



4 March 2014

Circular F.06/14A

## **Disclosure of Donations and Expenditure, Spending Limits and Political Donation Accounts at the Local Elections on May 23<sup>rd</sup>, 2014**

### **Implementation of provisions contained in the Local Elections (Disclosure of Donations and Expenditure) Act 1999**

#### **1. Introduction**

The Local Elections (Disclosure of Donations and Expenditure) Act 1999 ('the Act'), provides for an expenditure and donations disclosure regime at local elections. This Circular and the associated documents provide information to assist local authorities in their responsibilities with regard to the Act. It also provides further information on the role of Dublin City Council as the 'Specified Local Authority' for the purpose of dealing with election spending by national agents of political parties and third parties. The schedules to this Circular set out the principal duties of local authorities and of Dublin City Council under the 1999 Act.

- An unofficial consolidated version of the Local Elections (Disclosure of Donations and Expenditure) Act 1999 is enclosed for ease of reference.
- The two volumes of guidelines enclosed can be made available by local authorities to those required to comply with the provisions in the Act. One set of guidelines is concerned with the statutory obligations for candidates. The other set deals with the statutory obligations for national agents of a political party, designated persons and third parties. These may be made available by a local authority to prospective candidates, designated persons, etc.

The two guidelines documents are identified as being in 'draft' form to enable each local authority to issue the guidelines under its own name. The term 'draft' does not reflect on the content of both documents, which should not be subjected to substantive change before being issued.

- A copy of the Register of Political Parties for the purpose of inviting political parties to appoint a national agent.

Since the last local elections in 2009 there have been a number of legislative changes to the rules on election spending and donations that apply at local elections. These are contained in the Local Government Reform Act 2014 and the Electoral (Amendment) (Political Funding) Act 2012. The attached schedule, the unofficial consolidated version of the 1999 Act and the 2014 guidelines reflect these changes.

## **2. Categories of Person to Whom the Act Applies**

The principal persons to whom the Act applies are:

### Candidates

The Act provides that, for the purposes of Part IVA of the Act (dealing with donations), a candidate includes a person who, on or before the date of the making of the order appointing polling day in relation to a local election is declared by himself or herself or by others to be a candidate at the election.

### National Agents

Political parties must appoint a national agent at a local election.

### Designated Persons

Political parties must appoint a designated person at a local election in respect of each local electoral area.

### Unconnected Persons/Third Parties

The Act requires any person unconnected to a political party or a candidate who intends to incur expenditure in relation to a local election to register with the local authority.

The Act sets out a regulatory regime in respect of the above persons for the disclosure of expenditure at a local election; setting limits on allowable donations; prohibiting certain donations; requiring disclosure of donations and the opening of political donation accounts. Candidates, national agents and designated persons are subject to limits on electoral expenditure.

## **3. Duties of Local Authorities**

Schedule 1 (attached) sets out the principal duties of local authorities under the 1999 Act. Schedule 2 sets out the additional duties of Dublin City Council as the specified local authority for the purposes of the Act. These schedules are provided for assistance in complying with the statutory obligations of Dublin City Council in this regard.

Also attached is an unofficial consolidated version of the Local Elections (Disclosure of Donations and Expenditure) Act 1999. This version incorporates the amendments that have been made to the legislation, including those enacted since the 2009 local elections. It is not a legal document and in case of any doubt, reference should be made to the official published version of the Act, and the relevant amending legislation, as enacted. These can be viewed on the website [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

## **4. Guidelines**

Under section 18(6) of the Act, local authorities must draw up and publish to persons to whom the Act applies, guidelines concerning the steps to be taken by them to ensure compliance with the Act generally. Draft guidance documentation, in two volumes, is enclosed. These replace guidelines issued in connection with the 2009 local elections.

One set of guidelines is concerned with the statutory obligations for candidates. The other set deals with the statutory obligations for national agents of a political party,

designated persons and third parties. The guidelines are provided in 'draft form' and local authorities may wish to put the name of their authority on the covering sheet before issue.

The guidelines documents include the forms on which returns must be made. Please note that these forms have been amended since the 2009 local elections. All candidates, national agents, designated persons and third parties must submit a statement of election expenses and statutory declaration on the revised form for the 2014 local elections. Similarly, those candidates required to submit a certificate and statutory declaration in connection with a political donations account must complete the revised version of that form which is provided in the 2014 guidelines.

## 5. Changes since the 2009 local elections

Since the 2009 local elections there have been a number of legislative changes to the rules on election spending and donations that apply at local elections. These are contained in the Local Government Reform Act 2014 and the Electoral (Amendment) (Political Funding) Act 2012. Some of the principal changes are as follows:

- There has been a general reduction in the election spending limits and a consolidation of the population bands used as a basis in setting the limits. As was the case at the 2009 local elections, a candidate of a political party is deemed to automatically allocate 10% of their limit to the national agent of their party. This percentage can be changed by written agreement between the candidate and the national agent. The spending limits at the 2014 local elections are in the table below.

Local Electoral Area	Candidate Spending Limit	10% of Limit to be Allocated to National Agent (Political Party Candidates)	Effective Spending Limit (Political Party Candidates)
local electoral area with a population in excess of 35,000	€13,000	€1,300	€11,700
local electoral area with a population of between 18,001 and 35,000	€11,500	€1,150	€10,350
local electoral area with a population of 18,000 or less	€9,750	€975	€8,775

- The maximum donation that may be accepted by a member of a local authority or a local election candidate was reduced from €2,539.47 to €1,000.
- The threshold above which donations must be reported by candidates was reduced from €634.87 to €600.
- The maximum donation that may be accepted by a political party or a third party was reduced from €6,348.69 to €2,500.
- There has been a reduction in the maximum amount that can be accepted as an anonymous donation from €126.97 to €100.
- A candidate at a local election or a member of a local authority who receives, a monetary donation of more than €100 must open and maintain a political

donations account in a financial institution. The threshold that previously applied was €126.97.

- There is a ban on the acceptance of a donation in excess of €200 from a corporate donor unless the donor has registered with the Standards in Public Office Commission and a statement is furnished to the recipient confirming that the donation has been approved by the corporate donor concerned.
- There is a ban on the acceptance of any cash donation over €200.
- Where a donation is given through an intermediary, the identity of the person on whose behalf the donation is made must be provided to the recipient. It is an offence to fail to provide this information.

## **6. The spending period and submission of statements after the election**

Section 12B of the Act specifies that the spending period be set by an order made by the Minister for the Environment, Community and Local Government and must commence between 50 and 60 days before polling day, and end on polling day. Election spending incurred during this period must be disclosed by candidates and is subject to the limits specified in paragraph 5, above. Notification will be sent to each local authority when the date for commencement of the spending period is set by the Minister.

Section 13 of the Act requires that a written statement of all election expenses (whether paid or not) incurred in relation to a local election must be furnished in person by a candidate to their local authority within 90 days after polling day at that election. With the election being held on May 23<sup>rd</sup> 2014, the written statement must be submitted on or before August 21<sup>st</sup>, 2014.

An unsuccessful candidate must also provide details of each donation over €600 received, to meet the election expenses. In addition, an unsuccessful candidate that is required to open a political donations account must submit a statement and certificate in connection with such an account.

## **7. Queries**

Any queries you may have in relation to this circular can be made to the undersigned or to Ian Stuart-Mills, tel: 01-888 2769, email: [ian.stuart-mills@environ.ie](mailto:ian.stuart-mills@environ.ie).

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To: Dublin City Council, as the 'Specified Local Authority'.

**Schedules to Circular F.06/14A**

**SCHEDULE 1**

**Local Elections (Disclosure of Donations and Expenditure)**

**Act 1999, as amended**

**Action by a local authority**

[the relevant section of the 1999 Act in connection with each action is referenced in the square brackets]

1. Receive registration details from any unconnected person/third party proposing to incur expenditure at local level at the local election [section 6(7)].
2. Receive notification of appointment of "designated person" by a political party for each local electoral area not later than the last day for receiving nominations [section 8(1)(b)].
3. Publish in a newspaper circulating in the functional area of the local authority the name of the designated person appointed, the political party by whom the designated person was appointed and the address of the designated person [section 8(5)].
4. Statements in relation to election expenses/donations (section 13) & political donations accounts (unsuccessful candidates – section 19 D)
  - Issue prescribed form to candidate when nomination paper is received along with guidelines document.
  - Issue prescribed form to designated person on receipt of notification of appointment along with guidelines document.
  - Issue prescribed form to third party on receipt of notification of registration details along with guidelines document.
  - Receive and register receipt of completed prescribed forms from designated persons, third parties and candidates within 90 days of the election [section 18(1)].

- Furnish copies of statements and statutory declarations to members [section 14].
- Issue acknowledgement of receipt to designated person, third party or candidate [section 18(1)].
- Rectification of minor error or omission in the statement – return form to person who furnished it to have rectified [section 18(2)].
- Legal proceedings relating to statements –Action is triggered by receipt of a complaint or report in writing, or if it is obvious from the form furnished that it is grossly incomplete or contains false or misleading information [section 18(3), 18(4) and 18(5)].
- Receive notification of receipt, and remittance, of donation amounts in excess of donation limits [section 19B(6)(b)]
- Receive notification of receipt, and remittance, of anonymous donations greater than €100 by candidate/third party [section 19F(2)]

#### 5. Guidelines – see section 18(6), 18(7) and 18(8)

Copies of the Guidelines are attached. Copies should issue to designated persons, third parties and candidates. These guidelines include copies of the prescribed forms (see paragraph 4 above).

#### 6. Retention of documents, notices etc (section 19)

- Documents to be retained for at least 3 years.
- Publish notice in newspaper of time and place for inspection of documents [subsection 2(a)] and publish names of those who did not furnish statements within 90 days of polling day [subsection 2(b)].
- Local authority to include in its annual reports the aggregate details of election expenditure in respect of each candidate, designated person and third party, as well as details of donations received [section 19]. This information should be included in the annual report of the local authority for 2014, when published.

## 7. Disqualification from membership of local authority

Section 20 provides for disqualification from membership of a local authority for the period of the term of office of the members of the local authority for unsuccessful candidates and elected members who do not furnish a statement of donations and election expenses within 90 days of polling day. The elected member is suspended for 7 days or a shorter period if the statement is furnished after the 90 days: the disqualification becomes effective if the statement is still not furnished at the end of the 7 day period.

## 8. Offences [section 21]

See offences and penalties in section 21 of the 1999 Act and in chapter 5 of the respective guidelines documents.

Proceedings against designated persons and third parties shall not be instituted except by or with the consent of the DPP.

Under section 21(3A) of the 1999 Act a candidate at a local election shall be guilty of an offence if he or she directly, or through any other person, incurs election expenses in excess of the relevant spending limit.

Subsection (4) of section 20 of the 1999 Act provides that where an unsuccessful candidate or an elected member of a local authority furnishes to the authority concerned a statement of election expenses under section 13 of the Act of 1999 which to that person's knowledge is false or misleading in a material respect, the authority concerned may bring summary proceedings against that person for making a false or misleading declaration under the Statutory Declarations Act 1938.

Subsection (5) of section 20 provides that if a person is convicted of an offence following proceedings initiated under subsection (4), in addition to any penalty imposed by the court, the person shall be disqualified for membership of any local authority and the disqualification will apply and have effect for the remainder of the term in office of the members of the local authority concerned.

A person guilty, on conviction on indictment, of an offence referred to in section 21(5)(a)(ii) of the 1999 Act is liable to a fine not exceeding €25,000 or, at the discretion of the court, to imprisonment for a period of up to 3 years, or to both such fine and such term of imprisonment.

If an offence relates to the failure to furnish an election expenses statement to the local authority, section 21(5)(b) of the Act provides that the person concerned will be guilty of a further offence on every day on which the failure continues after such conviction. For each such offence, that person is liable, on summary conviction, to a fine not exceeding €126.97. This provision also applies to a conviction in relation to the failure to furnish a certificate or statement in respect of a political donations account.

9. Recovery of cost of prosecutions [section 22]

10. Election petitions [see section 23]



## SCHEDULE 2

### Action by a specified local authority [section 6(11)]

1. Receipt of registration details from unconnected person/third party, if any, of their intention to incur expenditure at national level at the local election [section 6(7)].
  
2. Receipt of notification of appointment of “national agent” by a political party [section 7(1)(b)].  
A copy of the Register of Political Parties is attached for the purpose of inviting political parties to appoint a national agent.
  
2. Publish in Iris Oifigiúil the name of the national agent appointed or deemed to be appointed, the political party by whom the national agent was appointed or deemed to be appointed and the address of the office of the national agent [section 7(5)].
  
3. Statements in relation to election [section 13]
  - Send prescribed form to national agents on receipt of notification of their appointment along with copy of guidelines document (see paragraph 4).
  
  - Receive and register completed prescribed form from national agents and third parties for national expenditure [section 18(1)].
  
  - Issue acknowledgement of receipt of statement of expenditure to national agent/third party [section 18(1)].
  
  - Rectification of minor error or omission in the statement – see section 18(2) for return of form to person who furnished it to have it rectified.

- Legal proceedings relating to statements see section 18(3), 18(4) and 18(5). Action is triggered by the receipt of a report or complaint in writing, unless it is obvious from the form furnished that it is grossly incomplete or inaccurate or contains false or misleading material.

4. Guidelines [see section 18(6), 18(7) and 18(8)]

A copy of the Guidelines is attached. A copy should issue to national agents and third parties. These Guidelines include copies of the prescribed forms [see paragraph 3 above].

5. Retention of documents, notices etc [section 19]

(1) Documents to be kept for at least 3 years.

(2) Publish notice in newspaper of time and place where statements can be inspected [subsection 2(a)] and names of any political parties/third parties who have not furnished statements within the 90 days of polling day [section 19[2]].

6. Offences and penalties [section 21]

See chapter 5 of the guidelines document for national agents and the offences and penalties provisions in section 21 of the 1999 Act.

National Agents – subsection (1).

Third Parties – subsection (3).

Publishers of newspapers, etc – subsection (4).

DPP – subsection (6). Proceedings for an offence shall not be instituted except by or with the consent of the DPP.

7. Recovery of cost of prosecutions [section 22].