

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM THITHÍOCHT, PLEANÁIL AGUS RIALTAS ÁITIÚIL

## JOINT COMMITTEE ON HOUSING, PLANNING AND LOCAL GOVERNMENT

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*Dé Máirt, 14 Samhain 2017*

*Tuesday, 14 November 2017*

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Tháinig an Comhchoiste le chéile ag 11 a.m.

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The Joint Committee met at 11 a.m.

Comhaltaí a bhí i láthair /Members present:

Teachtaí Dála/Deputies	Seanadóirí /Senators
Mick Barry,*	Victor Boyhan.
Pat Casey,	
Eoin Ó Broin.	

\* In éagmais / In the absence of Deputy Ruth Coppinger.

I láthair / In attendance: Deputy Éamon Ó Cuív.

Teachta/Deputy Maria Bailey sa Chathaoir /in the Chair.

*The joint committee met in private session until 12.28 p.m.*

### **Electoral (Amendment) (No. 3) Bill 2014: Discussion (Resumed)**

**Chairman:** At the request of the broadcasting and recording services, members are requested to ensure for the duration of the meeting that their mobile phones are turned off completely or switched to airplane, safe or flight mode, depending on the device. It is not sufficient for members to put their phones on silent mode as this will maintain the level of interference with the broadcasting system.

In accordance with standard procedures agreed by the Committee on Procedure and Privileges for paperless committees, all documentation for the meeting has been circulated to members on the document database.

Apologies have been received from Senators Murnane O'Connor, Grace O'Sullivan and Coffey, and Deputy O'Dowd. Deputy Barry will substitute for Deputy Coppingier.

Today we resume scrutiny of Deputy Ó Cuív's Electoral (Amendment) (No. 3) Bill 2014. On behalf of the committee, I welcome Ms Ríona Ní Fhlanghaile, Ms Mairead Ryan and Ms Mary Lane from the Department of Housing, Planning and Local Government.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable. I call Ms Ríona Ní Fhlanghaile to make her opening statement.

**Ms Ríona Ní Fhlanghaile:** I thank the joint committee for the invitation to attend this morning. I am accompanied by my colleagues, Ms Mairéad Ryan and Ms Mary Lane. We welcome the opportunity to engage on the Bill which proposes to repeal the option of early polling on our offshore islands. This will mean that voting on these islands will take place on the same day as voting on the mainland in referendums and at Dáil and presidential elections. This morning's discussions provide a timely opportunity to examine the Bill in more detail and to discuss some of the practical issues arising from taking a poll on the islands on the same day as on the mainland. Some of these issues were raised when the committee started its scrutiny of the Bill a few weeks ago.

By way of background, I note that polling takes place on seven islands in Cork, five in Galway, three in Mayo and five in Donegal. At the February 2016 general election, there were 2,583 registered voters on these islands. The decision on when to take the poll on an island is a matter for the local returning officer in accordance with section 85 of the Electoral Act 1992. This is the provision proposed to be repealed by the Bill. The law provides that the returning

officer may arrange for early polling on an island up to five days in advance of the appointed polling day if he or she considers that taking the poll is going to be affected by weather or transportation difficulties. Practice has varied from election to election and from constituency to constituency. This can be expected given that elections take place at different times of the year and having regard to the different geographic positions of the islands. Weather and sea conditions can vary considerably on any day and at any time of the year. Anyone listening to the weather or sea area forecasts will be familiar with the differences.

At the 2016 general election, polling took place on the Donegal, Mayo and Galway islands on the day before polling day on the mainland. Polling on the Cork islands took place on the same day as the mainland. This was also the pattern for the 2015 referendums and the 2014 local and European elections. Before that, the pattern varied somewhat. The Bill does not propose the repeal of the early voting option for European Parliament elections or local elections. It would seem to make sense to have the same arrangement in place for all elections. We will, therefore, be giving consideration to bringing forward amendments to address this on Committee Stage and would be interested to hear the views of the committee in that regard. Indeed, the need for Committee Stage amendments was signalled by the Minister on Second Stage last December.

Amendments might also be needed to the provisions for the preliminary proceedings at a count. It has always been a concern to start the count on time and to have ballot boxes at the count centre on time. If all ballot boxes are not at a count centre by 9 a.m., the proceedings cannot get under way. The members will be more familiar than I am with the preliminary proceedings and whether boxes are opened and the ballot paper counts are verified. I cannot over-emphasise 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.

With the above in mind, we note that the Bill does not propose to amend section 86 of the Electoral Act 1992, which provides for a shorter polling day in the event of weather or transport difficulties. This degree of flexibility would therefore be retained, which is important and helpful. In fact, this has been the arrangement on the Cork islands to date. Where there has been same day polling, it has been a shorter polling day to avoid delay or disruption in the count at the count centre for the constituency. We will not talk about Storm Ophelia and recent weather events which disrupted the whole country, but even if one has a shorter polling day on the islands, there remains a possibility that ballot boxes will not be at the count centre. We are, therefore, looking at amending the legislation to allow for the preliminary proceedings to be carried out for all other ballot boxes up to a certain point and until the arrival of any delayed ballot boxes. That would give the staff at the count centre something to do and it might shorten any delay. We have been talking to returning officers to see how that would work operationally but we have yet to talk to our Ministers about the detail of it.

Finally, we are curious about section 5 of the Bill and the regulation making power for the Minister for which it provides. I am not sure that it is necessary or what regulations are anticipated as the legislation is an amending Bill. As I read it, there is nothing in it as to what regulations might be made. That is an observation on the Bill. We are glad to take questions or to hear any responses.

**Deputy Éamon Ó Cuív:** Cuirim fáilte roimh na finnéithe. Is dóigh go bhfuil sé thar a bheith tábhachtach go ndéanfar mionscrúdú ar gach a bhfuil molta. I am delighted the witnesses are here today. It is a good opportunity to do what we have to do here as legislators, namely, examine in minute detail the implications of what is being proposed. I welcomed on Second Stage the fact that the then Minister was in favour of the basic principles in the Bill. When I spoke at the committee, I said there was a need for two amendments which are in line with what the Department has indicated now and what the Minister indicated on Second Stage. In other words, there was an oversight in relation to European and local elections. That is recognised. As the initial proposer of the Bill in the Dáil, I am not only agreeable but said I would bring amendments forward myself. However, if the Department has better amendments, I would always accede to the greater skill of the parliamentary counsel and the departmental officials in the drawing up of the technical amendment. The same point relates to getting the ballot boxes, which is eminently sensible, particularly from a cost point of view. Leaving bad weather out of it for a moment, if there was an 11 a.m. requirement for island boxes to be at a count centre-----

**Ms Ríona Ní Fhlanghaile:** It is 9 a.m.

**Deputy Éamon Ó Cuív:** I was saying if there were an 11 a.m. arrangement, that would mean ordinary ferry services could be used without any cost to the State. That is one possibility. My understanding is that at the last election, either an Air Corps or a Coast Guard helicopter ferried ballot boxes in and out of the Donegal islands. That is another possibility, albeit a little bit more expensive.

**Ms Ríona Ní Fhlanghaile:** Was it the Air Corps?

**Deputy Éamon Ó Cuív:** I am not sure exactly which agency provided the helicopter. Rather than bring them in and out by boat as heretofore, that was done.

**Ms Ríona Ní Fhlanghaile:** I think that at the 2016 general election, there were issues on Tory Island. We were talking to the returning officer the other day and she was recalling it. I think there was a week-long situation on Tory Island at the time. There was food and everything. The ballot boxes were the least of their worries, I think.

**Deputy Éamon Ó Cuív:** Tory Island is the most inaccessible.

**Ms Ríona Ní Fhlanghaile:** It is the most vulnerable to the weather.

**Deputy Éamon Ó Cuív:** However, there is a contracted helicopter service to the island. In the great national scheme of things, therefore, the expense to get the boxes in is not that huge. Obviously, a helicopter will guarantee that, whatever the weather, one will get them in when one wants them and certainly if the Government proposes a later arrival time. Ms Ní Fhlanghaile raised an issue of concern to me, which is one would have to ensure there was no abuse of the issue. When I drafted the Bill I left in the provision in regard to short day polling. Some islands with very small populations have polling stations on them, such as Inishfree and Gola in Donegal. There is no such equivalent in Galway. Inishbiggle has a polling station but it is very close to the mainland and there is no problem getting to or from it no matter what the weather conditions are. Islands with polling stations have short day polling. However, we would not like to have short day polling in places such as the Aran Islands or Inishbofin where there is a considerable population and a large number of those eligible to vote are likely to arrive on the evening boat, just as in rural constituencies around the country people who work or study in Dublin, Limerick or elsewhere want to vote in their home constituency and therefore do not

transfer their vote but go home to vote on the day. That is why Friday voting is now common. There would have to be some control on returning officers not getting us out of one hole and into another by swapping pre-day polling for short day polling on the more populated islands. Some sort of control would be needed in that regard. I have left in the principle because on some of the very small islands one could have 100% of polling completed by 11 a.m. and a returning officer would thereafter be sitting there for hours with nothing to do. The reason for the ability to make the regulation is that there would be no possibility of a decision-----

**Ms Riona Ní Fhlanghaile:** One would not be making a regulation under the Bill at that-----

**Deputy Éamon Ó Cuív:** Perhaps Ms Ní Fhlanghaile as the legal expert might advise us of how that issue would be dealt with because it is a possibility under the current law that returning officers-----

**Ms Riona Ní Fhlanghaile:** As I said, they have managed the issue in Cork by having shorter day polling-----

**Deputy Éamon Ó Cuív:** Even in parts of Donegal where they voted two days before the rest of the country until the most recent general election, there was short day polling.

**Ms Riona Ní Fhlanghaile:** Yes. It varies in different constituencies.

**Deputy Éamon Ó Cuív:** It was more a factor of the population of an island and whether there was a possibility that anybody would vote late in the day rather than the day on which the poll was taken because, as I said, there was always very short day polling on the two islands in Donegal that I mentioned and the local population were not against it. Half the island population lives on the three Aran Islands and they are in the Atlantic, unlike Arranmore, Bere Island and so on that are very near the coast. Not all Cork islands have short day polling. Bere Island and so on have full day polling.

**Ms Riona Ní Fhlanghaile:** I do not have that information to hand and cannot say one way or the other. We can check that.

**Deputy Éamon Ó Cuív:** That is my understanding. There is no logistical issue accessing Bere Island because it is so far into the bay. When I was there, there were approximately 14 sailings each way every day. There is a similar situation in Arranmore. It is interesting that the number attending the island school on Arranmore is rapidly growing. Pupils go from the mainland to the island in the morning and back in the evening. The ferry service is so fantastic that it is easier for them to do that than to go to school in the next nearest secondary school. Such islands do not generally pose problems.

**Ms Riona Ní Fhlanghaile:** As a matter of curiosity, what time does the last ferry leave the Aran Islands? I am not familiar with them.

**Deputy Éamon Ó Cuív:** In Galway?

**Ms Riona Ní Fhlanghaile:** Yes.

**Deputy Éamon Ó Cuív:** The last ferry arrives at the island at approximately 5.30 p.m. because we designed those for-----

**Ms Riona Ní Fhlanghaile:** The last ferry leaving the island for the mainland.

**Deputy Éamon Ó Cuív:** The last ferry going to the island is at 5.30 p.m.

**Ms Ríona Ní Fhlanghaile:** For the three islands.

**Deputy Éamon Ó Cuív:** The last ferry leaving the islands is earlier than that unless-----

**Ms Ríona Ní Fhlanghaile:** There is no evening ferry service.

**Deputy Éamon Ó Cuív:** There is but it is to the islands because that is where people want to go.

**Ms Ríona Ní Fhlanghaile:** At 5.30 p.m. What time is the first ferry in the morning?

**Deputy Éamon Ó Cuív:** It is at 8 a.m.

**Ms Ríona Ní Fhlanghaile:** For people who are going to work.

**Deputy Éamon Ó Cuív:** Some use it to go to work, although not many do so every day. Some use it to do so on a Monday morning. It would not be a huge issue to get the ballot boxes to the mainland but the requirement for them to be at the count centre by 9 a.m. is unnecessarily restrictive because there is no way that all boxes will be opened at 9 a.m. Boxes only start being opened at 9 a.m. It would be easy enough to see that four boxes are missing, which is all that is involved in Galway. In Mayo there are three boxes which contain the votes from Clare Island, Inishturk and Inishbiggle. There is a finite number of boxes. There are seven in Cork and four in Donegal. It would be easy for the ceann comhairimh to remember that there are four boxes missing when the votes begin to be counted. It should suffice for those boxes to arrive by 11 a.m. or 12 noon because not all the boxes would have been opened by that time.

**Deputy Eoin Ó Broin:** I thank Ms Ní Fhlanghaile for coming in and making her submission. As Deputy Ó Cuív said, the extension of the provisions to European and local elections is eminently sensible and nobody would oppose that. Being able to start opening some boxes while others are delayed would not materially affect the count and we would have no difficulty with that. It may delay the tally a little but that can be caught up with once the boxes arrive, if they do.

My one concern is in regard to the shorter polling day. The aim of the Bill is to give those on the islands the same entitlements and period of time to vote as everybody else. Even if that means a possibility of delays in the result of the count, I would prefer that than to have even one or two voters excluded because of an earlier close of polling. I support some regulation, whether through this legislation or elsewhere, that would create conditions as to when returning officers can do that, if such regulations do not already exist.

**Ms Ríona Ní Fhlanghaile:** It would be helpful for us to have proposals from members. If the idea is to distinguish between islands, it would be helpful if an amendment to section 86 were to be proposed.

**Deputy Eoin Ó Broin:** I do not have the level of expertise that Ms Ní Fhlanghaile and Deputy Ó Cuív have but perhaps the focus could be less on differentiating between types of islands and more on setting out relevant conditions. For example, in general if a returning officer is satisfied that an earlier closing of the poll will not disenfranchise anyone, that could be done. The worry is that if people work on the mainland and there is an early close of polling on their island, it could create difficulties. That would only affect a small number of people but the principle is important.

**Ms Ríona Ní Fhlanghaile:** Every vote matters and I would not distinguish-----

**Chairman:** Would it be possible for the opening of boxes from constituencies affected by island voting to be moved to 11 a.m. and those from other constituencies would be opened starting at 9 a.m. or do they all have to be started at the same time?

**Ms Ríona Ní Fhlanghaile:** It would be better to keep a standard time of 9 a.m. because there may not be a delay. Politicians are the people most anxious for counts to begin and results to be delivered. We could wait a couple of days after polling and until every ballot box arrives to begin but I know what goes on in count centres and members know that even better.

**Deputy Eoin Ó Broin:** Counting should begin at 6 p.m., before the polls have even closed.

**Ms Ríona Ní Fhlanghaile:** It has been proposed that there should be the kind of races that one witnesses at elections in the United Kingdom, for example, where people run in with ballot boxes. I do not understand that. It would be better to have a standardised requirement for the arrival of ballot boxes and to possibly amend the Act to allow for a potential delay in the delivery of some boxes and allow preliminary proceedings to begin because that work takes a couple of hours.

**Deputy Éamon Ó Cuív:** The numbers are very striking. The 2011 electorate on Arranmore in Donegal was 523. That will not have changed dramatically since then. The island is inshore and one can get a boat to it at any time of the day or night. It is a ten-minute ferry journey to the island.

**Ms Ríona Ní Fhlanghaile:** The ferry could be cancelled, although that is rare.

**Deputy Éamon Ó Cuív:** I have not worked out what would have happened on the mainland had there been a general election on the day of Storm Ophelia.

**Ms Ríona Ní Fhlanghaile:** We have discussed that.

**Deputy Éamon Ó Cuív:** I am sure Ms Ní Fhlanghaile has. To take an extreme example, if the county of the Deputy beside me experienced an incredibly heavy snowfall prior to polling day, what would be done, in particular for older people? There are significant “what ifs” nationwide. There is only a one in a million chance of not being able to get in, even if people had to resort to using a helicopter. It is like the rescue services in Connemara - one would be better off on the Aran Islands than where I live because the helicopter would be sent out in a jiffy. Gola Island has 25 people, Boffin has 67, Inishfree Upper has nine and Tory Island has 136. To my knowledge, the ones with the short polling day are Gola and Inishfree, although I am not sure about Boffin.

Clare Island has 115 people and Inishbiggle has 29. Getting boxes in and out of Inishbiggle is no problem. I went there once in a currach from the Achill side. It was a dangerous enough operation. We came out on the Ballycroy side, though. At very low tides, one can even walk to Ballycroy. It is sheltered, so there is no problem.

Inishturk has 50 people. It is offshore and has people travelling on a Friday. It has a football team, which is a great measure of whether there are young people. Inishmore has 629 people, Inishmaan has 158 and Inisheer has 202. These are very populous in relative terms and far offshore. They have regular evening ferries that are used by large numbers of people. The 5 p.m. ferry to each is highly populated, so it must stay open for the evening rush.

**Ms Ríona Ní Fhlanghaile:** Does that not leave the mainland at 5.30 p.m. on a Friday?

**Deputy Éamon Ó Cuív:** Yes. It might be a bit later on a Friday, but we can get to that. All of the information is on the website. Inishbofin, with 166 people, is in the same situation.

Bere Island has 179 people and Cape Clear Island has 122. Presumably, they wait for the last boat in the evening. There are also Dursey, Heir and Whiddy islands, which have 9, 29 and 14 people, respectively. Long Island has 11. These are small numbers and the islands are inshore. Boats are in and out regularly. Sherkin Island has 102 people.

The larger islands that are further offshore and to which there is a regular evening sailing that is heavily patronised on a Friday close early. If they closed an hour and a half after the last boat arrived, that would give everyone time to get off the boat, dump some bags and vote. That would be reasonable. If the time is 7.30 p.m. or 8 p.m., people might as well stay.

**Ms Ríona Ní Fhlanghaile:** It would be helpful if the Deputy proposed amendments. I am sensing that he does not want us to distinguish between various islands in a way that we do currently. The Deputy might set out his points or table an amendment.

**Deputy Éamon Ó Cuív:** I do not know whether it is appropriate to say it but, through the good offices of the Chair, we might enter a dialogue. If I understand it, we all want to go to the same place. The Department accepts-----

**Chairman:** We will be drafting a report on it, so we can make recommendations within that.

**Deputy Éamon Ó Cuív:** Great.

**Chairman:** We will forward the report to the Department. We can work on the matter as a committee. Is that agreeable to the Deputies?

**Deputy Eoin Ó Broin:** Yes.

**Deputy Éamon Ó Cuív:** Excellent.

**Chairman:** Has Deputy Ó Cuív further questions for Ms Ní Fhlanghaile?

**Deputy Éamon Ó Cuív:** I thank the officials for the careful consideration they have given to issues that need to be addressed and for highlighting others that we might not have fully addressed but which need to be put to bed so as to avoid unintended consequences.

**Ms Ríona Ní Fhlanghaile:** It might be helpful to have the views of people on the islands. We are not hearing those because our engagement is with the returning officers, who engage with their people on the islands.

**Chairman:** Similar to plebiscites that are held by local authorities regarding parking displays and so on, perhaps something could be done in that way.

**Deputy Éamon Ó Cuív:** Comhdháil Oileáin na hÉireann represents all of the islands. I am sure that it would make its views known to the committee on this issue.

**Chairman:** We can ask it to appear before us if the Deputy would like that.

**Deputy Éamon Ó Cuív:** It would be useful. It might not be a bad idea to invite the returning officers as well.



**Ms Riona Ní Fhlanghaile:** I believe the Deputy knows the views of the returning officers on this.

**Deputy Éamon Ó Cuív:** Well,-----

**Ms Riona Ní Fhlanghaile:** Their preference is to retain the flexibility. They understand that it is on the way out, but they would appreciate flexibility on their opening and closing hours. Thus far, they have been comfortable with the idea of getting the count started in the constituencies, allowing the latter to get on with matters as much as they can, and have appreciated the jumping up and down that there is at any count centre to proceed with the count or nationally in a referendum or presidential election. These weather events are unpredictable and rare, but it is on the unpredictable and rare day that everyone jumps up and down.

**Chairman:** We can draft a report on this matter and include some of Deputy Ó Cuív's recommendations. Is he proposing that we hold a further meeting on this or can we proceed with our report and have those recommendations in place?

**Deputy Éamon Ó Cuív:** I am not trying to dictate to the committee but, in view of the possible short-day polling, it would be important to get the opinions of the islanders. We could have a short session with Comhdháil Oileáin na hÉireann, which is very organised, to tease out its views on this remaining issue.

**Chairman:** Okay. Does Deputy Ó Broin wish to add something?

**Deputy Eoin Ó Broin:** We do not need another meeting just to do with that. The issue is important, but there is no reason that we could not ask Comhdháil Oileáin na hÉireann for a written submission on it. Members could consider it in advance of Committee Stage.

I appreciate what Ms Ní Fhlanghaile said regarding the returning officers' request for flexibility. I will ask my next question with an eye to our scrutiny report, which will be sent to the Department. Would it be practical for us to suggest that, where a returning officer in advance of the date of the election seeks a shorter polling day, there is some level of public engagement with the registered electors on that island before making that decision? This would give returning officers discretion with an element of consultation beforehand. I presume that the decision is made prior to polling day.

**Ms Riona Ní Fhlanghaile:** Yes. I believe that they do engage. Returning officers have people on the islands and there is good engagement, but we are entering a different space now.

**Deputy Éamon Ó Cuív:** People can engage and still do what they intended doing from the beginning. I was environment Minister for the 2011 election. It was well known that I would have preferred same-day polling, but returning officers had absolute discretion. Clearly I could not interfere because that was their legal right and, therefore, they had the discretion to make the call. To believe that we did not have engagement and discussions on the issue in previous elections with returning officers, especially in Galway, which is my constituency, and to say that there was not widespread demand, particularly on populous islands where large numbers of people are missing out on voting, would be to understate the situation. The ultimate decision rested with returning officers. I would be worried that, although the Department would engage, the returning officers would listen and ignore if the ultimate decision rested with them. That is not meant to disrespect them, but it is what the law says.

**Chairman:** This will be covered in our report. We will ask Deputy Ó Cuív to participate

in that.

**Deputy Éamon Ó Cuív:** I would appreciate that.

**Chairman:** I thank Ms Ní Fhlanghaile, Ms Lane and Ms Ryan for attending this morning and for the information that they provided beforehand. We will be in touch with our report once it is finalised.

We will adjourn. Our next meeting will be held at 10.30 a.m. tomorrow to discuss the mid-year expenditure review.

The joint committee adjourned at 1 p.m. until 10.30 a.m. on Wednesday, 15 November 2017.