

# **Electoral (Amendment) Bill 2007**

## **Screening Regulatory Impact Analysis**

### **1. Policy Context**

This Bill responds 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.

A number of issues arose in the cases and the State was successful on all but one. The Court upheld the main requirement for obtaining 30 assentors as well as other provisions but it struck down the provision requiring personal attendance by all assentors in a single location in a constituency. The Court found that the provision is disproportionate to the objective to be achieved, namely the due authentication of nomination papers, and declared section 46(4B) of the Electoral Act 1992 unconstitutional.

### **2. Statement of objectives**

In light of the judgement, the statutory mechanism which regulated Dáil candidates who are not in possession of a certificate of political affiliation was no longer valid. This legislation provides that revised mechanisms to regulate the nomination of such candidates are in place before the general election and in a manner which complies with the Supreme Court judgement.

### **3. Identification of Policy Options**

- 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 1. 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 Dáil candidates who are not in a possession of a certificate of political affiliation confirming that he or she is a candidate of a political party registered in the Register of Political Parties. These are as follows:

- (i) by way of assents requiring the completion of statutory declarations by 30 assentors in the relevant Dáil 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 of €500 with the returning officer.

#### **5. Consultation**

All Ministers were consulted in advance of the Bill 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 widely circulated to Returning Officers. Having regard to the feedback received, the proposals have been broadly accepted. No objections were received from any of the interests consulted nor were any alternative proposals put forward.

## **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 Dáil electors in force at the time of assent, address on the register, contact details, the relevant Dáil 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 constituency 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 general or bye-election in the relevant constituency and it will expire when the current register ceases to be in force (14<sup>th</sup> February each year), notwithstanding that no such election may have been held.

Responsibility will rest with the candidate or proposer to attach the 30 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.

### **(ii) Deposits**

In lieu of obtaining 30 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 of €500 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.

## **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.

The Electoral Act 1992 (Section 143) provides that it is an offence to make a false declaration on a nomination paper.

## **8. Review**

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

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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.</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 Dáil 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 constituencies where assentors would attend	Capacity and geographic spread of local authorities area/local offices might not be “sufficient” for this purpose, across all constituencies.	This option is likely to give rise to additional administrative procedures and commensurate costs, possibly involving increasing the number of	Register/ID check by registration authority.	Would appear to meet the terms of the Supreme Court judgement but may not be considered optimum in terms of access, particularly in rural

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	to have assents (by way of certificates) witnessed by local authority officials.	'Sufficient' in terms of Supreme Court judgement open to different interpretation. Absence of certainty could lead to challenge at election time.	trained staff in outlying offices beyond normal requirements.  Cost not quantifiable.		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 in view of previous High Court decision.	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 solicitors)	Positive impact.

Option	Description	Risks	Costs	Benefits	Impacts
				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.	<p>Maintain the integrity of the State's electoral system.</p> <p>Provides greater choice and accessibility for candidates.</p> <p>Complies with the terms of the Supreme Court judgement.</p>	Positive impact.