



**AN BILLE TOGHCHÁIN (LEASÚ) (SÍNTIÚIS
PHOLAITÍOCHTA), 2011
ELECTORAL (AMENDMENT) (POLITICAL DONATIONS)
BILL 2011**

EXPLANATORY MEMORANDUM

Purpose of Bill

The purposes of this Bill are to restrict the making of donations for political purposes by Companies, Trade Unions, Societies or Building Societies by requiring the disclosure of any such donations that exceed €100; to reduce the level at which donations to political parties must be declared from €5,078 to €1,000; to reduce the level at which donations to individuals must be declared from €634 to €500; to reduce the maximum allowable donation to political parties from €6,348 to €2,500 per annum; to reduce the maximum allowable donation to individuals from €2,539 to €1,000 per annum; to implement recommendations relating to political funding contained within the second report of the Tribunal of Inquiry into Payments to Politicians, and to provide for an annual audit of all income from public or private sources paid to political parties.

Provisions of Bill

Section 1 is a standard provision relating to the short title, collective citation and construction of the Bill.

Section 2 makes one amendment to Section 22 in that it amends the definition of ‘third party’ so that person(s) who oppose or promote particular results in referenda and who receive donations in excess of €100 are expressly included within the requirements of the Electoral Acts.

Section 3 makes three amendments to Section 23A of the Electoral Act 1997. First, it reduces the maximum allowable donation to national political parties and third parties from €6,348 to €2,500 per annum. Second, it reduces the maximum allowable donation to individuals from €2,539 to €1,000 per annum. Third, it introduces an amendment based upon one of the recommendations for political funding contained within paragraph 62.12(iv) of the second report of the Tribunal of Inquiry into Payments to Politicians (The Moriarty Report) which identified the problem of a pattern of donations being made by one donor under the declarable threshold. The amendment provides that where a donor makes donations in the same year to

two or more persons of the same political party or who were candidates for the same political party in the same election at the time the donations were made, these would be treated as one donation to a political party or third party and the donor would, consequently, be prohibited from donating more than €2,500 in total per annum.

Section 4 makes four amendments to Section 24 of the Electoral Act 1997. First, it amends the time within which candidates, whether elected or otherwise, at election time must declare donations received. This amendment arises from the political funding recommendation made at paragraph 62.12(viii) of the Moriarty Report which recommended that donations should be disclosable in something approximating to a real timeframe, particularly around election time. The amendment requires all details of declarable donations received by candidates or persons elected to the Dáil, Seanad or European Parliament to be declared within twenty five days after polling day. The law at present only requires unsuccessful candidates to make a declaration by the fifty sixth day after polling day, whereas successful candidates are simply required to make a donation not later than the 31st day of March in every year. Second, it amends the amount at which a donation to a political party is declarable from €5,078 to €1,000. Third, it reduces the level at which donations to individuals must be declared from €634 to €500. Fourth, it establishes that any donation from a Company, Trade Union, Society or Building Society exceeding €100 in value, as provided for in the amended Section 26 referred to in Section 5 below, is a donation that must be declared.

Section 5 amends Section 26 of the Electoral Act, 1997, by substituting a new section which becomes Part IVA of the Electoral Act 1997. This section relates to the disclosure of donations by Companies, Trade Unions, Societies and Building Societies. It is not possible to prohibit the making of donations by Companies, Trade Unions, Societies and Building Societies without a constitutional amendment since to do so would infringe their constitutional freedom of expression to support and be involved in the democratic process.

Subsection 2 of Section 26 provides that any Company, Trade Union, Society or Building Society that makes a donation (as defined in Section 22 or 46 of the Electoral Act 1997 or the regulations made under Section 72 of the Electoral Act 1997, or a donation as defined within Section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999) that exceeds €100 in value must, prior to the making of the said donation, register with the Standards in Public Office Commission as a “donating Company” or a “donating Trade Union”, or a “donating Society” or a “donating Building Society”. The Company, Trade Union, Society or Building Society is also required, prior to the making of any such donation, to provide in writing to the Standards in Public Office Commission full details of the organisation, membership, accounts of the applying Company, Trade Union, Society or Building Society and, also in the case of a Company, the shareholding and annual report of that Company. The Company, Trade Union, Society or Building Society must also have the proposed donation approved by a general meeting or a vote of its members. Under the amendment to Section 24(4) of the Electoral Act 1997, provided for in Section 4 of this Bill, details of any donation made by a Company, Trade Union, Society or Building Society exceeding €100 must be disclosed. The new subsection 2 of Section 26 also provides that the annual report of a Company or the annual return of a Trade Union or Society or a Building Society must disclose, in the year to which the report or return relates, details of any political donations exceeding €100 in value. It also introduces a

new provision into Irish Electoral Law which is based on the recommendation within the second Moriarty Report contained at paragraph 62.12(vii). That recommendation suggested that a donor should be obliged to identify any relevant financial, commercial or other interests if their donations exceeded a certain threshold. This requirement should, according to Judge Moriarty, embrace any government contracts received by the donor within a certain period of the making of the donation, any contracts pending, any application for contracts and any involvement in any procurement process, subject only to a limited temporary protection of confidentiality which may be required to safeguard the legitimate commercial interests of the donor. In accordance with this recommendation, subsection 2 requires in respect of any such donation in excess of €100 made by or on behalf of a company that it reveal in its annual report any contracts with the government exceeding €1,000 in value that the Company, or its holding company or a subsidiary company or any of their Directors, Shadow Directors or shareholders of over 20% shareholding have entered into. This obligation continues for a period of up to five years from the making of the donation. Further, it also requires the company to disclose if at the time of the making of the donation the Company, or its holding company or a subsidiary company or any of their Directors, Shadow Directors or shareholders of over 20% shareholding intended to apply for any government contracts above €1,000. Failure to comply with these requirements is a criminal offence.

Subsection 3 of Section 26 provides that any donation made by a Company, Trade Union, Society or Building Society in breach of the aforesaid provisions must be disclosed by the recipient to the Standards in Public Office Commission in writing within 14 days of receipt of the donation and the donation itself or value thereof should be remitted to the Standards in Public Office Commission.

Subsection 4 of Section 26 provides that the Standards in Public Office Commission shall publish and place all such notifications before both Houses of the Oireachtas.

Subsection 5 of Section 26 provides that all donations by a Company, Trade Union, Society or Building Society to the same person in one year shall be aggregated and treated as a single donation. It also prohibits a situation arising where a Company, Trade Union, Society or Building Society can donate €100 to a vast number of representatives of a political party without any disclosure obligation arising.

Subsection 6 applies the provisions concerning donations made by a Company, Trade Union, Society or Building Society exceeding €100 to any donations that they make to a third party involved in any referendum campaign.

Section 6 provides for the insertion of a further section after Section 26 which is referred to as Section 26A. It provides that it shall be an offence for a Company, Trade Union, Society or Building Society to make a donation in excess of €100 in violation of the requirements set forth in the new Section 26. This offence shall be punishable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding €5,000. On conviction on indictment, the available penalty is a fine not exceeding €25,000 or, at the discretion of the Court, imprisonment for a period not exceeding 3 years. It should be noted that under Section 74 of the Electoral Act 1997, where an offence under the Act has been committed by a body corporate and it has been proved that that offence has been committed with the consent of, or was attributable to, any

neglect on the part of any person being a Director, Manager, Secretary or other similar Officer of the body corporate, or a person purporting to act in any such capacity, that person as well as the body corporate shall be deemed to be guilty of that offence.

Subsection 2 of Section 26A provides that the recipient of such a donation from a Company, Trade Union, Society or Building Society who fails to comply with the requirements of Section 26 shall also be guilty of an offence, and shall be liable to the same penalty as provided for in respect of the donating Company, Trade Union, Society or Building Society.

Section 7 amends Section 48 of the Electoral Act 1997 and imposes an obligation upon a presidential candidate to disclose details of donations received in excess of €100 in value from a Company, Trade Union, Society or Building Society. This is a tidying up amendment to make Section 48 consistent with the new Section 26. It also amends the time within which a presidential candidate is required to publish a Presidential Election donation statement from 56 days after polling day to 25 days after polling day in line with the recommendation made by Judge Moriarty at paragraph 62.12(viii).

Section 8 amends Section 48A by reducing the amount that can be paid to a candidate or his/her agent at a Presidential Election from €2,539 to €1,000, and the amount that can be paid to a third party at a Presidential Election from €6,348 to €2,500.

Section 9 amends Section 13(1) of the Local Elections (Disclosure of Donations and Expenditure) Act 1999 and imposes an obligation upon a Local election candidate to disclose details of donations received in excess of €100 in value from a Company, Trade Union, Society or Building Society. Again, this amendment is a tidying up amendment to make Section 13(1) consistent with the requirements imposed by the new Section 26.

Section 10 introduces two new sections 26B and 26C, the first requiring all political parties to have their accounts audited on an annual basis. It provides that the accounts of the political parties are to be audited by the Standards in Public Office Commission. After the audit, a copy of the income and expenditure account, the balance sheet, a record of all donations received and all such other accounts as the Standards in Public Office Commission may direct, shall be published by the Standards in Public Office Commission. The sections also adopt the recommendations set forth by Judge Moriarty at paragraphs 62.12(i), (ii), (v) and (ix). Under these sections the Standards in Public Office Commission shall publish a record of all donations received by a political party, which shall include the size and amount of all donations, whether the identity of the donor is publishable or not. It also ensures that all income of political parties is disclosed to the Standards in Public Office Commission. Subsection 5 of section 26C also seeks to adopt measures to ensure that equivalent obligations apply to independent or non-party candidates, as recommended by Judge Moriarty in paragraph 62.12(x).

*An Teachta Micheál Ó Martín,
Aibreán 2011.*