



BILLE AN REIFRINN, 1994
REFERENDUM BILL, 1994

EXPLANATORY MEMORANDUM

Introduction

1. The purpose of the Bill is to amend and consolidate the law relating to the taking of a referendum. Existing law on the subject is contained in eight enactments, the principal Act being the Referendum Act, 1942. The Bill will repeal the 1942 Act in its entirety and will repeal the other enactments insofar as they relate to referenda. A further eight enactments, which are now spent, relating to the taking of individual referenda, will also be repealed. The Bill applies to referenda, with necessary modifications, the provisions of the Electoral Act, 1992 in relation to matters such as postal voting, special voting, taking the poll at polling stations, arrangements for the counting of votes and electoral offences.

The procedures in the Bill will apply to the taking of an "ordinary" referendum (a referendum held pursuant to Article 27 of the Constitution) as well as to a constitutional referendum.

Proposed Changes in the Law

2. The changes from existing law proposed in the Bill include:

—*Recount of votes cast at a referendum.* Under the Bill the referendum returning officer will have power to direct a complete re-examination and recount of the votes cast in every constituency. Under existing law a recount may be demanded in an individual constituency but there is no provision for a complete recount of the votes in all the constituencies. The provision is intended to deal with a situation where the overall result of the voting might be very close and a recount would be desirable to put the matter beyond doubt, thus avoiding the necessity for a time-consuming and expensive referendum petition.

—*Form of ballot paper.* Under the Bill the Minister may provide, by order, approved by both Houses, for the inclusion of a descriptive heading on the ballot paper at a referendum where this is considered necessary. Similar provision was made in special legislation on a number of occasions in the past where the polls at two or more referenda were taken on the same day.

—*Transfer of vote.* An elector employed by a local returning officer may be authorised to vote in the polling station at which he/she is employed even if the station is outside his/her own constituency.

—*Counting the votes.* The requirement in existing law for ministerial approval for the appointment of a deputy local returning officer and for the provision of a counting centre outside the constituency is omitted. The local returning officer is enabled to record on the ballot paper the effect of his/her ruling on a "doubtful" paper.

—*Questioning of result of referendum.* The provisions relating to referendum petitions will be tightened up in the Bill. Leave of the High Court to present a petition must be sought within 7 days of the publication of the provisional referendum certificate rather than 10 days as provided under existing law. The petition must be presented within 3 days of the grant of leave by the High Court — at present a petition may be presented within 21 days of the publication of the provisional referendum certificate.

PART I

GENERAL

3. *Part I* contains technical provisions, common to most statutes, including short title and commencement, repeal of existing provisions, interpretation of terms used and provision for regulations and expenses. In addition to the interpretation of expressions used in the Bill *section 2* sets out the necessary modifications of those provisions of the Electoral Act, 1992 which are applied to referenda by this Bill.

Section 6 applies to referenda, with modifications, the provisions of the Electoral Act, 1992 relating to electoral offences and penalties for such offences.

Section 7 imposes on every person, present at any of the proceedings at a referendum, an obligation to maintain and aid in maintaining the secrecy of the ballot. *Section 8* provides that a person may not in any legal proceedings be required to state how he/she voted. *Section 9* deals with the method of publication of notices by returning officers.

PART II

TAKING A REFERENDUM

4. This Part restates, with some changes, the law relating to the taking of a referendum. The taking of a poll at a referendum will be conducted in the same manner as at a Dáil election and the detailed rules in this regard contained in the Electoral Act, 1992 are applied with necessary modifications (*sections 28, 29, 30 and 32*). The rules in question include those relating to the procedure at polling stations, postal voting, home voting by disabled voters and voting on islands.

Sections 10 and 12 provide, respectively, for the making by the Minister of an order appointing polling day at a constitutional referendum and at an ordinary referendum and specify the period which must elapse between the making of the order and the polling day. *Section 11* provides that where the Dáil is dissolved following the passing of a Constitution Amendment Bill, the Minister may appoint the polling day at the general election to be polling day at the referendum. If the polling day at the referendum has already been appointed, the section enables the polling day to be altered so as to coincide with the polling day at the general election. The hours of polling must be fixed in the polling day order in accordance with *section 13*.

Section 14 provides for the appointment of a referendum returning officer and his/her replacement in the event of illness. The section contains a general statement of the returning officer's duties and provides for payment of the expenses incurred by the officer. Under *section 15*, the person who would be returning officer at a Dáil election in a constituency will be the local returning officer for that constituency

at a referendum. *Section 16* provides for payment of the expenses incurred by local returning officers in the conduct of a referendum.

Section 17 requires each registration authority to send to the referendum returning officer details of the number of presidential electors on the register of electors not later than 5 days before the polling day at an ordinary referendum. Unlike the position at a constitutional referendum, where the issue is decided by a majority of the votes cast, the question of whether a Bill, which is the subject of an ordinary referendum, is vetoed is settled by reference to the proportion of the total electorate who vote against it.

In accordance with *section 18*, the referendum will normally be conducted by reference to Dáil constituencies but the Minister may order it to be conducted by reference to counties and county boroughs. Such an arrangement could be considered, for example, in order to facilitate the taking of the polls should a referendum and local government elections be held on the same day. Under *section 19* the same polling districts and polling places will apply at a referendum as at a Dáil election.

Section 20 requires the referendum returning officer to send to each local returning officer a copy of the order appointing polling day at a referendum and a copy of the Bill containing the proposal which is the subject of the referendum. Under *section 21*, local returning officers are required to give public notice of the taking of the referendum including information on where copies of the relevant Bill, which is the subject of the referendum, may be inspected and purchased. *Section 22* provides that the Bill, which is the subject of the referendum, must be made available for inspection and purchase at post offices.

Section 23 provides for the issue at a referendum of a statement for the information of voters, approved by the Dáil and Seanad, regarding the proposal which is the subject of the referendum. Such a statement has been issued in relation to all referenda held to date.

The forms of ballot paper to be used at referenda are set out in the *Second Schedule*. *Section 24* enables the Minister to provide by order for the inclusion of a descriptive heading on the ballot paper where this is considered necessary. Such an order would require approval in draft by both Houses of the Oireachtas. Descriptive headings have been provided for in special legislation in relation to certain referenda in the past. The purpose of the headings is to help electors distinguish between the proposals where two or more referenda are held on the same day.

Section 25 provides for the placing of an official mark on each ballot paper at the time it is issued.

Under *section 26*, a member of the Dáil for the constituency and any member of the Seanad may appoint agents to be present at the issue of postal voters ballot papers, the opening of postal voters ballot boxes and at the counting of the votes. They may also appoint personation agents to be present at polling stations on polling day. Returning officers and any persons employed by them in connection with the referendum may not act as agents or be associated in furthering any particular result at a referendum (*section 27*).

Section 31 enables an elector employed by a local returning officer in connection with the referendum and disabled electors to be authorised to vote at a polling station other than the one for which they are registered.

PART III

THE COUNTING OF THE VOTES

5. *Section 33* applies, with necessary modifications, the Dáil election rules relating to the arrangements for the counting of votes, including the appointment of the counting centre and the right of persons to attend at the count. The law in relation to invalid ballot papers is contained in *section 34*. Under *section 35* the local returning officer is required to count the valid ballot papers and ascertain the number of votes in favour of the proposal and against the proposal and to notify the referendum returning officer of the result.

Section 36 provides that a local returning officer may, on his own initiative, or at the request of an agent, recount the votes recorded on all ballot papers or on ballot papers contained in any particular parcel. The section also empowers the referendum returning officer to order a complete re-examination and recount of the votes in every constituency. This is a new provision. It is envisaged that it would be used where the overall result of the voting may be very close. A complete recount could serve to put the matter beyond doubt and obviate the need for a referendum petition.

Section 37 requires the local returning officer to furnish to the referendum returning officer, at the completion of the counting of the votes, a written report giving details of the number of votes recorded in favour of the proposal which is the subject of the referendum, the number of votes recorded against the proposal and the number of invalid votes.

The ballot papers and other documents used at a referendum will be sent to the referendum returning officer who will retain them for 6 months and then cause them to be destroyed unless otherwise directed by order of the High Court (*section 38*). The High Court may order the inspection or production of such documents for the purpose of a referendum petition or for the purpose of a prosecution for an electoral offence (*section 39*).

Under *section 40*, the referendum returning officer will prepare, in the prescribed form, a provisional referendum certificate showing the result of the voting at the referendum. The provisional referendum certificate becomes final unless successfully challenged in the High Court by way of a petition. *Section 41* requires the Master of the High Court to inform the referendum returning officer where no petition is presented within the time allowed for this purpose or where any petition so presented has become null and void.

PART IV

REFERENDUM PETITIONS

6. *Part IV* restates, with amendment, the law relating to the questioning of the result of a referendum by means of a referendum petition. Existing law on this matter is contained in Part III of the Referendum Act, 1942. The principal changes involve reduction in the time allowed for lodging a petition and a stipulation that the grounds on which the petition is based must be such as to materially affect the result of the referendum as a whole.

Section 42 provides for questioning the result of a referendum by way of petition to the High Court. A petition may only be presented with the leave of the High Court on application made not later than 7 days after the publication of the provisional referendum certificate. Leave to present a petition may be sought by the Director of Public Prosecutions or any person registered or entitled to be registered as a presidential elector. The grounds of petition are limited to electoral offences, obstruction of the referendum, failure to conduct the referendum in accordance with this Bill or mistake or irregularity likely to have affected the result of the referendum as a whole (*section 43*).

Section 44 requires the petition to be presented not later than 3 days after the grant of leave by the Court, requires the lodgement of £5,000 as security for costs and sets out the procedure for presenting the petition. *Sections 45* and *46* contain technical provisions in relation to the content of a petition and procedures at the trial. Under *section 47* the Court may order all or any of the votes cast in any constituency to be counted afresh under its direction. It is made clear that the Court has power to reverse any decision of the local returning officer at the original count. *Section 48* provides that the Court may order the referendum to be taken again in any constituency on a day fixed by the Court.

Section 49 regulates the procedure for the withdrawal of a referendum petition. Leave of the Court must be obtained. Under *section 50*, any person who would be eligible to present a petition may be substituted by the Court in place of a petitioner who has withdrawn. *Section 51* enables the High Court to transfer carriage of the petition to the Director of Public Prosecutions where the petitioner dies or fails to proceed with the petition.

Section 52 provides that the Court may require any person to give evidence at the trial of a petition and that a witness may not refuse to answer any question on the ground that it would incriminate him/her, or on the grounds of privilege. He/she may, however, be given protection in relation to the evidence given.

Under *section 53*, the Court will have discretion to order the costs of any party to be paid by any other party to the petition. *Section 54* provides for payment of the costs of the referendum returning officer or any local returning officer in relation to a petition. Costs incurred by such officer or awarded against him/her will normally be paid out of the Central Fund, but where the High Court considers that a returning officer has been grossly negligent, it may order the officer to be personally liable for the costs.

Section 55 provides for the statement of a case for the opinion of the Supreme Court on any question of law arising at the trial of a petition.

Section 56 deals with the service of documents.

Section 57 requires the Court to determine the matter at issue in a referendum petition and, in its final order, to confirm the provisional referendum certificate with or without modification. A provisional referendum certificate confirmed by the Court becomes final and incapable of being questioned further.

Section 58 provides that where two or more referenda are held on the same day and some, but not all, of the provisional certificates are questioned by referendum petitions, none of the certificates shall become final until the High Court has determined all the petitions. The Director of Public Prosecutions may, with the leave of the court, present a petition in relation to any such certificate which is not already the subject of a petition.

**An Roinn Comhshaoil,
Feabhra, 1994.**

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