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*Number 4 of 1998*

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**ELECTORAL (AMENDMENT) ACT, 1998**

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ARRANGEMENT OF SECTIONS

Section

1. Short title, collective citation and construction.
  2. Definition.
  3. Amendment of section 3 of Act of 1997.
  4. Amendment of section 21 of Act of 1997.
  5. Amendment of section 22 of Act of 1997.
  6. Amendment of section 24 of Act of 1997.
  7. Addition of new section to Act of 1997.
  8. Amendment of section 25 of Act of 1997.
  9. Amendment of section 30 of Act of 1997.
  10. Amendment of section 31 of Act of 1997.
  11. Amendment of section 32 of Act of 1997.
  12. Amendment of section 33 of Act of 1997.
  13. Amendment of section 36 of Act of 1997.
  14. Amendment of section 40 of Act of 1997.
  15. Amendment of section 43 of Act of 1997.
  16. Amendment of section 46 of Act of 1997.
  17. Amendment of section 52 of Act of 1997.
  18. Transitional provisions.
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[No. 4]      *Electoral (Amendment) Act, 1998.*      [1998.]

Acts Referred to

Electoral Act, 1997

1997, No. 25

Electoral Acts, 1992 to 1997



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*Number 4 of 1998*

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**ELECTORAL (AMENDMENT) ACT, 1998**

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AN ACT TO AMEND THE ELECTORAL ACT, 1997, CONCERNING THE DISCLOSURE OF DONATIONS FOR POLITICAL PURPOSES AND THE REGULATION OF EXPENDITURE AT ELECTIONS BY POLITICAL PARTIES AND CANDIDATES AND TO PROVIDE FOR RELATED MATTERS. [31st March, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- 1.—**(1) This Act may be cited as the Electoral (Amendment) Act, 1998. Short title, collective citation and construction.
- (2) The Electoral Acts, 1992 to 1997, and this Act may be cited together as the Electoral Acts, 1992 to 1998, and shall be construed together as one Act.
- 2.—**In this Act “the Act of 1997” means the Electoral Act, 1997. Definition.
- 3.—**Section 3(1) of the Act of 1997 is hereby amended by the substitution of “section 24(1A) or (4),” for “section 24(4),”. Amendment of section 3 of Act of 1997.
- 4.—**Section 21(1) of the Act of 1997 is hereby amended— Amendment of section 21 of Act of 1997.
- (a) in paragraph (a) by the substitution of the following for subparagraph (ii):
- “(ii) is not so elected but the greatest number of votes credited to him or her at any stage of the counting of votes at the election exceeds, in the case of a general election, one quarter of the quota, or, in the case of a bye-election, one quarter of what would have been the quota in that constituency had the bye-election been a general election.”,
- (b) in paragraph (b)(ii) by the substitution of “under section 32(4)” for “under section 32(1)(b)”, and
- (c) in paragraph (d)(iii) by the addition of “, including expenses (if any) referred to in section 32(4) in relation to the candidate” after “incurred by the candidate”.

[No. 4.] *Electoral (Amendment) Act, 1998.* [1998.]

Amendment of  
section 22 of Act of  
1997.

5.—Section 22(2) of the Act of 1997 is hereby amended—

(a) in paragraph (b) by the substitution of the following subparagraph for subparagraph (iii):

“(iii) benefits derived from—

(I) a service rendered by an individual, including the use of the individual’s motor vehicle, on behalf of a political party, a member of either House of the Oireachtas, a representative in the European Parliament or a candidate at a Dáil, Seanad, European or local 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, in the course of the individual’s business or in the practice of the individual’s profession, or

(II) a service rendered at an election by an individual in the employment of a political party, including the use of the individual’s motor vehicle, whether the individual’s remuneration is paid out of the party’s resources or out of public funds, on behalf of a candidate of that party at a Dáil, Seanad, European or local election where the individual is not in receipt of any reward or benefit in kind other than his or her normal remuneration in consideration of that service,”

(b) in paragraph (b) (v) by the substitution of “European election,” for “European election;”,

(c) in paragraph (b) by the addition of the following subparagraph:

“(vi) election expenses incurred by a political party pursuant to section 32(1)(b) or 33(1)(b), as the case may be, on behalf of a candidate authenticated by the political party at a Dáil or European election, other than a donation of money;”,

and

(d) in paragraph (c) by the substitution of the following subparagraphs for subparagraphs (i) and (ii):

“(i) to a political party if it is made to the party, to any branch or subsidiary organisation thereof, to any candidate of the party at a local election, to any member of the party who is a member of a local authority, to any officer, member or agent of the party or of any branch or subsidiary organisation thereof, or, subject to subparagraph (ii), to any candidate of the party at a Dáil, Seanad or European election, or to any member of the party who is a member of either House of the Oireachtas or a representative in the European Parliament or to any agent or other person acting for him or her,

(ii) to a member of either House of the Oireachtas, a representative in the European Parliament or a candidate at a Dáil, Seanad or European election if it is made to him or her or to any agent or other

[1998.] *Electoral (Amendment) Act, 1998.* [No. 4.]

person acting for him or her unless the donation is passed on to a political party of which he or she is a member and a written acknowledgment is received by the member, representative or candidate, as the case may be, from the political party in respect of the donation, in which case, it shall be deemed to be a donation to that political party.”

S.5

6.—Section 24 of the Act of 1997 is hereby amended—

Amendment of section 24 of Act of 1997.

(a) in subsection (1) by the substitution of the following paragraphs for paragraph (b):

“(b) Subject to paragraph (c), each political party shall furnish to the Public Offices Commission—

(i) not later than the 30th day of April, 1998, in respect of the period commencing on the 15th day of May, 1997, and ending on the 31st day of December, 1997, and

(ii) not later than the 31st day of March in every year thereafter,

a written statement, in a form directed by that Commission, in respect of, in the case set out in subparagraph (i), the period referred to in that subparagraph and, in any other case, the preceding year, indicating—

(iii) whether during that period or year, as the case may be, the party received a donation exceeding in value the relevant amount specified in subsection (4), and

(iv) in respect of each donation (if any), the value of the donation and the name, description and postal address of the person by or on whose behalf the donation was made.

(c) Nothing in paragraph (b) shall apply to a donation made by a person referred to in subsection (1A) to a person who was a member of a political party when the donation was made.”,

(b) by the insertion of the following subsection after subsection (1):

“(1A) (a) Subject to paragraph (b), not later than the 31st day of January in every year commencing with 1999, each person who in the preceding year made donations, the aggregate value of which exceeds £4,000—

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

(ii) to one or more persons and to the political party of which such person or persons were members when the donations were made to them,

[No. 4.] *Electoral (Amendment) Act, 1998.* [1998.]

S.6

shall furnish to the Public Offices Commission a written statement, in a form directed by that Commission, in respect of the preceding year, indicating—

- (iii) the aggregate value of the donations,
- (iv) the name of the political party concerned, and
- (v) the name, description and postal address of each person to whom the donations were made,

whether or not the donations are subject to inclusion in a donation statement to be furnished by any of the persons to whom they were made.

(b) Paragraph (a) shall not apply—

- (i) to donations made before the commencement of the *Electoral (Amendment) Act, 1998*, and
  - (ii) to donations made by a company, trade union, society or building society referred to in section 26.
- (c) Notwithstanding section 22(2)(a), the gross value of a contribution referred to in subparagraph (vi) of that section shall be deemed to be a donation for the purposes of this subsection.”,

and

- (c) in subsection (3) by the substitution of “subsection (1), (1A) or (2)” for “subsection (1) or (2)”.

Addition of new section to Act of 1997.

7.—The Act of 1997 is hereby amended by the insertion of the following section after section 24:

“Prohibition on acceptance of donations in certain circumstances.

24A.—(1) This section applies to a person who—

- (a) is a candidate of a political party at a Dáil, Seanad, European or local election,
- (b) is a member of a political party and is—
  - (i) a member of either House of the Oireachtas,
  - (ii) a member of a local authority, or
  - (iii) a representative in the European Parliament, or
- (c) is any other officer, member or agent of a political party or of any branch or subsidiary organisation thereof.

[1998.] *Electoral (Amendment) Act, 1998.* [No. 4.]

(2) A person to whom this section applies shall not accept a donation if he or she knows or has reason to believe that the person proffering the donation—

(a) will, as a result of that donation and another donation, be required to furnish a written statement under section 24(1A) that includes the value of the donation being proffered, and

(b) does not intend to comply with that requirement.

(3) Where, notwithstanding subsection (2), a donation is made to a person who is prohibited by that subsection from accepting the donation, he or she shall, within 14 days after receiving the donation—

(a) notify the Public Offices Commission in writing of its receipt and of the name and address of the donor, and

(b) remit the donation or its value to that Commission.

(4) The Public Offices Commission shall—

(a) cause a copy of each notification received under subsection (3) to be laid before each House of the Oireachtas, and

(b) dispose of all moneys, property or goods received under that subsection in such manner as may be directed by the Minister for Finance.”.

**8.**—Section 25 of the Act of 1997 is hereby amended by the insertion of the following subsections after subsection (1):

Amendment of section 25 of Act of 1997.

“(1A) A person who is required by section 24(1A) to furnish a donation statement shall be guilty of an offence if he or she—

(a) fails to furnish that statement and make the statutory declaration required by section 24(3) on or before the relevant specified date, or

(b) knowingly furnishes a statement or makes a statutory declaration which is false or misleading in any material respect.

(1B) A person to whom section 24A applies shall be guilty of an offence if he or she—

(a) knowingly accepts a donation the acceptance of which is prohibited by section 24A(2),

[No. 4.] *Electoral (Amendment) Act, 1998.* [1998.]

- S.8
- (b) fails to notify the Public Offices Commission in accordance with section 24A(3) of the receipt of a donation acceptance of which is prohibited by section 24A(2), or
  - (c) fails to remit to the Public Offices Commission in accordance with section 24A(3) such a donation or its value.”.

Amendment of section 30 of Act of 1997.

**9.**—Section 30(1)(b) of the Act of 1997 is hereby amended by the deletion of “(other than election expenses deemed under section 32(1)(b)(ii) or 33(1)(b)(ii) to be election expenses incurred by that candidate)”.

Amendment of section 31 of Act of 1997.

**10.**—Section 31 of the Act of 1997 is hereby amended—

- (a) in subsection (1)(a) by the substitution of the following for everything before subparagraph (i):

“In this Part, subject to paragraph (b), ‘election expenses’ means all expenditure for electoral purposes incurred on the provision of property, goods or services for use at an election during the period referred to in subsection (3) in order—”,

- (b) in subsection (1)(b) by the substitution of the following subparagraph for subparagraph (v):

“(v) any of the matters referred to in subparagraphs (i) to (v) of section 22(2)(b);”,

- (c) by the substitution of the following subsection for subsection (3):

“(3) The following shall be reckoned for the purposes of this Part and shall be included in the statement to be furnished to the Public Offices Commission under section 36:

- (a) all election expenses incurred by or on behalf of a political party or a candidate at any time during the period commencing—

- (i) in the case of a Dáil general election, on the date of the dissolution of the Dáil which occasioned the election,

- (ii) in the case of a Dáil bye-election, on the date of the issue of the writ, and

- (iii) in the case of a European election, on the date of the order appointing polling day, and

ending on polling day at the election;

- (b) subject to subsection (1)(b)(vi), all election expenses incurred by or on behalf of a political party or a candidate at any time

[1998.] *Electoral (Amendment) Act, 1998.* [No. 4.]

before the commencement of the relevant period referred to in paragraph (a) for the provision of property, goods or services for use at the election during the period referred to in paragraph (a); S.10

- (c) all payments made in respect of the election expenses referred to in paragraphs (a) and (b).”,

and

- (d) in subsection (4)(b) by the deletion of “(other than election expenses deemed under section 32(1)(b)(ii) or 33(1)(b)(ii) to be election expenses incurred by that candidate)”.

**11.**—Section 32 of the Act of 1997 is hereby amended—

Amendment of section 32 of Act of 1997.

- (a) in subsection (1)(a) by the substitution of “Subject to paragraph (b), the aggregate” for “The aggregate”,
- (b) in subsection (1)(b)(i) by the deletion of “not exceeding fifty per cent.”,
- (c) in subsection (1)(b)(ii) by the deletion of “, and the said election expenses shall be deemed for the purposes of paragraph (a) to be expenses incurred by that candidate”, and
- (d) by the addition of the following subsections after subsection (2):

“(3) Expenditure by a political party at an election in a constituency (other than expenditure incurred by or on behalf of a national agent of that party) on behalf of a candidate whose candidature is authenticated by the party shall be deemed to be expenditure incurred by the candidate and shall be accounted for accordingly by the candidate’s election agent.

(4) Election expenses incurred pursuant to this section by a political party in a constituency in relation to a candidate at a Dáil election (including expenditure incurred in the constituency by or on behalf of the national agent of the party) shall be deemed for the purposes of section 21 to be expenses incurred by the candidate.”.

**12.**—Section 33 of the Act of 1997 is hereby amended—

Amendment of section 33 of Act of 1997.

- (a) in subsection (1)(a) by the substitution of “Subject to paragraph (b), the aggregate” for “The aggregate”,
- (b) in subsection (1)(b)(i) by the deletion of “not exceeding fifty per cent.”,
- (c) in subsection (1)(b)(ii) by the deletion of “, and the said election expenses shall be deemed for the purposes of paragraph (a) to be expenses incurred by that candidate”, and

[No. 4.] *Electoral (Amendment) Act, 1998.* [1998.]

S.12

(d) by the addition of the following subsections after subsection (3):

“(4) Expenditure by a political party at an election in a constituency (other than expenditure incurred by or on behalf of a national agent of that party) on behalf of a candidate whose candidature is authenticated by the party shall be deemed to be expenditure incurred by the candidate and shall be accounted for accordingly by the candidate’s election agent.

(5) Election expenses incurred pursuant to this section by a political party in a constituency in relation to a candidate at a European election (including expenditure incurred in the constituency by or on behalf of the national agent of the party) shall be deemed for the purposes of regulations made under section 21 to be expenses incurred by the candidate.”.

Amendment of section 36 of Act of 1997.

**13.**—Section 36(1)(b) is hereby amended by the substitution of the following subparagraph for subparagraph (ii):

“(ii) the name of each candidate whose candidature was authenticated by the party at that election and in respect of whom election expenses are incurred by the said agent, the constituency in which each such candidate was a candidate at the election and the amount of election expenses (if any) referred to in section 32(4) or 33(5), as may be appropriate, incurred by the party on behalf of each such candidate, and”.

Amendment of section 40 of Act of 1997.

**14.**—Section 40(b) of the Act of 1997 is hereby amended by the deletion of “(other than election expenses deemed under section 32(1)(b)(ii) or 33(1)(b)(ii) to be election expenses incurred by that candidate)”.

Amendment of section 43 of Act of 1997.

**15.**—Section 43(1)(b) of the Act of 1997 is hereby amended by the deletion of “(other than election expenses deemed under section 32(1)(b)(ii) or 33(1)(b)(ii) to be election expenses incurred by that candidate)”.

Amendment of section 46 of Act of 1997.

**16.**—Section 46(2)(b) of the Act of 1997 is hereby amended—

(a) by the substitution of the following subparagraph for subparagraph (iii):

“(iii) benefits derived from—

(I) a service rendered by an individual on behalf of a candidate at a presidential election, including the use of the individual’s motor vehicle, 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, in the course of the individual’s business or in the practice of the individual’s profession, or

[1998.] *Electoral (Amendment) Act, 1998.* [No. 4.]

(II) a service rendered at a presidential election by an individual in the employment of a political party, including the use of the individual's motor vehicle, whether the individual's remuneration is paid out of the party's resources or out of public funds, on behalf of a candidate at the presidential election where the individual is not in receipt of any reward or benefit in kind other than his or her normal remuneration in consideration of that service,"

(b) in subparagraph (v) by the substitution of "on behalf of a candidate," for "on behalf of a candidate;"", and

(c) by the addition of the following subparagraph after subparagraph (v):

"(vi) election expenses incurred by a political party on behalf of a candidate at a presidential election other than a donation of money;"

**17.—Section 52 of the Act of 1997 is hereby amended—**

Amendment of section 52 of Act of 1997.

(a) in subsection (1) by the substitution of the following paragraph for paragraph (a):

"(a) In this Part, subject to paragraph (b), 'election expenses' means all expenditure for electoral purposes incurred on the provision of property, goods or services for use at a presidential election during the period commencing on the date of the order appointing polling day at that election and ending on polling day at that election in order—

(i) to promote or oppose, directly or indirectly, the election of a candidate or to solicit votes for or against a candidate,

(ii) to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate on the policy or policies of another candidate at the presidential election, or

(iii) otherwise to influence the outcome of the election,

and shall be deemed to include all expenditure incurred in the taking of an opinion poll or other similar survey relating to the presidential election within the period of 60 days before polling day at the election by or on behalf of a candidate at the election."

(b) in subsection (1)(b) by the substitution of the following subparagraph for subparagraph (iv):

"(iv) any of the matters referred to in subparagraphs (i) to (v) of section 46(2)(b);"

and

- (c) by the substitution of the following subsection for subsection (3):

“(3) The following shall be reckoned for the purposes of this Part and shall be included in the statement to be furnished to the Public Offices Commission under section 56:

- (a) all election expenses incurred by or on behalf of a candidate at a presidential election at any time during the period commencing on the date of the order appointing polling day at that election and ending on polling day at that election;
- (b) all election expenses incurred, by or on behalf of a candidate at a presidential election at any time before the commencement of the relevant period referred to in paragraph (a), for the provision of property, goods or services for use at the election during that period;
- (c) all payments made in respect of the election expenses referred to in paragraphs (a) and (b).”.

Transitional provisions.

**18—(1)** If any of the following statements meets either the requirements of the Act of 1997 as it was before it was amended by this Act or the requirements of the Act of 1997 as amended by this Act that statement shall be deemed to be valid:

- (a) a donation statement which was furnished to the Public Offices Commission before the commencement of this Act and on or before the relevant date specified in section 24 of the Act of 1997;
- (b) a donation statement or a statement of election expenses which was furnished to the Public Offices Commission within the period specified for the purpose under section 24 or 36, as the case may be, of the Act of 1997 and which relates to an election held before the commencement of this Act;
- (c) a donation statement in respect of the year 1998 furnished to the Public Offices Commission on or before the relevant date specified in section 24 of the Act of 1997 insofar as the statement relates to donations received during the period commencing on the 1st day of January, 1998, and ending immediately before the commencement of this Act;
- (d) a presidential election donation statement which was furnished to the Public Offices Commission before the commencement of this Act and on or before the relevant date specified in section 48 of the Act of 1997.

(2) Where a candidate’s election agent furnishes a statement of election expenses referred to in *subsection (1)(b)*, election expenses shall be reimbursed to the candidate as though *sections 4 and 11* of this Act had been in operation at the time the election expenses were incurred.