



Tithe an Oireachtais

An Comhchoiste um Thithíocht, Pleanáil agus Rialtas Áitiúil

Tuarascáil maidir le Grinnscrúdú ar an mBille Toghcháin (Leasú) (Uimh. 3), 2014
[BCP]

Iúil 2018

Houses of the Oireachtas

Joint Committee on Housing, Planning & Local Government

Report on Scrutiny of the Electoral (Amendment) (no. 3) Bill, 2014 [PMB]

July 2018

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Introduction -

This is the report of the Joint Committee on Housing, Planning and Local Government's detailed scrutiny of the Electoral (Amendment) (no. 3) Bill 2014 (the Bill).

The Bill was referred to the Select Committee on Housing, Planning, Community and Local Government by order of the Dáil of 6th December 2016.

The Minister for Housing, Planning and Local Government was included in the circulation of a draft of this report, in accordance with Standing Order 141(2), as an *ex officio* Committee Member.

Procedural basis for scrutiny -

At its meeting of 7th November 2017, the Committee agreed to undertake scrutiny of the Electoral (Amendment) (no. 3) Bill. Private Members Bills referred to Select Committee are subject to the provisions of Standing Order 141(2) [Dáil], which provides that a Select Committee "*shall undertake detailed scrutiny of the provisions of such Bills ... and shall report thereon to the Dáil prior to Committee Stage consideration ...*" unless the Committee decides in relation to a particular Bill that detailed scrutiny is not necessary.

Paragraph (3) of Standing Order 141 permits scrutiny of the Bill in Joint Committee, viz. "*Nothing in this Standing Order shall preclude a Joint Committee from undertaking detailed scrutiny as set out in paragraph (2) and reporting thereon to both Houses prior to Committee Stage consideration of the Bill by the Select Committee*".

Main provisions of the Bill -

The purpose of the Bill is to provide same-day voting for the residents of the off-shore islands of Ireland for Dáil and Presidential elections and referendums. The Bill seeks to amend section 85 of the Electoral Act 1992 which currently contains provisions for the holding of electoral votes up to five days prior to the official polling date. It also seeks to amend section 42 of the Presidential Election Act 1993 and section 30 of the Referendum Act 1992 which contain the same provisions. The main aim is to ensure that provisions for the Returning Officer to

hold elections prior to the stated polling day are repealed to ensure that island residents are privy to fully completed political campaigns.

In particular the Bill provides for -

- The amendment of section 85 of the Electoral Act 1992 which allows the Returning Officer to hold elections up to 5 days before the stated election date;
- The amendment of the Presidential Elections Act 1993 (section 42) and the Referendum Act 1992 (section 30) to reflect the same;
- Provide the ability for the Returning Officer to avail of chartered or State transport options to ensure the delivery of ballot boxes to the counting centre by 9am the morning following an election, or, allow for the late arrival of boxes to count centre no later than 11am the morning following an election.

Pre-Committee Stage scrutiny -

On the 12th of October 2017, the Joint Committee held the first of two sessions scrutinising the Bill. In the first session, the sponsor of the Bill, Éamon Ó Cuív T.D. briefed the Committee on the main provisions of the Bill.

Deputy Ó Cuív informed the Committee that there are approximately 3,000 people permanently registered as living on the off-shore islands of Ireland who will be directly affected by the Bill. He stated that each island currently has different election processes. Some, such as the islands off Mayo and Donegal tend to vote a day early, while the islands off the coast of Co. Cork vote on the stated polling day. This decision rests with the Returning Officer for each constituency, which has created this inconsistency.

Senator Grace O'Sullivan questioned whether provisions could be put in place should the ballot boxes be delayed after voting on the islands closes, which allows for the votes to be counted on the islands. While this is not possible there are many ways for the ballot boxes to be transported, which would have an insubstantial cost to the Exchequer should regular modes of transport not be available. While the Bill had the support of the Committee, it was agreed to meet with representatives from the Department of Housing, Planning and Local Government at a later date for further scrutiny.

The Committee resumed scrutiny of the Bill on the 14th November 2017 with Ms Ríona Ní Fhlanghaile, Ms Mairead Ryan and Ms Mary Lane from the Department of Housing, Planning and Local Government.

Ms Ní Fhlanghaile stated the importance of ensuring that the count is not affected by the amendment that the island must vote on the same day as the mainland. She stated that *"If all ballot boxes are not at a count centre by 9 a.m., the proceedings cannot get under way... I cannot overemphasise the importance of that phase of the count. If one starts to lose bundles and does not give good time to that process, one is lost once the ballot papers are mixed. It is a critical part of the count. As such, there can be no count results in a constituency unless the ballot boxes from the islands are included. In the case of a presidential election or referendum, any delay with count results at constituency level will, in turn, generate a delay in a result at national level. That is in the event of the ballot boxes not being at the count centre."*

Deputy Ó Cuív explained that it would be rare for such an occurrence, explaining that adverse weather conditions could affect any part of the country, resulting in a delay in counting. He also stated that allowing for an 11am start time for the count would alleviate these fears. Ms Ní Fhlanghaile explained that the start time is currently 9am for all count centres and that a different amendment would have to be made to accommodate such a change.

Deputy Eoin Ó Broin outlined his concerns that the proposed amendments could result in an increased use of Section 86 of the Electoral Act 1992, which allows for a shorter polling day at the discretion of the Returning Officer. If weather or time restrictions were to be foreseen to cause delays, Returning Officers could close polling stations early, resulting in people returning from the mainland, due to work or school, missing their opportunity to vote. Ms Ní Fhlanghaile stated that keeping flexibility is important but that all citizens who wish to vote need to be accommodated.

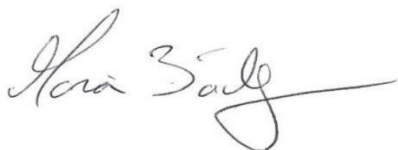
Observations of the Joint Committee -

The Committee in its scrutiny of the Bill and pursuant to Standing Orders, agreed to report to the Houses of the Oireachtas that it has undertaken and completed detailed scrutiny of the Bill. The Committee has made the following observations and conclusions:-

- the Committee notes the broad support expressed for the principle of the Bill and notes also that the Bill passed Second Stage reading;
- that the sponsor and the Department engage to ensure that any amendments required are fully explored;
- the Committee recommends that criteria be included for the use of Section 86 to ensure that shorter polling days on the islands does not become commonplace;
- the need to provide for the Returning Officer to avail of State or contracted services so ballot boxes reach the count centers on the mainland on time, or allow for a later start time in affected count centers to make use of public transport the next morning;
- the sponsor of the Bill considers expanding the scope of the Bill to include European Parliament and Local Government elections.

Conclusion –

The Committee concluded that that the Bill proceed to Third Stage consideration and that the proposer of the Bill take account of the observations of the Committee in framing their respective amendments to the Bill, in particular in relation to the need to address certain drafting issues arising in the Bill.



Maria Bailey T.D.
Chair
July 2018

Appendix 1 – Committee Membership

Joint Committee on Housing, Planning & Local Government

Deputies

Committee Membership:

Chairperson: Maria Bailey (Fine Gael)

Deputies

Pat Casey (Fianna Fáil) (Vice Chair)

Ruth Coppinger (Solidarity-PBP)

Mattie McGrath (Rural Independent Group)

Darragh O'Brien (Fianna Fáil)

Eoin O Broin (Sinn Féin)

Fergus O'Dowd (Fine Gael)

Senators

Victor Boyhan (Independent)

Martin Conway (Fine Gael)

Jennifer Murnane O'Connor (Fianna Fáil)

Grace O'Sullivan (Green Party)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil of 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 21 July 2016.
3. Elected Vice Chair on 24 May 2017

Appendix 2 – Terms of Reference of Committee

COMMITTEE ON HOUSING, PLANNING AND LOCAL GOVERNMENT

TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
- (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
- (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other matters
- as shall be referred to the Select Committee by the Dáil, and
- (e) Annual Output Statements including performance, efficiency and

effectiveness in the use of public monies, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the

relevant Department or Departments—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
 - (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.
- (5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

