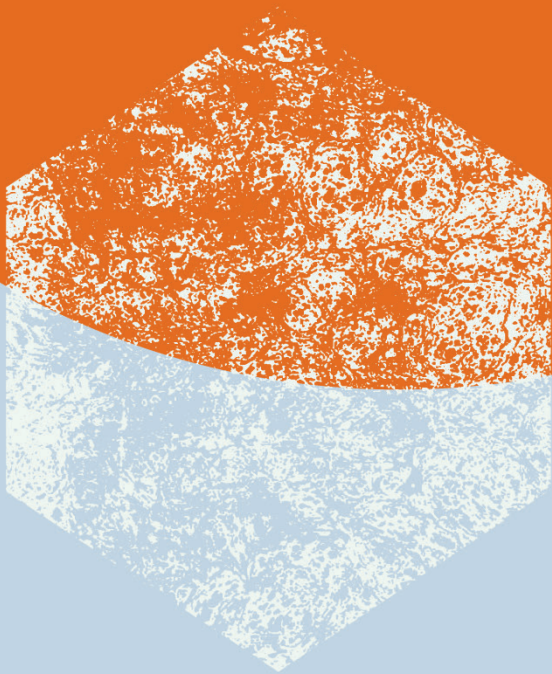
The *Irish Human Rights and Equality Commission Act 2014* introduced a positive duty on public bodies to have due regard to human rights and equality issues. The Office of the Ombudsman, which provides secretariat support to the Standards Commission, is committed to providing a service to all clients that respects their human rights and their right to equal treatment and has adopted a proactive approach to implementing this duty. The Office's approach is underlined by its core organisational values of independence, customer focus and fairness, which are evident in both the culture of the office and its internal policies and procedures. In undertaking its statutory functions, the Office will ensure that any failure to respect human rights is considered.

In 2018, the Office established a working group on the public sector duty. The group assessed the human rights and equality issues relevant to the Office's functions and identified the policies, plans and actions needed to address these. On foot of this, a Public Sector Duty Committee was established. During 2019, a considerable amount of progress was made by the Committee in delivering the actions it set out.

As mentioned earlier in the report, the Standards Commission launched its new website on 3 July 2019. This included ensuring that all communications used by the Office are accessible and clearly understood by all users.

In support of the Office's move, a considerable amount of work was carried out into ensuring the accessibility of the office for both staff and visitors alike. This included the development of a revised internal communications strategy which focused on ensuring staff members were aware of the availability of needs assessments and the assistive technologies that might be required. In addition to this, an e-learning module was introduced for all new staff members on human rights and equality.

Appendices



Appendix One:

Commission Publications in 2019

March

- Two individual reports under section 23(2) of the *Standards in Public Office Act 2001* regarding compliance by senior office holders with tax clearance provisions
- Report on the Investigation by the Standards in Public Office Commission of alleged contraventions of the *Ethics in Public Office Acts 1995 and 2001* by Councillor Joe Queenan, Sligo County Council
- Report on the Investigation by the Standards in Public Office Commission of alleged contraventions of the *Ethics in Public Office Acts 1995 and 2001* by Councillor John O'Donnell, Donegal County Council
- Submission to the Department of Housing, Planning, Community and Local Government on the proposal to create an electoral commission

April

- Report on Annual Disclosure of Donations received by TDs, Senators and MEPs in 2018

July

- Standards in Public Office Commission Annual Report 2018
- Report to Ceann Comhairle re Presidential Election of 26 October 2018
- Report on Political Parties Disclosure of Donations received for 2018

August

- Report on State funding of political parties and independent members under the electoral legislation and the Parliamentary Activities Allowance legislation for 2018
- Report on Annual Statements of Expenditure of Exchequer Funding and Auditors' Report to the Chairman of Dáil Éireann in respect of 2018

October

- Report on Political Parties' Statements of Accounts 2018

Appendix Two:

Third Parties and Corporate Donors Registered in 2019

List of Registered Third Parties 2019

- Abortion Never
- Abortion Rights Campaign
- ADFAM
- Alliance for Freedom and Democracy
- Anti-Corruption Ireland
- Amnesty International Ireland*
- Atheist Ireland
- Benedict Ó Floinn
- Cherish all The Children Equally
- Choice Ireland
- Christian Solidarity Party
- Coalition to Repeal The Eighth
- Cóir*
- Donegal Pro Life
- Education Equality*
- FACE
- Family & Life
- Immigration Control Platform

- Independent Alliance
- Iona Institute
- Irish Council for Civil Liberties
- Janet O'Sullivan
- Migrants and Ethnic-minorities for Reproductive Justice
- Mothers and Fathers Matter*
- National Campaign for the Arts
- National Women's Council of Ireland
- Peace and Neutrality Alliance
- People's Movement
- Pro Life Campaign
- Right2Water
- RISE!*
- ROSA (for Reproductive rights, against Oppression, Sexism and Austerity)
- Save Navan Hospital
- Save the 8th
- Seanad Reform Group / Democracy Matters
- Socialist Workers Network
- TFMR Ireland
- The Charter Group
- The Life Institute
- The National Party*
- The Socialist Party
- Together for Yes
- Women's Health in Ireland

**Deregistered during 2019*

List of Registered Corporate Donors 2019

- Boston Confectionary Ltd
- CE Cladewell Estates Ltd
- Donegal Office Services Ltd
- EP Lynam Properties Ltd
- Gaming & Leisure Association of Ireland
- Glenlow Construction Limited
- Golden Horseshoe Ltd
- Irish Farmers' Association
- Irish National Teachers Organisation
- Irish Nurses and Midwives Organisation
- Olivia O'Sullivan Ltd
- Rothar Velo Limited
- SIPTU
- Unite the Union
- Vintners' Federation of Ireland

