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**AN BILLE TOGHCHÁIN (LEASÚ) 2006  
ELECTORAL (AMENDMENT) BILL 2006**

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**EXPLANATORY MEMORANDUM**

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*General*

The main purpose of this Bill is to provide postal voting for prisoners, subject to the standard requirements under electoral law being met. Under existing electoral law, there is no specific mechanism to enable prisoners to exercise the franchise: the Bill will address this. The provisions of the Bill are based on existing postal voting procedures for other categories of voters, revised as appropriate. Prisoners will continue to be registered at their home address and, for voting purposes, will be deemed to be ordinarily resident in their home constituency. Prisoners must be able to establish that they were ordinarily resident in the State prior to being imprisoned in order to avail of the postal voting arrangements. As is the case with all voters, citizenship will determine the type of elections at which prisoners can vote.

Other provisions in the Bill are technical amendments to local elections and presidential election count rules and authority for members of the Garda Síochána or registration authority officials to witness statutory declarations for EU voters registering to vote for the first time in European Parliament elections in Ireland.

*Section 1* of the Bill is a standard interpretation provision setting out definitions of various terms including the definition of a prison.

*Section 2* allows an applicant who satisfies the registration authority that he or she would be unlikely to be able to vote in person on polling day because of his or her detention in prison to be included in the postal voters list. Applications must be made by the last date for making claims for correction in the draft register (i.e. 25th November).

Prisoners will have to establish that they were ordinarily resident in the State prior to their imprisonment in order to avail of the postal voting arrangements. The section also provides that a prisoner will be entered in the postal voters list for the constituency where he or she would have been residing were it not for his or her detention. A prison location will not be used for constituency purposes. As with all electoral codes, determination of ordinary residence will be a matter for the registration authorities.

*Section 3* provides a procedure for applying for entry in the postal voters list, which is largely based on the existing application provisions for the occupation and student category of postal voters. Under the section, a prisoner who wishes to be included in the list must submit an application on a form directed by the Minister, which must be signed by the applicant and completed according to the instructions provided. The completed application must be supported

by an accompanying certificate from a relevant prison official, who will send it or arrange for it to be sent by post in accordance with standard prison postal arrangements, so as to reach the registration authority concerned by the last date for making claims related to the draft register (i.e. not later than 25th November). The accompanying certificate must be signed by the relevant prison official to verify that the applicant is a prisoner for the purposes of inclusion in the postal voters list.

*Section 4* obliges an applicant to provide any additional information or documents to the registration authority to determine his or her eligibility for inclusion in the postal voters list. If such information is not received within a specified time (not being less than 7 days), the application will be deemed to have been withdrawn. The intent of this section is to allow registration authorities to be satisfied that the applicant meets the necessary qualification criteria and is similar to existing provisions in electoral law.

*Section 5* requires registration authorities to give public notice each year within the period of 14 days before the qualifying date for registration purposes (1st September) of the category of electors who are eligible for inclusion on the prisoners part of the postal voters list; the manner in which and the time before which applications must be submitted; and the times and places at which application forms may be obtained. This must include every prison situated in the area of the authority, and forms have to be supplied free of charge to anyone requesting one.

*Section 6* sets out the procedures to be followed by the registration authority following examination of the application by a prisoner for inclusion in the postal voters list, including the granting or refusal of an application and notification to the applicant of the decision. Applications cannot be accepted by a registration authority after 25th November (last date for claims for corrections to the draft register) but there is scope, if necessary, to vary this deadline by way of Ministerial order to dovetail into the period in which the new arrangements for prisoners first come into operation. This will facilitate prisoners who wish to vote at any election/referendum held in the period immediately following enactment.

There is also provision for an appeal to the County Registrar in the event of an application for entry in the postal voters list being refused by the registration authority, which is based on similar provisions for other categories of postal voters.

*Section 7* sets out the procedures for voting by prisoners entered in the postal voters list. These are based on the provisions of Part 13 of the Electoral Act 1992 in relation to other categories of postal voters, with appropriate modifications. Generally, the procedures include matters such as the issuing of ballot papers and other appropriate documentation to prisoners by post; completion of the declaration of identity and of ballot papers (in secret); and instructions/envelopes for the proper return of ballot papers and supporting documentation to the returning officer. In this regard, the relevant prison official will, on behalf of the prisoner, send the envelope containing the election documentation or arrange for it to be sent by post to the returning officer, in accordance with standard prison postal arrangements. *Section 7(2)* ensures that these modifications in relation to postal voting in Dáil elections will also apply to presidential elections and referendums.

*Section 8* amends the European Parliament Elections Act 1997 by inserting a new provision which sets out procedures for postal voting

by prisoners at a European Parliament election. The provision is required as European Parliament electoral law has separate rules governing postal voting, although they are virtually identical to the Dáil electoral law. The voting procedures for prisoners registered as postal voters at European Parliament elections correspond to the procedures set out in *section 7* in respect of Dáil and Presidential elections and referenda.

*Section 9* amends the Local Elections Regulations 1995 by inserting a new article which sets out procedures for postal voting by prisoners at a local election. The article is required as local elections law has separate rules governing postal voting, although they are virtually identical to the Dáil electoral law. The voting procedures for prisoners registered as postal voters at local elections correspond to the procedures set out in *sections 7* and *8* and will ensure consistency across the various electoral codes in the new arrangements.

*Section 10* amends section 15A of the Electoral Act 1992 by inserting a new provision to allow a prisoner who is not on the postal voters list to make application for inclusion in the supplement to the postal voters list. This amendment will allow the same procedures, suitably modified, to be used by prisoners when applying for entry in the supplement as apply to their applications for entry in the postal voters list itself. It will help meet the situation of an elector who may not have been registered nor indeed in prison (and therefore not eligible for inclusion in the postal voters list) by the specified date (25th November).

*Section 11* amends Rule 14A of the Second Schedule to the Electoral Act 1992. It establishes specific procedures for a prisoner who is not already on the register of electors to apply for inclusion in the supplement to the register. This is necessary because inclusion on the register, of which the supplement forms a part, is a pre-requisite for any voter in order to qualify for inclusion in the postal voters list; the provision will facilitate prisoners in meeting that requirement.

*Section 12* amends section 22 of the Seanad Electoral (University Members) Act 1937. It provides for a minor procedural adjustment to take account of standard prison postal arrangements whereby either the relevant prison official, or someone else acting under his or her direction, will be enabled to return the completed ballot paper and associated documentation to the Seanad returning officer on behalf of a prisoner.

*Section 13* amends the Seanad Electoral (Panel Members) Act 1947. Similar to the arrangements for university electors, it provides for the return of completed ballot papers and associated documentation to the Seanad returning officer by either the relevant prison official or someone else acting under his or her direction. The arrangements apply to both a Seanad General Election (section 51) and Seanad Bye-Election (section 73).

*Section 14* provides that a prisoner may have his or her name deleted from the postal voters list on notifying the registration authority in writing on or before the second day after the dissolution of the Dáil at a general election or on or before the second day after the making of a polling day order at a Dáil bye-election, or a Presidential, European or local election, or a referendum. If more than one poll is to be held on the same day, the latest closing date for receipt of a notification to delete shall apply.

Where a prisoner is released before polling day but is still on the postal voters list and the relevant prison official returns the ballot

paper documents to the returning officer before polling day, the returning officer can re-address the envelope (containing the ballot paper etc.) to that elector at his or her home address. In these circumstances, the elector can vote at a Garda station in the same manner as applies to an occupation or student postal voter.

Where a prisoner has been transferred to another prison, the prison authorities can re-address the envelope to the prisoner in the new prison or, where a prisoner has been released, they can re-address the envelope to the returning officer.

*Section 15* amends section 6 of the European Parliament Elections Act 1997 by the insertion of a new provision which authorises a member of the Garda Síochána or an official of the registration authority to witness the statutory declaration which EU voters are required to submit when registering for the first time in this country to vote in European Parliament elections here. The services of the two new categories of authorised witnesses are free and readily accessible.

*Section 16* makes technical amendments to the Local Elections Regulations 1995, primarily in relation to the local elections count rules, to delete qualifications regarding surpluses and exclusions that are no longer relevant. The provisions being deleted by paragraphs (a) and (b) were originally designed to ensure that individual candidates were given every opportunity to save their deposits (by being credited with a number of votes in excess of one-quarter of the quota). As the deposit requirement at elections was found to be unconstitutional, these qualifications are no longer required.

The term “alderman” was abolished on foot of the Local Government Act 2001 and there is now no statutory order of election at local elections. The amendments at paragraphs (c) and (d) reflect this position, repealing remaining provision in the Local Elections Regulations relating to order of election.

*Section 17* amends the Presidential Elections Act 1993. It reschedules, from 12 noon to 3 pm on the last day for receiving nominations, the time for the start of the formal ruling on nominations at a presidential election. This will allow time for consideration of the nomination papers. As the law currently stands, both the deadline for receipt of nominations and the start of the process of ruling on them is set at 12 noon.

This section also provides for a technical amendment to the Presidential count rules so that candidates are given a full opportunity to qualify for recoupment of election expenses. This follows on from article 3 of the Presidential Election (Reimbursement of Expenses) Regulations 2004 (S.I. No. 442 of 2004), which made provision for recoupment of some election expenses by Presidential candidates if they are credited with more than one-quarter of the quota at any stage of the count. Section 51 of the Presidential Elections Act 1993 is being amended to ensure that candidates are excluded separately in cases where this could give them the opportunity of qualifying for recoupment of election expenses. The amendment will bring the Presidential count rules into line with the Dáil and European codes.

*Section 18* contains standard provisions relating to short title, collective citation and construction.

*An Roinn Comhshaoil, Oidreachta agus Rialtais Áitiúil,  
Iúil, 2006.*

Wt. Letter. 769. 7/06. Cahill. (X49778). Gr. 30-15.