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**AN BILLE TOGHCHÁIN (LEASÚ) 2007**  
**ELECTORAL (AMENDMENT) BILL 2007**

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**EXPLANATORY MEMORANDUM**

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**General**

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

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

**Provisions**

*Section 1* is the main provision in the Bill. It amends the Electoral Act 1992 (as previously amended) by inserting sections 44 to 52 in substitution for the existing ones. These sections cover the nomination of candidates in general for election to Dáil Éireann and most of the existing law in this area is being re-enacted without amendment. The amendments necessary to meet the terms of the Court decision are being incorporated as appropriate in the re-enacted sections so as to give a single text relating to nominations generally.

The new *section 46(5)* provides for two alternative mechanisms to regulate the nomination of Dáil candidates who are not in possession of a certificate of political affiliation confirming that he or she is a candidate of a political party registered in the Register of Political Parties. These alternatives, one of which must be complied with before the expiration of the time for receiving nominations, are as follows:

- (i) by way of assents requiring the completion of statutory declarations by 30 assentors in the relevant Dáil constituency which may be witnessed by one of 5 categories: a Commissioner for Oaths, a Peace Commissioner, a Notary Public, a Garda or a local authority official; or

- (ii) by way of the candidate, or someone on his or her behalf, lodging a deposit of €500 with the returning officer.

Under the assents system detailed in the new *section 46(6)*, the form of statutory declaration will be prescribed by the Minister. The relevant details of the assentors must be included on the statutory declarations such as number (and polling district letters) on the register of Dáil electors in force at the time of assent, address on the register, contact details, the relevant Dáil constituency on the date of assent where he/she is registered, the name and address of the candidate, and the form of prescribed photographic ID produced and any number on it.

The assent will be valid in respect of the constituency in which the assentor's address at the time of assent is located at election time. The assent may be made at any time but it may only be used at the next general or bye-election in the relevant constituency and it expires when the current register ceases to be in force, notwithstanding that no such election may have been held.

Responsibility will rest with the candidate or proposer to attach the 30 statutory declarations to the nomination paper and deliver all the documentation to the returning officer by the deadline for receipt of nominations. An assentor must confirm on the statutory declaration that he or she has not consented to the nomination of any other candidate in the election concerned. Under the Statutory Declarations Act 1938, a person who knowingly makes a false or misleading statutory declaration is liable on conviction to a fine not exceeding €2,539.48 or imprisonment for a term not exceeding 6 months or both. However, under the new *section 52(1)(c)*, a candidate's nomination will not be invalid where a person assents to the nomination of more than one candidate. Forms for the giving of assents will be available from returning officers and registration authorities.

In lieu of obtaining 30 assents, a candidate may choose the alternative of making a deposit under the new *section 47* and, if he or she does not do so, their candidature will be deemed to have been withdrawn. This is similar to the previous deposit system which operated until 2001. The Bill provides that the candidate, or someone on his or her behalf, may lodge a deposit of €500 with the returning officer before the deadline for receiving nominations. Under the new *section 48*, the deposit will be returned to successful candidates, to those receiving votes in excess of a quarter of the quota and in certain other circumstances such as withdrawal of candidature or death. Otherwise, the deposit will be forfeited.

Under the new *section 52(1)(b)*, a returning officer may rule as invalid a nomination paper from a candidate who has opted for the assenting alternative if he/she considers that the candidate has not complied with the relevant statutory requirements set out in the Bill.

Consequential provisions are included in new *sections 44(b)* and *46(2)(b)* relating to inclusion of details of the new provisions on the notice of election and on notes to the nomination paper, respectively.

*Section 2* amends the Schedule to the Electoral Act 1997 to provide that necessary travelling and other expenses incurred by a candidate or an assentor in meeting the assentors requirements, and the amount of any deposit paid, shall not be regarded as an election expense for the election concerned.

*Section 3* contains standard provisions relating to short title, collective citation and construction.

*An Roinn Comhshaoil, Oidhreachta agus Rialtais Áitiúil,  
Feabhra, 2007.*