

Draft

**LOCAL ELECTIONS (DISCLOSURE OF DONATIONS
AND EXPENDITURE) ACT 1999**

**Guidelines for
Third Parties Concerning Donations for Political Purposes**

October 2013

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1. Introduction and overview of principal amendments from previous guidelines

These guidelines update and replace the previous version circulated in November 2012. The main amendment in the revised guidelines relates to the annual reporting requirements by third parties.

A third party that receives a monetary donation in excess of **€100** is required to register with their local authority, to open a political donations account and to submit a financial statement with a certificate and statutory declaration to their local authority not later than March 31st in each year. The threshold amount for registration as a third party and for opening a political donations account was reduced from €126.97 to **€100** with effect from January 1st 2013.

The Local Elections (Disclosure of Donations and Expenditure) Act 1999 – **‘the 1999 Act’** - provides a statutory framework for dealing with political donations at local level. This Act was amended by the Electoral (Amendment) (Political Funding) Act 2012. New and revised limits and restrictions on the acceptance of donations for political purposes came into force on January 1st 2013.

The certificate to be submitted by a third party to a local authority, which includes the necessary statutory declaration, has been revised. The new version is attached at Appendix 1. A third party that is required to submit a certificate in 2014, or in any subsequent year, should use this revised version of the certificate and statutory declaration.

This document contains guidelines to assist third parties in meeting their obligations under the Act and contains information on registration requirements, donation limits, prohibited donations and the opening of political donations accounts.

THIS DOCUMENT IS FOR GUIDANCE ONLY. REFERENCE SHOULD ALSO BE MADE TO THE LOCAL ELECTIONS (DISCLOSURE OF DONATIONS AND EXPENDITURE) ACT 1999. Please refer to:

<http://www.irishstatutebook.ie/1999/en/act/pub/0007/index.html>

2. Background

2.1 The provisions of the Local Elections (Disclosure of Donations and Expenditure) Act 1999 in relation to third parties are designed to bring such person or persons within the political donation regime in operation at local government level. Section 19A of the Act defines a third party. From January 1st 2013 this definition was revised, as follows:

*" 'third party', in relation to a local election, plebiscite or campaign, means any person, other than a political party registered in the Register of Political Parties under Part III of the Act of 1992 or a candidate at an election, who accepts, in any particular year, a donation the value of which exceeds **€100**".*

Prior to January 1st 2013 this definition provided for a donation threshold of €126.97 in defining a 'third party'.

Other relevant definitions are set out in Appendix 2.

3. Registration of Third Parties

- 3.1 Section 19G of the Local Elections (Disclosure of Donations and Expenditure) Act 1999 requires a third party to register with a local authority where it has received a donation which exceeds **€100** and which it intends to use for political purposes*. Prior January 1st 2013 a donation threshold of €126.97 was used in defining a ‘third party’.
- 3.2 The following registration details must be furnished to the local authority before a third party incurs expenses for political purposes:
- (a) the name and address of the third party and the name and address of the responsible person*, or each responsible person in relation to the third party,
 - (b) a statement of the nature, purpose and estimated amount of the donations to, and proposed expenses of, the third party in any year, and
 - (c) an indication of the third party’s connection, if any, with any political party or candidate at the election or with the plebiscite or campaign.

* see Appendix 2 for definitions.

4. Donations to Third Parties

4.1 A donation means any contribution given for political purposes by any person, whether or not a member of a political party, to a third party in connection with an election, plebiscite or campaign which is accepted in whole or in part by or duly on behalf of such person and includes -

- any donation of money,
- any donation of property or goods,
- any conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods,
- any supply of services without payment or other consideration therefor,
- any difference between the commercial price and the price charged for the purchase, acquisition or use of property or goods or the supply of any service where the price, fee or other consideration is less than the commercial price,
- in the case of a contribution made by a person in connection with an event organised for the purpose of raising funds for a candidate at an election, any proportion attributable to that contribution of the net profit, if any, deriving from the event, and
- a payment made by a person on their own behalf, or on behalf of one or more than one other person, of a fee or subscription for membership or continued membership of a political party.

Where a person makes more than one donation to the same third party in the same calendar year, the values of the donations must be aggregated and the donations treated as a single donation.

4.2 A donation to a third party **does not include:**

- necessary travelling expenses incurred by a candidate or as an assessor in fulfilling the nomination requirements at a local election;
- the payment by or on behalf of a candidate of an election deposit;
- expenditure on the purchase of copies of the register of electors;
- reasonable living expenses (including accommodation) of a candidate or any person or persons working on behalf of the candidate on a voluntary basis;
- any sum disbursed by any individual out of the individual's own resources for any minor (not exceeding €126.97 in any one payment) expenses lawfully incurred in relation to the election if the said sum is not repaid to the person.
- benefits derived from a service rendered by an individual, including the use of the individual's motor vehicle, on behalf of a political party or a candidate at an election, where that service is gratuitous and is not part of that individual's work carried out under a contract of employment, or where the individual is self-employed, is not in the course of the individual's business or in the practice of the individual's profession;
- benefits derived from a service rendered at an election by an individual in the employment of a political party, (whether remunerated out of the party's own resources or out of public funds) including use of the individual's motor vehicle, on behalf of a candidate of that party at an election, where the individual is not in receipt of any reward or benefit in kind other than his or her normal remuneration (including recoupment of expenses) in consideration of that service;
- the publication in a newspaper, magazine or other periodical publication or the broadcast on radio or television of news, reports, articles, features, editorial or other comments, including the publication of letters to the editor, where such publication or broadcast is effected in the same manner as that of other material relating to issues of public interest or concern, and the newspaper, magazine or other periodical publication is not for the purpose of promoting the interests of a political party or of a candidate at an election;
- the transmission on radio or television of a broadcast on behalf of a political party or candidate at an election (this exclusion does not cover any production, or other, costs associated with a transmission on radio or television);
- any election expenses incurred by or on behalf of a political party by a national agent or designated person, as the case may be, on behalf of a candidate authenticated by a political party at an election, other than a donation of money;

- expenses incurred in the provision of property, goods or services used at an election where such property, goods or services was or were provided in respect of a previous Presidential, Dáil, European or local election and the cost of providing such property, goods or services was included in the statement of election expenses furnished to the Standards in Public Office Commission or to a local authority in relation to the said previous election by the national agent of the political party, election agent, designated person or by the candidate, as the case may be.

5. Prohibited donations

5.1 Donations over the statutory limit

A third party may not, either directly or through an intermediary, accept a donation with a value exceeding **€2,500** from the same donor in the same calendar year.

The **€2,500** limit on donations came into force with effect from January 1st 2013. Prior to this date the limit was €6,348.69.

If a person makes more than one donation to the same third party in the same year, the values of the donations must be aggregated and the donations treated as a single donation.

If a third party receives a donation with a value in excess of the limit:

- the donation must, within fourteen days of receipt, be returned by the third party to the donor or, if it is a monetary donation, the part of it exceeding the limit must be returned to the donor and a written record of the return must be kept for the purpose of it being furnished to the local authority, if required by the authority, or
- the third party must, within fourteen days of receipt, notify the local authority of such receipt and remit the donation or, in the case of a monetary donation, the part of it exceeding the limit or the value thereof, to the authority.

The limit referred to above does not apply to the provision by any person of a constituency office to an individual, or if more than one such office is provided to the individual, whichever one of those offices is nominated in writing by the individual.

5.2 Foreign donations

A third party must not accept a donation, of any value, from an individual (other than an Irish citizen) who resides outside the island of Ireland.

Neither must a donation, of any value, be accepted from a body corporate or an unincorporated body of persons which does not keep an office in the island of Ireland from which at least one or more of its principal activities is directed.

Notwithstanding the above, where such a donation is received:

- the third party should, within 14 days, return the donation to the donor and keep a written record of the return for the purpose of its being furnished to the local authority, if required by it, or
- the member should, within 14 days, notify the local authority and remit the donation, or the value thereof, to the authority.

5.3 Anonymous donations

A third party must not accept an anonymous donation exceeding **€100** in value.

The **€100** threshold limit on anonymous donations came into force with effect from January 1st 2013. The limit before this date was €126.97.

A donation is anonymous if the name and address of the donor is not known to the third party concerned. If such a donation is received, the third party must notify the local authority in writing within 14 days of receipt of the donation and remit the donation, or its value, to the authority. The authority must lay a copy of each such notification received before the members of the local authority and must dispose of the donation as directed by the authority.

5.4 Donations by Intermediaries

An intermediary is “a person who makes a donation on behalf of another person”. With effect from 1st January 2013, an intermediary must inform the recipient in writing that the donation is being made on behalf of another person and provide the name, description and postal address of the person on whose behalf the donation is being made. It is an offence to fail to provide this information. This provision is contained in section 19BC of the 1999 Act.

5.5 Corporate Donations

Donations given by a corporate donor to a third party cannot be accepted if they exceed **€200**, unless the corporate donor is registered with the Standards in Public Office Commission.

A donation above **€200** from a registered corporate donor must also be accompanied by a statement that the making of the donation was approved by the members, shareholders or trustees of the donating body. The form for making this statement is provided by the Standards in Public Office Commission. This statement must be accompanied by a statutory declaration from the donor.

Donations made by the same corporate donor to a given recipient over a calendar year are aggregated. If the corporate donor is not registered and the donation is not approved, then no more than **€200** should be accepted from the same corporate donor in the same year.

Definition of ‘corporate donor’

Section 19A of the 1999 Act provides that:

“ ‘corporate donor’ means—

- (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”.

Bodies covered by the definition:

This definition encapsulates all incorporated and unincorporated bodies, including companies, trade unions, trusts, partnerships, societies, associations, clubs and non-governmental organisations.

The definition applies to all bodies other than natural persons. The definition therefore does not include sole traders.

5.6 Cash Donations

The maximum amount that can be accepted by a third party as a cash donation in a calendar year from the same donor is **€200**. This provision was introduced with effect from January 1st 2013.

6. Political donations accounts

- 6.1 A third party who receives, in any particular year, a monetary donation of more than **€100** must open and maintain an account in a financial institution* in the State and must lodge that donation and any further monetary donations received, of whatever value, to that account (referred to as a political donations account).

The **€100** threshold for opening a political donations account came into force with effect from January 1st 2013. The limit before this date was €126.97.

- 6.2 Not later than 31 March each year, a third party who was required to open a political donations account must furnish a statement provided by the financial institution where the political donations account was opened. The statement must specify the transactions that have taken place in relation to the account during the preceding year together with a certificate stating that all monetary donations received during the preceding year after the account was opened were lodged to the account and that all amounts debited from the account were used for political purposes.

The certificate must be accompanied by a statutory declaration that, to the best of the third party's knowledge and belief, the certificate is correct in every material respect and that all reasonable action has been taken in order to be satisfied as to the accuracy of the certificate.

* see Appendix 2 for definitions.

The certificate to be completed by a third party has been revised to reflect the reduced threshold applying to the opening of a political donations account. The statutory declaration element of the certificate has also been amended to reflect changes in the required format for such declarations.

The revised certificate to accompany a statement from a financial institution of a political donations account for a third party is attached at Appendix 1. The Irish language version of the certificate is at Agusín 1.

The local authority will retain the statements from financial institutions and their accompanying certificates and statutory declarations and will not disclose the contents thereof, unless ordered by a court to do so or where disclosure is required in connection with an investigation held by the local authority.

7. **Offences and penalties**

7.1 A third party will be guilty of an offence if he or she:

- Fails to furnish the necessary registration details to the local authority
- fails to notify the local authority of receipt of an anonymous donation valued in excess of €100, or fails to remit to the authority the donation or the value thereof, or
- where required, fails to notify the local authority of receipt of a donation from the same person in the same year with a value in excess of €2,500, or
- fails to remit to the local authority or return to the donor a donation, or part exceeding the limit or the value thereof, where the value of the donation received exceeds €2,500, or
- fails to notify the local authority of the acceptance of a donation over €200 from a corporate donor, where the donor has not registered with the Standards in Public Office Commission and declared that the donation has been properly approved, or does not either return the part of the corporate donation exceeding €200 to the donor or send it to the local authority concerned, or
- in the case of a cash donation, fails to remit to the local authority or return to the donor a donation, or part exceeding the limit or the value thereof, where the value of the donation received exceeds €200, or
- where required, fails to notify the local authority of receipt of a foreign donation, or fails to remit to the local authority or return to the donor a foreign donation, or
- where required, fails to furnish to the local authority, on or before 31 March each year, a statement from a financial institution or a certificate and statutory declaration, or

- knowingly furnishes a statement from a financial institution or a certificate and statutory declaration, which is false or misleading in any material respect.

Proceedings for any of the above offences may only be instituted by, or with the consent of, the Director of Public Prosecutions.

- 7.2 A person found guilty of an offence will be liable to a fine not exceeding €1,904.61. Where the conviction is for failing to furnish the required statutory documentation to the local authority, a person will be liable to a further fine of up to €126.97 per day for every day after the conviction on which the failure continues.

Where a conviction relates to knowingly furnishing statutory documentation to the local authority which is false or misleading in any material respect, a member of the local authority will be liable, on conviction on indictment, to a fine of up to €25,000 and/or up to three years in prison.

Appendix 1 - Certificate for a statement of a political donations account

LOCAL ELECTIONS (DISCLOSURE OF DONATIONS AND EXPENDITURE) ACT 1999

**CERTIFICATE TO ACCOMPANY STATEMENT FROM A FINANCIAL INSTITUTION
OF A POLITICAL DONATIONS ACCOUNT
FROM THE RESPONSIBLE PERSON OF A THIRD PARTY**

THIS CERTIFICATE IS NOT FOR PUBLIC DISPLAY

Name of Third Party	
Name of Responsible Person	
Address	
Local authority	

I hereby declare that a donation for political purposes exceeding €100 and subsequent donations received by me during the year (insert year) were lodged to the following political donations account, a statement of the account for which is attached, and that all amounts debited (excluding charges by the institution) were used for political purposes.

Account Number	
Financial Institution address	
Date account opened	

Signed: _____

Date: _____

Statutory Declaration

I (name) do solemnly and sincerely declare that the above statement is, to the best of my knowledge and belief, correct in every material respect and that I took all reasonable action in order to be satisfied as to its accuracy. I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1938.

Signed

Declared before me.....[*name in capitals*] a [notary public] [commissioner for oaths] [peace commissioner] [practicing solicitor] by[*name of responsible person of third party*]

who is personally known to me,

or

who is identified to me by who is personally known to me

or

whose identity has been established to me before the taking of this Declaration by the production to me of
passport no.[*passport number*] issued on[*date of issue*] by the
authorities of[*issuing state*], which is an authority recognised by the Irish
Government

or

national identity card no.[*identity card number*] issued on[*date of issue*]
by the authorities of[*issuing state*] which is an EU Member State, the Swiss
Confederation or a Contracting Party to the EEA Agreement

or

Aliens Passport no.(*document equivalent to a passport*) [*passport number*] issued
on[*date of issue*] by the authorities of[*issuing state*] which is an authority
recognised by the Irish Government

or

refugee travel document no.[*document number*] issued on[*date*
of issue] by the Minister for Justice, Equality and Defence

or

travel document (other than refugee travel document)[*document no.*] issued on
.....[*date of issue*] by the Minister for Justice, Equality and Defence.

at..... [place of signature]

this.....day of[date]

.....

[signature of witness]

Please note that a witness must belong to one of the following categories: Commissioner for Oaths / Notary Public / Peace Commissioner / Practicing Solicitor.

PENALTIES

A person who knowingly makes a false or misleading statutory declaration is liable on conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding six months or both.

Appendix 2 - Definitions

For ease of reference, some of the more important definitions follow: The definition of what constitutes a ‘donation’ is set out in pages 7 to 9.

“account” means an account in an institution in the State for the purpose of crediting and debiting money received in respect of donations;

“institution” means:

- the holder of a licence under section 9 of the Central Bank Act 1971;
- a building society;
- a trustee savings bank;
- ACC Bank plc;
- An Post; or
- a person authorised in accordance with the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992) to carry on a business in the State.

NOTE: A credit union is not an institution for the purposes of the legislation.

“local political matter” means a matter relating to the policy or policies or functions of a local authority or other statutory body in which are vested functions in relation to local government;

“person” is defined as meaning:

- an individual;
- a body corporate (a body corporate and any of its subsidiaries shall be deemed to be one person);
- an unincorporated body of persons;

“plebiscite” means a poll to ascertain the views or consent of qualified electors within the meaning of section 67(2) of the Local Government Act, 1994 in relation to a local political matter;

“political party” means a party registered in the Register of Political Parties in accordance with Part III of the Electoral Act of 1992, as a party organised to contest a local election;

“political purposes” means:

- to promote or oppose, directly or indirectly, the interests of a political party, or a member of a local authority, or
- to present, directly or indirectly, the policies or a particular policy of a political party, a member of a local authority or a third party, or
- to present, directly or indirectly, the comments of a political party, a member of a local authority, or a third party with regard to the policy or policies of another political party, member of a local authority, a third party or candidate at the election or at a plebiscite or campaign or otherwise, or
- 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 plebiscite or local political matter, or
- to promote or oppose, directly or indirectly, the election of a candidate at the election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate with regard to any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or third party or of another candidate at the election or otherwise,
- otherwise to influence the outcome of the election or a plebiscite or campaign.

“responsible person” in relation to a third party, means a person who is responsible for the organisation, management or financial affairs of the third party.

Agusín 1 - Deimhniú le bheith i dteannta an ráitis ó fhoras airgeadais

AN tACHT UM THOGHCHÁIN ÁITIÚLA (SÍNTIÚIS AGUS CAITEACHAS A NOCHTADH) 1999

DEIMHNIÚ ATÁ LE CUR AG GABHÁIL LE RÁITEAS Ó INSTITIÚID AIRGEADAIS MAIDIR LE CUNTAS SÍNTIÚS POLAITÍOCHTA ATÁ AG DUINE FREAGRACH DE CHUID TRÍÚ PÁIRTÍ

NÍ CHUIRFEAR AN DEIMHNIÚ SEO AR TAISPEÁINT GO POIBLÍ

Ainm an Tríú Páirtí	
Ainm an Duine Fhreagraigh	
Seoladh	
Údarás áitiúil	

Dearbhaím leis seo go ndearnadh síntiús níos mó ná €100, agus síntiús ina dhiaidh sin, a fuair mé chun críoch polaitíochta i rith na bliana (cuir isteach uimhir na bliana) a thaisceadh sa chuntas síntiús polaitíochta thíos, a bhfuil ráiteas ina leith i gceangal leis seo, agus go ndearnadh na méideanna go léir a íocadh as an gcuntas sin (seachas muirir a ghearr an institiúid) a úsáid chun críoch polaitíochta.

Uimhir an Chuntais	
Seoladh na hinstitiúide airgeadais	
An dáta a osclaíodh an cuntas	

Síniú: _____

Dáta: _____

Dearbhú Reachtúil

Déanaimse (ainm) a dhearbhú go sollúnta agus go macánta go bhfuil an ráiteas thuas ceart i ngach ponc ábhartha, de réir mar is fearr is eol dom agus mar a chreidim, agus go ndearna mé gach gníomh réasúnach chun bheith deimhin de go bhfuil sé cruinn. Déanaim an dearbhú reachtúil seo á chreidiúint go coinsiasach é a bheith fíor agus de bhua an Achta i dtaobh Dearbhuithe Reachtúla 1938.

Síniú:

Arna dhearbhú i m'fhianaise [ainm i gceannlitreacha] , [nótaire poiblí] [coimisinéir mionnaí] [feidhmeannach síochána] [aturnae cleachtach], ag [ainm dhuine freagrach an tríú páirtí]

a bhfuil aithne pearsanta agam air/uirthi,

nó

ar chuir , a bhfuil aithne phearsanta agam air/uirthi, in aithne dom é/i
nó

ar suíodh a chéannacht/céannacht dom sula ndearnadh an Dearbhú trí cheann de na doiciméid seo a leanas a thabhairt ar aird dom:

pas uimh. [uimhir an phas] arna eisiúint an [an dáta eisiúna] ag údarás [an stát a d'eisigh], ar údarás é atá aitheanta ag Rialtas na hÉireann]
nó

cárta aitheantais náisiúnta uimh. [uimhir an chárta aitheantais náisiúnta] arna eisiúint an [an dáta eisiúna] ag údarás [an stát a d'eisigh] ar Ballstát de chuid an AE é, ag údarás Chónaidhm na hEilvéise nó ag údarás Páirtí Chonarthaigh i gComhaontú LEE]
nó

Pas Eachtrannaigh uimh. (doiciméad atá comhionann le pas) [uimhir an phas] arna eisiúint an [an dáta eisiúna] ag údarás [an stát a d'eisigh], ar údarás é atá aitheanta ag Rialtas na hÉireann]
nó

doiciméad taistil dídeanaí uimh. [uimhir an doiciméid] arna eisiúint an [an dáta eisiúna] ag an Aire Dlí agus Cirt, Comhionannais agus Cosanta
nó

doiciméad taistil (seachas doiciméad taistil dídeanaí) [uimhir an doiciméid] arna eisiúint an [an dáta eisiúna] ag an Aire Dlí agus Cirt, Comhionannais agus Cosanta

i/in/sa/san [áit an tsínithe]

an ú lá seo de [dáta]

.....

[síniú an fhinné]

Tabhair do d'aire, le do thoil, nach mór don fhinné a bheith cáilithe chun gníomhú mar bhall de cheann de na haicmí seo a leanas: Coimisinéir Mionnaí / Nótaire Poiblí / Feidhmeannach Síochána / Aturnae Cleachtach.

PIONÓIS

Aon duine a dhéanfaidh dearbhú reachtúil atá, go bhfios dó nó di, bréagach nó míthreorach, dlífear, ar é nó í a chiontú, fíneáil nach mó na €3,000 nó príosúnacht ar feadh téarma nach faide ná sé mhí, nó iad araon, a chur air nó uirthi.