

ÉIRE.

BILLE AN REIFRINN, 1941.

REFERENDUM BILL, 1941.

Mar do ritheadh ag Dáil Eireann.

As passed by Dáil Eireann.

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ÉIRE.

BILLE AN REIFRINN, 1941.

REFERENDUM BILL, 1941.

BILL

5 *entitled*

AN ACT TO MAKE PROVISION FOR THE TAKING OF A
REFERENDUM AND FOR THE TRIAL BY THE
HIGH COURT OF QUESTIONS ARISING IN RESPECT
10 OF THE TAKING OF A REFERENDUM AND TO
PROVIDE FOR MATTERS INCIDENTAL TO OR
CONNECTED WITH THE MATTERS AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

PART I.

PRELIMINARY AND GENERAL.

15 1.—This Act may be cited as the Referendum Act, 1942. Short title.

2.—In this Act— Definitions.

the expression “the Minister” means the Minister for Local
Government and Public Health;

20 the expression “constitutional referendum” means a referendum
on a proposal for the amendment of the Constitution;

the expression “ordinary referendum” means a referendum on a
proposal other than a proposal for the amendment of the
Constitution;

25 the word “referendum”, when used without qualification, includes
both a constitutional referendum and an ordinary referendum;

the expression “general election” means a general election of
members of Dáil Eireann consequent on a dissolution of Dáil
Eireann;

30 the expression “Dáil elector” means a person entitled to vote at a
Dáil election;

the expression “Dáil election” means an election of a member or
members of Dáil Eireann;

the word “prescribed” means prescribed by regulations made by
the Minister under this Act.

35 3.—The Minister may make regulations prescribing any matter or Regulations.
thing which is referred to in this Act as prescribed or to be
prescribed.

40 4.—The expenses incurred by the Minister in the administra- Expenses.
tion of this Act shall, to such extent as may be sanctioned by the
Minister for Finance, be paid out of moneys provided by the
Oireachtas.

Repeals.

5.—The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

The referendum returning officer.

6.—(1) As soon as may be after the passing of this Act and from time to time thereafter as occasion requires, the Minister shall appoint a fit and proper person to be the referendum returning officer for the purposes of this Act. 5

(2) It shall be the duty of the referendum returning officer to conduct the referendum for which he is appointed, to ascertain and declare the result of the voting thereon in accordance with this Act, and to do such other things in respect of such referendum as he is required by this Act to do. 10

(3) There shall be charged on and paid out of the Central Fund or the growing produce thereof to the referendum returning officer such sums as the Minister for Finance shall sanction for his services and expenses in respect of every referendum conducted by him. 15

Statement by registration officers of the number of Dáil electors.

7.—(1) As soon as may be after the passing of this Act, every registration officer shall send to the referendum returning officer a statement in the prescribed form of the number of Dáil electors registered in the register of electors then in force in each constituency or portion of a constituency in the registration area of such registration officer. 20

(2) Whenever after the passing of this Act a register of electors comes into force, every registration officer shall forthwith send to the referendum returning officer a statement in the prescribed form of the number of Dáil electors registered in the register of electors in each constituency or part of a constituency in the registration area of such registration officer. 25

(3) Whenever the number of Dáil electors which is the subject of a statement sent by a registration officer to the referendum returning officer in pursuance of this section becomes altered by the decision of appeals, correction of errors, or any other cause, such registration officer shall forthwith communicate to the referendum returning officer the fact of such alteration and the particulars thereof. 30 35

PART II.

THE POLL AT A REFERENDUM.

The polling day at a constitutional referendum.

8.—(1) Whenever a bill containing a proposal for the amendment of the Constitution shall have been passed or be deemed to have been passed by both Houses of the Oireachtas and the Government determines that such proposal shall be submitted by referendum to the decision of the people, the Minister shall, within one week after such determination by the Government, appoint by order the day (in this Act also referred to as the polling day) upon which the polling at such referendum shall take place. 40 45

(2) The polling day appointed by an order made by the Minister under this section shall not be less than thirty days and not more than ninety days after the date of such order.

(3) Whenever the Government determines that a constitutional referendum shall be taken, the Government shall cause notice of such determination to be published in the *Iris Oifigiúil*, and thereupon such publication shall be conclusive evidence of such determination. 50

(4) Every order made by the Minister under this section shall be published in the *Iris Oifigiúil* as soon as may be after it is made. 55

9.—(1) Whenever the Government has determined that a constitutional referendum shall be taken and Dáil Eireann is dissolved before the Minister has made under the next preceding section an order appointing the polling day at such referendum, the Minister, if he so thinks fit, may (notwithstanding anything contained in the said next preceding section) appoint by his order under that section the polling day at the general election consequent on such dissolution of Dáil Eireann to be the polling day at such referendum.

Power to appoint the same polling day for a general election and a constitutional referendum.

10 (2) Whenever the Government has determined that a constitutional referendum shall be taken and Dáil Eireann is dissolved after the Minister has made his order (in this sub-section referred to as the original order) under the next preceding section in relation to such referendum and before the polling day appointed by that order, the Minister, if he so thinks fit, may by order amend the original order by substituting the day which is the polling day at the general election consequent on such dissolution of Dáil Eireann for the day named in the original order as the polling day at such referendum.

20 10.—(1) Whenever—

(a) the President informs the Taoiseach in accordance with Article 27 of the Constitution that he has decided that a bill to which that Article applies contains a proposal of such national importance that the will of the people thereon ought to be ascertained, and

The polling day at an ordinary referendum.

(b) the Government determines that a referendum for the purpose of ascertaining the will of the people on such proposal shall be taken.

the Minister shall, within one week after such determination by the Government, appoint by order the day (in this Act also referred to as the polling day) upon which the polling at such referendum shall take place.

(2) The polling day appointed by an order made by the Minister under this section shall not be less than thirty days and not more than ninety days after the date of such order.

(3) Whenever the Government determines that an ordinary referendum shall be taken, the Government shall cause notice of such determination to be published in the *Iris Oifigiúil*, and thereupon such publication shall be conclusive evidence of such determination.

(4) Every order made by the Minister under this section shall be published in the *Iris Oifigiúil* as soon as may be after it is made.

11.—The following provisions shall have effect in relation to the taking of the poll at a referendum, that is to say:—

Method of taking the poll at a referendum.

(a) save as is otherwise provided by this Act, the poll shall be taken on one day only and that day shall be the same throughout the State and shall be the day appointed by the order of the Minister under this Act to be the polling day at such referendum;

(b) the poll shall commence at nine o'clock in the forenoon and shall be kept open until nine o'clock in the afternoon and no longer;

- (c) for the purpose of taking the poll, the State shall be deemed to be divided into the same constituencies as those into which it is for the time being divided for the purpose of the election of members of Dáil Eireann, and the poll shall be taken separately in each such constituency; 5
- (d) the person who would be the returning officer at a Dáil election in any such constituency shall be the returning officer (in this Act referred to as the local returning officer) in such constituency for the purpose of the poll and, where such person is a county registrar, sub-section 10 (7) of section 40 of the Court Officers Act, 1926 (No. 27 of 1926), shall apply and have effect;
- (e) each voter at the poll shall record his vote in the constituency in which he would be entitled to vote at a general election of members of Dáil Eireann; 15
- (f) each such constituency shall be deemed to be divided for the purpose of the poll into the same polling districts as those into which it is for the time being divided for the purpose of a Dáil election, and the places which are for the time being appointed as polling places in each 20 such polling district for the purpose of a Dáil election shall be the polling places for the purpose of taking the poll;
- (g) it shall be the duty of every local returning officer to conduct the taking of the poll in his constituency in accordance with this Act, and for that purpose to provide such polling stations, ballot boxes, ballot papers, stamping instruments, copies of the register of electors and other things, appoint and pay such officers and do such other acts and things as may be necessary for effectually taking 30 the poll in his constituency in accordance with this Act;
- (h) every local returning officer shall, in relation to the taking of the poll in his constituency, comply with the provisions of this Act, the rules contained in the First Schedule to this Act, and the orders made and instructions given by the Minister under this Act. 35

Local returning officers expenses.

12.—(1) Every local returning officer at the taking of the poll at a referendum shall be entitled to his reasonable charges, not exceeding the sums specified in the scale of maximum charges framed under this section, in respect of services and expenses of the several kinds mentioned in the said scale which have been properly rendered or incurred by him for the purposes or in connection with the taking of such poll. 40

(2) The amount of the charges mentioned in the foregoing subsection of this section of a local returning officer shall be paid by the Minister for Finance out of the Central Fund or the growing produce thereof on an account to be submitted to him by such returning officer in accordance with regulations to be made by the said Minister under this section, but the said Minister may, if he thinks fit, before payment of the charges of any local returning officer, apply to a judge of the Circuit Court having jurisdiction in the constituency of such returning officer for the taxation of such account and thereupon such judge shall cause such account to be taxed and the amount payable thereunder to be determined by the county registrar. 55

(3) The Minister for Finance may, if he so thinks fit, on the application of a local returning officer, make to such officer, on such terms as the said Minister shall think proper, an advance on account of the charges payable to such returning officer under this section. 60

(4) The taxation under this section of the account of a local returning officer shall, if the judge so directs on the application of such returning officer, include the taxation and determination of the amount of any claim made by any person against such returning officer in respect of any matter charged for in such account. 65

(5) The Minister for Finance shall prescribe for the purposes of this section a scale of maximum charges and may revise such scale as and when he thinks fit, and may also make regulations as to the time when and the manner and form in which accounts are to be rendered to him by local returning officers for the purposes of the payment of such charges.

13.—(1) No person shall be entitled to vote in any constituency at the poll at a referendum unless he is registered as a Dáil elector in the register of electors for the time being in force for such constituency. Restrictions on persons entitled to vote at the poll.

(2) No person who has not attained the age of twenty-one years shall be entitled to vote at the poll at a referendum.

(3) No person shall be entitled to vote more than once (whether in the same constituency or in different constituencies) at the poll at a referendum, but subject to that limitation, every person who is registered as a Dáil elector in the register of electors for the time being in force for a constituency shall (save as is otherwise provided by this section) be entitled to demand and receive a ballot paper and to vote in such constituency at such poll.

(4) No person who is for the time being prohibited by law from voting at a Dáil election shall be entitled to receive a ballot paper or to vote at the poll at a referendum, and every person who votes at such poll while he is so prohibited shall be liable to the same penalties as those for which he would be liable if he voted at a Dáil election.

14.—(1) The votes at the poll at a referendum shall be given by ballot and the ballot of each voter shall consist of a paper (in this Act called a ballot paper). The ballot papers.

(2) Every ballot paper shall have a number printed on the back thereof and shall have attached a counterfoil with the same number printed on the face thereof and shall be capable of being folded up.

(3) Every ballot paper shall, at the time of issue thereof, be marked on both sides with an official mark either stamped or perforated.

(4) The referendum returning officer shall be responsible for the printing and procuring of a sufficient quantity of ballot papers and it shall be his duty to supply to every local returning officer such number of ballot papers as such officer shall reasonably require.

15.—(1) Every ballot paper at a referendum shall be in whichever of the forms set out in the Second Schedule to this Act is applicable. Form of ballot papers.

(2) Where the same day is the polling day at two or more referenda, then and in such case (save as is otherwise provided by the next following sub-section of this section) separate ballot papers shall not be issued for such referenda and, in lieu thereof, every ballot paper at such referenda shall be so framed that the voter shall be able to record thereby a separate vote in respect of each such referendum.

(3) Where the same day is the polling day at two or more referenda and the Minister is of opinion that it is for any reason impracticable or inexpedient to comply with the next preceding sub-section of this section in regard to those referenda, the following provisions shall apply and have effect, that is to say:—

(a) the Minister may direct that separate ballot papers shall be issued for one or more or all of such referenda;

(b) where the Minister gives such direction as is authorised by the foregoing paragraph of this sub-section, separate ballot papers shall, notwithstanding anything contained in the said next preceding sub-section, be issued in accordance with that direction;

(c) where the Minister gives such direction as aforesaid and such direction does not apply to all of such referenda, then and in such case, if there is only one of such referenda to which such direction does not apply, separate ballot papers shall be issued for that one of such referenda, and, if there are two or more of such referenda to which such direction does not apply, the said next preceding sub-section shall apply and have effect in relation to those two or more of such referenda. 10

(4) Every ballot paper in respect of one referendum shall contain a statement of the proposal which is the subject of such referendum, and every ballot paper in respect of two or more referenda having the same polling day shall contain, in respect of each such referendum, a statement of the proposal which is the subject of such referendum. 15

(5) At a constitutional referendum, the proposal which is the subject thereof shall be stated on the ballot paper in the same terms as nearly as may be as such proposal is stated in the bill containing such proposal passed or deemed to have been passed by both Houses of the Oireachtas. 20

(6) At an ordinary referendum, the proposal which is the subject thereof shall be stated on the ballot paper in the same terms as nearly as may be as such proposal is stated in the writing under the hand and seal of the President sent by him to the Taoiseach. 25

Method of marking a vote on a ballot paper.

16.—(1) Every voter at the poll at a referendum shall record his vote by marking his ballot paper in accordance with the instructions for marking which are printed on the ballot paper.

(2) Any ballot paper—

(a) which does not bear the official mark, or 30

(b) on which no vote is placed at all, or

(c) on which the vote is not so placed as to indicate that the voter approves or does not approve of the proposal which is the subject of such referendum, or

(d) on which votes are given both for and against such proposal, or 35

(e) on which anything by which the voter can be identified (except the number required by law to be printed on the back of the ballot paper) is written or marked,

shall be invalid and shall not be counted. 40

(3) Where a ballot paper is not invalid under any of the provisions of the next preceding sub-section of this section, such ballot paper shall not be invalid merely because it does not comply with the instructions for marking which are printed thereon, and in particular shall not be invalid because the mark “ x ” is not used in marking such paper, provided such paper is so marked as to indicate with reasonable certainty the will of the voter. 45

(4) Where a ballot paper relates to two or more referenda and a vote is properly recorded thereon in respect of one or more but not all of such referenda, such ballot paper, if not otherwise invalid, shall be valid for the purposes of the referendum or referenda in respect of which a vote is properly recorded thereon and invalid and not counted for the purposes of the referendum or referenda in respect of which a vote is not recorded thereon or is improperly recorded thereon. 55

Personation agents.

17.—(1) Any member of Dáil Eireann may appoint a person (in this Act referred to as a personation agent) to attend at a particular polling station at a referendum for the purpose of assisting in the detection of persons committing or attempting to commit the offence of personation. 60

(2) A member of Dáil Eireann may appoint under this section, in respect of any referendum, personation agents at as many polling stations as he thinks fit, but no one member of Dáil Eireann shall appoint more than one personation agent in respect of any one polling station. 65

(3) A member of Dáil Eireann appointing under this section a personation agent in respect of a polling station shall, not less than forty-eight hours before the commencement of the poll, furnish in writing to the local returning officer in the constituency in which such polling station is situate the name of such personation agent and the name or description of the polling station in respect of which he is appointed.

(4) Every personation agent duly appointed under this section and of whose appointment notice is duly given in accordance with the next preceding sub-section of this section shall be entitled to attend in the polling station to which he is so appointed during the whole of the time for which the poll is open and during half an hour before and half an hour after that time.

(5) No personation agent shall, while the poll remains open, leave the polling station to which he is appointed without previously obtaining the permission of the presiding officer or without depositing with the presiding officer for the duration of his absence all registers, books, and documents in which he has made any note, writing, or mark during the poll.

(6) Any personation agent who leaves a polling station in contravention of this section shall not be permitted to return to such polling station until after the close of the poll and shall also be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding twenty-five pounds or, at the discretion of the Court, to imprisonment for a term not exceeding three months.

(7) Where the polling day at a constitutional referendum is also the polling day at a general election, every person appointed under section 22 of the Prevention of Electoral Abuses Act, 1923 (No. 38 of 1923), to be a personation agent for the purposes of such general election at a polling station in a constituency in which a poll is taken at such general election shall be deemed to have been appointed under this section to be a personation agent at such polling station for the purposes of such referendum, and the foregoing provisions of this section shall apply to him accordingly.

18.—(1) Every local returning officer at a referendum shall appoint, in respect of every polling station in his constituency, a fit and proper person to be the presiding officer in such polling station.

Appointment of
presiding officers.

(2) Every presiding officer appointed under this section shall have in his polling station all the powers and duties conferred or imposed by this Act on a presiding officer.

19.—If, at the poll at a referendum, any person misconducts himself in a polling station or fails to obey the lawful orders of the presiding officer, he may immediately by order of the presiding officer be removed from such polling station by any member of the Garda Síochana or by any person authorised in writing by the presiding officer to remove him, and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter such polling station during the poll.

Keeping of order
in polling
stations.

20.—(1) Every person whose name is, at the time of the poll at a referendum, on the postal voters' list for a constituency shall be entitled to vote in that constituency at the poll at such referendum by sending his ballot paper by post to the local returning officer for the said constituency and shall not be entitled to vote at such referendum in any other manner.

Postal voters.

(2) Every local returning officer shall, as soon as practicable after the date of the order of the Minister appointing the polling day at a referendum, send to every person who is on the postal voters' list for his constituency a ballot paper and a declaration of identity in the prescribed form.

(3) If a ballot paper sent to any person under the next preceding sub-section of this section is returned to the local returning officer duly marked by the said person and is accompanied by the declaration of identity duly signed and authenticated and is received by such returning officer before the close of the poll, 5 such ballot paper shall be treated and counted by such returning officer in the same manner as a ballot paper placed in the ballot box in the ordinary way.

(4) In sending out, receiving, and otherwise dealing with the ballot papers of postal voters, every local returning officer shall observe and comply with the law (so far as it is not inconsistent with this Act) for the time being regulating the sending out, receiving and otherwise dealing with the ballot papers of postal voters at a Dáil election. 10

Questions and oaths at the poll at a referendum.

21.—(1) No question, inquiry, or objection shall be put, made, or permitted during the poll at a referendum as to the right of any person to vote, and no objection to the right of any person to vote shall be made or received by any presiding officer at such poll save only that the presiding officer may, and, if so required by a personation agent, shall put to any person at the time of his applying for a ballot paper and not afterwards the following questions, or any two or one of them, viz. :— 15 20

(i) Are you the same person as the person whose name appears as A B on the register of electors now in force for the constituency of..... 25

(ii) Have you already voted at this referendum?

(iii) Have you attained the age of twenty-one years?

And unless such of those questions as are put to such person are answered, in the case of the first and third of those questions, in the affirmative and, in the case of the second of those questions, in the negative that person shall not vote. 30

(2) A presiding officer at the poll at a referendum may, and, if so required by a personation agent, shall administer to any person at the time of his applying for a ballot paper and not afterwards an oath or (in the case of any person who objects to take an oath on the ground that he has no religious belief or that the taking of an oath is contrary to his religious belief) an affirmation in the following form :— 35

“ I swear by Almighty God (or I, A B, do solemnly, sincerely and truly declare and affirm— as the case may be) that I am the same person as the person whose name appears as A B on the register of electors now in force for the constituency of and that I have not already voted at this referendum, and that I have attained the age of twenty-one years.” 40 45

(3) Save as is mentioned in this section, it shall not be lawful at the poll at a referendum to require any person to take any oath or affirmation either in respect of his right to vote or any other matter whatsoever. 50

(4) It shall not be lawful to reject any vote tendered at a referendum by any person whose name appears as a Dáil elector upon the register of electors in force for the time being except by reason of its appearing to the presiding officer upon putting the questions aforesaid, or any two or one of them, that the person so claiming to vote is not the person whose name appears on such register as aforesaid, or that such person has already voted at that referendum or that such person has not attained the age of twenty-one years or except by reason of such person refusing to answer the said questions, or any two or one of them, or to take the said oath or make the said affirmation 55 60

(5) Where the same day is the polling day at two or more referenda, the following provisions shall have effect, that is to say:—

- 5 (a) in the questions and oath authorised by this section the words “ any of these referenda ” shall be substituted for the words “ this referendum ”;
- (b) a person who applies for a ballot paper shall be deemed to tender his vote at all the said referenda;
- 10 (c) subject to the provisions of this Act in relation to a voter who inadvertently spoils his ballot paper, a voter who receives a ballot paper shall not be entitled to receive another ballot paper on the ground that he did not record on the said ballot paper a vote in respect of all the said referenda.

15 **22.**—(1) Every officer, clerk, and person employed or in attendance at a polling station at the poll at a referendum shall maintain, and aid in maintaining, the secrecy of the voting in such station, and shall not, except for some purpose authorised by law, communicate before the poll is closed to any person any
20 information as to the name or number on the register of electors of any voter who has or has not applied for a ballot paper or voted at that station, or as to the official mark, and no such officer, clerk or person, and no other person whosoever, shall interfere with or attempt to interfere with a voter when marking
25 his vote, or otherwise attempt to obtain in the polling station information as to the manner in which any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the manner in which any voter in such station is about to vote or has
30 voted, or as to the number on the back of the ballot paper given to any voter at such station.

Infringement of
secrecy.

(2) Every officer, clerk, and person employed or in attendance at the opening of the ballot boxes or the counting of the votes by a local returning officer at a referendum shall maintain and
35 aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such opening or counting the number on the back of any ballot paper, or communicate any information obtained at such opening or counting as to the manner in which any vote is given in any particular ballot paper.

40 (3) Every officer, clerk, and person concerned in or present at the issue of ballot papers to postal voters or the receipt of ballot papers from postal voters at a referendum shall maintain, and aid in maintaining the secrecy of the voting by such voters, and shall not, except for some purpose authorised by law, communi-
45 cate before the poll is closed to any person any information as to the name or number on the register of electors of any postal voter to or from whom any ballot paper has been sent or received, or as to the official mark, and no such officer, clerk, or person, and no other person whosoever shall interfere with, or attempt
50 to interfere with, the receipt, marking, or return of his ballot paper by any postal voter at a referendum or attempt to obtain information as to the manner in which any such voter has voted, or communicate at any time to any person any information obtained in connection with the issue or receipt of ballot papers
55 to or from postal voters at a referendum as to the manner in which any such voter has voted or as to the number on the back of the ballot paper sent to any such voter.

(4) No person shall directly or indirectly induce any voter at a referendum to display his ballot paper after he shall have
60 marked the same so as to make known to such person or to any other person the manner in which such voter has marked his vote.

(5) Every person who by any act or omission contravenes any of the provisions of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to imprisonment for a term not exceeding six months.

Proceedings in case of riot at the poll.

23.—(1) If and whenever, at a referendum, the polling at any polling place is wholly prevented or is interrupted or obstructed by riot or open violence or persons are prevented by riot or open violence from proceeding to a polling place, the local returning officer in the constituency in which such polling place is situate shall adjourn the polling at such polling place to the next following day which is not a Sunday, Good Friday, Christmas Day, or a bank holiday and shall, if necessary, further adjourn such polling until such riot or open violence has ceased. 5 10

(2) Whenever the polling at one or more polling places in a constituency at a referendum is adjourned under this section, the local returning officer in such constituency shall not open any of the ballot boxes used at any polling place in such constituency until the polling at all such places has been completed. 15

Destruction, etc., of ballot boxes or ballot papers.

24.—If at the poll at a referendum any ballot boxes or ballot papers are taken out of the custody of the local returning officer or a presiding officer or are in any way tampered with or are either accidentally or intentionally destroyed or (in the case of ballot papers) are maliciously torn or defaced, the following provisions shall have effect, that is to say:— 20

(a) the polling at every polling place at which any of such ballot boxes or ballot papers were used shall be void; 25

(b) the local returning officer for the constituency in which such ballot boxes or ballot papers were used shall forthwith inform the Minister of such polling having so become void; 30

(c) upon receipt of such information, the Minister shall forthwith take all such steps and give all such directions as he shall think proper for the taking of a fresh poll at every such polling place;

(d) a fresh poll shall be taken at every such polling place in accordance with the directions given by the Minister; 35

(e) this Act shall apply in respect of such fresh poll in like manner as it applies to the original poll.

Use of schools and other buildings.

25.—(1) For the purpose of taking the poll at a referendum, a local returning officer may use, free of charge, any room in a school receiving a grant out of moneys provided by the Oireachtas, and any room the expense of maintaining which is payable out of any local rate, and may, where no such room is available, hire a building or room. 40

(2) Whenever a local returning officer uses free of charge a room under the foregoing sub-section of this section, he may defray any expenses incurred by the person having control of such room on account of its being so used and shall pay for any damage done to such room while it is so used. 45

(3) The use or hire under this section by a local returning officer of a room in an unoccupied building shall not render any person liable to be rated or to pay any rate in respect of such building. 50

(4) A person having charge of a school adjoining or adjacent to or forming part of a church or a convent or other religious establishment may, within twenty-four hours after receiving from the local returning officer notice of such officer's intention to use such school or any part thereof under this section, object to such use by sending a written statement of such objection to such returning officer, and thereupon it shall not be lawful for such returning officer so to use such school or any part thereof unless or until such objection is overruled by the Minister on the application of such returning officer. 55 60

26.—Where any constituency comprises the whole or any part of any local government electoral area, any ballot boxes, fittings for polling stations, and compartments provided for local government elections in such electoral area may be used for the poll at a referendum in such constituency, and it shall be the duty of the local returning officer at any such poll in such constituency to make use so far as practicable of the ballot boxes, fittings, and compartments aforesaid, and the court upon taxation of his accounts shall have regard to the provisions of this section, and any damage other than reasonable wear and tear caused to any such ballot boxes, fittings, and compartments by such user at any such poll shall be paid as part of the expenses of such local returning officer.

Use of local government ballot boxes, etc.

27.—No person who has voted at a referendum shall be required in any legal proceeding to state the manner in which he has voted at such referendum.

Prohibition of disclosure, etc.

28.—Whenever the polling day at a constitutional referendum is also the polling day at a general election, the following provisions shall (notwithstanding anything to the contrary contained in this Act) apply and have effect in every constituency in which a poll is taken at such general election, that is to say:—

Special provisions where a general election and a constitutional referendum have the same polling day.

(a) the poll at such referendum shall be taken at the same time, in the same places, by the same persons, and in the same manner as the poll at such general election;

(b) the same official mark shall be used for the ballot papers at such referendum as is used for the ballot papers at such general election;

(c) the ballot papers at such general election shall not be of the same colour as the ballot papers at such referendum, and for that purpose white shall be deemed to be a colour;

(d) the ballot paper for such referendum shall be handed to each voter or, in the case of voters on the postal voters lists, sent to each voter at the same time as the ballot paper for such general election is handed or sent to him;

(e) the returning officer may, if he so thinks proper, provide separate ballot boxes for the ballot papers for such referendum and for the ballot papers for such general election;

(f) if such separate boxes are so provided, a ballot paper for such referendum shall not be invalid by reason only of its being put into a ballot box provided for ballot papers for such general election, and a ballot paper for such general election shall not be invalid by reason only of its being put into a ballot box provided for ballot papers for such referendum;

(g) if such separate ballot boxes are not so provided, the ballot papers for such referendum and the ballot papers for such general election shall be put into the same ballot boxes.

29.—(1) The following portions of the Prevention of Electoral Abuses Act, 1923 (No. 38 of 1923), shall apply and have effect in relation to every referendum, that is to say:—

Application of the Prevention of Electoral Abuses Act, 1923.

(a) Part I, except section 7;

(b) in Part II, sections 9, 10, 13, and 15;

(c) in Part III, sections 25 and 26;

(d) in Part VIII, sections 44, 45, 46, 49, 52, 53, and 56.

(2) For the purpose of the application of the said portions of the Prevention of Electoral Abuses Act, 1923 (No. 38 of 1923), to a referendum in pursuance of the foregoing sub-section of this section—

- (a) the word “ election ” wherever it is used without qualification in the said portions of the said Act shall be construed and have effect as including a referendum; 5
- (b) the expression “ Dáil election ” and the expression “ Dáil or Seanad election ”, wherever they respectively occur in the said portions of the said Act, shall be construed as including a referendum; 10
- (c) all references in the said portions of the said Act to candidates shall be disregarded;
- (d) in sub-sections (2) and (3) of section 2 of the said Act, the words “ the return of any person to serve in the Oireachtas or ” shall be disregarded; 15
- (e) in sub-section (3) of section 10 of the said Act, the question “ Have you already voted at this referendum? ” shall be substituted for the question mentioned in that sub-section; 20
- (f) in sections 25 and 26 of the said Act, the expression “ personating agent ” shall be construed as meaning a personation agent appointed under this Act;
- (g) in section 46 of the said Act, the expression “ returning officer ” shall be construed and have effect as including both the referendum returning officer and a local returning officer; 25
- (h) in section 52 of the said Act, the words “ proceedings are held before an election court ” shall be construed as meaning the trial before the High Court of a referendum petition, and the words “ the report of such court ” shall be construed as meaning the final order of the High Court on such trial. 30

(3) There shall be included in every corrupt and illegal practices list prepared in pursuance of section 43 of the Prevention of Electoral Abuses Act, 1923 (No. 38 of 1923), the names and descriptions of all persons who are convicted by any court of a corrupt or illegal practice within the meaning of the said Act at a referendum. 35

The provisional referendum certificate.

30.—(1) As soon as may be after the close of the poll at a referendum in any constituency, the local returning officer for that constituency shall, in accordance with the Rules contained in the First Schedule to this Act, count the votes recorded in his constituency and report the result of such counting to the referendum returning officer. 40 45

(2) When the referendum returning officer has received from every local returning officer the report of the result of the counting of the votes recorded in his constituency at the poll at a referendum, the referendum returning officer shall prepare, sign, and publish, in accordance with the Rules contained in the First Schedule to this Act, a certificate (in this Act referred to as the provisional referendum certificate) stating the particulars of the voting at such referendum and the result thereof. 50

(3) When the referendum returning officer is informed in writing by the Master of the High Court in relation to a provisional referendum certificate either that no referendum petition in respect of such certificate has been presented within the time limited by this Act or that every referendum petition presented in respect of such certificate has become null and void, the said provisional referendum certificate shall (save where otherwise provided by this Act) become and be final and incapable of being questioned in any court and shall be conclusive evidence of the voting at the referendum to which such certificate relates and of the result of such referendum. 55 60

31.—Every local returning officer, presiding officer, clerk, or other person having duties in connection with the conduct of a referendum in any constituency who commits any wilful or grossly negligent misfeasance or any grossly negligent act or omission in contravention of this Act shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds.

Punishment of officers guilty of gross negligence.

32.—(1) The Minister may, whenever he thinks proper so to do, issue to all or any local returning officers or officer such instructions in relation to the conduct of the poll (including the opening of the ballot boxes and the counting of the votes) at a referendum as he shall consider necessary or expedient in order to ensure the smooth and efficient taking of such referendum and to secure uniformity of procedure in regard thereto in all constituencies.

Issuing of instructions by the Minister.

(2) It shall be the duty of every local returning officer to observe and comply with all instructions given to him by the Minister under the next preceding sub-section of this section.

(3) If any difficulty shall arise in the taking of a referendum, the Minister may by order provide for any matter or do any thing not inconsistent with this Act which appears to him to be necessary for the proper taking of such referendum.

(4) No local returning officer shall be required or authorised by an instruction given to him or an order made by the Minister under this section to do any act (whether of commission or omission) which is contrary to this Act, or which would, directly or indirectly, infringe the secrecy of the ballot.

PART III.

REFERENDUM PETITIONS.

33.—In this Part of this Act—

the expression "corrupt practice" means an offence which is a corrupt practice within the meaning of the Prevention of Electoral Abuses Act, 1923 (No. 38 of 1923),

Definitions in this Part of this Act.

the expression "duly presented" means, in relation to a referendum petition, that such petition either was presented in accordance with this Part of this Act and did not become null and void after such presentation or was presented by the Attorney-General with the leave of the court under the provision in that behalf contained in this Part of this Act.

34.—(1) A petition (in this Act referred to as a referendum petition) questioning the validity of a provisional referendum certificate may be presented to the High Court in accordance with this Part of this Act by any person authorised by this section so to do.

Referendum petitions.

(2) A referendum petition may question a provisional referendum certificate either—

(a) in respect of the particulars stated in such certificate of the voting in any one constituency, on the ground that corrupt practices prevailed extensively at or in relation to the taking of the referendum in that constituency or on the ground of error or misconduct (whether by act or omission) on the part of the local returning officer for that constituency, or

(b) in respect of the particulars stated in such certificate of the aggregate voting at the referendum as a whole or of the result of the referendum as so stated, on the

ground of error on the part of the referendum returning officer or, in the case of an ordinary referendum, on the ground of error in relation to the number of Dáil electors on the register of electors for the time being in force. 5

(3) A referendum petition may be presented by any of the following persons, that is to say:—

(a) in the case of a petition in respect of the voting in one constituency, by any person who voted in that constituency at the referendum or who claims that he was entitled to vote in that constituency at the referendum but was unlawfully refused a ballot paper or was in any other manner unlawfully prevented from so voting; 10

(b) in the case of a petition in respect of the aggregate voting at the referendum as a whole or in respect of the result of the referendum, by any person who voted at the referendum; 15

(c) in any case, by the Attorney-General.

(4) A provisional referendum certificate shall not be capable of being questioned in any manner in any court save only by a referendum petition presented to the High Court under this Part of this Act. 20

The respondent to a referendum petition.

35.—(1) Where a referendum petition is presented by a person other than the Attorney-General, the Attorney-General shall be named therein as the respondent thereto. 25

(2) Where a referendum petition is presented by the Attorney-General, no person shall be named therein as the respondent thereto but the High Court may, if it so thinks proper, assign counsel to present the case against the petition.

(3) Where, in a referendum petition or any particulars filed in relation thereto or at the hearing of a referendum petition, any particular person is alleged to have been guilty of a corrupt practice in relation to the referendum or where a copy of a referendum petition is served on a particular person by direction of the High Court, the High Court may, on the application of that person, add or name him as a respondent to such petition. 30 35

(4) Where, at the trial of a referendum petition presented by the Attorney-General, a question of law arises in relation to anything done or omitted by the referendum returning officer or a local returning officer, the High Court may, on the application of the Attorney-General, name the referendum returning officer or such local returning officer (as the case may be) as respondent to such petition to argue the said question of law, but for no other purpose. 40

(5) Where the referendum returning officer or a local returning officer is named as respondent to a referendum petition under the next preceding sub-section of this section, the costs and expenses incurred by such officer in or about appearing on and arguing the question of law shall be defrayed by the Minister for Finance out of moneys provided by the Oireachtas. 45 50

(6) References in this section to arguing a question of law shall be construed and have effect as including arguing such question before the Supreme Court on a case stated (if any) thereon as well as arguing such question before the High Court.

General provisions in respect of referendum petitions.

36.—The following provisions shall apply and have effect in relation to every referendum petition, that is to say:— 55

(a) the petition shall be presented by being lodged in the Central Office of the High Court, and shall be so presented not later than twenty-one days after the publication in the *Iris Oifigiúil* of the provisional referendum certificate to which the petition relates; 60

- 5 (b) save where the Attorney-General is the petitioner, a copy of the petition shall be served on the Attorney-General within five days after the day on which it is presented, and an affidavit verifying such service shall be filed in the Central Office of the High Court within the said five days;
- 10 (c) save where the Attorney-General is the petitioner, the petitioner shall, within five days after the petition is presented, give security for the costs of the Attorney-General to the amount of one thousand pounds either,
- 15 (i) by the lodgment of the sum of one thousand pounds with the Accountant of the Courts of Justice, or
- (ii) by entering into a recognisance, with three sureties accepted by the Master of the High Court, conditioned for the payment of the costs of the Attorney-General to such (if any) amount not exceeding one thousand pounds as shall be ordered by the High Court;
- 20 (d) if, in a case to which the foregoing provisions of this section in relation to serving a copy of the petition, filing an affidavit of service, and giving security for costs apply, those provisions are not all complied with, the petition shall, at the expiration of the time limited by this section for complying with those provisions, become
- 25 and be null and void;
- (e) the petition shall set out with reasonable particularity the grounds on which it is based and shall pray that the provisional referendum certificate to which it relates shall be reviewed by the High Court;
- 30 (f) the petition shall be signed by the petitioner or by his counsel;
- (g) where the ground or one of the grounds on which the petition is based is that corrupt practices prevailed
- 35 extensively in relation to the taking of the referendum in a particular constituency, such corrupt practices need only be stated generally in the petition, but save where the Attorney-General is the petitioner, the petitioner shall lodge a full and detailed statement of the particulars of such corrupt practices in the Central Office of the High Court and serve a copy thereof on the Attorney-General
- 40 within fourteen days after the presentation of the petition;
- (h) where a statement of particulars of corrupt practices has been lodged in pursuance of the next preceding paragraph of this section, the High Court may, at any time on the application of the Attorney-General, require the petitioner to furnish further and better particulars of such corrupt practices;
- 45 (i) if, at the expiration of twenty-one days from the publication of a provisional referendum certificate in the *Iris Oifigiúil*, no referendum petition has been presented in relation to such certificate, the Master of the High Court shall, immediately on the expiration of those twenty-one days, inform the referendum returning officer in writing
- 50 of that fact;
- (j) if a referendum petition is presented by the Attorney-General within the time limited by this section, the Master of the High Court shall forthwith inform the referendum returning officer in writing of that fact;
- 60 (k) if a referendum petition is presented by a person other than the Attorney-General within the time limited by this section, the Master of the High Court shall forthwith inform the referendum returning officer in writing of that fact and shall also, after, but not more than

seven days after, the expiration of twenty-one days from the publication of the relevant provisional referendum certificate in the *Iris Oifigiúil*, inform the referendum returning officer in writing either (as the facts may be)—

- (i) that the provisions of this section in relation to filing an affidavit of service on the Attorney-General and in relation to giving security for costs have been duly complied with in respect of such petition, or 10
- (ii) that the said provisions have not been complied with in respect of such petition and that such petition has therefore become null and void;
- (l) unless or until rules of court are made in respect of referendum petitions, the rules of court for the time being in force in respect of plenary summonses and the trial of actions in the High Court shall, subject to the provisions of this Part of this Act, apply and have effect in respect of referendum petitions and the trial thereof with the necessary modifications; 15 20
- (m) in the reckoning of any period of time mentioned in this section which does not exceed ten days, Sundays, bank holidays, Christmas Day, and Good Friday shall be excluded.

Giving of notice to interested persons.

37.—(1) Where, at any time before or during the trial of a referendum petition, it appears to the High Court that a particular person is so concerned in or affected by such petition that he ought to have notice thereof, the High Court may, on the application of the Attorney-General or on its own motion, direct that a copy of such petition together with such notice as is mentioned in the next following sub-section of this section be served on that person by the Attorney-General. 25 30

(2) The notice to be served on a person in pursuance of a direction of the High Court under the next preceding sub-section of this section shall state that it appears to the High Court that such person is so concerned in or affected by the referendum petition of which a copy is served with such notice that he ought to have notice of that petition, and the said notice shall also state that such person is entitled under this Part of this Act to apply, if he so thinks fit, to the High Court to have himself added or named as a respondent to such petition. 35 40

The trial of a referendum petition.

38.—(1) The following provisions shall have effect in respect of the trial of a referendum petition, that is to say:—

- (a) every referendum petition shall be tried by the High Court and every such trial shall be before three judges of that court; 45
- (b) the trial shall take place in the City of Dublin, but it shall be lawful for the court to transfer the trial or any part thereof to any other place whenever, owing to the number of local witnesses or for any other reason, such transfer appears to the court to be expedient; 50
- (c) if the trial or any part thereof is transferred to a place outside the City of Dublin, sections 41, 42, 43, and 44 of the Courts of Justice Act, 1936 (No. 48 of 1936), shall apply and have effect as if the court were the High Court on Circuit and the said place (if it is not an appeal town) were an appeal town; 55
- (d) the evidence at the trial shall, save where the court otherwise directs, be given *viva voce*;

- (e) the petitioner and the respondent (if any) shall each be entitled to adduce evidence and, where there are two or more respondents, each of them shall be entitled to be heard and adduce evidence separately;
- 5 (f) where two or more referendum petitions are presented in respect of the same provisional referendum certificate, all such petitions shall, so far as practicable, be heard and determined by the same three judges, and all or
10 any two or more of such petitions may, at the discretion of the court, be tried together or be consolidated;
- (g) the referendum returning officer shall attend the trial and produce and deliver to the court the provisional referendum certificate and generally give to the court such assistance as shall be requested of him by the court, but
15 without prejudice to his being called as a witness by any party to the petition;
- (h) no person shall be asked or required to state how he voted at the referendum;
- (i) the costs of all parties to the petition shall be in the discretion of the court, and the court shall have power to
20 order the costs or any part of the costs of any party to the petition to be paid by any other such party, and, where the costs or any part of the costs of the Attorney-General are so ordered to be paid by the petitioner, the
25 court shall make provision for the payment, where necessary, of such costs out of or by means of the security for costs given by the petitioner.

(2) The court trying a referendum petition shall be entitled, at any time during such trial, to direct that a particular person shall
30 be brought before the court and shall give evidence at such trial, and whenever the court so directs, the following provisions shall have effect, that is to say:—

- (a) the court shall have power to compel the attendance of the person to whom such direction relates, and the Attorney-General shall take all such steps as the court shall direct
35 for bringing such person before the court;
- (b) the costs and expenses of bringing such person before the court (including any moneys payable to him as witness's expenses) shall be defrayed in the first instance by the
40 Attorney-General but shall be part of the Attorney-General's costs and shall ultimately be borne accordingly;
- (c) the said person shall be compellable to give evidence and shall be examined by the court and may be cross-examined by any party to the referendum petition;
45
- (d) the said person shall not be entitled to refuse to answer any question on the ground that such answer would inculpate him in respect of any crime or offence.

39.—(1) At the trial of a referendum petition, the court shall
50 be entitled to require the referendum returning officer to produce and deliver to the court all or any of the documents in his possession relating to the referendum, including reports, packets, and documents sent to him by local returning officers.

Production of documents by the referendum returning officer.

(2) All documents delivered to the court under the foregoing
55 sub-section of this section shall be retained by the court until the relevant provisional referendum certificate has become final and shall then be returned to the referendum returning officer.

(3) While any documents are retained by the court under this section, it shall be lawful for the court to authorise any particular

person or persons to inspect all or any of such documents and, where necessary, to open sealed packets, and it shall be lawful for the court to impose such conditions and restrictions as it shall think proper in respect of any such inspection.

Re-taking a referendum in a constituency.

40.—(1) At the trial of a referendum petition which questions the validity of a provisional referendum certificate in respect of the voting in a particular constituency, it shall be lawful for the High Court to order that the referendum shall be taken again in that constituency, and when the High Court so orders the following provisions shall have effect, that is to say:—

- (a) the court shall, in the said order, appoint the day which shall be the polling day for the purpose of such re-taking of the referendum;
- (b) the referendum shall be retaken in the said constituency and the provisions of this Act in relation to the taking of a referendum (including the provisions relating to payment of the referendum returning officer for his services and expenses and to the charges and expenses of local returning officers) shall apply to such retaking, with the substitution of the polling day appointed by the said order of the court for a polling day appointed by the Minister;
- (c) when the referendum returning officer has received the report of the local returning officer of the result of the counting of the votes at such retaking, he shall forthwith report such result to the High Court.

(2) The High Court shall not order a referendum to be taken again in any constituency merely on account of a non-compliance with the Rules contained in the First Schedule to this Act or a mistake in the use of forms prescribed by or under this Act where it appears to the court that such referendum was conducted in that constituency in accordance with the general principles laid down in the Act and that such non-compliance or mistake did not affect the result of the referendum in the said constituency.

The final order on a referendum petition.

41.—(1) Where only one referendum petition is duly presented in respect of a provisional referendum certificate, the final order of the court on the trial of such referendum petition shall either—

- (a) confirm without alteration the said provisional referendum certificate which was the subject of the petition, or
- (b) direct that the said certificate shall be amended in accordance with the findings of the court (including the result of any retaking of the referendum) and confirm the said certificate as so amended.

(2) Where two or more referendum petitions are duly presented in respect of the same provisional referendum certificate, then and in such case, whether such petitions are tried separately or are tried together or are consolidated, one consolidated final order shall be made by the court on such petitions at the conclusion of the trials or trial thereof and such consolidated final order shall either—

- (a) confirm without alteration the said provisional referendum certificate which was the subject of the said petitions, or
- (b) direct that the said certificate shall be amended in accordance with the several findings of the court in regard to the said petitions respectively (including the result of any retaking of the referendum) and confirm the said certificate as so amended.

(3) Where the court confirms a provisional referendum certificate without alteration, the court shall cause a statement of the fact of such confirmation to be endorsed on such certificate by a registrar of the High Court and shall cause such certificate so
5 endorsed to be returned forthwith to the referendum returning officer.

(4) Where the court directs a provisional referendum certificate to be amended and confirms such certificate as so amended, the court shall cause such certificate to be amended in accordance
10 with such direction, and shall further cause a statement of the fact that such amendment was made by order of the court and of the fact that such certificate as so amended was confirmed by the court to be endorsed on such certificate by a registrar of the High Court, and shall cause such certificate so amended and
15 endorsed to be returned forthwith to the referendum returning officer.

(5) A provisional referendum certificate duly endorsed in accordance with this section shall, when it is received by the referendum returning officer from the High Court, forthwith become and be, in the form in which it was confirmed by the court,
20 final and incapable of being further questioned in any court and shall, in that form, be conclusive evidence of the voting at the referendum to which it relates and of the result of such referendum.

25 **42.**—Where the same day is the polling day in respect of two or more referenda and either a referendum petition or two or more referendum petitions questioning the provisional referendum certificate relating to one only of such referenda is or are duly presented or referendum petitions respectively questioning some but not all
30 of the provisional referendum certificates respectively relating to such referenda are duly presented, the following provisions shall have effect notwithstanding anything inconsistent therewith contained in this Act, that is to say:—

Provisions in respect of referenda having the same polling day.

35 (a) a provisional referendum certificate relating to any of such referenda shall not become final by reason of no referendum petition questioning such certificate having been duly presented;

40 (b) it shall be lawful for the Attorney-General, with the leave of the High Court, to present at any time a referendum petition questioning any provisional referendum certificate which relates to any of the said referenda and has not been confirmed by the High Court and is not the subject of a referendum petition duly presented;

45 (c) all the referendum petitions (duly presented) questioning any of the provisional referendum certificates relating to any of the said referenda shall, so far as practicable, be heard and determined by the same three judges, and all or any two or more of the said petitions may, at the discretion of the court be tried together or be consolidated;

50 (d) the final orders of the court on all the trials of the said referendum petitions shall be made on the same day;

55 (e) when the said final orders have been made, every provisional referendum certificate relating to any of the said referenda in respect of which no referendum petition was duly presented shall be deemed to have been confirmed by the court, and the court shall cause to be endorsed on every such certificate by a registrar of the High Court a statement that such certificate is deemed to have been confirmed by the High Court, and the court shall cause such certificate so endorsed to be returned
60 forthwith to the referendum returning officer;

(f) the referendum returning officer shall deliver to the High Court for endorsement under the next preceding para-

graph of this sub-section every provisional referendum certificate which is deemed under that paragraph to have been confirmed by the court, and every such certificate when so endorsed and received by the referendum returning officer from the High Court shall forthwith become 5 and be final and incapable of being questioned in any court and shall be conclusive evidence of the voting at the referendum to which it relates and of the result of such referendum.

Death of or delay by a petitioner.

43.—The following provisions shall apply and have effect in 10 relation to every referendum petition presented by a person other than the Attorney-General that is to say:—

- (a) where there are two or more petitioners and one or more but not all of them dies or die at any time before the final order of the court on the trial of the petition, the surviving petitioner or petitioners shall be entitled to carry on the petition subject to such application or order as may be required by rules of court; 15
- (b) where the only or the last surviving petitioner dies at any time before the final order of the court on the trial of the petition, the High Court shall, on application of the Attorney-General, transfer the carriage of the petition to the Attorney-General, and thereupon all subsequent proceedings on the petition shall be conducted as if the petition were a petition presented by the Attorney-General; 25
- (c) if the petitioner fails to proceed with reasonable speed with the proceedings on the petition, the High Court may, on the application of the Attorney-General, either forthwith make a final order confirming without alteration the provisional referendum certificate which was the subject of the petition or transfer the carriage of the petition to the Attorney-General and authorise him to proceed on the petition as if it had been presented by him; 30
- (d) nothing in this section shall operate to prevent the High Court ordering the costs or part of the costs of the Attorney-General to be paid out of or by means of the security for costs given by a deceased petitioner or by a petitioner who has failed to proceed with reasonable speed. 40

Appeal by case stated to the Supreme Court.

44.—(1) At any stage of the trial of a referendum petition, the High Court may, if it so thinks proper on its own motion or on the application of any party to such petition, state a case for the opinion of the Supreme Court on any question of law arising at such trial. 45

(2) When the High Court states a case for the opinion of the Supreme Court under this section, the High Court shall not make any final order in relation to the referendum petition in connection with which such case is stated until the Supreme Court has given its decision on the question referred to it by such case, and the High Court may adjourn the trial or any part of the trial of such referendum petition until such decision is given. 50

(3) The costs of all parties in or about a case stated for the Supreme Court under this section shall for all purposes be part of the costs of such parties respectively in or about the referendum petition in connection with which such case is stated. 55

FIRST SCHEDULE.

RULES FOR TAKING THE POLL AT A REFERENDUM.

PART I.

Functions of the Local Returning Officers.

5 1.—(1) It shall be lawful for any local returning officer with the consent of the Minister to appoint a deputy local returning officer for the discharge of all or any particular part of the duties of such local returning officer, and accordingly in this Schedule the expression "local returning officer" includes, in relation to
10 any duties for which a deputy local returning officer is so appointed, the deputy local returning officer so appointed.

Deputy local returning officer.

(2) The provisions of section 4 of the Electoral (Revision of Constituencies) Act, 1935 (No. 5 of 1935), and of the Second Schedule to that Act in relation to assistant returning officers shall
15 apply and have effect in relation to every referendum, and accordingly in this Schedule the expression "local returning officer" includes, in relation to any portion of a constituency in which an assistant returning officer is appointed or acts under the said provisions of the said Act, the assistant returning officer
20 so appointed or acting.

2.—As soon as practicable after the Minister has made an order appointing the polling day at a referendum, the referendum returning officer shall send to every local returning officer a copy of such order and a copy of the proposal which is the subject of
25 such referendum.

Notice to local returning officers.

3.—(1) Every local returning officer shall, immediately upon receiving the copy of the said order from the referendum returning officer, give public notice in the prescribed form of—

Public notices of the taking of the referendum.

- 30 (a) the taking of the referendum to which such order relates, and
(b) the proposal which is the subject of such referendum, and
(c) the post offices at which copies of the Bill containing such proposal may be inspected and purchased, and
(d) the date of the polling day at such referendum.

35 (2) Every local returning officer shall, as soon as may be after the publication of the said public notice, send a copy of that notice to the postmaster of the principal post office in each polling district in his constituency in an envelope or wrapper endorsed with the words "Notice of Referendum", and every such envelope or
40 wrapper so endorsed shall be forwarded and delivered free of charge by the Minister for Posts and Telegraphs.

(3) Every postmaster to whom a copy of the said notice is so sent shall upon receipt thereof forthwith publish the same in the manner in which Post Office notices are usually published.

45 4.—(1) The Minister for Posts and Telegraphs shall cause copies of the Bill containing the proposal which is the subject of the referendum to be made available for inspection and purchase by members of the public at such post offices throughout the State as shall be agreed upon between the said Minister and the
50 Minister for Local Government and Public Health at all times at which such post offices are open from the third day after the date of the order appointing the polling day until the polling day.

Availability of copies of the Bill at post offices.

(2) Any member of the public shall be entitled to inspect free of charge a copy of the said Bill at any post office at which it is
55 made available for such inspection in pursuance of this rule during any time at which it is so made available, and also to purchase at any such post office and time a copy of the said Bill on paying therefor such sum (not exceeding six pence) as shall be fixed by the Minister for Posts and Telegraphs.

Provision of polling stations.	5.—At every polling place the local returning officer shall provide a sufficient number of polling stations for the accommodation of the voters entitled to vote at such polling place, and shall distribute the polling stations amongst those voters in such manner as he thinks most convenient.	5
Provision of compartments.	6.—Every polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the local returning officer thinks necessary, but at least one compartment shall be provided for every one hundred and fifty voters entitled to vote at such polling station.	10
Position of polling station.	7.—A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.	
Voting at polling station.	8.—No person shall be admitted to vote at any polling station, except the one allotted to him	15
Notice of situation of polling stations.	9.—The local returning officer shall give public notice of the situation of all polling stations in his constituency, and the description of voters entitled to vote at each such station.	
Local returning officer to provide materials, etc.	10.—The local returning officer shall provide at every polling station materials wherewith voters may mark their ballot papers, instruments for stamping the official mark on the ballot papers, and copies of the register of electors for the time being in force or such part thereof as contains the names of the voters allotted to vote at such station.	20 25
Secrecy of the official mark.	11.—The local returning officer shall keep the official mark secret.	
Appointment of clerks to assist presiding officers.	12.—(1) The local returning officer may appoint, for each polling station, such and so many clerks as he shall think proper to assist the presiding officer at such polling station. (2) A presiding officer may do, by the clerks appointed under this rule to assist him, any act which he is required or authorised by this Act to do, except ordering the arrest of any person or the exclusion or ejection of any person from the polling station.	30
Duties of presiding officers during the poll.	13.—Every presiding officer shall keep order at his polling station, shall regulate the number of voters to be admitted at a time, and shall exclude all other persons except his clerks, the personation agents (if any) appointed for his polling station, and the members of the <i>Gárda Síochána</i> on duty.	35
Undertaking for secrecy at the poll.	14.—Every local returning officer and every officer, clerk, personation agent, and other person who is permitted to be present in a polling station (otherwise than for the purpose of voting at the poll) shall, before the opening of the poll, sign an undertaking in the prescribed form to preserve the secrecy of the ballot.	40 45
Ballot boxes.	15.—(1) Every ballot box shall be so constructed that, without the box being unlocked, the ballot papers can be introduced therein, but cannot be withdrawn therefrom. (2) The presiding officer at each polling station, immediately before the commencement of the poll, shall show the ballot boxes empty to such persons, if any, as may then be present in such station, so that they may see that they are empty, and shall then lock each ballot box and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.	50 55

16.—Immediately before a ballot paper is delivered to a voter it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the voter as stated in the copy of the register of electors shall be called out, and the number of such voter shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the voter to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

Method of voting.

17.—The voter, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

Method of voting continued.

18.—(1) If any voter satisfies the presiding officer that his sight is so impaired or he is otherwise so physically incapacitated or he is so illiterate that he is unable to vote without assistance, the presiding officer shall, in the presence of the personation agents (if any), cause the vote of such voter to be marked on a ballot paper in the manner directed by such voter and shall place the ballot paper so marked in the ballot box.

Incapacitated voters.

(2) A request made by a voter within four hours before the hour fixed for closing the poll to have his ballot paper marked for him under this rule may be refused by the presiding officer, if in his opinion, having regard to the number of voters then coming in to vote or likely to come in to vote before the close of the poll, his acceding to such request would interfere with the proper discharge of his duties or would unduly obstruct the voting of other voters.

(3) In carrying out the provisions of this rule, the presiding officer shall observe and comply with the following directions, that is to say:—

(a) the presiding officer shall ask the voter, “Which do you wish to do—to vote in favour of the proposal? or to vote against the proposal?”;

(b) the presiding officer shall then mark the ballot paper in accordance with the answer of the voter to the said question;

(c) where the voter fails to understand the import of the said question, the presiding officer shall read out to the voter the proposal as stated on the ballot paper and then ask the voter, “Do you approve of or do you object to that proposal becoming law?” and then mark the ballot paper in accordance with the answer of the voter;

(d) where the ballot paper enables the voter to vote in respect of two or more proposals, the presiding officer shall comply with the foregoing sub-paragraphs of this paragraph in respect of each of such proposals separately and successively;

(e) the presiding officer shall not accept, consider, or act upon any paper or document purporting to show the manner in which the voter desires to vote and shall not mark the ballot paper of the voter otherwise than after compliance and in accordance with the foregoing provisions of this paragraph of this rule.

19.—If a person, representing himself to be a particular person named on the register of electors, applies for a ballot paper after another person has voted as such person, the applicant shall, upon

Alleged personation.

duly answering the questions and taking the oath or affirmation permitted by this Act to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of electors, and set aside in a separate packet and shall not be counted by the returning officer, and the name of such voter and his number on the register shall be entered on the tendered votes list in the prescribed form. 5 10

Inadvertent destruction of ballot paper.

20.—A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled. 15 20

Sealing and disposal of ballot boxes.

21.—(1) As soon as practicable after the close of the poll, the presiding officer at each polling station shall seal up with his own seal the ballot boxes used at the poll in that polling station so as to prevent the introduction of additional ballot papers.

(2) As soon as practicable after the close of the poll, the presiding officer at each polling station shall deliver the said ballot boxes, sealed up as directed by this rule, to the local returning officer who shall thereupon take charge of such ballot boxes. 25

Duty of presiding officer at close of poll.

22.—The presiding officer at each polling station, as soon as practicable after the close of the poll, shall make up into separate packets sealed with his own seal— 30

(a) the unused and spoilt ballot papers, placed together, and

(b) the tendered ballot papers, and

(c) the marked copies of the register of electors, and the counterfoils of the ballot papers, and 35

(d) the tendered votes list, and shall deliver all such packets to the local returning officer.

Statement by presiding officer.

23.—The packets mentioned in the next preceding rule shall be accompanied by a statement in the prescribed form made by the presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of (a) ballot papers in the ballot boxes, (b) unused ballot papers, (c) spoilt ballot papers, and (d) tendered ballot papers, which statement is in this Act referred to as the ballot paper account. 40

Opening of the ballot boxes.

24.—As soon as practicable after the close of the poll in a constituency, the local returning officer for that constituency shall open each ballot box used at the poll in that constituency, take out the ballot papers therein, count and record the number thereof, and then mix together the whole of the ballot papers contained in the said ballot boxes. 45 50

Counting of the votes.

25.—(1) When the local returning officer has mixed the ballot papers together, he shall count the votes recorded thereon and ascertain the number of votes thereby given in favour of the proposal which is the subject of the referendum and the number of votes thereby given against that proposal and shall record the said numbers respectively. 55

(2) Where the ballot papers relate to two or more referenda, the local returning officer shall count and record in accordance with this rule separately the numbers of votes recorded on such ballot papers in favour of and against the several proposals which are the respective subjects of such referenda. 60

(3) While carrying out the foregoing provisions of this rule, the local returning officer shall reject any ballot papers which are invalid but, where the ballot papers relate to two or more referenda, he shall distinguish between ballot papers which are wholly invalid and ballot papers which are invalid only in respect of one or some but not all of such referenda.

(4) The decision of the local returning officer as to the validity or invalidity of any ballot paper shall be final and capable of being questioned only by a referendum petition.

10 26.—(1) At any time during the counting of the votes, the local returning officer may and, if so required by any person lawfully present, shall recount the votes recorded on all the ballot papers or on any particular parcel of ballot papers.

(2) If, on any first recount under this rule, the result of such
15 recount is the same as the result of the original count, the local returning officer shall not be obliged to make any further recount, but if, on such first recount, the result of such recount is different from the result of the original count, the local returning officer shall repeat the recount until the results of two consecutive such recounts
20 are identical.

27.—(1) The local returning officer shall endorse "rejected" on any ballot paper which he rejects as invalid and, where such ballot paper relates to two or more referenda, shall add (as the case may require) either the word "wholly" or an indication of the
25 referendum in respect of which it is rejected.

Report in respect of rejected ballot papers.

(2) The local returning officer shall report to the referendum returning officer the number of ballot papers rejected and not counted by him under the several heads following, that is to say:—

- (a) want of official mark,
- 30 (b) writing or mark by which the voter could be identified,
- (c) unmarked or void for uncertainty.

(3) Where the ballot papers relate to two or more referenda, the local returning officer shall in his said report distinguish between the ballot papers which he rejects as being wholly unmarked or
35 void for uncertainty and those which he rejects as being unmarked or void for uncertainty in respect of one or some, but not all, of such referenda.

28.—The local returning officer, while counting and arranging the ballot papers and recording the numbers thereof in pursuance of the preceding rules, shall keep the ballot papers with their faces
40 upwards and shall take all proper precautions for preventing any person from seeing the numbers printed on the backs of such ballot papers.

Precautions for preservation of secrecy.

29.—(1) Each member of Dáil Eireann for the constituency may
45 nominate two persons to be present on his behalf at the opening of the ballot boxes and counting of the votes; any such member may nominate himself as one of the persons so nominated by him.

Persons to be present at the opening of the ballot boxes and counting of the votes.

(2) The local returning officer, his assistants and clerks, persons nominated as aforesaid by members of Dáil Eireann, and no other person (except with the permission of the local returning officer)
50 may be present at the opening of the ballot boxes and counting of the votes.

(3) The local returning officer and every clerk, assistant, and person who is permitted to be present at the opening of the ballot boxes or the counting of the votes shall, before the commencement
55 of such opening, sign an undertaking in the prescribed form to preserve the secrecy of the ballot.

30.—(1) The local returning officer shall, so far as practicable, proceed continuously with the opening of the ballot boxes and counting of the votes, allowing only time for refreshment and excluding
60 (except in so far as he may consider expedient) the hours between seven o'clock at night and nine o'clock on the succeeding morning.

Continuity of proceedings on the opening of the ballot boxes and counting of the votes.

(2) During the said excluded time, the local returning officer shall place the ballot papers and other documents relating to the poll under his own seal and shall otherwise take proper precautions for the security of such papers and documents.

Sending of report and documents to the referendum returning officer.

31.—When the local returning officer has completed the counting of the votes, he shall do the following things, that is to say:—

- (a) send to the referendum returning officer a report in writing in the prescribed form stating the number of valid votes recorded in favour of the proposal, the number of valid votes recorded against the proposal, and such other matters as shall be prescribed; 10
- (b) where the same day is the polling day at two or more referenda, the local returning officer shall send to the referendum returning officer a separate such report as aforesaid in respect of each such referendum; 15
- (c) send to the referendum returning officer the following packets and statement in respect of postal voters, that is to say: the packet containing the declarations of identity which accompanied ballot papers duly accepted, and the packet containing rejected declarations of identity with the envelopes (if any) attached thereto, and the packet containing rejected ballot papers, and a statement, in the form directed by the Minister, showing the number of ballot papers sent to postal voters and giving, in regard to such ballot papers, the particulars required by the form; 20 25
- (d) seal up in separate packets the counted ballot papers and the rejected ballot papers and (without opening the sealed packets containing respectively the tendered ballot papers, the marked copy of the register of electors, and the counterfoils) proceed to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him, the unused and spoilt ballot papers, and the tendered votes list and, after resealing each examined packet, prepare a report stating the result of such verification; 30 35
- (e) send to the referendum returning officer all the packets (including sealed packets not opened), ballot paper accounts and tendered votes lists mentioned in the next preceding paragraph of this rule, and also the report prepared in pursuance of that paragraph, having previously endorsed on each such packet a description of its contents, an identification of the referendum to which they relate, and the name of his constituency. 40

PART II.

45

Functions of the Referendum Returning Officer.

The provisional referendum certificate.

32.—(1) As soon as the referendum returning officer has received from every local returning officer the report of the numbers of the votes recorded in his constituency, the referendum returning officer shall prepare from such reports and shall sign the provisional referendum certificate in the prescribed form stating:—

- (a) in the case of a constitutional referendum, the number of votes recorded in favour of the proposal which is the subject of the referendum, the number of votes recorded against such proposal, and whether a majority of the votes recorded at the referendum was or was not recorded in favour of such proposal; 55
- (b) in the case of an ordinary referendum, the number of votes recorded in favour of the proposal which is the 60

subject of the referendum, the number of votes recorded against such proposal, and, if the number of votes recorded against such proposal exceeds the number of votes recorded in favour of such proposal, the total number of Dáil electors on the register of electors for the time being in force, and whether the number of votes recorded against such proposal is or is not less than thirty-three and one-third per cent. of the said total number of Dáil electors, and in any case whether such proposal was or was not vetoed at such referendum;

(c) in every case, the number of votes reported by the local returning officers to have been recorded in each constituency in favour of the proposal which is the subject of the referendum and the number of votes similarly reported to have been recorded in each constituency against such proposal.

(2) As soon as may be after he has signed the provisional referendum certificate, the referendum returning officer shall publish in the *Iris Oifigiúil* a copy of that certificate together with a statement that such certificate will become final and incapable of being questioned when he is informed by the Master of the High Court either that no referendum petition has been duly presented in respect thereof or that every such petition so presented has become null and void.

(3) When a provisional referendum certificate has become final otherwise than by being confirmed by the High Court, the referendum returning officer shall endorse on such certificate a statement that it has so become final and shall send a copy thereof to the Taoiseach.

(4) When a provisional referendum certificate has been confirmed or is deemed to have been confirmed by the High Court and is returned to the referendum returning officer with a statement of the fact of such confirmation endorsed thereon in accordance with this Act, the referendum returning officer shall send a copy of such certificate to the Taoiseach.

33.—(1) Subject to the provisions of the following paragraphs of this rule, the referendum returning officer shall retain all reports, documents, and packets sent to him by a local returning officer in respect of a referendum until the expiration of six months after the provisional referendum certificate in respect of such referendum has become final and shall then destroy all such reports, packets, and documents.

Disposal of documents.

(2) Where the same day is the polling day at two or more referenda, the referendum returning officer shall, notwithstanding anything contained in the next preceding paragraph of this rule and subject to the provisions of the next following paragraph of this rule, retain all the reports, documents, and packets mentioned in the said next preceding paragraph which relate to any one or more of the said referenda until six months after the several provisional referendum certificates in respect of the said referenda respectively have all become final.

(3) The obligation to retain reports, documents, and packets imposed on the referendum returning officer by the preceding paragraphs of this rule is subject and without prejudice to the obligation imposed on him by this Act to produce and deliver such reports, documents, and packets to the High Court at the hearing of a referendum petition.

34.—Notwithstanding anything contained in the next preceding rule, no sealed packet of counterfoils shall at any time be opened

Non-inspection of counterfoils and counted ballot papers.

and no counterfoil and no counted ballot paper shall at any time be inspected save under and in accordance with an order of the High Court under Part III of this Act.

PART III.

General.

5

Method of giving public notice.

35.—Where the referendum returning officer or a local returning officer is required or authorised by this Act to give any public notice, he shall, unless some other method is prescribed by this Act, give such notice by such advertisements, placards, handbills, or other means as he thinks best calculated to afford information to the voters. 10

Restrictions on persons to be employed by returning officers.

36.—No person shall be employed by the referendum returning officer or by a local returning officer who has been employed by any other person in or about the referendum or the taking of the poll. 15

SECOND SCHEDULE.

FORMS OF BALLOT PAPERS.

I.

FORM OF BALLOT PAPER WHERE ONE REFERENDUM ONLY IS BEING TAKEN.

FORM OF FRONT OF BALLOT PAPER.

Do you approve or do you disapprove of the Proposal stated in the first column below becoming law ?

	PROPOSAL	I APPROVE	I DISAPPROVE
Referendum counterfoil			
Number			

INSTRUCTIONS FOR MARKING THIS PAPER.

If you approve of the Proposal stated in the first column above becoming law, make the mark " x " in the above column headed " I approve."

If you disapprove of that Proposal becoming law, make the mark " x " in the above column headed " I disapprove."

FORM OF BACK OF BALLOT PAPER.

Number

Constituency of Referendum on Proposal that

.....

NOTE.—The number on the back of the ballot paper is to correspond with the number on the counterfoil.

II.

FORM OF BALLOT PAPER WHERE TWO OR MORE REFER-
ENDA ARE BEING TAKEN ON THE SAME DAY.

FORM OF FRONT OF BALLOT PAPER.

In the case of each of the Proposals stated in the first column below,
do you approve or do you disapprove of the Proposal becoming law ?

	PROPOSALS	I APPROVE	I DISAPPROVE
Referendum counterfoil	1.		
Number....	2.		
	3.		

INSTRUCTIONS FOR MARKING THIS PAPER.

You are to vote separately in regard to each of the Proposals stated
in the first column above, but you are not obliged to vote on every of
those Proposals.

If you approve of any of the Proposals stated in the first column
above becoming law, make the mark "x" in the above column
headed "I approve" opposite every Proposal of which you so
approve.

If you disapprove of any one or more of those Proposals becoming
law, make the mark "x" in the above column headed "I
disapprove" opposite every Proposal of which you so disapprove.

FORM OF BACK OF BALLOT PAPER.

Number Referenda on the following Proposals, viz:—

Constituency of

-
1.
 2.
 3.

NOTE.—The number on the back of the ballot paper is to correspond
with the number on the counterfoil.

THIRD SCHEDULE.

REPEALS.

Number and Year	Short title	Extent of Repeal
No. 12 of 1923.	The Electoral Act, 1923.	Part V, and the Seventh Schedule.
No. 38 of 1923.	The Prevention of Electoral Abuses Act, 1923.	Section 23.

File

File

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Rithte ag Dáil Eireann, 4adh Feabhra, 1942.

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REFERENDUM BILL, 1941.

BILL

entitled

An Act to make provision for the taking of a Referendum and for the trial by the High Court of questions arising in respect of the taking of a Referendum and to provide for matters incidental to or connected with the matters aforesaid.

Passed by Dáil Eireann, 4th February, 1942.

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