

Electoral (Amendment) Bill 2008*

Screening Regulatory Impact Analysis

1. Introduction

The overall aim of this Bill is to modernise and update electoral law. The specific objectives of the Bill are to:

- (i) revise Dáil and European Parliament constituencies and to provide for the number of members to be elected for such constituencies in accordance with the Report of the Constituency Commission 2007 (parts 2 and 3 of the Bill);
- (ii) amend the law relating to the constituency revision process having regard to the implications of the High Court judgment arising from the Murphy, McGrath etc. cases (part 4 of the Bill); and
- (iii) provide alternative statutory mechanisms to regulate the nomination of non-party candidates at European Parliament and local elections in line with those enacted for Dáil elections in the Electoral (Amendment) Act 2007 (parts 5 and 6 of the Bill).

(Part 1 of the Bill contains the short title, collective citation and construction provisions).

The parts of the Bill, as outlined above, are treated as separate RIAs having regard to the discrete and distinctive area of electoral law being provided for. This document is therefore divided into three sections as follows -

Section 1: Parts 2 and 3 - Revision of Dáil and European Parliament Constituencies

Section 2: Part 4 - Constituency Revision Process

Section 3: Parts 5 and 6 - Nomination of Non-party Candidates at European Parliament and Local Elections

* The text of the Electoral (Amendment) Bill 2008 and an accompanying Explanatory and Financial Memorandum is available from www.oireachtas.ie

Section 1

Parts 2 and 3: Revision of Dáil and European Parliament Constituencies

1. Policy Context

A Constituency Commission was established under the Electoral Act 1997 on 26 April 2007 to make a report in relation to the constituencies for the election of members to Dáil Éireann and the European Parliament. The Commission's report (*Report on Dáil and European Parliament Constituencies 2007 (Prn. A7/1347)*) was presented to the Ceann Comhairle and published on 23 October 2007. The report contains recommendations in relation to the constituencies for the election of members to the Dáil and European Parliament. The constitutional position is that the number of members of Dáil Éireann must be fixed from time to time and that the constituencies for which they are elected must be determined by law. Thus, the final determination of the constituencies for Dáil Éireann is a matter for the Oireachtas to prescribe in legislation: the Commission's role is advisory. The same applies in respect of the European Parliament constituencies.

2. Statement of Objectives

To revise Dáil and European Parliament constituencies and to provide for the number of members to be elected for such constituencies in accordance with the Report on Dáil and European Parliament Constituencies 2007.

3. Identification of Policy Options

Since independent constituency commissions were initiated in 1979 it is established practice that the Government accepts the recommendations in the report. This Bill provides accordingly. The final determination of constituencies is a matter for the Oireachtas to prescribe in legislation. Options in relation to constituency formation are a matter for the Commission.

4. Analysis of Policy Options in terms of Risk, Cost, Benefit and Impacts

There will be no significant costs or impacts as a result of implementing the Commission's report.

5. Consultation

All Ministers were consulted in advance of the Bill being published. Submissions to the Constituency Commission are dealt with in section 2.4 (page 9) of the Commission's report.

6. Operation of new procedures

The revised Dáil Éireann constituencies come into operation upon the dissolution of Dáil Éireann next following the enactment of this Bill. The European Parliament constituencies come into operation at the 2009 European elections.

7. Enforcement and compliance

No issues are foreseen regarding compliance.

8. Review

Once the constituencies are legally established (upon dissolution of Dáil Éireann next following the enactment of this Bill) they will fall to be reviewed according to the legislative procedure set out in the Electoral Act 1997.

Section 2

Part 4: Constituency revision process

1. Policy Context

Under section 5 of the Electoral Act 1997, the Minister for the Environment, Heritage and Local Government is required to establish a Constituency Commission “Upon publication by the Central Statistics Office (CSO), following a Census of Population, of the Census Report setting out the population of the State classified by area” (i.e. Volume 1 of the census reports). However, in its judgment of June 2007 in the Murphy, McGrath etc. cases, the High Court concluded that, having regard to the constitutional requirements and the high quality of CSO preliminary data, consideration should be given to the initiation of constituency revisions on publication of the CSO Preliminary Report on a census. The revision work would then be completed when the final data are available.

2. Statement of objectives

To amend the constituency revision process to ensure compliance with the High Court judgment of June 2007.

3. Identification of Policy Options

To comply with the High Court judgment of June 2007 it is necessary to establish future Constituency Commissions on publication by CSO of the Census Report setting out the preliminary result of the Census in respect of the total population of the State and that the work of a Commission be finalised after publication by CSO of the Census Report setting out the final result of the Census in respect of the total population of the state.

4. Analysis of Policy Option in terms of Risk, Cost, Benefit and Impacts

This option complies with the High Court judgment of June 2007. It does not contain any apparent risks and brings certainty to the constituency revision process. The costs are not readily quantifiable but are not likely to be significant.

5. Consultation

All Ministers and the Attorney General were consulted in advance of the Bill being published.

6. Operation of new procedures

Future Constituency Commissions will be established on publication by CSO of the Census Report setting out the preliminary result of the Census in respect of the total population of the State and that the work of a Commission will be finalised not later than 3 months after publication by CSO of the Census Report setting out the final result of the Census in respect of the total population of the state.

7. Enforcement and compliance

The Constituency Commission and its members are independent in the performance of their functions under the Electoral Act 1997, and, subject to the provisions of the Act, the Commission shall regulate its own procedure.

8. Review

Any review of the procedures of the constituency revision process ultimately is a matter for the Oireachtas, having regard to the Constitution and the relevant legislation.

Section 3

Parts 5 and 6: Nomination of non-party candidates at European Parliament and local elections.

1. Policy Context

Parts 5 and 6 of the Bill respond to a judgement of the Supreme Court on 13 November 2006 in the cases of *King, Cooney and Riordan v The Minister for the Environment, Heritage and Local Government, the Attorney General and others*. The cases challenged the assentor provisions requiring that the nomination papers of Dáil candidates who are not candidates on behalf of a political party registered in the Register of Political Parties be assented to, by way of signing the nomination paper, by 30 persons (excluding the candidate and any proposer) who are registered as Dáil electors in the constituency concerned.

The Government at its meeting of 31 January 2007 authorised the drafting of a Bill to provide alternative procedures for nomination of candidates not in possession of a certificate of political affiliation at Dáil, European Parliament and local elections. Having regard to the limited time then available and the need for enactment and implementation of the Bill before the 2007 General Election, the text of the Bill provided for alternative procedures at Dáil elections only. These procedures were enacted as the Electoral (Amendment) Act 2007. Corresponding procedures for European Parliament and local elections are proposed in this Bill.

2. Statement of objectives

To provide a statutory mechanism to regulate the nomination of candidates at European Parliament and local elections who are not in possession of a certificate of political affiliation, which corresponds with the procedures enacted for Dáil elections in the Electoral (Amendment) Act 2007.

3. Identification of Policy Options

The policy options identified and detailed analysis of same were carried out in the context of the Electoral (Amendment) Act 2007 for non-party Dáil candidates and are largely restated here with certain modifications in the context of European Parliament and local elections. The policy options identified are:

- A) Unregulated system (i.e. do-nothing approach);
- B) Require local authorities to designate various locations throughout constituencies where assentors would attend to have assents (by way of certificates) witnessed by local authority officials;
- C) A deposit system (similar to that which operated until 2001)
- D) Obtain assents by way of statutory declaration which may be witnessed by one of 5 categories: a Commissioner for Oaths, a Peace Commissioner, a Notary Public, a Garda or a local authority official;
- E) Establish a dual system with candidates having a choice between obtaining assents by way of statutory declaration or lodging deposits (i.e. combining options C and D).

4. Analysis of Policy Options in terms of Risk, Cost, Benefit and Impacts

An assessment of the risks, costs, benefits and impacts of each of these options is outlined at Table 2. From this analysis Option E was recommended and approved by the Government.

In summary, the legislation provides for two alternative statutory mechanisms to regulate the nomination of non-party candidates at European Parliament and local elections. These are as follows:

- (i) by way of assents requiring the completion of statutory declarations by assentors in the constituency which may be witnessed by one of 5 categories: a Commissioner for Oaths, a Peace Commissioner, a Notary Public, a Garda or a local authority official;

or

- (ii) by way of the candidate, or someone on his or her behalf, lodging a deposit with returning officer before the expiration of the time for receiving nominations.

5. Consultation

All Ministers were consulted in advance of the 2007 Bill (which regulated nomination of non-party Dáil candidates) being published. The Attorney General was also consulted and was supportive of the proposal which was further refined to take account of his advice.

The Bill, on publication was circulated to Returning Officers. Having regard to the feedback received, the proposals were accepted. No objections were received from any of the interests consulted nor were any alternative proposals put forward.

The procedures which operated for the Dáil General Election in May 2007 were well received and no problems were identified. All Ministers were further consulted in advance of the current 2008 Bill being published.

6. Operation of new procedures

(i) Assentors

Under the assents system, the form of statutory declaration will be prescribed by the Minister. The relevant details of the assentors will be included on the statutory declarations such as number (and polling district letters) on the register of electors in force at the time of assent, address on the register, contact details, the relevant constituency on the date of assent where the assentor is registered, the name and address of the candidate, and the form of prescribed photographic ID produced and any number on it.

The assent will be valid in respect of the European Parliament constituency or local electoral area (LEA), as appropriate, in which the assentor's address at the time of assent is located at election time. The assent may be made at any time but it may only be used at the next such European Parliament or local election in the relevant European Parliament constituency/LEA and it will expire when the current register ceases to be in force (14th February each year), notwithstanding that no such election may have been held.

Responsibility will rest with the candidate or proposer to attach the statutory declarations to the nomination paper and to deliver all the documentation to the returning officer by the deadline for receipt of nominations. An assentor must confirm on the statutory declaration that he or she has not consented to the nomination of any other candidate in the election concerned. However, the legislation makes it clear that a candidate's nomination will not be invalid solely on the basis that an assentor signs more than one candidate's nomination paper.

It is proposed that the number of assents required by non-party candidates at European Parliament elections be 60 (as at present). In respect of local elections, it is proposed that the requirements be 15 assents (as at present)

(ii) Deposits

In lieu of obtaining assents, a candidate may choose the alternative of making a deposit and, if he or she does not do so, their candidature will be deemed to have been withdrawn. This is similar to the previous deposit system which operated until 2001. The candidate, or someone on his or her behalf, may lodge a deposit with the returning officer before the deadline for receiving nominations. The deposit will be returned to successful candidates, to those receiving votes in excess of a quarter of the quota and in certain other circumstances such as withdrawal of candidature or death. Otherwise, the deposit will be forfeited.

It is proposed that for candidates standing at European Parliament elections the amount of the deposit which may be lodged will be €1800. In respect of candidates standing at local elections it is proposed that the deposit will be €100 in the case of the election of members of a county or city council or €50 in the case of any other election.

7. Enforcement and compliance

Under the Statutory Declarations Act 1938, a person who knowingly makes a false or misleading statutory declaration is liable on conviction to a fine not exceeding €2,539.48 or imprisonment for a term not exceeding 6 months or both.

With regard to European Parliament elections the European Parliament Elections Act 1997 (Section 112) provides that it is an offence to make a false declaration on a nomination paper. A similar provision is provided for in respect of local elections in Local Elections Regulations 1995 (Article 104).

8. Review

The Department will monitor the practical operation of the procedures after the relevant elections through its ongoing contacts with returning officers, registration authorities and all relevant interests.

Table 2

Option	Description	Risks	Costs	Benefits	Impacts
A	Unregulated system (i.e. do-nothing approach)	<p>(i) Free-for-all scenario prior to election. Regulating access to the electoral process is a common feature in most parliamentary democracies and is widely seen as necessary to discourage an overly large number from contesting an election. This view is endorsed in the Supreme Court judgement of 13 November 2006.</p> <p>(ii) At risk of challenge from party affiliated candidates who are required to attach a certificate of political affiliation to nomination paper.</p>	Non-regulation is likely to lead to significant additional administrative procedures/checks etc. with associated cost for returning officers and registration authorities at election time. Though not readily quantifiable cost may be significant.	None except for non-party candidates who may prefer a non-regulatory system.	Could have potential negative impact on the conduct of election. Non-regulation may give rise to frivolous candidates or an excessive number of candidates could potentially undermine the integrity of the electoral process.
B	Require local authorities to designate “sufficient” (in terms of the Court judgement) locations throughout	Capacity and geographic spread of local authorities area/local offices might not be “sufficient” for this	This option is likely to give rise to additional administrative procedures and commensurate costs,	Register/ID check by registration authority.	Would appear to meet the terms of the Supreme Court judgement but may not be considered optimum

Option	Description	Risks	Costs	Benefits	Impacts
	constituencies where assentors would attend to have assents (by way of certificates) witnessed by local authority officials.	purpose, across all constituencies. 'Sufficient' in terms of Supreme Court judgement open to different interpretation. Absence of certainty could lead to challenge at election time.	possibly involving increasing the number of trained staff in outlying offices beyond normal requirements. Cost not quantifiable.		in terms of access, particularly in rural areas. Therefore potentially a negative impact.
C	Deposit system (along similar lines to that which operated up to 2001).	May lead to legal challenge, particularly if high level of deposit decided.	This option would give rise to additional administrative procedures. Some costs would arise but unlikely to be significant in overall terms.	Maintain the integrity of the State's electoral system.	Possible negative impact: complies with the terms of the Supreme Court judgement but, as the sole regulatory mechanism, it might be considered by some as a retrograde step.
D	Obtain assents by way of statutory declaration which may be witnessed by one of 5 categories: a Commissioner for Oaths, a Peace Commissioner, a Notary Public, a Garda or a local authority official.	No inherent risks identified.	This option would give rise to additional administrative procedures and costs but unlikely to be significant in overall terms.	ID check by reliable source using photo. Would maintain the integrity of the State's electoral system. Easy access to large numbers to witness statutory declaration (e.g. approx. 6,000	Positive impact.

Option	Description	Risks	Costs	Benefits	Impacts
				solicitors) Complies with the terms of the Supreme Court judgement.	
E	Establish a dual system with non-party candidates having a choice between obtaining assents by way of statutory declaration or lodging deposits (i.e. combining options C and D).	This option would be robust in case of legal challenge.	This option would give rise to additional administrative procedures and costs but unlikely to be significant in overall terms.	Maintain the integrity of the State's electoral system. Provides greater choice and accessibility for candidates. Complies with the terms of the Supreme Court judgement.	Positive impact.

Franchise Section

Department of the Environment, Heritage

and Local Government

franchise@environ.ie