

GENERAL SCHEME

Of the

ELECTORAL REFORM BILL 2020

An Act to establish an independent Electoral Commission; to make provision for the preparation and maintenance of the Register of Political Parties; to provide a framework to support voter education and voter turnout at elections and referendums; to make provision for the review of constituencies for the election of members to the Dáil and the European Parliament; to make provision for the review of local authority election boundaries; to make provision for the oversight of the modernised register of electors; to provide a framework for the regulation of online political advertising during election periods by the Electoral Commission; to provide a policy research and advisory function to the Electoral Commission; to modernise the arrangements for the registration of electors, including the introduction of continuous registration; to provide for a central national register database; to provide for anonymous registration in certain limited cases; to provide for the early registration of persons under 18; to provide for the disclosure of specified information in connection with online political advertising; to provide for the power to assess compliance with the framework for the regulation of online political advertising and the power to apply dissuasive sanctions for non-compliance; to provide for the extension of postal voter categories to include special voters; to allow for polling to take place on more than one day at a Dáil election and at a referendum where Covid-19 restrictions are in place; and provide for matters connected therewith.

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PART 1: PRELIMINARY AND GENERAL

HEAD 1

SHORT TITLE, COLLECTIVE CITATION, CONSTRUCTION AND COMMENCEMENT

Provide that:

- (1) This Act may be cited as the Electoral Reform Act 2020.
- (2) The Electoral Acts 1992 to 2019 and sections 81 to 119, sections 120 to 135 and sections 141 to 143 of this Act may be cited together as the Electoral Acts 1992 to 2020 and shall be construed together as one.
- (3) The Referendum Act 1994 and sections 39 and 136 to 140 of this Act may be cited together as the Referendum Acts 1994 to 2020 and shall be construed together as one.
- (4) This Act shall come into operation on such day or days as the Minister for Housing, Local Government and Heritage may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (5) The following enactments are hereby repealed:

Short Title	Extent of Repeal
Court of Appeal Act 2014	Sections 55, 58.
Electoral Act 1992	Section 25.
Electoral Act 1997	Sections 5-15.
Electoral (Amendment) Act 2001	Section 11.
Electoral (Amendment) Act 2009	Section 9.
Electoral (Amendment) Act 2011	Section 3.
Electoral (Amendment) (Political Funding) Act 2012	Sections 3-4.
Electoral (Amendment) (Dáil Constituencies) Act 2017	Section 5.
Electoral, Local Government and Planning and Development Act 2013	Sections 23-26.
Gaeltacht Act 2012	Section 23.
Local Government Act 1991	Section 32(2)
Local Government Act 1994	Section 4(2): Schedule 2, Item 10
Local Government (No.2) Act 2003	Section 7.
Referendum Act 1998	The whole Act.
Referendum Act 2001	The whole Act.

NOTES:

This is a standard provision.

HEAD 2

INTERPRETATION

Provide that:

Accounting Unit	“accounting unit”, in relation to a political party, means a branch, including the headquarters of a political party if it is a separate accounting unit or other subsidiary organisation of the party, which in any particular year, receives a donation the value of which exceeds €100;
Appointed member	“appointed member” means members of the Electoral Commission who have been appointed following a nomination, either by the Public Appointments Service or the Chief Justice. This means both the selected members and the chairperson of the Electoral Commission.
Approved body	“approved body” means a body declared by the Commission under head 32 to be an approved body
Ballot Paper	“ballot paper” has the meaning assigned to it by Section 88 of the Electoral Act 1992
Chairperson	The Chairperson of the Electoral Commission
Civil Servant / Civil Service	“civil servant” and “civil service” have the same meaning, respectively, as in the Civil Service Regulation Act 1956, as amended by Section 17 of the Staff of the Houses of the Oireachtas Act, 1959
Chief Executive	The Chief Executive of the Electoral Commission
Commission	“Commission” means the Electoral Commission established under head 4;
Constituency	“constituency” means, as the context may require, a Dáil constituency or a European Parliament constituency
Covid-19	“Covid-19” means a disease caused by infection with the virus SARS-CoV-2 and specified as an infectious disease in accordance with Regulation 6 of, and the Schedule to, the Infectious Diseases Regulations 1981 (S.I. No. 390 of 1981) or any variant of the disease so specified as an infectious disease in those Regulations;
Credit institution	“credit institution” has the meaning assigned to it by section 24(1) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018;
Dáil election	“Dáil election” means an election of a member or members to serve in the Dáil and includes a bye-election as well as a general election
Election	“election” means , as the context may require, a Dáil Election or a European Election or both a Dáil Election and a European Election
Electoral period	“electoral period” means the period of time –

	<p>(i) commencing on, and inclusive of, the day of the making of a polling day order, and</p> <p>(ii) ending on, and inclusive of, the day the poll closes at an election or a referendum;</p>
European Communities	“European Communities” has the same meaning as in the European Communities Acts 1972 to 2012;
European Election	“European election” means an election in the State of members to the European Parliament
European Parliament	“European Parliament” means the Parliament of the European Communities
Excluded day	“excluded day” means a day which is a Sunday, Good Friday or a day which is declared to be a public holiday by the Holidays (Employees) Act 1973, or a day which by virtue of a statute or proclamation is a public holiday
Financial institution	“financial institution” has the meaning assigned to it by section 24(1) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended by the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018;
Functions	“functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of duties
Joint Oireachtas Committee	“Joint Oireachtas Committee” means the Joint Oireachtas Committee on Housing, Local Government and Heritage
Local authority	“local authority” means a county, city or city and county council within the meaning of section 2 (as amended by the Local Government Reform Act 2014) of the Local Government Act 2001
Local election	“local election” means an election held pursuant to Section 81 of the Electoral Act 1963, or a new election within the meaning of Part IV of the Local Government Act 1941
Look alike targeting	“look alike targeting” means a targeting method that takes an existing target audience and uses machine learning methods to identify new persons who have similar characteristics or are engaged in similar activities on an online platform or platforms as the case may be;
Minister	“Minister” means the Minister for Housing, Local Government and Heritage;
Online platform	<p>“online platform” means any public-facing website, web application, or digital application, including a social media network, advertising network, search engine or the seller of an online political advertisement, that –</p> <p>(i) has 10,000 or more unique monthly visitors or users in the State for a majority of months during the 12 calendar months immediately preceding the date of the making of a polling day order for an election or a referendum, and</p> <p>(ii) receives payment for the placement, display or promotion of an online political advertisement on that website,</p>

	application, social media network, advertising network or search engine;
Online political advertisement	“online political advertisement” means any form of communication in a digital format commissioned for political purposes for placement, display or promotion on an online platform during an electoral period and for which a payment is made to the online platform;
Person	“person” means any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether having separate legal personality or not);
Personation agent	“personation agent” has the meaning assigned to it by Section 60 of the Electoral Act 1992
Political party	“political party” means a political party registered in the Register of Political Parties in accordance with Part 2, Chapter 5 of this Bill as a party organised to contest a Dáil election or a European election or both such elections
Political purposes	“political purposes” has the meaning assigned to it by section 22(2)(aa) of the Electoral Act 1997 as amended by the Electoral (Amendment) Act 2001;
Polling day	“polling day” means the day appointed by order of the Minister to be polling day at a presidential election or a Dáil election or a European election or a local election or a referendum, as the case may be
Polling day order	<p>“polling day order” means an order by the Minister appointing a day (or days as the case may be) for the holding of the poll which -</p> <ul style="list-style-type: none"> (i) in the case of a Dáil election, is made under section 96 of the Electoral Act 1992, (ii) in the case of a European election, is made under section 10 of the European Parliament Elections Act 1997, (iii) in the case of a local election, is made under section 26 of the Local Government Act 2001, (iv) in the case of a presidential election, is made under section 6 of the Presidential Elections Act 1993, (v) in the case of a referendum, is made under section 10 or 12 of the Referendum Act 1994, or (vi) in the case of a Seanad election, is made under section 12 of the Seanad Electoral (University Members) Act 1937 and under section 24 of the Seanad Electoral (Panel Members) Act 1947;
Postal voter	“postal voter” means a person whose name is entered in the postal voters list, which is prepared pursuant to Section 14 of the Electoral Act 1992

Presidential elector	“presidential elector” means a person entitled to vote at an election of a person to the office of President of Ireland, as set out in Section 7 of the Electoral Act 1992
Referendum	“referendum” means a constitutional referendum or an ordinary referendum
Referendum Returning Officer	“referendum returning officer” has the meaning assigned to it by Section 14 of the Referendum Act 1994
Register	<p>“register” means –</p> <p>(i) in respect of the registration of political parties, the Register of Political Parties, as provided for in head 64;</p> <p>(ii) in relation to the electoral register, "register" means, as the context may require, the register of Presidential, Dáil, European and local government electors or the register of presidential electors or the register of Dáil electors or the register of European electors or the register of local government electors and, where the context so requires, includes the postal voters list and the special voters list, as set out in head 81</p>
Responsible Person	<p>“responsible person” means –</p> <p>(i) in relation to an accounting unit, the treasurer or any other person responsible for dealing with donations to the unit, or, in relation to a third party, the person or persons responsible for the organisation, management or financial affairs of the third party,</p> <p>(ii) in respect of online political advertising, a person appointed by an online platform in accordance with head 122;</p>
Seanad	“Seanad” means Seanad Éireann
Selected Member	“selected member” means a member of the Electoral Commission who was selected by the Service
Seller of an online political advertisement	“seller of an online political advertisement” means a person who receives payment for the placement, display or promotion of an online political advertisement on an online platform, website, application, social media network, advertising network or search engine;
Service	“Service” means The Public Appointments Service
The Treaties Governing the European Union	“the treaties governing the European Union” has the same meaning as in the European Communities Acts 1972 to 2012.
The Act of 1994	“The Act of 1994” means the Referendum Act 1994
Transparency notice	“transparency notice” has the meaning assigned to it in head 121,

NOTES:

Many of the definitions are taken from the Electoral Act 1992, the Local Government Act 1994, the European Parliament Elections Act 1997, the Electoral Act 1997, the Referendum Act 1998, the Referendum Act 2001, the Electoral (Amendment) Act 2001, the Local Government Act 2001 and the Electoral (Amendment) Act 2009.

The definitions relating to online political advertising have been prepared having regard to the detailed proposal from the Interdepartmental Group on the Security of Ireland's Electoral Process and Disinformation, which was agreed by the Government on 5 November 2019. The [proposal](#) recommends that the identification and verification procedures that would apply with regard to online political advertising should ideally align with sections 33 to 39 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, i.e. the verification procedures should mirror the customer due diligence measures as set out in that Act. In this context, the definitions for "credit institution" and "financial institution" are the same as those set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010; it is envisaged that statements / references from such institutions may be sought by an online platform for identification purposes.

The meaning of "political purposes" is similarly taken to be that set out in the Electoral Act 1997 to ensure a consistent approach is taken across the electoral codes. It should be noted that this definition is the subject of concern for a number of civil society groups who contend that it is too broad and adversely affects the ability of third parties in funding raising in support of undertaking their ordinary day-to-day advocacy work.

The definition of an "online platform" is similar to that used in Canada's *Elections Modernization Act*, the State of Maryland's *Online Electioneering Transparency and Accountability Act* and in the Private Members Bill entitled the *Online Advertising and Social Media (Transparency) Bill 2017*.

The definitions for "electoral period" and "polling day order" are interlinked and are necessary given the online political advertising provisions will only apply in respect of paid political advertising commissioned for use on online platforms during the period of an election or a referendum. To extend these provisions outside of the defined and narrow period of an election or referendum may have adverse implications for freedom of expression under Article 10 of the European Convention on Human Rights and Article 11 of the European Union's Charter of Fundamental Rights.

The meaning of "person" is modelled on that provided in the *Financial Provisions (Covid-19) Act 2020* and is intended to be as broad as possible to ensure that the due diligence procedures can be applied to anyone who may be involved in the placement, display or promotion of an online political advertisement during an electoral period.

PART 2: ESTABLISHMENT OF ELECTORAL COMMISSION

CHAPTER 1: PRELIMINARY AND GENERAL

HEAD 3

ESTABLISHMENT DAY

Provide that:

The Minister shall, by order, appoint a day to be the establishment day of the Commission

NOTES:

A standard provision, setting out the day on which the Electoral Commission comes into being. Persons nominated to posts (membership, Chairperson, Chief Executive) prior to this day become officeholders on the establishment day.

The establishment day convention is used frequently where public bodies are being set up. This head is similar to the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, P.7, S.44 (62A) and the Irish Human Rights and Equality Commission Act, 2014, P.2, S.8.

HEAD 4

ESTABLISHMENT OF ELECTORAL COMMISSION

Provide that:

- (1) On the establishment day of the Commission, a body to be known as an Comisiún Toghcháin or, in the English language, the Electoral Commission stands established to perform the functions assigned to it by this Act.
- (2) The Commission shall be a body corporate with perpetual succession and an official seal and may sue, or may be sued, in its corporate name.
- (3) The Commission may, with the consent of the Minister for Public Expenditure and Reform, acquire, hold and dispose of property other than land or an interest in land.
- (4) The official seal of the Commission shall be authenticated by the signature of—
 - (a) a member of the Commission, and
 - (b) the Chief Executive, or other member of the staff of the Commission authorised by the Commission to act in that behalf.
- (5) Judicial notice shall be taken of the seal of the Commission and every document purporting—
 - (a) to be an instrument made by the Commission, and
 - (b) to be sealed with the seal of the Commission authenticated in accordance with subhead (4), shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.
- (6) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal, may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission to act in that behalf.
- (7) The Commission shall, subject to the provisions of this Act, be independent in the performance of its functions and shall determine, by standing orders or otherwise, the procedure and business of the Commission.

NOTES:

This head sets out the name of the Commission gives the Electoral Commission legal status, setting it up as a body corporate and establishing it as an independent body.

The head is similar to Part 7, [S.44\(62B\)](#) of the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015 and Irish Human Rights and [Equality Commission Act, 2014](#), P.2, S.9.

Subheads (3) – (7) are standard provisions in establishing an independent body corporate, derived from [S.44, 62B \(3\) of the Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015](#). Given the independence of the Electoral Commission and its control over its own budget, the Minister for Housing, Local Government and Heritage is not required to give consent in respect of the ownership of property, as provided for in subhead (3).

CHAPTER 2: GOVERNANCE ARRANGEMENTS

HEAD 5

MEMBERSHIP OF ELECTORAL COMMISSION

Provide that:

- (1) Subject to this head, the Commission shall consist of not more than 9 and not less than 7 members, one of whom shall be the Chairperson.
- (2) The membership of the Electoral Commission shall be constituted as follows:

A nominated Chairperson:

- The Chairperson, nominated by the Chief Justice and appointed by the President, shall be –
 - (a) A former judge of the Supreme Court, a former judge of the Court of Appeal or a former judge of the High Court, or
 - (b) A judge of the Supreme Court, or
 - (c) Following consultation by the Chief Justice with the President of the High Court, a judge of the High Court, or
 - (d) Following consultation by the Chief Justice with the President of the Court of Appeal, a judge of the Court of Appeal.

Two *Ex Officio* members:

- The Ombudsman, or where the office is vacant, the Director of the Office of the Ombudsman;
- The Clerk of Dáil Éireann (or, where the office is vacant, the Clerk Assistant of Dáil Éireann), or the Clerk of Seanad Éireann (or, where the office is vacant, the Clerk Assistant of Seanad Éireann). These office holders shall be appointed alternately for terms of 4 years.

Between four and six Selected Members:

- (3) All other members (to be referred to as ‘selected members’) shall, following a public selection process, be nominated by the Government and appointed by the President, subject to the passing of resolutions by each House of the Oireachtas recommending the appointments.

- (4) The selected membership shall include individuals recommended on the basis of meeting the general criteria which have been agreed between the Service and the Minister, and also of possessing following skills and experience, where possible:
 - (a) At least one person recommended by the Service with experience and/or expertise on electoral matters, including any experience/expertise gained in their capacity as a former member of the Houses of the Oireachtas and/or a local authority
 - (b) At least one person recommended by the Service with experience and/or expertise in electoral systems internationally.
 - (c) At least one person recommended by the Service with experience and expertise in the administration of the Irish electoral system.
 - (d) At least one person recommended by the Service with experience and expertise in public administration, public governance and public financial accountability, at a senior level.
- (5) Further to subhead (1), the Electoral Commission may propose the addition of further members, where considered necessary in order to effectively carry out its functions. In such a situation, the Electoral Commission shall set out in writing a detailed description of the circumstances which necessitate the additional resources, the role which the new person(s) which be required to carry out, and the skills and experience which would be required of them in this regard for the consent of the Minister for Public Expenditure and Reform. Upon receipt of such consent, the Electoral Commission shall inform the Minister, who shall request the Service to put in motion a selection process at the earliest opportunity.
- (6) The Commission may act notwithstanding any vacancy among its membership.

NOTES:

The Electoral Commission will initially consist of 7 members, with this head providing for 9 members to account for the possibility of expansion in the future.

Some of the members will be officeholders (the Ombudsman, the Clerk of the Dáil / Clerk of the Seanad) who currently carry out functions which will transfer to the Electoral Commission, or appointees (the Chairperson, nominated by the Chief Justice), while others will be put forward by the Service, following a public selection process. This head is not derived from existing legislation.

The membership will initially be:

A nominated Chairperson:

The Chairperson is nominated by the Chief Justice and appointed by the President. The appointment of a serving or former member of the judiciary is in keeping with current

practice with the chairperson of a Referendum Commission, the Constituency Commissions and SIPO¹. The appointment of a chairperson from the judiciary has been widely referenced as international best practice.

Two *Ex Officio* members:

- The Ombudsman, who currently serves on [Referendum Commissions](#) (Referendum Act, 1998, S.2(6)(B)) and [Constituency Commissions](#) (Electoral Act, 1997, S.7 as amended).
- The Clerk of the Seanad or the Clerk of the Dáil, to be appointed alternately for 4-year terms. It is desired that the Minister decides which of the two serves on the initial membership, which will define the ongoing sequence. Each officeholder is expected to stay in place for the full four-year term – if the officeholder changes, the incoming officeholder will serve out the remainder of the 4-year term. If the office is vacant or the officeholder cannot attend for a period of time, the Clerk Assistant of the Dáil or the Clerk Assistant of the Seanad (as appropriate) can take their place for the period. This is set out below in head 11.

As is current practice in respect of the appointments of any of the above to SIPO, Referendum Commissions or Constituency Commissions, they will be part of the Electoral Commission by virtue of their nomination or the office they hold. The need does not arise for their confirmation in the post by the Minister, the Government or the President.

Four ‘Selected Members’:

The remaining (initially 4) members (‘selected members’) will be identified via a competitive public selection process carried out by the Public Appointments Service (‘the Service’). The selection process will seek to identify preferred candidates with competence and experience in specific areas of expertise as follows:

- experience and/or expertise in electoral matters gained in their capacity as former members of the Houses of the Oireachtas or local authorities.
- expertise and/or experience in international electoral systems
- experience and expertise in the administration of the Irish electoral system
- expertise and experience in public financial accountability

A set of general criteria will be agreed by the Service with the Minister, as referred to in Chapter 2, head 7(5) and, together with the specialist criteria set out above in subhead (4), shall serve as the basis for the assessment of applicants. The legislation should provide for the

¹ SIPO is chaired by a former High Court judge, the Referendum Commission is chaired by a current or former High/Supreme/Appellate Court Judge, and Constituency Commissions are chaired by a current High/Supreme/Appellate Court Judge

possibility that no suitable candidate emerges with the desired specialist attributes set out above.

Subhead (5) is intended to create a process for the expansion of the membership beyond 7 members, subject to the nine-member limit set out in subhead (1). It is not informed by existing legislation.

HEAD 6

TERMS AND CONDITIONS OF SELECTED MEMBERS

Provide that:

- (1) Subject to subhead (2), a selected member of the Commission shall hold office, unless the member sooner dies, resigns, becomes disqualified or is removed from office, for such period, not exceeding 4 years from the date of his or her appointment, as the President, on the advice of the Government, shall determine when appointing him or her.
- (2) Such two of the selected members of the Commission that is first constituted under this Act as are determined by the President, on advice of the Government, shall hold office for a period of 3 years from the date of their respective appointments as such selected members. A 3 year term shall also apply in respect of re-appointments, should they arise.
- (3) A member of the Commission holds office on such terms and conditions as may be determined:
 - by the Government at the time of recommendation for appointment, or
 - by the Minister, in consultation with the Minister for Public Expenditure and Reform at the time of reappointment.
- (4) Members of the Commission shall serve for a maximum of two terms of office. Each term shall not exceed four years.
- (5) A member of the Commission may resign from office by notice in writing addressed to the President and the resignation takes effect on the date the President receives the notice.

NOTES:

This head sets out the terms and conditions for the Selected Members of the Electoral Commission in respect of terms of office, conditions of service, eligibility for reappointment and resignations. It is derived from the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015, S.44 \(62E\)](#).

Subhead (1) sets out the standard term of office of 4 years.

Subhead (2) provides that two of the initially-selected members are appointed for 3 year terms, and (where it arises), reappointed for 3 years in order that the replacement of selected members takes place on a staggered basis. This would enhance continuity of the membership, with Selected Members changing on a gradual basis. Should such two members be reappointed, the membership would thereafter be set on a trajectory of two selected member appointments being made every second year. This subhead is derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62E\)\(2\)](#)

Subhead (3) allows the Government to set the terms and conditions of members at the time of their appointment. It is derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62E\)\(2\)](#), but bullet 2 has been added in order that the terms and conditions may be changed at the time of a potential reappointment.

Subhead (4) sets out that a reappointment (Head 8: Reappointment of Currently-Serving Members) can only happen once per member, providing for an aggregate term of no more than eight years. The Policing Authority also only allows for one reappointment.

Subhead (5) is derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62E\)\(7\)](#). In the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, the Government must agree to a specified date of resignation. This has been amended to allow for the President to give such assent instead.

HEAD 7

NOMINATION AND REPLACEMENT OF SELECTED MEMBERS

Provide that:

- (1) A selected member of the Commission shall be appointed by the President following a public selection process, and the recommendations of the Service, the Minister and the Government, and the passing of resolutions of each House of the Oireachtas recommending the appointment.
- (2) Where a vacancy arises, or is anticipated will arise among the selected membership of the Commission, the Minister shall invite the Service to undertake a selection competition for the purpose of identifying and recommending to the Minister those persons for appointment as members of the Commission.
- (3) The Minister shall, sufficiently in advance of the establishment day as may be required, invite the Service to undertake a selection competition for the purposes of identifying and recommending to him or her an individual for appointment in respect of each selected member position on the Commission.
- (4) Further to subheads (2) and (3), upon receipt of a request from the Minister for the nomination of persons to serve as selected members on the Commission, the Service shall appoint a selection panel.
- (5) The Service shall agree with the Minister the selection criteria to be adhered to in respect of the filling of vacancies for selected members on the Commission. These shall include the criteria set out in head 5.
- (6) Anticipated vacancies on the Commission shall be advertised publicly and shall include the agreed selection criteria and the process to be followed in respect of the filling of vacancies.
- (7) The Service may adopt such procedures as it thinks fit to carry out its functions as set out under this head.
- (8) In recommending to the Minister persons for appointment as members of the Commission, the Service shall, in so far as practicable, endeavour to ensure that among the members of the Commission there is an equitable balance between men and women.
- (9) The service shall provide the Minister with particulars of experience, training and expertise of persons who it recommends under this head.

- (10) Where the Service makes a recommendation to the Minister for the appointment of a person to the Commission, the Minister shall accept that recommendation and bring a proposal to Government for the appointment of the recommended person.
- (11) Further to subhead (10), the Government shall accept the proposed appointment. In exceptional circumstances, where the Government, for substantial and stated reasons, is unable to accept the recommendation by the Service of a particular person, it shall inform the Service of that fact and the reasons for it and shall request the Service to make another recommendation in respect of the vacancy and, the Service shall make another recommendation for appointment to the Commission.
- (12) Following the Government's acceptance of the Service's recommendation, resolutions shall be put before each House of the Oireachtas recommending the appointments (or, if prior to the establishment day of the Commission, recommending the nominations). The President shall appoint (or, if prior to the establishment day of the Commission, nominate) the persons recommended by the Service as members of the Commission, subject to the passing of these resolutions. Should either of these resolutions fail to be passed, the Service shall put forward another nominee to Government.
- (13) If, immediately before the establishment day of the Commission, a person stands nominated, as set out in subhead (12), the person shall, on the establishment day, stand appointed as a selected member of the Commission.

NOTES:

This text draws from the [Irish Human Rights and Equality Commission Act, 2014, S.13](#) and the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015, S.44 \(62C\),\(62D\)](#).

The 'selected members' of the Electoral Commission are selected by the Public Appointments Service in a public selection process, then recommended by the Minister and Government and appointed by the President, with the appointment being effective subject to resolutions supporting the appointments from both Houses of the Oireachtas. Such resolutions are appropriate, given that the Electoral Commission is accountable to the Oireachtas.

The intended process is that:

- (A) Where a vacancy is anticipated/occurs, the Minister writes to the Service, inviting it undertake a selection competition.
- (B) The Service agrees general selection criteria with the Minister, which apply to all selected members, as well as specialist skills which are set out in head 5(4), and proceeds with the selection competition, publicising it as necessary.

- (C) The Service recommends a specific person for each post. This ensures that there is an independent Electoral Commission, as the Minister has had no input into the selection of members. It would be desirable that a panel is put in place for each position, so that a future vacancy during the lifetime of a board does not require running a new competition.
- (D) Following receipt of the recommendations from the Service, the Minister accepts the recommendation and brings a proposal to Government for the recommendation of said appointments to the President or, in the case of the initial membership, for nomination by the President.
- (E) The Government accepts the nominations and recommends the appointments to the President. Consecutively, the Government puts forward motions recommending the appointments to the Houses of the Oireachtas. Further to the passing of the motions, the President makes the appointments. In the case of the initial selected membership, the President recommends the appointments and these become effective on the establishment day.
- (F) In limited circumstances, where for substantial and stated reasons the Government is unable to accept the nomination. There is provision that the Government can refuse a nomination, setting out its reasons to the Service. PAS shall then make another recommendation.
- (G) If either House of Oireachtas does not pass the aforementioned motions, PAS is required to make another nomination.

This process shares several features with the process set out in the Irish Human Rights and Equality Commission Act 2014:

- Minister agrees general criteria (IHREC Act, 2014, S.13(6))
- PAS selects an individual for each 'selected member' post (IHREC Act, 2014, S.13(2))
- Government accepts PAS recommendation, except where exceptional circumstances arise (IHREC Act, 2014, S.13(11) and S.13(12))

Subheads (3) and (13) above use the 'Establishment day' structure which is also used in the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015, S.44](#) (62C, subsections (3)-(7)). The underlying principle is that anyone who has been nominated to a position before establishment day is considered appointed on establishment day.

HEAD 8

REAPPOINTMENT OF CURRENTLY-SERVING SELECTED MEMBERS

Provide that:

- (1) Further to head 6(4), the reappointment of a currently-serving selected member of the Commission shall be effected by the President, subject to recommendations of the Minister and the passing of resolutions by both Houses of the Oireachtas supporting the reappointment. It shall not be necessary for such a currently-serving member to participate in a selection competition undertaken by the Service under head 7 or to be recommended for reappointment by the Service.
- (2) Further to subhead (1), where a currently-serving selected member of the Commission wishes to be considered for reappointment, he or she shall write to the Chairperson of the Commission no less than six months prior to the expiry of their term, expressing their wish to be so considered. The Chairperson shall, as soon as may be practicable, write to the Minister requesting the reappointment by the President of the member. The reappointment shall be subject to the passing of resolutions by the Houses of the Oireachtas supporting the reappointment.

Upon receipt of such a request, The Minister shall:

- inform the Government of the request that has been received, setting out the intention to reappoint the member(s) in question.
 - in consultation with the Minister for Public Expenditure and Reform, set out the terms and conditions which apply in respect of the reappointment.
 - Cause supporting resolutions to be put before the Houses of the Oireachtas as soon as may be practicable.
- (3) Further to subhead (2), the passing of such supporting resolutions and the acceptance by the member of such updated terms and conditions as apply, the President shall reappoint the member to the Commission under these terms and conditions.

NOTES:

This head allows for the reappointment of a currently-serving member to the Commission, subject to a maximum of two terms of office. The Minister is required to be involved in the process in order that resolutions can be put before the Houses of the Oireachtas, whose support is required given the reporting relationship of the Commission to the Oireachtas. The Terms and Conditions may have changed generally in respect of appointments to state bodies, therefore such consultation with the Minister for Public Expenditure and Reform is provided for.

Subhead (1), draws from the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015](#), S.44(62E)(5), which exempts a reappointee from selection competitions or the need to be confirmed by the Houses of the Oireachtas. In the case of the Electoral Commission, it is appropriate that reappointments be subject to the approval of the Houses of the Oireachtas, given the direct reporting relationship between the Electoral Commission and the Houses of the Oireachtas.

Subhead (2) sets out the process for reappointment, detailing how the resolutions of the Houses of the Oireachtas are put forward, and how the Terms and Conditions are updated during the process. The [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015](#), S.44(62E)(3) provides that a reappointment to the Policing Authority is subject to terms and conditions as may be determined by the Government at the time of reappointment.

Note: Further to head 6(2), two initially-appointed members shall serve a 3-year term, rather than the normal 4-year term. This 3-year term will also apply in respect of reappointments for these members, should a reappointment come about. This is in order to facilitate a gradual turnover of selected members and reducing the potential for losses of organisational knowledge.

HEAD 9

INELIGIBILITY, DISQUALIFICATION OF SELECTED MEMBERS

Provide that:

- (1) A person is not eligible to be recommended for or appointed as a member of the Commission or a committee if he or she is—
 - (a) a member of either House of the Oireachtas,
 - (b) entitled under the rules of procedure of the European Parliament to sit in that Parliament,
 - (c) a member of a local authority.
- (2) A person shall be disqualified for holding and shall cease to hold office as a member of the Commission or a committee (as defined in head 13) if he or she—
 - (a) is convicted on indictment of an offence,
 - (b) is convicted of an offence involving fraud or dishonesty,
 - (c) has a declaration under the Companies Act 2014, S.819 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of 14 of that Act, or
 - (d) is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014 , whether by virtue of that Chapter or any other provision of that Act.
- (3) Where a member of the Commission or a committee is—
 - (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, or
 - (d) elected or co-opted as a member of a local authority,

he or she shall thereupon cease to be a member of the Commission or the committee, as the case may be.

NOTES:

This head sets out conditions under which a Member can be deemed ineligible, disqualified, or removed from office. The heads are derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62F\)](#) and (62G). They accord with the conditions for removal of an Electoral Commissioner in the UK, as set out in [Schedule 1\(4\)](#) of the UK Political Parties, Elections and Referendums Act, as amended.

They include some provisions from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, such as where a person is convicted of an offence involving fraud or dishonesty, which are additional to the provisions of the Irish Human Rights and Equality Commission Act, 2014 ([S.14](#)).

HEAD 10

REMOVAL OF APPOINTED MEMBERS

Provide that:

- (1) The Oireachtas may only remove an appointed member of the Commission from office where—
 - (a) one or more of the grounds referred to in subhead (2) apply,
 - (b) subheads (3) to (6) have been complied with, and
 - (c) a resolution is passed by both Houses of the Oireachtas calling for the removal of the member from office.
- (2) The grounds referred to in subhead (1) are that, in the opinion of the Oireachtas, the member of the Commission—
 - (a) has, without reasonable excuse, failed to discharge the functions of the office,
 - (b) has become incapable through ill health of effectively performing those functions,
 - (c) has committed stated misbehaviour,
 - (d) has a conflict of interest of such significance that he or she should cease to hold the office, or
 - (e) is otherwise unfit to hold the office or unable to discharge its functions.
- (3) Where the Oireachtas proposes to remove a member of the Commission pursuant to subhead (1), the Oireachtas shall adhere to fair procedures and the principles of natural justice.

NOTES:

This head provides for the removal of a member of the Electoral Commission. The removal of a Member requires resolutions of both houses of Oireachtas. This is similarly onerous to equivalent provisions in the UK Political Parties, Elections and Referendums Act, 2000, which requires an address from the House of Commons ([Schedule 1, S.4](#)).

HEAD 11

PROVISIONS FOR MEMBERSHIP OF CLERK OF DÁIL AND CLERK OF SEANAD

Provide that:

- (1) In respect of the alternating Clerk of Dáil Éireann / Clerk of Seanad Éireann membership, the position of member of the Electoral Commission applies to the office of Clerk of Dáil Éireann and the office of Clerk of Seanad Éireann consecutively.
- (2) The Minister shall, before establishment day, write to the Clerk of Dáil Éireann and the Clerk of Seanad Éireann, informing them of the sequencing which will apply in respect of their alternating membership, and of provisions in respect of replacements and retirements.
- (3) Further to subhead (2), the initially-designated member shall serve as a member of the Electoral Commission for a period of four years from the establishment date, and each succeeding term shall also be for a period of four years.
- (4) The Chairperson of the Commission shall, no later than six months from the expiry of a term of membership, write to both the outgoing and incoming officeholders, affirming to them of the date on which the incumbent's term of membership will expire and the date on which the successor's term of membership will commence, and of any supplementary information pertaining to membership.
- (5) Each period of membership of the Commission attaches to the office of Clerk of the Dáil or the office of Clerk of the Seanad. Therefore, the holder of the designated office shall cease to be a member of the Commission upon vacation of office. Similarly, should the designated officeholder vacate their office while a member of the Commission, their successor shall serve the remainder of the four-year term.
- (6) Where the officeholder of Clerk of Dáil Éireann is the currently designated member of the Commission, and the office of Clerk of Dáil Éireann is vacant, the Clerk Assistant of Dáil Éireann shall temporarily act as a member of the Commission in their place. Where the officeholder of Clerk of Seanad Éireann is the currently designated member of the Commission, and the office of Clerk of Seanad Éireann is vacant, the Clerk Assistant of Seanad Éireann shall temporarily act as a member of the Commission in their place.

NOTES:

This head addresses the logistics around the alternating membership of the Clerk of Dáil Éireann and the Clerk of Seanad Éireann. It is not derived from existing legislation. The head should provide for:

- The Minister to decide which officeholder serves on the Commission initially.
- The Chairperson of the Commission to handle the changeover by communicating with the incoming and outgoing members.
- The four-year term of office to attach to the office of Clerk of Dáil Éireann or Clerk of Seanad Éireann, rather than the officeholder – therefore a change of officeholder does not impact on the length of terms.
- Where the office of a serving Clerk of Dáil Éireann or Clerk of Seanad Éireann becomes vacant, the deputy Clerk shall temporarily take up the membership role.

HEAD 12

MEETINGS AND PROCEDURE

Provide that:

- (1) The Commission shall hold such and so many meetings as may be necessary for the due fulfilment of its functions but in each year shall hold not less than one meeting in each period of 3 months.
- (2) The Commission may publish all or any of the following as it considers appropriate:
 - (a) agendas for its meetings and those of its committees;
 - (b) the papers relating to those meetings, where privilege does not militate against such publication;
 - (c) such reports of those meetings.
- (3) At a meeting of the Commission—
 - (a) if the Chairperson thereof is present, he or she shall be the Chairperson of the meeting, or
 - (b) if the Chairperson thereof is not present or the office of Chairperson is vacant, the Deputy Chairperson shall act as the Chairperson of the meeting, or
 - (c) if and so long as the Chairperson and Deputy Chairperson are not present, the members of the Commission who are present shall choose one of their number to act as the Chairperson of the meeting.
- (4) Every question at a meeting shall be determined by a majority of the votes of the members of the Commission present and voting on the question and, in the case of an equal division of the votes, the chairperson of the meeting shall have a second or casting vote.
- (5) The quorum for a meeting of the Commission shall be 4 or such other number, not being less than 4 as the Commission may determine.
- (6) Subject to the provisions of this Act, the Commission shall regulate its own procedures.

NOTES:

This head provides for the orderly running of meetings. The provisions are taken and amended from:

- (1) Irish Human Rights and Equality Commission Act, 2014, S.16(1)
- (2) Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62J\)](#). The head is amended to clarify that meeting documents may not be released where they are covered by legal privilege. The definition of privilege will be clarified with the OPC in the course of the drafting process.
- (3) Irish Human Rights and Equality Commission Act, 2014, S.16. and (Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62J\)](#). The head has been amended to take account of the Deputy Chairperson, who will chair meetings in the absence of the Chairperson.
- (4) taken from Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62J\)\(9\)](#).
- (5) Taken from several places, but the quorum of 4 has been decided, taking into account the difficulty of running with a quorum of 5 if there is even one long-term absentee where there is a total of 7 members.
- (6) A general provision, used in the Irish Human Rights and Equality Commission Act, 2014, S.16(5).

HEAD 13

POWERS TO ESTABLISH COMMITTEES

Provide that:

- (1) The Commission may establish committees to advise and assist in performance of functions, and to perform such functions of the Commission as may be delegated to them.
- (2) In appointing members of a committee, the Commission will have regard to the range of qualifications and experience necessary for the proper and effective performance of the functions of the Committee.
- (3) A committee:
 - (a) shall consist of such number of members as the Commission may determine, and
 - (b) may include persons who are not members of the Commission or its staff.
- (4) The Commission may:
 - (a) appoint a person to be the chairperson of a committee,
 - (b) remove at any time a member from a committee, and
 - (c) at any time dissolve a committee.

NOTES:

This head aims to allow the Electoral Commission to use committees to assist with carrying out many of its functions. The terms of such delegation of functions are broad, allowing the independent Electoral Commission to decide on the most appropriate means of delegating, given that the workload will differ from year to year, and also given that the organisation will evolve.

This head is derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44](#)(62K).

HEAD 14

POWER TO APPOINT CONSULTANTS AND ENTER INTO CONTRACTS

Provide that:

- (1) The Commission may, as it considers necessary to assist it in the performance of its functions:
 - (a) enter into contracts with persons, or
 - (b) appoint consultants or advisers,or both.
- (2) There may be paid by the Commission, out of the resources at its disposal, to persons, consultants or advisers referred to in subhead (1), such fees (if any) or allowances for expenses (if any) incurred by them as the Commission may determine.
- (3) The appointment of a person as a consultant or adviser shall be for such period and on such terms and conditions as the Commission considers appropriate.
- (4) Persons appointed under such contracts, consultancies or advisory roles shall be bound by the terms of the Official Secrets Act 1963.

NOTES:

This head seeks to give the Electoral Commission the power to appoint consultants and advisers, and enter into contracts in the normal course of its business.

This text is derived from the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015, S.44\(62L\)](#) in which, the consent of the Minister (for Justice) and the Minister for Public Expenditure and Reform is required. This requirement for Ministerial consents has been removed, given the independence of the Electoral Commission. The Commission's powers are, however, subject to its available financial resources.

The Irish Human Rights and Equality Commission Act, 2014 does not make reference to the appointment of consultants

Subhead (4) is intended to ensure that consultants or persons acting for the Electoral Commission are held to the appropriate standards in respect of confidentiality of information. This is effected by requiring that such persons are bound by the terms of the Official Secrets Act, 1963. Further provisions can be made in respect of confidentiality under the terms of any particular consultancy or contract.

HEAD 15

STAFFING

Provide that:

- (1) The Commission may, with the consent of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of the Commission as it may determine.
- (2) The terms and conditions of service of a member of the staff of the Commission, and the grade at which he or she serves, shall be such as may be determined by the Commission with the consent of the Minister for Public Expenditure and Reform.
- (3) Members of staff of the Commission are civil servants in the Civil Service of the State.
- (4) The Commission is the appropriate authority (within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005) in relation to the members of its staff.

NOTES:

Provides for the Electoral Commission to take on staff, which are categorised as civil servants. The consent of the Minister for Public Expenditure and Reform (but not the Minister for Housing, Planning and Local Government) is required when taking on additional staff, and setting their grade.

This head is derived from The Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44 \(62Q\)](#).

HEAD 16

ACCOUNTS OF COMMISSION

Provide that:

- (1) The Commission shall keep in such form as may be approved by the Minister for Public Expenditure and Reform all proper and usual accounts of all money received or expended by it and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister for Public Expenditure and Reform, may direct.
- (2) Accounts kept in accordance with this head shall be submitted, not later than 1 April in the year immediately following the financial year to which they relate, or on such earlier date as the Minister for Public Expenditure and Reform may direct to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Chairman of the Dáil who shall, as soon as may be after they are so presented, cause copies thereof to be laid before each House of the Oireachtas.

NOTES:

This is a standard provision which allows for appropriate financial accountability. It is derived from the Irish Human Rights and Equality Commission Act, 2014, [S.27](#).

HEAD 17

CHAIRPERSON OF ELECTORAL COMMISSION

Provide that:

- (1) The Minister shall, as far in advance of the Establishment Day as may be necessary, request that the Chief Justice nominate a Chairperson of the Commission to commence their term on the establishment day.
- (2) The Minister shall, no less than six months prior to the expiry of a Chairperson's term, write to the Chief Justice requesting the nomination of a new Chairperson. Upon receipt of the nomination, the Minister shall bring a proposal to Government for the recommendation of the appointment of the Chairperson to the President. Government shall accept the Minister's recommendation.
- (3) The chairperson on the Commission shall hold office on a part-time basis for a period of seven years.
- (4) Further to subhead (2), the President shall appoint the Chairperson, effective following the earlier of:
 - (a) The expiry of seven years from the date of appointment of the previous Chairperson;
 - (b) The termination of the term of the previous Chairperson.
- (5) A Chairperson may not be reappointed for a second term.
- (6) A Chairperson may resign their office by informing the President of their decision in writing, copying the correspondence to the Chief Executive of the Electoral Commission and the Chief Justice. The resignation takes effect on the date the President receives the notice.
- (7) Where the Chairperson of the Commission becomes temporarily unable to act as such chairperson, the Deputy Chairperson shall assume the role until such time as the Chairperson is fit to resume their duties. The Deputy Chairperson shall not be appointed in such a capacity for a term in excess of 6 months and may not be reappointed on more than three occasions. Should this quantum of temporary terms be exceeded, the Chairperson shall be subject to the provisions of Head 10, and the Chief Executive shall be required to write to the Minister requesting that the removal process be put in motion.
- (8) If the Chairperson dies, resigns or is removed from office, the Minister shall request in writing the nomination of a new Chairperson from the Chief Justice.

NOTES:

The Chairperson is appointed by the President, following the nomination of the Chief Justice and the recommendation of the Government. This nomination does not require the assent of the Oireachtas. The remuneration of the Chairperson shall be set at the time of appointment in consultation with the Minister for Public Expenditure and Reform.

Subheads (1) and (2) ensure an orderly appointment and replacement of Chairpersons. They provide that in the normal course of events where a Chairperson serves their full term, a replacement is requested in good time.

Subhead (3) sets out the term of the Chairperson, and that the appointment is on a part-time basis.

Subhead (4) sets out that the commencement day of each Chairperson's term of office.

Subhead (5) requires that the Chairperson is not eligible for reappointment.

Subhead (6) allows for the resignation of the Chairperson. In such circumstances, the Chairperson writes to the President. The wording is derived from the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act, 2015, S.44, 62E.\(7\)](#) which sets out the terms of resignation for a member of the Policing Authority. A resignation is effective from the day the letter is received by the President.

Subhead (7) provides for the temporary replacement of a Chairperson, where they become temporarily unable to act in the role. The subhead differs from the provisions of the Policing Authority (Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44, 62J\(6\)](#)) and the Irish Human Rights and Equality Commission (Irish Human Rights and Equality Commission Act, 2014, [S.16](#)) in respect of the temporary incapacity of the Chairperson, which only address the issue in the general context of meetings and procedure, and do not provide for the role of Deputy Chairperson. This subhead draws from [The EPA Act, 1992, S.26\(4\)](#), which gives precedent to limitation of the number and length of periods of temporary incapacity before the Chairperson should be replaced.

Subhead (8) provides for the replacement of the Chairperson where the serving Chairperson has died, been removed from office, or become incapable of carrying out their work. Note: Neither IHREC nor the Policing Authority set out a provision specifically for the resignation of their Chairperson. It is provided for here because the method of appointment (nomination) is distinct from the process which covers the Selected Members.

HEAD 18

DEPUTY CHAIRPERSON OF ELECTORAL COMMISSION

Provide that:

NOTES:

This head will provide for an appointed member of the Commission to be designated as the Deputy Chairperson, and to take on the role of the Chairperson, should the Chairperson be temporarily unable to perform their duties, or unable to attend a meeting.

The Deputy Chairperson shall be appointed by an ordinary resolution of the membership from within their numbers.

The Deputy Chairperson may, in addition to his or her remuneration as a member, be paid such additional remuneration (if any) as the Minister for Public Expenditure and Reform may determine. This is to provide for periods where the Deputy Chairperson is acting in the Chairperson's role. Such periods entail a greater level of responsibility and a greater time commitment. This principle applies in the EPA, albeit in respect of the role of Deputy Director General ([EPA Act, 1991, S.22\(3\)](#))

The duration of term of Deputy Chairperson shall be the shorter of either:

- The remainder of the duration of the selected Deputy Chairperson's current term
- The period of time until the appointment of a new Chairperson.

Therefore, a member who is serving as Deputy Chairperson at whose term is renewed will not retain their Deputy Chairperson designation without a positive vote of the membership in support of their re-appointment as Deputy Chairperson.

The Deputy Chairperson does not have a role additional to their ordinary membership of the Commission outside of the time where they serve as a temporary replacement for the Chairperson.

HEAD 19

APPOINTMENT AND REAPPOINTMENT OF CHIEF EXECUTIVE

Provide that:

- (1) The Chief Executive of the Electoral Commission shall be appointed by the President, following:
 - the recommendation of Government;
 - the passing of resolutions by both Houses of the Oireachtas, supporting the appointment.
- (2) Where the Chief Executive post becomes vacant, or is anticipated to become vacant, the Minister shall invite the Service to undertake a selection competition for the purpose of identifying and recommending to the Minister a person for appointment as Chief Executive of the Commission.
- (3) Upon receipt of such a request from the Minister for the nomination of a Chief Executive, the Service shall appoint a selection panel and commence a selection competition.
- (4) The post and selection competition shall be advertised publicly and shall include the selection criteria (the agreement of which is set out in subhead (6)) and the process to be implemented in respect of the filling of the vacancy.
- (5) The Service may adopt such procedures as it thinks fit to carry out its functions under this head.
- (6) In selecting a candidate, the panel shall have regard to the special knowledge, experience and qualifications, including any criteria which the Minister, in consultation with the Commission, may specify, or personal qualities which the committee consider appropriate to enable a person effectively to perform the functions of the Chief Executive.
- (7) The Service shall inform the Minister in writing of their recommendation in respect of the person to be appointed as Chief Executive of the Commission, setting out their particulars, qualifications, experience and suitability for the role. Upon receipt of this correspondence, the Minister shall bring a proposal to Government for the recommendation of such an appointment.
- (8) The Government shall accept the Minister's proposal, and recommend the appointment to the President. Furthermore, the Government shall arrange for supporting resolutions to be put before each House of the Oireachtas for the recommendation of the appointment. Further to the passing of these resolutions, the

President shall make the appointment. Should such a resolution fail to be passed by either House, the Service shall put forward another nominee.

- (9) In exceptional circumstances, where the Government, for substantial and stated reasons, is unable to accept the recommendation by the Service of a particular person, it shall inform the Service of that fact and the reasons for it and shall request the Service to make another recommendation in respect of the vacancy and, the Service shall, as soon as is practicable, comply with the request.
- (10) If the Service is unable to select any suitable candidate pursuant to a particular request—
- (a) the Government shall recommend for appointment a Chief Executive who was the candidate selected by the committee pursuant to a previous request (if any) in relation to that appointment, or
 - (b) the Minister shall make a further such request to the Service and the Government shall appoint to be the Chief Executive the candidate selected by the committee pursuant to that request or pursuant to another such request made in relation to that appointment.
- (11) Subject to head 20(2), should the Chief Executive wish to be considered for reappointment, he or she shall write to the Chairperson and the Minister requesting their reappointment no less than 6 months prior to the expiry of their term of office.

Upon receipt of such a request, the Minister shall:

- Consider the request and, if he or she agrees to the reappointment, inform the Government of the request that has been received, setting out the intention to reappoint the Chief Executive.
- In consultation with the Minister for Public Expenditure and Reform, set out the terms and conditions which apply in respect of the reappointment.
- Cause supporting resolutions to be put before the Houses of the Oireachtas as soon as may be practicable.

Further to the passing of such motions and the acceptance by the Chief Executive of such updated terms and conditions as apply, the President shall reappoint the Chief Executive under these terms and conditions.

(12) The Minister shall, in advance of the Establishment Day, commence the candidate selection process, allowing such time as may be necessary in order that in advance of the Establishment Day:

- an individual is recommended by the Service and by Government for appointment as Chief Executive of the Commission,
- the Government's recommendation is supported by resolutions of both Houses of the Oireachtas, and
- the President has nominated for appointment the Government's recommended candidate.

(13) If, immediately before the establishment day of the Commission, a person stands nominated by the Government, this nominee shall be deemed to be the Chief Executive of the Commission on the Establishment Day.

NOTES:

This head sets out the recruitment and reappointment process for the Chief Executive. It carries a similar procedure to the appointment of the selected membership (head 7).

The recruitment process is as follows:

Minister invites PAS to run a competition (subhead 2) -> PAS commences selection competition, appoints selection panel (subhead 3) -> Minister and PAS agree criteria for competition (subhead 6) -> PAS advertises and runs competition (subheads 4,5) -> PAS recommends in writing a candidate to the Minister (subhead 7) -> Minister recommends the candidate to Government (subhead 7) -> Government accepts candidate and recommends their appointment to the President, which is effective following the passing of positive resolutions by both Houses of the Oireachtas (subhead 8).

Subheads (4) and (5) are derived from the Irish Human Rights and Equality Commission Act, 2014, S.13 (7) and (8), which apply to the appointment of members of the Human Rights and Equality Commission.

Subhead (6) is derived from the EPA Act 1992, S.21(7), but has more of an emphasis on experience than the EPA Act, which places a specific emphasis on qualifications.

Subhead (7) is derived from the Irish Human Rights and Equality Commission Act, 2014, [S.13](#)(10) and S.13(11).

Subheads (8) and (9) are derived from the Irish Human Rights and Equality Commission Act, 2014, S.13(11) and S.13(12) insofar as they require that the Government accept the recommendation of PAS and the Minister in the absence of extenuating circumstances.

Subhead (8) addresses potential situations where the Houses of the Oireachtas fail to pass the supporting resolutions, and subhead (9) addresses potential situations where the Government is unable to accept the recommendation by the Service.

Subhead (10) addresses circumstances where the Public Appointments Service cannot recommend an additional candidate. These are derived from the EPA Act, 1992, [S.21](#) (9) and (10).

Subhead (11) allows for a reappointment of the Chief Executive, subject to serving a maximum of two terms. A reappointment does not require a PAS selection process, but does require the approval of the Minister and the Houses of the Oireachtas.

Subheads (12) and (13) address the appointment of the initial Chief Executive, using the “Establishment Day” convention for selection of the initial selected membership (set out in Chapter 2, Head 3), which is also used for IHREC’s Director position and set out in the Irish Human Rights and Equality Commission Act, 2014, S.20.

HEAD 20

ROLE OF CHIEF EXECUTIVE

Provide that:

- (1) There shall be a Chief Executive of the Electoral Commission who, subject to subheads (2) and (3), shall be nominated by Minister following a public selection process undertaken by the Service, recommended by the Government and appointed by the President, subject to the passing of resolutions recommending the appointment by each House of the Oireachtas. The office holder is referred to in this Act as the ‘Chief Executive’.
- (2) The term of office of the Chief Executive shall be five years. The Chief Executive is eligible for consideration for reappointment by the Government for a second term of office of no more than five years if, at the time of his or her reappointment, he or she is the outgoing Chief Executive. Further reappointments are not permitted.
- (3) The Chief Executive shall–
 - hold office under a contract of service in writing for such period as is specified in the contract and subject to such terms and conditions (including terms and conditions relating to remuneration, in line with public pay policy) as are determined by the Commission, with the consent of the Minister for Public Expenditure and Reform.
 - be paid out of moneys at the disposal of the Commission.
- (4) The Chief Executive shall–
 - implement the policies and decisions of the Commission.
 - manage and control generally the staff, administration and business of the Commission.
 - perform such other functions (if any) as may be required by the Commission or as may be authorised under this Act.
 - be accountable to the Commission for the efficient and effective management of the Commission and for the due performance of his or her functions.
 - provide the Commission with such information, including financial information, in respect of the performance of his or her functions as the Commission may require.
- (5) The Chief Executive may make proposals to the Commission on any matter relating to its functions.

- (6) The Chief Executive shall not be a member of the Commission, or a committee, but he or she may, in accordance with procedures established by the Commission or such a committee, as the case may be, attend meetings of the Commission or a committee and shall be entitled to speak at and give advice at such meetings.
- (7) The Chief Executive shall act in a full-time capacity and shall not hold any other office or occupy any position in respect of which remuneration is payable, or carry on any business, trade or profession, without the consent of the Commission.
- (8) The Chief Executive may, with the consent of the Commission, authorise one or more members of staff of the Commission to perform a specified function of the Chief Executive and such member or members so authorised may perform the function accordingly.
- (9) If the Chief Executive—
- (a) dies, resigns or is removed from office, or
 - (b) is for any reason temporarily unable to continue to perform his or her functions,
- the Commission may designate such member or members of the staff of the Commission as it considers appropriate to perform the functions of the Chief Executive until—
- (i) in the circumstances mentioned in paragraph (a), a new Chief Executive is appointed in accordance with head 19 (Appointment and Reappointment of Chief Executive), or
 - (ii) in the circumstances mentioned in paragraph (b), the Chief Executive is able to resume the performance of his or her functions. Such temporary periods of absence should not exceed six months and may not occur more than three times during a term of office.
- (10) The Chief Executive may resign his or her office by registered letter addressed to the President and copied to the Minister and the Chairperson of the Commission. The resignation takes effect on the date the President receives the notice.

NOTES:

This head sets out the role of the Chief Executive.

Subhead (1) provides for the office of Chief Executive, and outlines at a high level the procedure through which they are appointed (set out in detail in head 19). The process differs from:

- IHREC, where their equivalent post (director) is put in place by the commission itself.
- The Policing Authority, where the chief executive is appointed by the Authority with the consent of the Minister for Justice and the Minister for Public Expenditure and Reform.

- The EPA, where their equivalent (Director General) is selected and appointed by Government from a shortlist following a selection process carried out by a specified selection panel.

This process provides for independence (selection made by PAS) and the assent of the Houses of the Oireachtas, given that the Electoral Commission is accountable to them.

Subhead (2) provides for a five year term, with one reappointment for five years or less permitted. This head should allow that a former Chief Executive who applies for a non-consecutive re-appointment to the position can do so, subject to a maximum of two terms, and also subject to selection by the Service in a public selection process.

Subhead (3) sets out that the terms and conditions of the Chief Executive are set at the time of the signing of the contract. These are derived from the Irish Human Rights and Equality Commission Act, 2014, [S.20](#) and the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62P\)\(4\)\(b\)](#) respectively. The first bullet point has an added reference to public pay policy, and also removes the need for consent of the Minister.

Subhead (4) defines the duties of the Chief Executive. Bullets 1-3 are derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62P\) \(6\)](#). Bullet 4 is derived from the Irish Human Rights and Equality Commission Act, 2014, [S.21\(2\)](#). Bullet 5 is derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62P\) \(9\)](#).

Subheads (5) and (6) set out that the Chief Executive is not a member of the Commission, and give him or her powers to interact with the membership as necessary. They are derived from the Irish Human Rights and Equality Commission Act, 2014, [S.21\(4\)](#) and the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62P\) \(8\)](#).

Subhead (7) sets out that the role is full time, and that the office holder cannot be otherwise employed. It is derived from the Irish Human Rights and Equality Commission Act, 2014, [S.20\(6\)](#) and the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62P\) \(10\)](#).

Subhead (8) allows for the delegation of the Chief Executive's functions to staff with the approval of the members. Derived from from the Irish Human Rights and Equality Commission Act, 2014, [S.21\(6\)](#).

Subhead (9) allows for the replacement of the Chief Executive, either temporarily or permanently, should he/she become unable to perform the role, die, or be removed. Derived from the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62P\) \(11\)](#). The EPA Act, 1992 [S.26\(4\)\(b\)](#) allows for the appointment of a temporary replacement of their Director General, with the proviso that a person cannot be nominated more than three times, and for maximum periods of no greater than 6 months.

Subhead (10) allows for the resignation of a Chief Executive.

HEAD 21

REMOVAL OF CHIEF EXECUTIVE

Provide that:

- (1) The Chief Executive may be removed or suspended from office by the membership where:
 - (a) One or more of the grounds referred to in subhead (2) apply,
 - (b) Subheads (3) to (6) have been complied with
 - (c) The membership votes for the removal or suspension of the Chief Executive. Five members of the Commission will be required to vote in favour of the removal or suspension, where there are either seven or eight members of the Commission in total. Where there are nine members of the Commission in total, six of these members will be required to vote in favour of the removal or suspension.
- (2) The grounds referred to in subhead (1) are that, in the opinion of the membership, the Chief Executive of the Commission—
 - (a) Has become incapable of effectively performing his or her duties
 - (b) Has committed stated misbehaviour, or
 - (c) His or her removal appears necessary for the effective performance by the Commission of its functions.
- (3) Where the membership propose to remove or suspend the Chief Executive of the Commission pursuant to subhead (1), the membership of the Commission shall notify, or cause to be notified, the Chief Executive in writing of the proposal.
- (4) A notification under subhead (3) shall include –
 - (a) A statement of the reasons for the proposal
 - (b) A statement that the Chief Executive may, within 30 working days of the sending of the notification or such longer period as the membership may specify, make representations in the manner specified in the notification to the membership as to why the Chief Executive should not be suspended or removed from office, and

- (c) A statement that, where no representations are received within the period specified under paragraph (b), the Membership will, without further notice, proceed with the suspension or removal of the Chief Executive of the Commission from office in accordance with this head.

- (5) In considering whether to suspend or remove the Chief Executive of the Commission from office in accordance with this head, the Membership shall take into account –
 - (a) any representations made pursuant to subhead (4)(b), and
 - (b) any other matter that the Membership consider relevant for the purposes of the decision.

- (6) Where, having taken into account the matters referred to in subhead (5), the Membership decide to suspend or remove the Chief Executive of the Commission from office, they shall notify the Chief Executive in writing of the decision, the reasons for it and of the intention of the Membership to inform the Chairman of the Dáil of the removal or suspension, and the reasons for it. The decision of the Membership shall require a vote with the backing of at least 5 members where the Commission contains either 7 or 8 members in total, or at least 6 members where the Commission contains 9 members in total.

NOTES:

Every state body provides for the removal of its Chief Executive or equivalent. Generally the decision is taken by the Government (EPA), the membership (IHREC) or the membership with the consent of the Minister (Policing Authority). Given the independence of the organisation, it is proposed that the decision be in the hands of the membership, however given the gravity of such a decision, the need for the backing of 5 out a 7 or 8 member Commission, or 6 of a 9 member commission for such a decision is appropriate. Since the Electoral Commission reports to the Oireachtas, details of the decision are required to be given to the Chairman of the Dáil.

HEAD 22

ACCOUNTABILITY OF CHIEF EXECUTIVE TO PUBLIC ACCOUNTS COMMITTEE

Provide that:

The Chief Executive shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (in this head referred to as the “Committee”), give evidence to that Committee in relation to—

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the Commission is required by this Act to prepare,
- (b) the economy and efficiency of the Commission in the use of its resources,
- (c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11 (2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (insofar as it relates to a matter specified in paragraph (a), (b), or (c)) that is laid before Dáil Éireann.

The Committee may not ask the Chief Executive to express an opinion on the merits of a policy of the Commission, the Government or of a Minister of the Government or the merits of the objectives of such a policy, and the Chief Executive may not express such an opinion.

NOTES:

This head sets out the requirement for the Chief Executive to appear before the PAC, as requested and required. It is derived from the Irish Human Rights and Equality Commission Act, 2014, [S.22](#), however subsection (2) of that section, which states that “in the performance of his or her duties under this section, the Chief Executive shall not question or express an opinion on the merits of any policy of the Government or any Minister of the Government or on the merits of the objectives of such a policy” has been replaced with the final paragraph above, which is derived from [Section 93 of the Houses of the Oireachtas \(Inquiries, Privileges and Procedures\) Act 2013](#).

HEAD 23

ACCOUNTABILITY OF CHIEF EXECUTIVE TO OIREACHTAS

Provide that:

- (1) In this head, “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in head 22 or a Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.
- (2) Subject to subhead (3), the Chief Executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of the Commission.
- (3) The Chief Executive shall not be required to give account before a Committee for any matter which is or has been or may be at a future date, the subject of proceedings before a court or tribunal in the State.
- (4) Where the Chief Executive is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which subhead (3) applies, he or she shall inform the Committee of the opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at the time when the Chief Executive is before it, the information shall be so conveyed in writing.
- (5) Where the Chief Executive has informed a Committee of this opinion in accordance with subhead (4) and the Committee does not withdraw the request referred to in subhead (2) in so far as it relates to the subject matter of that opinion—
 - (a) the Chief Executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in summary manner for determination of the question whether the matter is one to which subhead (3) applies, or
 - (b) the chairperson of the Committee may, on behalf of the Committee, make such an application,and the High Court shall determine the matter.
- (6) Pending the determination of an application under subhead (5), the Chief Executive shall not attend before the Committee to give account for the matter that is the subject of the application.

- (7) If the High Court determines that the matter concerned is one to which subhead (3) applies, the Committee shall withdraw the request referred to in subhead (2) but if the High Court determines that subhead (3) does not apply, the Chief Executive shall attend before the Committee to give account for the matter.
- (8) The Committee may not ask the Chief Executive to express an opinion on the merits of a policy of the Commission, the Government or of a Minister of the Government or the merits of the objectives of such a policy, and the Chief Executive may not express such an opinion.

NOTES:

The Chief Executive will be the conduit between the Electoral Commission and the Oireachtas. In subhead (2), general administration refers to the setting of organisational priorities, business planning, research programmes and the efficient and effective management of the Commission. Subheads (3) to (7) address circumstances where the Committee brings up a matter which is/has been/is likely to be the subject of legal proceedings. This head is derived from the Irish Human Rights and Equality Commission Act, 2014, [S.23](#). Subhead (8) is derived from [Section 93 of the Houses of the Oireachtas \(Inquiries, Privileges and Procedures\) Act 2013](#).

HEAD 24

ACCOUNTABILITY FOR ACCOUNTS OF COMMISSION

The Chief Executive is the accounting officer in relation to the appropriation accounts of the Commission for the purposes of the Comptroller and Auditor General Acts 1866 to 1998.

NOTES:

This head provides for the Chief Executive to be accountable for the accounts and finances of the Electoral Commission. The nomination of an accounting officer is necessary in order for the Electoral Commission to have its own voted expenditure, which is another strand of setting up the Electoral Commission as a body which is independent from the Department. Provisions around Accounting Officers are set out in the Public Financial Procedures guidebook (Blue Book), Section A5 ([link](#)).

Should the Electoral Commission take on functions directly relating to electoral events, expenditure relating to such events would be drawn from the central fund, rather than voted expenditure, however this does not arise in respect of the Commission's initial functions.

This head is based on the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, [S.44\(62R\)](#).

HEAD 25

ANNUAL REPORTS

Provide that:

- (1) As soon as may be after the end of each financial year, but not later than six months thereafter, the Commission shall cause a report on the performance of its functions during that year to be laid before each House of the Oireachtas.
- (2) A report under subhead (1) shall include information on the performance of the functions of the Commission during the period to which the report relates and without prejudice to the generality of the foregoing, shall include an account of –
 - (a) research works completed and their high level conclusions;
 - (b) reports prepared under Chapter 8 and provided to the Minister and the Houses of the Oireachtas; and
 - (c) progress towards the goals set out in the most recent Strategy Statement (head 26).
- (3) The Commission shall ensure that, as soon as practicable after copies of an annual report are laid before both Houses of the Oireachtas in accordance with subhead (1), the annual report is published in such manner as the Commission considers appropriate.

NOTES:

This head, which provides for an annual report to be submitted to the Houses of the Oireachtas via the Chairman of the Dáil each year, is similar to provisions for annual reports found in the EPA Act, 1992, [S.51](#), the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, S.44 ([62O](#)) and the Irish Human Rights and Equality Commission Act, 2014, [S.28](#). Where the former two refer to the generality of annual reports, this head sets out some specific items to be covered in the Annual Report, which is also the case in the Irish Human Rights and Equality Commission Act, 2014, [S.28](#).

HEAD 26

STRATEGY STATEMENT

Provide that:

- (1) Subject to subhead (2), every 3 years the Commission shall prepare a strategy statement in respect of the following 3 years.
- (2) The first strategy statement shall be prepared by the Commission as soon as practicable after the establishment day of the Commission and shall relate to the period from its submission to the Committee until the day immediately before the third anniversary of the establishment day of the Commission.
- (3) A second or subsequent strategy statement shall be prepared by the Commission within the period of 6 months before the expiry of the period to which the previous strategy statement relates. The second or subsequent statements of strategy shall relate to the period of 3 years from the anniversary of the establishment day of the Commission.
- (4) The Commission shall, in a strategy statement prepared under this head –
 - (a) set out the key aims, objectives, outputs and strategies of the Commission
 - (b) having regard to subparagraph (a), set out the key priorities of the Chief Executive for his or her term of office
 - (c) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Commission.
- (5) The Commission shall, in preparing a strategy statement–
 - (a) May publish in such manner as the Commission considers appropriate a draft of the strategy statement and, where it publishes the draft, it shall allow persons 30 days from the date of that publication within which to make representations in writing to the Commission with regard to the draft strategy statement, and
 - (b) following consultation under subparagraph (a), and, where appropriate, having considered any representations made, make such modifications as may be necessary to take account of such representations.
- (6) The Commission shall, as soon as may be after the preparation of a strategy statement under subhead (1), cause copies of it to be laid before each House of the Oireachtas

- (7) The Commission shall ensure that, as soon as practicable after copies of a strategy statement are submitted to the Joint Oireachtas Committee, the strategy statement is published in such manner as the Commission considers appropriate.

NOTES:

This head is derived from the Irish Human Rights and Equality Commission Act, 2014, S.25 and the Garda Síochána (Policing Authority and Miscellaneous Provisions) Act, 2015, S.44 (62N). It requires the Electoral Commission to prepare 3-year strategy statements, which are laid directly before the Houses of the Oireachtas. The statements also provide an opportunity for the Chief Executive to set out his/her priorities. A consultation phase is also provided for.

HEAD 27

ASSISTANCE OF STATE BODIES

Provide that:

The Director General of the Central Statistics Office and the Chief Executive of Ordnance Survey Ireland shall, on a request being made in that behalf, provide free of charge to the Electoral Commission such assistance as the Electoral Commission may reasonably require for the purpose of the performance of its functions.

NOTES:

This head is derived from S. 11 of the Electoral Act, 1997. Subsection (1) of this section required the Minister to make available services to the Constituency Commission, and this section has not been included given the independence of the Electoral Commission. However, Section 11(2) of the Electoral Act, 1997, which required the CSO and OSI to provide assistance free of charge, does not impinge on the independence of the Electoral Commission and so has been carried over.

CHAPTER 3: FUNCTIONS OF ELECTORAL COMMISSION

HEAD 28

DEFINITION OF INITIAL FUNCTIONS

Provide that:

The Electoral Commission shall carry out the functions conferred on it by this act in relation to –

- (1) The explanation of, and encouragement of the electorate to vote in, referendums. (“Referendum Functions”).
- (2) The Registration of political parties, and the preparation and maintenance of a register of political parties (“Registration of Political Parties Function”).
- (3) Make reports in relation to the constituencies for the election of members to the Dáil and the election of members to the European Parliament. (“Dáil and European Parliament Constituency Review Functions”).
- (4) Make reports in relation to local electoral boundaries. (“Local Electoral Area Boundary Review Functions”).
- (5) Conduct research on electoral policy and procedure, and providing advice to the Oireachtas and the Minister for Housing, Local Government and Heritage, as required (“research and advisory function”).
- (6) The oversight of the Electoral Register. (“Oversight of the Electoral Register Function”).
- (7) The regulation of online political advertising during election periods. (“Regulation of Online Political Advertising Function”).

NOTES:

This head sets out the functions of the Electoral Commission. The Government provided on 20 October 2020 for the Electoral Commission to initially take on:

- The work of Referendum Commissions;
- The function of the Registrar of Political Parties;
- The functions of Constituency Commissions;
- The functions of Local Electoral Area Boundary Committees;
- A new policy research and advisory function;
- A key role in relation to the regulation of online political advertising during election periods;
- An oversight and monitoring role in respect of the modernised register of electors.

This General Scheme provides for the membership of the Electoral Commission to take on the decision-making roles associated with these transferring functions, while the organisation staff will carry out the administrative and supporting roles.

The aforementioned Government decision also provides for several functions to be considered for transfer at a later stage:

- Oversight of electoral events
- Regulation of political funding and electoral expenditure

It is intended that these additional functions will be legislated for following the establishment of the Commission.

The draft legal text is derived from the [Garda Síochána \(Policing Authority and Miscellaneous Provisions\) Act 2015, S.44\(62H\)](#). The specific language used to describe each transferring function has been taken from the relevant existing legislation:

Subhead (1) defines the referendum functions as being “the explanation of, and encouragement of the electorate to vote in referendums”. This definition is taken from the Referendum Act 1998, [S.3](#), as amended by the Referendum Act, 2001 [S.1\(a\)](#).

Subhead (2) defines the registration of political parties function as being “the registration of political parties, and the preparation and maintenance of a register of political parties”. This definition is taken from the Electoral Act, 1992, [S.25](#) as amended by the Electoral (Amendment) Act 2001, [S.11](#)

Subhead (3) defines the Dáil and European Parliament Constituency Review Functions as making “reports in relation to the constituencies for the election of members to the Dáil and the election of members to the European Parliament”. This definition is taken from the Electoral Act 1997, [S.6](#).

Subhead (4) defines the local electoral area boundary review functions as being the making of “reports in relation to local electoral boundaries”. This definition comes from Local Government Act, 1991, [S.32](#) (2). While this language is incongruous with the language used

in relation to national electoral constituencies, the alignment with legislation has been prioritised.

Subhead (5) defines the function of carrying out research and advising the Minister for Housing, Local Government and Heritage and the Oireachtas, as required.

Subhead (6) defines the Commission's function in respect of oversight of the electoral register.

Subhead (7) defines the Commission's function in respect of the regulation of online political advertising during election periods.

CHAPTER 4: REFERENDUM FUNCTIONS

HEAD 29

TRIGGERING OF REFERENDUM FUNCTIONS

Provide that:

Whenever a referendum falls to be held, or, in the case of a constitutional referendum, may fall to be held, the Electoral Commission which is referred to in this Act as "the Commission" shall perform the functions conferred on it by this Act.

A member of the Commission shall not advocate or promote a particular result at the referendum in respect of which the Commission is currently engaged.

NOTES:

This head is derived from Section 2(1) of the Referendum Act 1998. It is amended to recognise the fact that the Electoral Commission will operate on an ongoing basis, which removes the requirement for the Minister to establish a Referendum Commission. This head instead requires that the Electoral Commission carries out its referendum functions in certain circumstances.

HEAD 30

REFERENDUM FUNCTIONS OF ELECTORAL COMMISSION

Provide that:

- (1) The Commission shall have, in addition to any functions conferred on it by any other provision of this Act, the following principal functions in relation to a referendum:
 - (a) to prepare one or more statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant Bill and any other information relating to those matters that the Commission considers appropriate;
 - (b) to publish and distribute those statements in such manner and by such means including the use of television, radio and other electronic media as the Commission considers most likely to bring them to the attention of the electorate and to ensure as far as practicable that the means employed enable those with a sight or hearing disability to read or hear the statements concerned;
 - (c) to promote public awareness of the referendum and encourage the electorate to vote at the poll.
- (2) The Commission shall have all such powers as it considers necessary or expedient for the performance of its functions including, but without prejudice to the generality of the foregoing, the following powers:
 - (a) to prepare, publish and distribute brochures, leaflets, pamphlets and posters, and
 - (b) to distribute the statements aforesaid to each presidential elector or each household.

NOTES:

This head is derived from The Referendum Act, 2001, Section 1(a). It is largely unchanged, apart from the removal of:

- A reference to a referendum commission's establishment in the chapeau, which would now be incongruous with the continuous nature of the Electoral Commission.
- Subhead 3, which is concerned with the prohibition of a referendum commission incurring costs in advance of the passing of a bill containing the proposals to amend the constitution, except with the consent of the Minister for Finance. Again, this text would be incongruous with the continuous nature of the Electoral Commission.

HEAD 31

ADVERTISEMENTS ETC. BY ELECTORAL COMMISSION

Provide that:

- (1) Section 20(4) of the Broadcasting Authority Act, 1960, and section 10(3) of the Radio and Television Act, 1988, shall not apply to advertisements broadcast at the request of the Commission in relation to a matter referred to in this head concerning the referendum.
- (2) The Minister for the Environment, Climate and Communications if so requested by the Commission following consultation by the Commission with Radio Telefís Éireann ("the Authority") and consideration of any proposals of the Authority for broadcasts in connection with the referendum that it communicates to the Commission, shall direct the Authority in writing to allocate broadcasting time to facilitate the Commission in performing its functions, and the Authority shall comply with a direction under this subhead.
- (3) The Minister for the Environment, Climate and Communications if so requested by the Commission following consultation by the Commission with An Coimisiún Um Radio agus Telefís Neamhspleách — The Independent Radio and Television Commission ("the Independent Commission") and consideration of any proposals of the Independent Commission for broadcasts in connection with the referendum by sound broadcasting contractors or television programme service contractors that it communicates to the Commission, shall direct the Independent Commission in writing to arrange for the provision for and on behalf of the Commission of services (with or without charge) including the allocation of broadcasting time to facilitate the Commission in performing its functions, and the Independent Commission shall comply with a direction under this subhead.

NOTES:

Broadcasting Authority Act, 1960 S.20(4):

The Authority shall not accept any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute.

Radio & Television Act, 1988 S.10(3):

No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute.

This head is derived from the Referendum Act, 1998, [S.5](#).

Subhead (1) allows that advertisements relating to religious or political ends shall be permitted – such issues may be the topics of referendums.

Referendum Commissions have traditionally been granted some free advertising on radio and television. This is facilitated through subheads (2) and (3) in relation to state and independent broadcasting services, respectively.

In (3), references in the original legislation to the Minister for Arts, Heritage, Gaeltacht and the Islands have been replaced with references to the Minister for the Environment, Climate and Communications given the latter's responsibility for RTE and the BAI.

HEAD 32

DECLARATION THAT A BODY IS AN APPROVED BODY FOR PURPOSES OF A REFERENDUM

Provide that:

- (1) On application in that behalf in accordance with this head to the Commission by a body, the Commission may make a declaration that the body is an approved body for the purposes of the referendum in respect of which an application was received.
- (2) An application under subhead (1) shall be in writing in a form specified by the Commission or in a form to the like effect and shall be made within such time as the Commission may specify and shall include the address in the State of the body concerned.
- (3) Where a body makes an application under this head, it shall nominate a person to be its authorised officer for the purposes of this Act (referred to subsequently in this Act as "an authorised officer") and the name and address of the person so nominated shall be included in the form of application.
- (4) The Commission may refuse to make a declaration under subhead (1) if—
 - (a) in the opinion of the Commission, the body concerned does not have a bona fide interest in the proposal the subject of the referendum concerned,
 - (b) it fails or refuses to comply with the provisions of this head or head 34, or
 - (c) the name of the body is identical with the name of any party registered in the Register of Political Parties, or in the opinion of the Commission so closely resembles such name as to be calculated to mislead, confuse or deceive.
- (5) Upon the determination of an application under this head, the Commission shall as soon as may be—
 - (a) by notice in writing (which may be sent by post) inform the body concerned of the determination and, if it is a refusal to make a declaration under this head, the notice shall include a statement of the reasons for the refusal, and
 - (b) publish a notice in *Iris Oifigiúil* of the result of the determination.
- (6) A person shall not knowingly furnish false information to the Commission in relation to an application under this head.

- (7) A person who contravenes this head shall be guilty of an offence and shall be liable on summary conviction to a Class E fine, as defined in the Fines Act, 2010, or to imprisonment for a term not exceeding 3 months or to both.
- (8) Where the Commission is satisfied that false information has been furnished to it under this head, the Commission shall revoke any declaration made by it in relation to the application concerned and shall, as soon as may be, notify the body concerned of the revocation and of the reasons therefor.
- (9) (a) Subject to paragraph (b), in this head "body" means a body corporate or unincorporated body which, or a branch of which, is established in the State, governed by a constitution, a memorandum of association or other such document or other written rules and having a membership of not less than 300.

(b) A political party that is for the time being registered in the Register of Political Parties shall be deemed to be a body.

NOTES:

This head allows for the Commission to declare bodies as ‘approved bodies’ in respect of particular referendums. Approved bodies may have representatives present when postal ballot papers are being sent out and opened, at polling stations and at the counting of the vote.

This head is derived from Section 7 of the Referendum Act, 1998. Subhead (7) has been amended to take account of the Fines Act, 2010.

HEAD 33

PUBLICATION OF REFERENDUM NOTICES BY COMMISSION

Provide that:

The Commission shall, as soon as may be practical after publication of legislation requiring the holding of a referendum, publish a notice in two or more national newspapers—

- (a) indicating that a body may apply to the Commission for a declaration under head 32,
- (b) specifying time limits for the receipt of such applications, and
- (c) specifying the procedures for making such submissions and applications.

NOTES:

This head is derived from the Referendum Act, 1998, [S.8](#), as amended by the Referendum Act 2001, [S.1\(c\)](#). The original head provides for the publication of referendum notices following a Referendum Commission's establishment. This has been changed, taking account of the continuous nature of the Electoral Commission. The head provides for the publication of such notices following the publication of legislation requiring the holding of a referendum.

HEAD 34

OBLIGATION TO PROVIDE INFORMATION OF STATUTORY DECLARATION IF REQUIRED

Provide that:

- (1) The Commission may request from a body that applies for a declaration under head 32 all such information or documents in the possession or procurement of the body that the Commission reasonably requires from it for the purposes of the determination of the application.
- (2) Whenever the Commission makes a request under subhead (1), the authorised officer of the body shall furnish the Commission with the information or documents within the time (being not more than 7 days from the day on which the request is made) specified in the request and, if the officer does not comply with the request, the application of that body for a declaration under head 32 shall be deemed to be withdrawn.
- (3) The Commission may require that information furnished to the Commission under this head shall be accompanied by a statutory declaration made by the authorised officer concerned that, to the best of the person's knowledge and belief, the information is correct in every material respect and that the person has taken all reasonable steps to ensure the accuracy of the information.
- (4) A person who knowingly furnishes false information pursuant to a request under this head shall be guilty of an offence.
- (5) A person guilty of an offence under this head shall be liable on summary conviction to a Class E fine, as defined in the Fines Act, 2010, or to imprisonment for a term not exceeding 3 months or to both.
- (6) Where the Commission is satisfied that false information has been furnished to it under this head, the Commission shall revoke any declaration made by it in relation to the application concerned and shall, as soon as may be, notify the body concerned of the revocation and of the reasons therefor.

NOTES:

This head is derived from Section 9 of the Referendum Act 1998. Subhead (5) has been updated to take account of the Fines Act, 2010.

HEAD 35

NOTIFICATION OF REFERENDUM RETURNING OFFICER AND LOCAL RETURNING OFFICER OF DETAILS OF APPROVED BODY

Provide that:

- (1) As soon as practicable after the Commission has made a declaration under head 32 or revoked a declaration under head 34 or 35, as the case may be, in respect of a body, the Commission shall notify the referendum returning officer of the name and address of the body and the name and address of the authorised officer of the body.
- (2) The referendum returning officer shall, as soon as practicable after receipt of a notification under subhead (1), notify each local returning officer of the particulars so notified to him or her under subhead (1).

NOTES:

This head, which provides for the referendum returning officer and local returning officers to be provided with the details of approved bodies, is taken unchanged from the Referendum Act, 1998, [S.10](#).

HEAD 36

APPOINTMENT BY APPROVED BODY OF AGENTS AT A REFERENDUM

Provide that:

- (1) Subject to the provisions of Section 26 of the Act of 1994 that are applied by subsection (3), an approved body may appoint a person or persons to act as agent for the body at the referendum concerned to be present—
 - (a) at the issue of ballot papers to postal voters,
 - (b) at the opening of postal ballot boxes, and
 - (c) at the counting of votes,at the referendum.
- (2) An approved body may appoint one personation agent to be present as the agent for the body in each polling station for the purposes of assisting in the detection of personation, and such appointment shall be in writing.
- (3) The provisions of subsections (2), (4) to (9), (11) and (12) of Section 26 of the Act of 1994 shall apply to persons appointed to act as agents under this head as they apply to agents appointed under the said Section 26 with the modification that references to a member of the Dáil shall include references to an approved body and with any other necessary modifications.

NOTES:

This is taken unchanged from the Referendum Act, 1998, [S.11](#). The Referendum Act, 1998, S.11 will be repealed.

The Referendum Act, 1994, [S.26](#) concerns provisions as to agents. The subheads referred to are quoted below for information:

- 2: local RO to decide # agents who can be present. Must be same for all members.
- 4: Appointment may be revoked by the person by whom it was made
- 5: local members of Dáil and Seanad must let RO know before issue of postal ballot papers the names of all agents they have appointed.

- 6: local members of Dáil and Seanad must, more than 2 days before commencement of polling day, give names of personation agents and the polling stations they are appointed to. They can be present from 30 minutes before polling opens to the point where ballot boxes are sealed.
- 7: local members of Dáil and Seanad must, more than 2 days before commencement of polling day, notify the RO of agents appointed to be present at opening of postal ballot boxes.
- 8: as above, but in respect of agents to be present for the count.
- 9: where nominated agent dies, resigns or becomes incapable of acting during referendum, someone else can be appointed + notified to local RO.
- 11: any of the above can still go ahead if the agents are not present
- 12: where the referendum polling takes place on same day as General Election:
- These powers are conferred on outgoing TDs.
 - Anyone appointed as agents under [the Electoral Act, 1992, S.60](#) to be a personation agent at a General Election will also be deemed a personation agent at the referendum polling and vice versa.

HEAD 37

REFERENDUM PETITION

Provide that:

Section 43 of the Act of 1994 is hereby amended by the insertion of the following subhead after subsection (2):

- (3) A provisional referendum certificate shall not be questioned by reason of a non-compliance by the Electoral Commission with any provision contained in the Electoral Reform Act, or mistake made by the Electoral Commission if it appears to the High Court that the Electoral Commission complied with the principles laid down in that Act and that such non-compliance or mistake did not materially affect the result of the referendum."

NOTES:

This head is taken directly from the Referendum Act, 1998, [S.12, which amends the Referendum Act, 1994, S.43](#) in respect of grounds for referendum petitions, questioning validity of results. The provisions of the head are unchanged from the Referendum Act, 1998, save for replacement of 'Referendum Commission' with 'Electoral Commission'.

HEAD 38

REPORTS AND INFORMATION TO HOUSES OF OIREACHTAS

Provide that:

- (1) As soon as may be after the completion of the performance of its functions in relation to a particular referendum under this Act, but not later than 6 months thereafter, the Commission shall prepare and submit to the Chairperson of the Dáil a report in writing in relation to the performance by it of those functions. A copy of the report shall concurrently be provided to the Minister.
- (2) The Commission shall, whenever so requested by the Joint Oireachtas Committee for Housing, Local Government and Heritage (“the Committee”), furnish to the Committee information in relation to such matters as it may specify relating to any report specified in subhead (1).

NOTES:

This head, which provides for the Electoral Commission to report to the Houses of the Oireachtas following each referendum, is derived from the Referendum Act, 1998, [S.14](#). It has been changed as follows:

- Subhead (1): The Electoral Commission will now submit such reports to the Chairman of the Dáil. Reports were previously submitted to the Minister. A copy of the report will be concurrently provided to the Minister for Housing, Local Government and Heritage. The wording has been revised in order to reflect the new organisational context for the function.
- Subhead (2) formerly obliged the Referendum Commission to provide information to the Minister for Housing, Local Government and Heritage at the Minister’s request. This has been amended with the JOC replacing the Minister, given the Electoral Commission’s remit to report directly to the Oireachtas.
- Subhead (3), of the Referendum Act, 1998, which effected the dissolution of the Referendum Commission one month after presentation of the report, has been removed, taking account of the continuing nature of the Electoral Commission.

HEAD 39

AMENDMENTS TO ACT OF 1994

Provide that:

The Act of 1994 is hereby amended by—

- (a) in Section 2(3), the substitution for paragraphs (f), (g), (h), (m) and (v) of the following paragraphs:
 - "(f) the reference in Section 67 of the said Act to Section 60 thereof was a reference to Section 26 and to Section 9 of the Referendum Act, 1998, Referendum Commission Act, and 'of the candidates' was deleted,
 - (g) the references in Section 68 of the said Act to each candidate were references to each member of the Dáil for the constituency and each member of the Seanad resident in the constituency concerned and each approved body within the meaning of the Referendum Act, 1998 and 'if the election is contested' was deleted,
 - (h) the references in Section 73 of the said Act to each candidate were references to each member of the Dáil for the constituency and each member of the Seanad resident in the constituency concerned and each approved body within the meaning of the Referendum Act, 1998, Electoral Commission Act,
 - (m) in Section 95 of the said Act 'a member of the Dáil for the constituency and any member of the Seanad and a person authorised in writing by the authorised officer of an approved body within the meaning of the Referendum Act, 1998' was substituted for 'a person in respect of whom he is satisfied that that person has a bona fide interest in the Dáil election as either a candidate or a prospective candidate, or the agent of such a person',
 - (v) in Section 113 of the said Act the references to 'each candidate' were references to each member of the Dáil for the constituency and each member of the Seanad resident in the constituency and each approved body within the meaning of the Referendum Act, 1998 and 'of the candidates' in subsections (2) and (3) was deleted,"
- (b) in Section 27(1), the insertion after "at that referendum" of "or for an approved body within the meaning of the Referendum Act, 1998", and
- (c) in Section 28—
 - (i) in subsection (4), the insertion after "resident in the constituency" of "and to each approved body within the meaning of the Referendum Act, 1998", and

- (ii) in subsection (5), the substitution for "any member of the Seanad" of "any such member of the Seanad and a reference to an agent appointed by an approved body within the meaning of the Referendum Act, 1998."

NOTES:

These are amendments which the Referendum Act, 1998 made to the Referendum Act, 1994.

HEAD 40

PROVISIONS IN RELATION TO OFFENCES

Provide that:

- (1) Where an offence under this Part, in respect of the Electoral Commission's referendum functions, is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, any person, being a director, manager, secretary or any other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (2) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

NOTES:

This head is derived from S.16 of the Referendum Act, 1998 and allows for offences referred to in Heads 32 and 34 to apply to bodies corporate.

CHAPTER 5: REGISTRATION OF POLITICAL PARTIES FUNCTIONS

HEAD 41

APPLICATION FOR REGISTRATION OF POLITICAL PARTIES

Provide that:

- (a) A political party may apply to the Commission to be registered in the Register as a party organised in the State or in a part thereof specified in the application to contest all or any of the following elections –
 - (i) a Dáil election,
 - (ii) a European election,
 - (iii) a local election
- (b) An application for registration under this subhead shall be in writing in such form as shall be specified by the Commission and shall contain such particulars as shall be specified in the application form.

NOTES:

This head is taken from the Electoral (Amendment) Act, 2001, [Section 11](#)(2). The term ‘Registrar’ is replaced by ‘Commission’.

HEAD 42

PROCEDURE FOR APPLICATION TO REGISTER POLITICAL EMBLEMS

Provide that:

A political party may apply for the registration in the Register of one emblem to be used by candidates of the party on ballot papers. An application under this subhead shall be in writing in such form as shall be specified by the Commission and in accordance with directions specified on the application form.

NOTES:

This head allows for the registration of one emblem by political parties for use on ballot papers. It is taken from the Electoral Amendment Act 2001, [S.11\(3\)](#), with the term 'Registrar' replaced by 'Commission'.

HEAD 43

QUALIFYING CRITERIA FOR REGISTRATION OF POLITICAL PARTIES

Provide that:

Subject to head 44, the Commission shall register a political party which applies for registration provided the application complies with the requirements of this Chapter and that

- (a) the party is organised in the State or in a part thereof specified in the application as a party organised to contest all or any of the elections referred to in subhead 41(a), and
- (b) (i) (I) the party has not less than 300 recorded members or, in the case of a party applying for registration as a party organised to contest elections in part of the State or local elections only, 100 recorded members, each of whom (in any of the foregoing cases) has reached the age of 18 years,

and

- (ii) (II) at least fifty percent of the recorded members are registered in the register of electors, or
 - (ii) the party has at least one member who, at the time the application for registration is made, is a member of the Dáil or is a representative in the European Parliament (whether by reason of his having been elected as such a representative in the State or having been nominated as a replacement candidate under the European Parliament Elections Act, 1997) and who certifies in writing to the Commission that he or she is a member of the party, or
 - (iii) in the case of a party which applies for registration as a party organised to contest a local election only, it has at least 3 members who are, at the time the application for registration is made, members of a local authority and each of whom certifies in writing to the Commission that he or she is a member of the party, or
- (c) the organisation and direction of the party are governed by a constitution, a memorandum of association or other such document or other written rules which have been adopted by the party and which provide for -
 - (i) an annual or other periodic meeting or conference of the party; and
 - (ii) the conduct of the business of the party by an executive committee or similar body elected by the party.

NOTES:

This head is taken from the Electoral Amendment Act 2001, [S.11](#)(4) with the term 'Registrar' replaced by 'Commission'. In (b)(ii) and (b)(iii), 'he' is changed to 'he or she'.

HEAD 44

QUALIFYING CRITERIA FOR SUBMITTED TITLES OF POLITICAL PARTIES

Provide that:

A political party shall not be registered in the Register if its name –

- (a) is identical with the name or an abbreviation or acronym of the name of any party for the time being registered in the Register or, so nearly resembles such name, abbreviation or acronym as to be likely to mislead, confuse or deceive, or
- (b) comprises more than 6 words, or
- (c) in the case of a party operating in relation to a particular part of the State, does not include such reference to that part as to distinguish the party as so operating.

NOTES:

This head is taken, unchanged, from the Electoral Amendment Act 2001, [S.11\(5\)](#).

HEAD 45

QUALIFYING CRITERIA FOR SUBMITTED EMBLEMS OF POLITICAL PARTIES

The Commission shall not grant a request for registration in relation to an emblem if the emblem –

- (a) would be likely to be confused by voters with an emblem which is already registered for another party,
- (b) is obscene or offensive,
- (c) is of such a character that its publication would be likely to amount to the commission of an offence, or
- (d) includes a word or expression which, if it were, or were part of, the party concerned's name, would, by virtue of head 44, prevent the party from being registered in the Register.

NOTES:

This head is taken, from the Electoral Amendment Act 2001, [S.11](#)(6). The term 'registrar' is replaced with 'Commission' in the chapeau.

HEAD 46

DETAILS TO BE ENTERED IN REGISTER OF POLITICAL PARTIES

Provide that:

The following particulars shall be entered in the Register in respect of a political party registered therein -

- (a) the name of the party, including any abbreviation or acronym,
- (b) the emblem, if an application for its registration under head 42 has been granted,
- (c) the address of the party's headquarters,
- (d) the name or names of the officer or officers of the party authorised to sign certificates authenticating the candidatures of candidates of the party at elections,
- (e) the type or types of election for which the party is registered as being organised to contest,
- (f) where the party is registered as organised to contest elections in a specified part of the State, a reference to that fact and to the part of the State concerned,
- (g) the name of any political group or European political party in accordance with head 47, and,
- (h) the name and address of each accounting unit of the political party and the name and address of the responsible person or persons of the accounting unit.

NOTES:

This head is taken, unchanged, from the Electoral Amendment Act 2001, S.11(7), as amended by the European Parliament Elections (Amendment) Act, 2019, [S.6](#).

HEAD 47

PROCEDURE FOR THE ADDITION OF EUROPEAN POLITICAL GROUPING DETAILS TO REGISTER

Provide that:

Where a party which is registered in the Register as a party organised to contest a European election, or which applies for such registration in the Register, informs the Commission that a member of the party, being a representative in the European Parliament (whether by reason of his having been elected as such a representative in the State or having been nominated as a replacement candidate under the European Parliament Elections Act, 1997), is a member of –

- (a) a political group formed in accordance with the rules of procedure of the European Parliament, or
- (b) a European political party established in accordance with Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations,

the Commission shall, if that member certifies in writing to the Commission that he or she is a member of that party and that political group or that European political party, note on the Register, in relation to the party, the name of that political group or that European political party.

NOTES:

This head is derived from the Electoral Amendment Act 2001, [S.11](#)(8). The term ‘Registrar’ is replaced by ‘Commission’.

HEAD 48

COMMISSION TO INFORM APPLICANTS FOR REGISTRATION OF DECISION

Provide that:

As soon as the Commission has considered an application for registration under this Part, it shall notify the applicant of the decision on the application (stating reasons in the case of refusal and the provisions of this Act enabling a challenge against the decision) and shall cause notice thereof to be published in the Iris Oifigiúil.

NOTES:

This head is derived from the Electoral Amendment Act 2001, Section 11(9). The term 'Registrar' is replaced with 'Commission', and the word 'challenge' in line 3 replaces the word 'appeal'.

HEAD 49

REQUIREMENT TO INFORM COMMISSION OF CHANGES IN PARTICULARS

Provide that:

If there is any change in the particulars entered in the Register with respect to the name or names of the officer or officers of a political party referred to in paragraph (d) of head 46 or in the address of the party's headquarters, the party shall, as soon as may be after the change occurs, inform the Commission of the change and, where appropriate, the Commission shall amend the particulars entered in the Register in relation to the party accordingly.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9(1). The term 'Registrar' is replaced with 'Commission'.

HEAD 50

PROCEDURE FOR AMENDMENT OF PARTICULARS OF POLITICAL PARTIES

Provide that:

A political party registered in the Register may apply in writing to the Commission in such form as shall be specified by the Commission to have any of the particulars, including party emblem (other than those referred to in head 49) entered in the Register in relation to the party amended and the Commission shall consider each such application and may, subject to the provisions of this head, amend the Register accordingly.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9(2). The term 'Registrar' has been replaced with 'Commission'.

HEAD 51

COMMISSION TO INFORM APPLICANTS OF DECISION IN RESPECT OF AMENDMENTS TO REGISTER

Provide that:

As soon as the Commission has considered an application for amendment of the Register under head 50, it shall notify the applicant of the decision on the application (stating reasons in the case of refusal and the provisions of this Act enabling a challenge against the decision) and shall cause notice thereof to be published in the Iris Oifigiúil.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9(3). The term 'Registrar' is replaced with 'Commission'.

The word 'challenge' on line 3 replaces the word 'appeal', since the former appeals system is being replaced by judicial review.

HEAD 52

COMMISSION VERIFICATION OF REGISTER DETAILS

Provide that:

The Commission shall, with respect to each party registered in the Register, inquire in writing at least once in each year from an officer referred to in head 46 whether the party desires to remain registered and, unless the Commission receives an affirmative reply to such an inquiry within twenty-one days from the date of the making of such inquiry, the provisions of head 54 shall apply in relation to the party.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9(4). The term 'Registrar' is replaced with 'Commission'.

HEAD 53

POLITICAL PARTIES TO INFORM COMMISSION OF UPDATED DETAILS

Provide that:

- (a) when replying to an inquiry under head 52, the officer of the party shall provide the Commission with the name and address of each accounting unit of the political party and the name and address of the responsible person or persons of the accounting unit, including any changes that have occurred during the period from when the particulars were last provided to the Commission,
- (b) the Commission shall enter the particulars provided under subhead (a) in the Register.

NOTES:

This head is taken from Section 4 of the Electoral (Amendment) (Political Funding) Act 2012. The term 'Registrar' has been replaced with 'Commission'.

HEAD 54

PROVISIONS IN CASE OF FAILURE OF POLITICAL PARTIES TO PROVIDE UPDATED INFORMATION

Provide that:

Where a political party registered in the Register fails to comply with head 49, or information provided by it, in purported compliance with that head, is not such as to enable the Commission to comply with head 46 or otherwise fails to comply with the requirements of this Part, the Commission shall, following such inquiry as he thinks fit, publish in Iris Oifigiúil notice of his its intention to cancel the registration of the party. The Commission shall notify the party concerned of its intention and such a notification shall include a reference to the provisions of this Act in respect of challenges against the decision.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9(5). The term ‘Registrar’ is replaced with ‘Commission’.

The word ‘challenges’ on line 6 replaces ‘enabling an appeal’, given that the former appeals process is replaced with Judicial Review.

HEAD 55

PROVISIONS IN RESPECT OF CHALLENGES RE: PARTICULARS REQUIRED TO BE ENTERED IN REGISTER

Provide that:

Any doubt, dispute or question arising in connection with the particulars required to be entered in the Register pursuant to head 46 shall be decided by way of an application for judicial review to the High Court under Order 84, Part 5 of the Rules of the Superior Courts.

NOTES:

This head is derived from the Electoral (Amendment) Act 2001, Section 9(6). The Referendum Act, 1998 set out an appeals mechanism which was organised by the Clerk of the Seanad and included a Judge of the High Court, the Clerk of the Dáil and the Clerk of the Seanad.

In order to take account for the new organisational context for this function, and the need for independence in respect of appeals, this head now provides that challenges be conducted via Judicial Review in the High Court, as set out under Order 84 (V) of S.I. No. 15/1986 - The Rules of the Superior Courts: <http://www.irishstatutebook.ie/eli/1986/si/15/made/en/print>

HEAD 56

PROVISIONS IN RESPECT OF CHALLENGES AGAINST COMMISSION DECISIONS

Provide that:

A decision by the Commission in relation to -

- (a) an application for registration under heads 41 or 42, or
- (b) an application under head 50 for amendment of the particulars entered in relation to a party in the Register, or
- (c) the cancellation of the registration of a party under head 54,

may be challenged through an application by way of judicial review to the High Court under Order 84, Part 5 of the Rules of the Superior Courts and, pending the determination by the High Court of such an application or review, the decision of the Commission shall not have effect.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9. The Referendum Act, 1998 set out an appeals mechanism which was organised by the Clerk of the Seanad and included a Judge of the High Court, the Clerk of the Dáil and the Clerk of the Seanad.

In order to take account for the new organisational context for this function, and the need for independence in respect of challenges, this head now provides that such challenges be conducted via Judicial Review in the High Court, as set out under Order 84 (V) of S.I. No. 15/1986 - The Rules of the Superior Courts:

<http://www.irishstatutebook.ie/eli/1986/si/15/made/en/print>

HEAD 57

COMMISSION STATEMENTS OF REASONS FOR DECISIONS TO REFUSE REGISTRATION

Provide that:

Where the Commission has decided to refuse an application for registration including the registration of an emblem or an application for an amendment of the Register and has stated the reasons for so doing in accordance with head 48 or head 51, such statement shall be regarded as a sufficient statement of the reasons for the decision.

In making any such decisions, the Electoral Commission shall adhere to fair procedures and the principles of natural justice.

NOTES:

This head is derived from the Electoral (Amendment) Act 2001, Section 9. The second paragraph has been added to give assurance that the Electoral Commission adheres to fundamental legal principles.

HEAD 58

MAINTENANCE AND INSPECTION OF REGISTER

Provide that:

The Commission shall maintain the Register at its office, permit any person to inspect the Register at such time and under such conditions as may be specified by the Commission and shall furnish, on request, to any person a copy of the Register.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9. 'Registrar' has been replaced with 'Commission'.

HEAD 59

COURT ORDERS FOR PRODUCTION OF REGISTER

Where an order of a court or a request by any person is made for the production by the Commission of the Register or a copy thereof, the production of a copy of the Register accompanied by a certificate of the Commission that such copy is a copy of the Register shall in any civil or criminal proceedings be prima facie evidence of the fact so certified and it shall not be necessary, unless the court on receipt of the certificate and copy of the Register so orders, for a representative of the Commission to attend in person to attest to any matter relating to the Register or the certificate.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9. 'Registrar' has been replaced with 'Commission', and 'Registrar' has been replaced with 'a representative of the Commission'.

HEAD 60

REQUIREMENT TO COMPLY WITH COMMISSION REQUESTS FOR INFORMATION

Provide that:

The Commission may require any person to give any information in the possession of such person which the Commission may require for the purpose of its duties under this Part.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9. 'Registrar' has been replaced with 'Commission'.

HEAD 61

REQUIREMENT FOR POLITICAL PARTIES AND THEIR REPRESENTATIVES TO COMPLY WITH COMMISSION REQUESTS FOR INFORMATION

Provide that:

- (a) Without prejudice to head 60, the Commission may require from any political party which applies for registration (including registration of an emblem) in, or for amendment of, the Register all such information as the Commission reasonably requires for the determination of the application, and the Commission may refuse the application of any party which fails or refuses to give any information so required of it under this head.
- (b) For the avoidance of doubt, notwithstanding the authority of the Commission to request information, it shall be the duty of every political party which applies for registration (including the registration of an emblem) in, or for amendment of, the Register to provide to the Commission such information as may be necessary to enable the Commission to consider the application.
- (c) The Commission may require that –
 - (i) information furnished for the purposes of this Chapter shall be accompanied by a statutory declaration made by the person by whom the information is furnished (or by such other person as the Commission considers appropriate in the circumstances) that, to the best of the person's knowledge and belief, the information is correct in every material respect and that the person has taken all reasonable steps in order to be satisfied as to the accuracy of the information;
 - (ii) any statement in relation to the number of recorded members of a party shall be certified by a public auditor.
- (d) In paragraph (c) 'public auditor' means a public auditor, for the purposes of the Industrial and Provident Societies Acts, 1893 to 2018, and the Friendly Societies Acts, 1896 to 2018.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9. 'Registrar' has been replaced with 'Commission'.

HEAD 62

LIMITATION OF REGISTRATION TO SPECIFIED TYPES OF ELECTION AND LOCATIONS

Provide that:

- (a) Where a party is registered in the Register as a party organised to contest a particular type or types of election, the registration shall have effect only in relation to elections of the type or types concerned.
- (b) Where a party is registered in the Register as a party organised to contest an election or elections in a specified part of the State, the registration shall have effect only in relation to that part of the State.

NOTES:

This head is taken, unchanged, from the Electoral (Amendment) Act 2001, Section 9.

HEAD 63

PROVISION OF COPIES OF REGISTER TO RETURNING OFFICERS

Provide that:

Not later than the third day (disregarding any excluded day) after the day of the issuing under Section 39 of the Electoral Act, 1992 of the writ or writs at a Dáil election, the Commission shall send to the returning officer or each returning officer, as the case may be, a copy of the Register then in force, including a copy of the emblems of political parties registered in it.

NOTES:

This head is taken from the Electoral (Amendment) Act 2001, Section 9. ‘Registrar’ has been replaced with ‘Commission’.

HEAD 64

DEFINITION OF THE REGISTER OF POLITICAL PARTIES

Provide that:

The Register of Political Parties in force at the commencement of Subhead 28 (2) of this Act, shall be deemed to be the Register prepared and maintained under this Part.

NOTES:

This head is taken, from the Electoral (Amendment) Act 2001, S.9, as amended by the Gaeltacht Act 2012, Section 23(m). Reference to the Electoral (Amendment Act), 2001 has been replaced with reference to the forthcoming Electoral Reform Act, 2021.

**CHAPTER 6: DÁIL AND EUROPEAN PARLIAMENT CONSTITUENCY REVIEW
FUNCTIONS**

HEAD 65

TRIGGERING OF CONSTITUENCY REVIEW WORK OF THE ELECTORAL COMMISSION

Provide that:

The Electoral Commission shall perform the functions assigned to it by this part, triggered by either:

- (a) the publication by the Central Statistics Office, following a Census of Population, of the Census Report setting out the preliminary result of the Census in respect of the total population of the State.
- (b) Circumstances where a Constituency Commission or the Electoral Commission has presented their report in accordance with head 68(1), and:
 - (i) After such presentation, the total number of members of the European Parliament to be elected in the State specified pursuant to the treaties governing the European Union is different from the total number to which the Constituency Commission or Electoral Commission had regard in preparing its report in accordance with (a), and
 - (ii) The Electoral Commission is not due to prepare and present a report pursuant to (a) before the date of the next European Parliament election

On commencement of its work in this regard, the Electoral Commission shall write to the Chairman of the Dáil and the Minister for Housing, Local Government and Heritage, informing them of such a commencement of work.

NOTES:

This head provides for the Electoral Commission to take on constituency review work directly in response to the publication of the preliminary results of a census by the CSO, or changes in the number of EP seats. Therefore, it removes the previous need for an establishing Ministerial Order, effecting the independence of the Electoral Commission and reflecting the new organisational context for this function. It merges the text of Section 5 of the Electoral Act, 1997 and Section 23 of the Electoral, Local Government and Planning and Development Act 2013, which set out the establishment of Constituency Commissions.

HEAD 66

CONSTITUENCY REVIEW FUNCTIONS OF THE ELECTORAL COMMISSION

Provide that:

- (1) It shall be a function of the Electoral Commission to make reports in relation to the constituencies for –
 - (a) the election of members to the Dáil
 - (b) the election of members of the European Parliament
- (2) In preparing a report under subhead 1(a), the Electoral Commission shall, in observing the relevant provisions of the Constitution in relation to Dáil constituencies, have regard to the following:
 - (a) the total number of members of the Dáil, subject to Article 16.2.2 of the Constitution, shall be not less than 166 and not more than 172;
 - (b) each constituency shall return 3, 4 or 5 members;
 - (c) the breaching of county boundaries shall be avoided as far as practicable;
 - (d) each constituency shall be composed of contiguous areas;
 - (e) there shall be regard to geographic considerations including significant physical features and the extent of and the density of population in each constituency; and
 - (f) subject to the provisions of this head, the Electoral Commission shall endeavour to maintain continuity in relation to the arrangement of constituencies.
- (3) In preparing a report under 1(b), the Electoral Commission shall have regard to the following:
 - (a) the total number of members of the European Parliament to be elected in the State shall be such number as may be specified for the time being pursuant to the treaties governing the European Communities
 - (b) there shall be reasonable equality of representation as between constituencies; and
 - (c) the matters specified in paragraphs (b) to (f) of subhead (2).
- (4) The reference in subhead (2)(c) to county boundaries shall be deemed not to include a reference to the boundary of a city or any boundary between any 2 of the counties of Dún Laoghaire-Rathdown, Fingal and South Dublin.

NOTES:

Subhead (1), which sets out the functions which the Electoral Commission should carry out in respect of boundary reviews, is taken from Section 6(1) of the Electoral Act, 1997 with 'Constituency Commission' replaced with 'Electoral Commission'.

Subheads (2) and (3) set out the factors which the Electoral Commission shall have regard to in their work. Subhead (2), which is taken from Section 6(2) of the Electoral Act, 1997, relates to situations where constituency boundary reviews are triggered by a census, and Subhead (3), which is taken from Section 24 of the Electoral, Local Government and Planning and Development Act, 2013, refers to where constituency boundary reviews are triggered by changes in the number of European Parliament seats.

Subhead (4) is taken unchanged from Section 6(3) of the Electoral Act, 1997.

The head contains substitutions of 'Electoral Commission' for 'Constituency Commission'.

HEAD 67

CONFIDENTIALITY

Provide that:

No person shall, without the consent of the Electoral Commission, disclose to any person any information obtained in respect of ongoing reviews of Dáil and European Parliament constituencies while serving as (or during service as) a member of the Commission or as a person whose services are made available to the Commission.

NOTES:

This confidentiality provision is derived from the Electoral Act, 1997, S.11. This head is intended to prohibit disclosure of information relating to this function while Dáil and European Parliament constituency reviews are ongoing.

HEAD 68

CONSTITUENCY REVIEW REPORT OF THE ELECTORAL COMMISSION

Provide that:

- (1) Where the constituency review function of the Electoral Commission has been triggered by the circumstances set out in subhead 65(a), the Electoral Commission shall present the following reports to the Chairman of the Dáil, not later than 3 months after the publication by the Central Statistics Office of the final result of the Census referred to in subhead 65(a) in respect of the total population of the State –
 - (a) A report containing the recommendations of the Electoral Commission in relation to the constituencies for the election of members to the Dáil and any alteration of those constituencies which the Electoral Commission considers appropriate, and
 - (b) A report containing the recommendations of the Electoral Commission in relation to the constituencies for the election of members of the European Parliament and any alteration of those constituencies which the Electoral Commission considers appropriate.
- (2) Where the constituency review function of the Electoral Commission has been triggered by the circumstances set out in subhead 65(b), the Electoral Commission shall, within two months of writing to the Chairman of the Dáil, as required in head 65, present to the Chairman of the Dáil a report containing the recommendations of the Electoral Commission in relation to the constituencies for the election of members of the European Parliament and any alteration of those constituencies which the Electoral Commission considers appropriate.
- (3) A report of the Electoral Commission under this head may indicate that, in the opinion of the Electoral Commission having regard to subhead (2) or (3) of head 66, no alteration is required to be made in the constituencies to which the report relates.
- (4) As soon as may be after the receipt of a constituency review report of the Electoral Commission, the Chairman of the Dáil shall cause such report to be laid before each house of the Oireachtas.

NOTES:

Subhead (1) is a modified version of Section 9(1) of the Electoral Act, 1997 with several replacements of Constituency Commission with Electoral Commission. The presentation of the report to the Chairman of the Dáil has been retained.

Subhead (2) is a modified version of Section 25 of the Electoral, Local Government and Planning and Development Act 2013. Where the original version measured the two month period for preparation of the report from the establishment of a Constituency Commission, this is now replaced with the 2 month period being measured from the point where the Electoral Commission writes to the Chairman of the Dáil and the Minister for Housing, Local Government and Heritage, informing them of the commencement of its work in this regard (as set out in head 65 of this Part).

Subhead (3) is taken from Section 9(2) of the Electoral Act, 1997, with substitutions re the title of the Electoral Commission.

Subhead (4) is taken from Section 9(4) of the Electoral Act, 1997 and relates to the laying of the Commission's final report before the Houses of the Oireachtas.

HEAD 69

ELECTORAL COMMISSION TO INVITE AND CONSIDER PUBLIC SUBMISSIONS

Provide that:

- (1) The Electoral Commission, as soon as may be after writing to the Chairman of the Dáil, as set out in head 65, give public notice of its intention to make a report relating to –
 - (a) In the case of preparing a report under head 65(a),
 - (i) the constituencies for the election of members to the Dáil, and
 - (ii) the constituencies for the election of members of the European Parliament
 - (b) In the case of preparing a report under head 65(b), the constituencies for the election of members of the European Parliament only.
- (2) Where the Electoral Commission is preparing a report under head 65(a), the Electoral Commission shall prepare –
 - (a) a statement setting out the relevant provisions of the Constitution in relation to Dáil constituencies to which the Electoral Commission is required to have regard in preparing a report under head 66(1)(a), and
 - (b) statements based on the population as set out in the Census Report setting out the preliminary result of the Census referred to in head 65(a) in respect of the total population of the State showing, for the constituencies for the time being in force for Dáil and European elections, in relation to each constituency -
 - (i) the number of members of the Dáil or European Parliament, as the case may be;
 - (ii) the population of the constituency;
 - (iii) the population per member of the Dáil or European Parliament, as the case may be, of the constituency; and
 - (iv) the percentage variation of population per member of the Dáil or European Parliament, as the case may be, of the constituency from the national average population per member.

- (3) The statements prepared by the Electoral Commission, and any submissions received by it, under this head shall be made available free of charge by the Electoral Commission, to any person wishing to examine them, in accordance with the public notice referred to in subhead (1).
- (4) The public notice referred to in subhead (1)(a) shall indicate that the statements prepared by the Electoral Commission under this subhead shall be made available free of charge by the Electoral Commission, to any person wishing to examine them, in such a manner as shall be specified in the notice.
- (5) The public notice referred to in subhead (1) shall indicate that –
 - (a) any person may make a submission to the Electoral Commission in such manner and within such period (which shall not be less than three months in the case of reports being prepared under head 65(a), and not less than one month in the case of reports being prepared under head 65(b)) as shall be specified in the notice.
 - (b) Any submissions received by the Electoral Commission in the manner and within the period specified in the notice shall be made available free of charge by the Electoral Commission, to any person wishing to examine them, in such manner and within such period as shall be specified in the notice.
- (6) The Electoral Commission shall consider every submission made to it in accordance with a public notice referred to in subhead (1).

NOTES:

This head provides for the Dáil and European Parliament constituency review work to feature a public consultation process, which in turn entails the provision of public notices on the boundary review process, including the publication of up-to-date information on current Dáil/European Parliament representation by constituency to inform the public's submissions. All submissions received will be made available free of charge and all submissions will be considered by the Commission.

It takes in Section 10 of the Electoral Act, 1997 and Section 26 of the Electoral, Local Government and Planning and Development Act, 2013. These Sections concerned public submissions in respect of this function, providing for constituency reviews triggered by census and changes in European Parliament seat allocations, respectively.

In Subhead (1), the trigger for the publication of a public notice is now the Electoral Commission writing to the Chairman of the Dáil and the Minister, rather than the establishment of the Constituency Commission as was previously the case.

CHAPTER 7: LOCAL ELECTORAL AREA BOUNDARY REVIEW FUNCTIONS

HEAD 70

TRIGGERING OF LOCAL ELECTORAL AREA BOUNDARY REVIEW WORK OF THE ELECTORAL COMMISSION

Provide that:

The Electoral Commission shall perform the functions assigned to it by this Chapter upon receipt of a written request from the Minister for Housing, Local Government and Heritage (“the Minister”).

NOTES:

This head is to provide for the Electoral Commission taking on the role of considering local electoral representation and boundaries, as provided for in Section 32(2) of the Local Government Act 1991, as amended.

HEAD 71

LOCAL ELECTORAL BOUNDARY REVIEW FUNCTIONS OF THE ELECTORAL COMMISSION

Provide that:

- (1) It shall be a function of the Electoral Commission, on request of the Minister, to review and make recommendations on –
 - (a) the alteration of council local electoral areas under Section 23 of the Local Government Act, 2001 (as amended).
 - (b) the alteration of the number of members of a local authority under Section 22 and Section 23 of the Local Government Act, 2001 (as amended).

NOTES:

This head is to provide that, where the Electoral Commission is carrying out its work on the basis of a census, it will consider local electoral boundaries nationally. In the case of the Minister requesting a report to inform the potential redrawing of a local authority boundary / boundaries, the Electoral Commission's work will only be in respect of the area in question.

HEAD 72

DEFINING OF TERMS OF REFERENCE

Provide that:

In relation to any function referred to in head 71, the Minister shall set the terms of reference for the Commission's work in consultation with the Joint Oireachtas Committee, and having regard to the factors set out in Schedule (1). These terms of reference shall require positive resolutions from both Houses of the Oireachtas.

NOTES:

This head gives the Minister and JOC responsibility for setting the terms of reference of the review, with the terms of reference subject to supporting resolutions from both Houses of the Oireachtas. It requires the Minister to have regard to a range of frequently used terms of reference from previous reviews (set out in Schedule 1).

HEAD 73

DETERMINATION OF PROCEDURES AND BUSINESS OF ELECTORAL COMMISSION'S LOCAL ELECTORAL AREA BOUNDARY REVIEW FUNCTIONS

Provide that:

Subject to the provisions of this Act, a Commission shall determine, by standing orders or otherwise, its procedures and business in respect of this function.

NOTES:

This is a standard head used on many of the functions proposed for transfer to the Electoral Commission.

HEAD 74

LOCAL ELECTORAL AREA BOUNDARY REPORTS

Provide that:

A report of the Electoral Commission to the Minister under head 71 shall—

- (a) be in writing,
- (b) be issued within the timeframe specified by the Minister, being not less than 7 months,
- (c) include the recommendations of the Commission in relation to the matters which are the subject of the report, and
- (d) include recommendations in relation to such ancillary or related matters (including financial matters) as the Commission may consider appropriate or as the Minister may specify under head 72.

The Minister shall publish a report furnished to him or her by the Commission.

The Minister shall have regard to such report in carrying out his or her functions under and in accordance with the provisions specified in head 71.

NOTES:

In combination with head 71, this head provides for the completion of the Electoral Commission's census-driven local electoral boundary work to be completed one year in advance of a local election.

HEAD 75

PUBLIC AND STAKEHOLDER SUBMISSIONS

Provide that:

- (1) The Electoral Commission, as soon as may be after the publication of finalised terms of reference, give public notice of its intention to make a report relating to –
 - (a) In the case of preparing a report under subhead 70(2)(a), the division of council electoral areas and the number of council members to be assigned into each such local electoral area.
 - (b) In the case of preparing a report under subhead 70(2)(b), the division of council electoral areas relating to [a] specific proposed alteration[s] of a local authority boundary / boundaries.
- (2) The Electoral Commission shall prepare a statement setting out the relevant legislative provisions relating to local electoral areas to which the Electoral Commission is required to have regard in preparing a report.
- (3) Any submissions received by the Electoral Commission under this head shall be made available free of charge by the Electoral Commission, to any person wishing to examine them, in accordance with the public notice referred to in subhead (1).
- (4) The public notice referred to in subhead (1) shall indicate that –
 - (a) any person may make a submission to the Electoral Commission in such manner and within such period, which shall not be less than one month, and as shall be specified in the notice.
 - (b) Any submissions received by the Electoral Commission in the manner and within the period specified in the notice shall be made available free of charge by the Electoral Commission, to any person wishing to examine them, in such manner and within such period as shall be specified in the notice.
- (5) The Electoral Commission shall consider every submission made to it in accordance with a public notice referred to in subhead (1).

NOTES:

This head provides for the commission to invite and consider submissions from the public in relation to local electoral area boundary reviews.

HEAD 76

CONFIDENTIALITY

Provide that:

No person shall, without the consent of the Electoral Commission, disclose to any person any information obtained in respect of ongoing Local Electoral Area Boundary Reviews while serving as (or during service as) a member of the Commission or as a person whose services are made available to the Commission.

NOTES:

This confidentiality provision is derived from the Electoral Act, 1997, S.11. This head is intended to prohibit disclosure of information relating to this function while local electoral area boundary reviews are ongoing.

CHAPTER 8: RESEARCH, ADVISORY AND VOTER EDUCATION FUNCTION

HEAD 77

RESEARCH FUNCTION

Provide that:

The Electoral Commission shall conduct research on electoral policy and procedure, as required, which will inform Government and the Oireachtas in their consideration of reform to electoral law.

The Electoral Commission shall also develop means to increase participation in our political processes through voter education.

NOTES:

This head provides for the Electoral Commission to take on a research role and advisory role. The research role will include a voter information and education function.

HEAD 78

RESEARCH PROGRAMMES

Provide that:

- (1) The Commission shall annually prepare programmes of such research.
- (2) Programmes under this head shall specify–
 - (i) The subjects in relation to which research is necessary and the objectives of such research,
 - (ii) The manner in which and the persons or bodies by which such research could be carried out
 - (iii) The estimated cost of particular research projects or operations
- (3) Programmes under this head shall be prepared, having regard to available resources provided as part of the Electoral Commission's budget for this purpose.
- (4) The process of preparing programmes under this head shall include consultation with the Joint Oireachtas Committee on Housing, Local Government and Heritage, the Minister and other bodies as may be prescribed.
- (5) Programmes under this head shall be submitted to the Chairman of the Dáil, who shall arrange for them to be laid before both Houses of the Oireachtas.
- (6) The Commission shall submit an update on its research programmes to the Joint Oireachtas Committee on Housing, Local Government and Heritage within six months of the Programme's submission to the Chairman of the Dáil.

NOTES:

This head creates a framework for a research function, taking elements from the EPA's research programme. The EPA Act, 1992, S.71 (2)(b) and (c) form the basis of subheads (2) and (4).

Subhead (3) highlights the fact that the research programme is subject to available resources – in this case, voted expenditure

Given that the Electoral Commission is directly accountable to the Oireachtas, subheads (3), (5) and (6) provide for consultation and direct submission of research programmes to the Houses of the Oireachtas. Consultation with the Minister reflects the fact that the Department for Housing, Local Government and Heritage is responsible for electoral legislation.

HEAD 79

ADVISORY FUNCTION

- (1) The Commission shall, following a request by–
 - (a) the Minister for Housing, Local Government and Heritage, or
 - (b) The Chairman of the Dáil

Provide in writing to the requestor a report containing information or advice or recommendations in respect of any proposals for legislative change, or on any other policy matters, concerning electoral policy or procedures.

- (2) The Commission shall carry out, cause to be carried out, or arrange for such research as may be necessary in this regard.
- (3) Each report submitted by the Commission to the Minister or the Chairman of the Dáil under subhead (1) shall be laid before each House of the Oireachtas by the requestor within 10 working days of receipt.

NOTES:

This head sets out the gives effect to an advisory role for the Electoral Commission.

The research role is intended to be commission-led, and the advisory role will be led by a request from the Minister or Chairman of the Dáil.

CHAPTER 9: OVERSIGHT OF THE ELECTORAL REGISTER

HEAD 80

OVERSIGHT OF THE ELECTORAL REGISTER

Provide that:

- (1) The Electoral Commission may, in relation to the Register of Electors, commission or conduct research regarding:
 - (a) the accuracy and completeness of the register
 - (b) the activities undertaken by Registration Authorities in the compilation of the register
 - (c) the processes relating to the compilation, management and functioning of the register, or
 - (d) any other matter considered by the Commission to be relevant to its functions.

- (2) The Electoral Commission shall annually publish a report on the Register of Electors, based on:
 - (a) information provided by the Registration Authorities referred to in Section 20A of the 1992 Act;
 - (b) information provided by the Registration Authority referred to in Section 13B(5) of the 1992 Act; and
 - (c) the Commission's own work as set out in subhead (1);and which shall provide an overview of the status and functioning of the electoral register along with any recommendations considered by the Commission to be necessary to maintain or enhance the integrity of the Register and the registration process.

- (3) The Electoral Commission may, on the basis of its work:
 - (a) make recommendations to Registration Authorities related to the management of their registers;
 - (b) set standards for Registration Authorities in relation to the electoral register, and
 - (c) make recommendations to the Minister in relation to legislation related to the electoral registration process.

- (4) On commencement of this Section, the references to "the Minister" in Sections 20A and 13B(5) should be replaced with "the Commission".

NOTES:

This head provides for the Electoral Commission to take a role in relation to oversight of the electoral register and provides it with explicit functions in relation to research and reporting on the status of the register in terms of its quality (accuracy and completeness) as well as the management and operation of the registration process. This is a new function which is not currently provided for in Electoral legislation and is intended to underpin the broader modernisation of the electoral registration process and its implementation on an ongoing basis.

The current provisions suggested under the Electoral Register Modernisation Project legislation include requirements for Registration Authorities to report to the Minister on their activities and for the Registration Authority assigned to manage the central database to report to the Minister on the functioning of that database. Subhead (4) provides that these references be read as “the Commission” on commencement of this section.

Overall, this head is intended to ensure that the Commission can gather information on the register and its functioning, commission research, report on same and make recommendations both to registration authorities, who should have regard to those recommendations in the exercise of their functions in relation to the registration of electors, and to the Minister/Government in relation to legislative provisions that might be needed to support the integrity of the register and its related processes.

SCHEDULE 1: SUGGESTED TERMS OF REFERENCE FOR LOCAL ELECTORAL AREA BOUNDARY REVIEWS

In preparing the terms of reference for the Electoral Commission's work on local electoral boundaries, the Minister shall have regard to:

- The population as ascertained in the preliminary results of the most recent Census
- Variance in representation of each local electoral area within each council area
- Alignment with Dáil constituencies where practicable
- Local and community identities and linkages, and the desirability of preserving natural communities
- Facilitation of effective governance and representational roles of elected members, including, in particular, the need to avoid designating local electoral areas which are territorially very large or extend over very long distances.
- The desirability of basing electoral areas around the areas of 'census towns', as defined by the CSO for the purposes of censuses.
- The Government's action/development plans which have or are anticipated to have an impact on the local area

PART 3:

FRANCHISE AND REGISTRATION OF ELECTORS

ACTS REFERRED TO

The Presidential Elections Acts, 1992 to 2006.

The Referendum Acts, 1992 to 2013.

Electoral Act 1992

Electoral (Amendment) Act 1996

Electoral Act 1997

Electoral (Amendment) Act 2001

Local Government Act 2001

Electoral (Amendment) Act 2002

Local Government (No. 2) Act 2003

Electoral (Amendment) Act 2006

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

Electoral (Amendment) Act 2012

Gaeltacht Act 2012

Electoral, Local Government and Planning and Development Act 2013

Court of Appeal Act 2014

Electoral (Amendment) Act 2015

Electoral (Amendment) Act 2016

Data Protection Act 2018

Data Sharing and Governance Act 2019

CHAPTER 1: AMENDMENTS TO THE ELECTORAL ACT 1992

Provide that the Electoral Act 1992 is amended as follows: –

HEAD 81

DEFINITIONS

Provide that:

Section 6 of the Electoral Act 1992 is amended by inserting:

“Anonymous elector” has the meaning assigned to it in section 15E;

“central database” has the meaning assigned to it in section 13B;

"closing date" has the meaning assigned to it in the Second Schedule;

"local authority" means the council of a county, the council of a city; or the council of a city and county within the meaning of section 2 (as amended by the Local Government Reform Act 2014) of the Local Government Act 2001;

“pending elector list” means a list referred to in section 17A;

"the register" means, as the context may require, the register of Presidential, Dáil, European and local government electors or the register of presidential electors or the register of Dáil electors or the register of European electors or the register of local government electors and, where the context so requires, includes the postal voters list and the special voters list;

"registration area" means the administrative area of a county council, a city council or a city and county council;

"registration authority" means a county council, a city council or a city and county council;

"the county registrar" means the county registrar for the administrative area of a county council, a city council or a city and county council or other area coterminous with or contained in a registration area or a person appointed or designated under Rule 24 of the Second Schedule to perform the duties of a county registrar;

and by deleting the existing definitions for

“edited register”

“local authority”
“national edited register”
“national register”
“the register”
"registration area"
"registration authority"
"the county registrar"
“qualifying date”

NOTES:

- New definitions included here are ‘anonymous elector’; ‘central database’; ‘closing date’; and ‘pending elector list’.

‘Anonymous elector’ provides for electors whose safety may be compromised should their details appear on the register. Section 15E refers.

‘Central database’ provides for a central, shared database encompassing the register of all registration authorities in a single register database. Section 13B refers.

‘Closing date’ refers to the closing date for amendment of the register prior to an electoral event. Rule 1(2) refers.

‘Pending elector list’ provides for a ‘pre-registration’ list of 16 and 17 year olds that will automatically include such persons on the register on turning 18. Section 17A refers.

- Definitions removed: ‘edited register’; ‘national edited register’; ‘national register’; and ‘qualifying date’.

‘edited register’ is being removed as there will no longer be an edited register which can be used for non-electoral purposes.

‘national edited register’ is being removed as there will no longer be an edited register which can be used for non-electoral purposes.

‘national register’ is being removed as will no longer be necessary in the context of the central database.

‘qualifying date’ is being removed in the context of a rolling register.

- Definitions amended: ‘local authority’; ‘the register’; ‘registration area’; ‘registration authority’; and ‘the county registrar’.

‘local authority’ is being amended to take account of the fact that Councils can be named City, County or city and county (following the merging of Waterford & Limerick Councils).

‘the register’ is being amended to remove mention of the supplement and postal and special voting supplements.

‘registration area is being amended to take account of the fact that administrative areas can be City, County or city and county (following the merging of Waterford & Limerick Councils).

‘registration authority’ equates to a local authority and is being amended to take account of the fact that such authorities can be named City, County or City and County (following the merging of Waterford & Limerick Councils).

‘the county registrar’ is being amended to take account of the fact that the remit of county registrars can be City, County or city and county administrative areas. (following the merging of Waterford & Limerick Councils).

HEAD 82

REGISTRATION OF PRESIDENTIAL ELECTORS

Provide that:

Section 7 (1) is amended by replacing the word “was” with “is” and deleting “on the qualifying date”.

Section 7 (2) (i) is replaced by “the Presidential Elections Acts, 1992 to 2006,”

Section 7 (2) (ii) is replaced by “the Referendum Acts, 1992 to 2013, and”

Section 7 (3) is replaced by “In the Presidential Elections Acts, 1992 to 2006 "elector", when used alone, means a person described in subsection (1).”

NOTES:

The reference to the qualifying date is removed as it will have no relevance in the context of a rolling register. The collective citations for the Presidential Acts and the Referendum Acts are also updated.

HEAD 83

REGISTRATION OF DÁIL ELECTORS

Provide that:

Section 8 (1) is amended by replacing the word “was” with “is” and deleting “on the qualifying date”.

Section 8 (2) (a) is amended by deleting “on the qualifying date”.

NOTES:

The reference to qualifying date is being removed as it will have no relevance in the context of rolling register.

HEAD 84

REGISTRATION OF EUROPEAN ELECTORS

Provide that:

Section 9 is amended by replacing the word “was” with “is” and deleting “on the qualifying date”.

NOTES:

The reference to qualifying date is being removed as it will have no relevance in the context of a rolling register. The word “was” is being replaced by “is” as the move to a rolling register means a person can apply at any time up to 14 days before polling day for entry to the register so residency refers to where the person lives on the date of application.

HEAD 85
REGISTRATION OF LOCAL GOVERNMENT ELECTORS

Provide that:

Section 10 is amended by replacing the word “was” with “is” and deleting “on the qualifying date”.

NOTES:

The reference to qualifying date is being removed as it will have no relevance in the context of a rolling register. The word “was” is being replaced by “is” as the move to a rolling register means a person can apply at any time up to 14 days before polling day for entry to the register so residency refers to where the person lives on the date of application.

HEAD 86

GENERAL PROVISIONS RELATING TO THE REGISTRATION OF ELECTORS

Provide that:

Section 11 (2) should be replaced by -

“Subject to the requirements of sections 7, 8, 9 and 10, a person shall be entitled to be registered as an elector on or after the day on which that person reaches eighteen years of age, including such a day that falls within the period beginning on the last day on which applications for entry in the register can be received and ending on polling day in the case of a Dáil, presidential, European or local election or a referendum, provided that any application is received by the registration authority before the closing date as provided for in Rule 1(2) of the Second Schedule”.

Section 11 (4) (a) should be amended by deleting “on the qualifying date” and by replacing “making claims” with “making applications”

Section 11 (5) should be amended by deleting “on the qualifying date,”.

Section 11 (6) should be amended by deleting “on the qualifying date,”.

Section 11 should be amended by inserting a new subsection (7) as follows –

- 7 (a) Where a person has no fixed address he shall, without prejudice to the generality of subsection (1)(b), be deemed for the purposes of this section to be ordinarily resident in –
- (i) the place where the person is currently situated, or
 - (ii) some other place deemed to be acceptable by the registration authority having due regard to a declaration of circumstances.
- (b) For the purposes of this subsection “a declaration of circumstances” shall be a statement in a form directed by the Minister and submitted to the registration authority together with the form referred to in section 15D.
- (c) All electors qualifying under this provision must renew their registration on an annual basis.
- (d) The Minister shall, not later than 3 years after the commencement of this subsection, carry out, or arrange to be carried out, a review of the operation of this subsection

NOTES:

Subsection (2) has been amended to remove reference to the qualifying date as it will have no relevance under the rolling register and to provide that a person shall be eligible for entry in the register on or after the day on which that person reaches 18 years of age, including where that day falls at any time up to polling day. This will mean that a person who will turn 18 on polling day in a given election or referendum can apply in advance of the closing date (the fourteenth day disregarding excluded days before polling day) and for the purposes of eligibility, their age on polling day will be taken into account.

Subsection 4(a) is amended to remove references to a qualifying date and a reference to claims as these will now be applications under section 15D.

Subsections (5) and (6) are amended to remove references to a qualifying date.

New section 11(7).

This is a new provision. The overall objective is to ensure that all those who are entitled to vote can do so. Current legislation refers to a voter's place of ordinary residence for registration purposes and local authorities are encouraged to facilitate people as much as possible, including those experiencing homelessness, by allowing them to register at their temporary place of residence or at the relevant local authority address. To ensure consistency across all local authorities, however, this section provides that where a person doesn't have a permanent address, they can register at an address where they are availing of emergency accommodation or they can register at an address where they spend most of their time for example a homeless shelter or where they are availing of essential services e.g. outreach service.

This provision does not provide for registration at a previous address in order to ensure accuracy of the register but the inclusion of provision for "a declaration of circumstances" is intended to provide for situations where:

- a person may be in temporary emergency accommodation some distance from where they consider themselves "ordinarily resident" and where they have a longstanding connection; or
- a person has no fixed address or might be rough sleeping and therefore has a connection or interest in the specific area where they live/sleep/spend the majority of their time.

The declaration is envisaged as a statement provided by a person on a specific form setting out their connection to a constituency or local electoral area that is not the constituency or local electoral area where they are currently situated. Under subsection 11(1)(b), the Act currently provides for expressions of choice by individuals who may "*prima facie be eligible for registration in respect of two or*

more premises, the question of which of such premises he shall be registered for shall, subject to any expression of choice by such person, be determined by the registration authority”.

This provision is not intended to result in any disconnect between ordinary residence and voting eligibility – rather it is intended to provide for a formalised means by which a person can inform the Registration Authority of their circumstances and be appropriately registered.

The section provides for the re-registration on an annual basis of those qualifying under this section, given the specifically temporary nature of the details being provided. A separate registration form is being developed for those wishing to avail of this provision and, as for all applications under the new process, contact details will be sought in order to allow officials in the registration authority to make contact. This should prevent the people involved from falling off the register and losing their right to vote.

A review clause is included to allow the operation of this provision to be reconsidered after a period of time to ensure it addresses appropriately the balance between the right of persons to be registered and the importance of an accurate and workable register.

HEAD 87

CERTAIN PERSONS DEEMED TO BE ORDINARILY RESIDENT IN THE STATE

Provide that:

Section 12 (2) should be amended by deleting “on the qualifying date”.

Section 12 (3) should be replaced by:

A qualified person may, not later than the date specified in Section 14, send to the appropriate registration authority a statement in the form directed by the Minister providing the following information-

- (a) the address of the premises in the State in which, but for the requirements of his duties, he would be resident; and
- (b) particulars of his spouse (if any).

Section 12 (5) should be amended by deleting “on the qualifying date”.

NOTES:

Section 12 provides for registration by diplomats and their partners and is amended by removal of references to the qualifying date in subsections (2), (3)(a) and subsection (5), by removal of references to the specified date in the Second Schedule and instead referencing the specified dates in the Section 14.

HEAD 88

THE REGISTER OF ELECTORS

Provide that:

Section 13 (1) should be replaced with –

“The register in force on the date on which this section is commenced shall remain in force and, by reference to registration areas consisting of the administrative areas of county councils, city councils and city and county councils, shall be prepared and maintained, in accordance with section 20 and subject to subsection (2). The register will -

- (a) in so far as it relates to presidential electors, be the register of presidential electors;
- (b) in so far as it relates to Dáil electors, be the register of Dáil electors;
- (c) in so far as it relates to European electors, be the register of European electors; and
- (d) in so far as it relates to local government electors, it shall be the register of local government electors

Section 13 (2) should be replaced with –

“No information shall be updated between the fourteenth day before polling day, disregarding any excluded days, and polling day inclusive”.

Section 13 (3) should be amended by replacing –

“draft register prepared” with

“register of electors maintained”

and by deleting

“or the electors lists prepared, under section 16, by a registration authority the subject of a direction under that section”.

Section 13 should be amended by inserting a new section 13 (5) as follows –

“In addition to the requirements under section 20 for making the register available for inspection, as soon as practicable after the fourteenth day

(disregarding any excluded day) before polling day at an election or a referendum, the registration authority shall:

- (a) Publish the register
- (b) Publish the lists of names added or removed since the making of the polling day order in respect of that election or referendum.”

NOTES:

The objective of this section is to provide that, once the section is commenced, the register in force remains in force and becomes the electoral register which is then maintained on an ongoing basis.

- Section 13(1) provides that the register and any supplement in force on the date this section is commenced shall remain in force and shall be continuously updated.
- Section 13(2) sets the cut-off date for updates to the register from fourteen days before polling day, disregarding excluded days (defined in section 2 of the 1992 Act as Sundays, Good Friday or public holidays). Updates can recommence the day after polling day.
- Section 13(3) is amended to replace “draft register prepared” with “register of electors maintained” and by deleting “or the electors lists prepared, under section 16, by a registration authority the subject of a direction under that section” as section 16 is being repealed.
- Section 13(5) is added to provide for an obligation on registration authorities to publish the register as soon as practicable after the fourteenth day (disregarding any excluded day) before polling day at an election or a referendum. The list of names added or removed since the making of the polling day order in respect of that election or referendum should also be published. The intent of this provision is to provide transparency as to the names on the register and those that were added or removed after the polling day order was signed.

HEAD 89

EDITED REGISTER OF ELECTORS

Provide that:

Section 13A should be repealed.

NOTES:

The objective of this section is to remove the provisions in the Electoral Acts for an edited register. Section 4 of the Electoral (Amendment) Act 2001 requires the compilation of a full and an edited register. The edited register was introduced at the same time as it was made an offence to use the electoral register for non-electoral purposes and was at the time intended to provide for the ongoing use of the register by companies and others for a range of purposes, such as, for example, direct marketing. This list is available for purchase from the registration authority. Since 2018, electors must opt-in by proactive choice to be listed on the edited register. There has been a trend of decrease in the number of electors appearing on the edited register over the last number of years. Just 9.9% of registered voters appear on the 2019/2020 Edited Register of Electors. Over time the use of the edited register has also diminished and statistics for 2018 show that there were only 27 requests across all registration authorities for the edited register in the three years previous. Consultation exercises with both local authorities and the public showed overwhelming support for the removal of provision for the edited register.

A new section, section 13D has been inserted and it contains provisions, currently in section 13A in regards to the uses of the register and offence for the misuse of the register.

HEAD 90

NATIONAL ELECTORAL REGISTER SHARED CENTRAL DATABASE

Provide that:

Section 13B is replaced with:

- 13B (1) The Minister may by order authorise a registration authority, subject to the consent of the authority, to manage, on behalf of other registration authorities, the information contained in the register of electors prepared by those authorities, including the postal voters lists, special voters lists and pending elector lists, in a central database.
- (2) Nothing in this section shall be construed as removing from registration authorities their duties to maintain their registers of electors and engage in registration activities under section 20.
- (3) Registration authorities may furnish a copy of the relevant registers free of charge to the authority authorised pursuant to subsection (1) for the purposes of its functions thereunder.
- (4) An order under subsection (1) may provide that the cost of managing the central database and related systems referred to in that subsection shall be met by the registration authorities to whose registration areas the registers referred to relate.
- (5) The registration authority referred to in subsection (1) shall report annually on the performance of the central database and any other issue related to its function identified by the Minister.
- (6) Subsection (1) of section 13D and section 133 (as amended) shall apply to the use of information in the central database in the same manner as they apply to an individual register compiled by a registration authority.

NOTES:

This section provides a legal basis for one registration authority to manage a national electoral shared central database which all registration authorities could use. The format is similar to that in the existing 13B and 13C which provided for similar centralised functions in relation to the register but which were never used. Subsection (4) is intended to provide that the Minister can put in place an appropriate funding model to support the maintenance of the central database and related systems to be paid for by Local Authorities.

The registration authority referred to should have responsibility for the management of the electoral registration system (which includes a central database and a public interface or portal). Individual registration authorities would still maintain their own registers, i.e. the data in said database.

This relationship will be subject to further points of contractual agreement – including data controller and processor agreements.

While this head provides that the Registration Authority will report to the Minister annually on the performance of the central database and any other issue related to its function it is provided in head 80 above that the Commission will take on this task in due course.

HEAD 91

PREPARATION AND MAINTENANCE OF REGISTER OF ELECTORS

Provide that:

Section 13 C is repealed.

NOTES:

The provisions in the amended section 13B cover the provisions currently in section 13C.

HEAD 92

USE OF THE ELECTORAL REGISTER

Provide that:

A new section 13D is inserted:

- 13D (1) The information in the register of electors maintained under section 13 shall only be used for an electoral or other statutory purpose.
- (2) A person who uses, or causes to be used, information in the register prepared under section 13, for a purpose, other than an electoral or other statutory purpose or in accordance with subsection (3), shall be guilty of an offence.
- (3) Without prejudice to the generality of subsection (1), the information contained in the register maintained under section 13 may be used -
- (a) by a specified person (within the meaning of section 39 of the Data Protection Act 2018), for the purpose of communicating with a data subject in accordance with section 39 of that Act, or
 - (b) by an elected representative (within the meaning of section 40 of the Data Protection Act 2018) for the purposes of section 40 of that Act.

NOTES:

13A of the Electoral Act 1992 contains provisions in relation to the edited register of electors. This section is now being abolished, however, the provisions for the edited register that improper use of the electoral register is identified as an offence are important and therefore are re-enacted in this section. The provisions are amended to contain the term ‘causes to be used’, which is intended to provide for an offence where a person makes information in the register available in such a way as might reasonably be expected to enable use of the material for purposes other than electoral or statutory purposes – for example where a person receives a copy under Rule 13 of the Second Schedule and puts all or part of it online. Offences generally in the 1992 Act are provided for in section 133 so amendments are also proposed in that amended section.

13D (3) is an amendment to 13A(3C), inserted by the Data Protection Act 2018, section 175, which provides for the use of the electoral register by elected representatives in the course of their work.

HEAD 93

DATA SHARING

Provide that:

A new section 13E is inserted:

- 13E (1) In this section –
- “data-sharing” has the meaning given to it by section 9 of the Data Sharing and Governance Act 2019;
- “information” means any personal data or information extracted from the register referred to in section 13 or the database referred to in section 13B;
- (2) A registration authority may share information held with another registration authority –
- (a) for the purposes of checking for duplicates on the register of electors;
 - (b) for the purposes of checking the accuracy of the register of electors;
 - (c) For the purposes of checking whether information supplied on an application form related to the register of electors is accurate;
 - (d) for the purposes of updating and maintaining the register;
 - (e) for any other purpose in pursuance of its functions under this Part.
- (3) A Minister of the Government may, solely for the purpose of assisting a registration authority in maintaining and updating the register of electors, provide to a registration authority, including a registration authority nominated by the Minister under section 13B, confirmation of an individual’s identifying particulars and the authority or authorities may use such confirmation to maintain and update the register.
- (4) The Minister may, for the purposes of assisting a registration authority or authorities in identifying entries on the register that may require up to date information, make an order to provide for the conduct of a periodic data sharing exercise between that authority or authorities with another Minister of the Government.
- (5) An order under subsection (4) shall specify the information to be shared and the process to be followed.
- (6) A Minister of the Government may, for the purposes of the exercise referred to in subsection (4) provide the registration authority or authorities with such identifying particulars that are relevant and necessary to maintain and update

the register of electors and the registration authority may use any such particulars so provided for that purpose.

- (7) The registration authority may require the superintendent registrar of births and deaths to furnish lists or other information in connection with deaths of persons in the district of the superintendent registrar. Where the superintendent registrar is an individual, payment for such lists or information shall be made by the registration authority at a rate approved from time to time by the Minister and in any other case no payment shall be made.

NOTES:

This section provides for data sharing in relation to the electoral register. The Department is aware that the Data Sharing and Governance Act would provide a legal basis for the the activities proposed, however, the relevant parts of that Act have yet to be commenced. Should they be commenced prior to finalisation of this legislation the Department will, upon advice from the Office of the Attorney General, remove data sharing provisions if appropriate.

This section should provide for two types of data sharing:

- The day to day sharing of data to enable the functioning of the register –
 - the interaction between registration authorities where people move from one area to another for example, or where a person tries to register when they are already registered in another area.
 - the use of PPSN for verification of identity data will require confirmation of details provided – this will be a very limited, yes or no check and no information will be retained by the Department of Social Protection (DSP) and no further information will be received as part of this confirmation check.

- Provision of a legal basis for a periodic (as opposed to ongoing) data-matching exercise to enable the electoral register to be matched against other Public Sector data, for example, Public Service Identity (PSI) data held by the Department of Social Protection to identify entries that match and therefore require no update – where possible and appropriate these will be linked to their PPSN (which will never appear on the register) and the individuals concerned need take no further action to update their electoral register entry. For entries that don't match, i.e. entries that may require update – these will then be notified to the registration authority for manual follow up by postal or door to door canvass.

We consider that a definition of “identifying particulars” may be required in respect of this section but it should be without prejudice to the general provisions that allow registration authorities to seek any information they need from individuals to maintain an accurate and complete register.

- Subsection (1) sets definitions relevant for this section.
- Subsection (2) Ongoing data sharing between registration authorities as they work on the register – such provision will need to ensure that use of a shared single database is covered.
- Subsection (3) Ongoing data sharing to enable the details being received by registration authorities to be confirmed against PSI data held by the Department of Social Protection. This text is modelled on that in section 8 of the Health Identifiers Act 2014, but limited to confirmation of data provided.
- Subsection (4) provides that that Minister may, by order initiate a periodic data sharing exercise with another Minister of the Government to enable identification of entries on the register that may not be accurate.
- Subsection (5) provides that the order shall specify the details of the exercise.
- Subsection (6) again is based on section 8 of the Health Identifiers Act 2014 but this time provides for the sharing of identifying particulars that are relevant for the electoral register (this would include name, address, date of birth, nationality, PPSN).
- Subsection (7) provides for data sharing with the superintendent registrar for the area to enable sharing of lists of people who have died so they can be removed from the register. Currently, the General Register Office sends lists of people registered as deceased to the local authorities to update the electoral register. Following consultation with An tArd-Chláraitheoir of the General Register Office the inclusion of this provision needs to be further considered during drafting.

The aim of this provision is to ensure that the information necessary to update and maintain an accurate register and minimise duplication can be shared between public bodies. The information that would be shared in all cases would be minimal. The register only uses a small number of pieces of information, which in combination allow for a verification check of the data provided – PPSN; name; age; citizenship and address/Eircode. These data sharing arrangements would, in addition to this legislative basis, require a series of data sharing agreements including controller to controller agreements where appropriate in order to ensure and demonstrate compliance with all the requirements of the GDPR.

There has been ongoing engagement with the Data Protection Commission in relation to these and the other proposals set out in the General Scheme.

HEAD 94

ENTRY OF NAMES IN POSTAL VOTERS LIST

Provide that:

Section 14 (a) should be amended by replacing “claims” with “applications”.

Section 14 (c) should be amended by deleting “qualifying date”.

Section 14 (d) (ii) should be replaced with –

“the physical illness or physical disability is likely to continue for at least one year from the date of application”

A new sub-section 14 (1) should be inserted –

14 (1) Applications for postal voting received on or after:

- (a) The third day after the date of the dissolution of the Dáil at a general election;
- (b) The third day after the date of the making of the order appointing polling day at a Dáil bye-election, or
- (c) The twenty-first day (disregarding any excluded day) before polling day at a presidential, European, or local election, or a referendum,

shall have no effect in relation to that election or referendum

A new sub-section 14 (2) should be inserted

14 (2) The provisions for Part VI of the Second Schedule shall apply to an application to be registered as a postal voter.

NOTES:

Section 14 relating to postal voters is, in relation to the modernisation process, amended to remove references to the qualifying dates, to take account of a rolling register, and a consequential amendment to section 14(d) whereby an indication that the physical illness or disability is likely to continue for at least one year from the time of application will be required – this replaces the existing text which had the duration to be for the period of continuance in force of the register being prepared, i.e. a year – this requirement is now being made explicit. A new section 14 (1) is inserted which sets out the cut off dates for applications for a postal vote. These are unchanged from the current provisions set out in section 15A (4).

HEAD 95

SUPPLEMENTAL PROVISIONS TO SECTION 14

Provide that:

Section 14A is repealed.

NOTES:

Part VI of the revised Second Schedule provides for all aspects of the application process for postal voting and obviates the need for section 14A.

HEAD 96

SUPPLEMENT TO THE REGISTER OF ELECTORS

Provide that:

Section 15 is to be repealed.

NOTES:

Section 15 contains provisions in relation to the supplementary register. The move to a rolling register will obviate the need for a supplementary register.

HEAD 97

SUPPLEMENT TO POSTAL VOTERS LIST

Provide that:

Section 15A is to be repealed.

NOTES:

Section 15A contains provisions in relation to the supplementary register. The move to a rolling register will obviate the need for a supplementary register. New section 14(1) will provide for cut off dates for applications to the postal voters list in the context of a rolling register.

HEAD 98

SUPPLEMENT TO SPECIAL VOTERS LIST

Provide that:

Section 15B is to be repealed.

NOTES:

Section 15B contains provisions in relation to the supplementary register. The move to a rolling register will obviate the need for a supplementary register. New section 17(7) will provide for cut off dates for applications to the special voters list in the context of a rolling register.

HEAD 99

CLOSING DATE FOR POSTAL AND SPECIAL VOTERS LISTS WHERE MORE THAN ONE POLL IS HELD ON THE SAME DAY

Provide that:

Section 15C is to be replaced by:

“Where an application by an elector to have his name entered in the postal voters list or in the special voters list is received after the relevant date referred to in subsection (1) of section 14 or subsection (7) of section 17 in relation to an election or referendum but before the relevant date referred to in either of the said subsections in relation to another election or referendum, the poll at which is to be held on the same day, the relevant date for the second or subsequent election or referendum shall apply to an application received under subsection (1) of section 14 or subsection (7) of section 17 in connection with the elections or referendums”.

NOTES:

Section 15C contains provisions in relation to the supplement to the register, which needs to be amended in the context of a rolling register.

Section 15C was included in 2001 to provide for different closing dates to the supplement to postal & special voters lists, when more than one poll is held on the same day. For example, the closing date for entry to the postal or special voters supplement for a Dáil election is the 2nd day following the dissolution of the previous Dáil. However, the closing date for entry to the postal or special voters supplement for a referendum or any other type of election is before the 21st day before that polling day. These cut-off dates may thus be quite different, in the context of postal and special vote applications. To provide for a single cut-off date for these applications, section 15C thus allowed for the closing date applying to be that for the second electoral event called (i.e. the later date).

A new section 14(1) will provide for cut off dates for applications to the postal voters list where two types of election are held on the day in the context of a rolling register. A new section 17(7) will provide for cut off dates for applications to the special voters list where two types of election are held on the day in the context of a rolling register.

Amendments to the section relate to removal of references to the supplement to the postal voters list and the supplement to the special voters list. Both sections 15A and 15B are to be repealed and relevant closing dates are now provided for in sections 14(1) (postal votes) and 17(7) (special votes) consequential changes are being made to section 15C.

HEAD 100

APPLICATION TO THE REGISTER OF ELECTORS

Provide that:

A new Section 15D is inserted –

15D

- (1) A person who is entitled to be registered as an elector may apply, in a form directed by the Minister, to the registration authority to be entered in the register.
- (2) A person who is included on the register but whose details have changed, in respect of:
 - (a) name; or
 - (b) address; or
 - (c) citizenship

may apply, in a form directed by the Minister, to the registration authority to have their details updated.

- (3) On receipt of an application under subsection (1) or (2) the registration authority may make such enquiries as it considers necessary, and, being satisfied that the particulars provided are correct, add the person to the register or amend their details.
- (4) The provisions of Part V of the Second Schedule shall apply to –
 - (a) the procedure for making applications under subsection (1) or (2) and —
 - (b) the consideration of applications under subsection (3) by the registration authority and the ruling on such applications by the registration authority, and
 - (c) the ruling on an appeal against the decision of the registration authority.
- (5) An application by a person under subsection (1) or (2), received by the registration authority on or after the fourteenth day (disregarding any excluded day) before polling day at an election or referendum shall not have effect in relation to that election or referendum and shall not be considered before the day following the election or referendum.

NOTES:

This section is an amended version of the existing section 15, which set out the process for individual applications for inclusion in the supplement to the register. The rolling register will function much more like the supplement and therefore this section provides for the application by individuals to apply to be on the register (new applications or people turning 18), or amend their details (name, address or citizenship).

- Section 15D(1) Provides that a person can apply to be entered onto the register.
- Section 15D(2) provides that a person can apply to have their details on the register updated.
- Section 15D(3) provides that the registration authority shall consider the applications under (1) or (2).
- Section 15D(4), (previously (15(2))) is amended to delete reference to the supplement and provides that the provisions of the Second Schedule will apply to consideration of applications under this section or the ruling on appeal against decisions of the registration authority.
- Section 15D(5) provides that an application received on or after the fourteenth day, disregarding excluded days, shall not have effect in relation to that election or referendum and shall not be considered before the day following the election or referendum.

HEAD 101

ANONYMOUS ELECTORS

Provide that:

Insert a new section 15E

15E (1) Where the registration authority is satisfied, on the application of a person in accordance with Rule 39, that the publication of that person's name would be prejudicial to the personal safety of that person or member of their household, the authority may direct that the name and address of that person shall not be available for inspection under the provisions in Section 20.

- (2) A person referred to in subsection (1) shall be known as an "anonymous elector".
- (3) The provisions of the Part VII of the Second Schedule shall apply to this section.
- (4) The Minister shall, not later than 3 years after the commencement of this provision, carry out, or cause to be carried out, a review of its operation.

NOTES:

Since the register is a public document and open for inspection by any person, this legislation provides for anonymous registration where a person's safety may be compromised by their name and address details being publicly available e.g. where a barring order or similar court ordered provision is in place. The current legislation makes no provision for anonymous registration. The details are set out in Rule 39.

In determining who would be eligible to register anonymously it is imperative that we strike the correct balance in terms of providing proof that a person is at risk if they were to appear on the register. SafeIreland points out that very few survivors of domestic abuse will seek a court order. It cites research from the EU Fundamental Rights Agency that indicates only 21% of Irish Survivors reported to Gardaí, 20% contacted a hospital and 8% sought help from a women's refuge. It would therefore appear reasonable to allow for a declaration to be made from a qualified person stating that the applicant could be in danger if their name and address were to appear on the register. The Department has examined provisions already in place in the UK, New Zealand and Australia in developing this provision. It has determined that at present the definition of "qualified officer" will be restricted to a member of An Garda Síochána above at or above the rank of Superintendent or a registered medical practitioner. This can be reviewed as part of the 3 year review provided for in this legislation.

The Department has consulted with the Department of Justice regarding the development of this provision.

HEAD 102

ELECTORS LISTS TO REPLACE DRAFT REGISTER, REGISTER AND SUPPLEMENT IN THE CASE OF SPECIFIED REGISTRATION AUTHORITIES

Provide that:

Section 16 should be repealed.

NOTES:

Section 16 provides for the publication of electors lists in place of the draft register, the register and the supplement to the register. These provisions were never used and their intention – to provide for a type of continuous registration will now be addressed by the substantive provisions of this Bill.

HEAD 103

SPECIAL VOTERS LIST

Provide that:

Section 17 (2) (b) is replaced by –

- (b) the physical illness or physical disability is likely to continue for at least one year from the date of application.

Section 17 is amended by inserting new subsections (6), (7) and (8) –

- (6) An application for inclusion on the Special Voters list should be made on an annual basis in accordance with the provisions of Rule 19 of Part III of the Second Schedule.

- (7) Applications for special voting received on or after:

- (a) The third day after the date of the dissolution of the Dáil at a general election;
- (b) The third day after the date of the making of the order appointing polling day at a Dáil bye-election, or
- (c) The twenty-first day (disregarding any excluded day) before polling day at a presidential, European, or local election, or a referendum,

shall have no effect in relation to that election or referendum.

- (8) Where a person is entered on the special voters list and the place where such special voter is ordinarily resident is not accessible by the special presiding officer appointed pursuant to section 80, rule 43 of European Elections Act 1997 and regulation 44 of the Local Elections Regulations, and the special voter is therefore unable to cast his vote, the returning officer may, as circumstances may require, on or before 7 days before the day the poll commences, treat the special voter as if he or she was entered on the postal voters list in accordance with section 14(d) of this Act, and issue a postal vote to that voter in accordance with Part XIII of this Act and Part XIV does not apply.

NOTES:

1. Section 17, which deals with the special voters list is largely unchanged, however the previous text provided that the circumstances leading to the entitlement to a special vote was likely to continue for the period of continuance in force of the register of electors (previously one year). In a rolling register, since the register will remain in force, that requirement is now being made explicit in 17 (2)(b) and 17 (6). In addition, the provision of the cut off dates has been included here for clarity – the dates are unchanged from the current provisions but were previously set out in section 15A which related to the supplement to the postal voters list.
2. The insertion of a new subsection (8) in section 17 provides that a returning officer may, in the event that a special presiding officer, appointed pursuant to section 80², rule 43 of European Elections Act 1997 and regulation 44 of the Local Elections Regulations, is unable to gain access to the place where the special voter is ordinarily resident, treat the special voter as if he or she was on the postal voters list, in the same the category as that set out in section 14(d). Section 14(d) provides for a person who is ordinarily resident at his or her residence and is unable to go in person to a polling station to vote.
3. There are a number reasons why a special voter's place of residence may not be accessible – for example it may be closed to visitors because of an outbreak of a winter vomiting bug or similar, or as was evidenced more recently because of Covid-19 restrictions. Closures could occur in a single institution, institutions in a particular region or on a national basis. This new provision gives the returning officer the flexibility to give a postal vote to a special voter if the circumstances require.
4. However, to allow sufficient time for a returning officer to comply with the arrangements for postal voting set out in Part XIII, including the issue of postal votes, notification of candidates/agents (where relevant) and for the ballot paper to be returned by the voter, it is necessary to identify a latest date by which the returning officer can give a postal vote to a special voter. Seven days is regarded as sufficient to issue a postal vote and have it returned by polling day. The Returning Officer could however issue a postal vote earlier than that. If a special voter's place of residence is closed nearer to polling day, it is open to the returning officer to appoint a person in the institution itself to act as a special presiding officer, in accordance with section 80(1) of the 1992 Act.

² Section 41(2) of the Presidential Elections Act 1993 and section 29(2) of the Referendum Act 1994 apply the provisions of section 80 of the Electoral Act 1992 to a presidential election and referendum in relation to the appointment of a Special Presiding Officer

5. It should be noted that the provisions relating to the preparation of a special voters list in accordance with Part XIV of the 1992 Act also apply at a presidential election, a referendum, a European Parliament election and at local elections by virtue of 17(1) of the Electoral Act 1992. However, the provisions of Part XIV would not apply in the circumstances set out in the new subsection (8) where voters would be treated as postal voters rather than special voters, hence the inclusion of the text: “*and Part XIV does not apply.*” (*this is a drafting question for OPC*).

HEAD 104

PENDING ELECTOR LIST

Provide that:

A new Section 17A is inserted:

- 17A. (1) A registration authority shall prepare and maintain a list that shall be known as the pending elector list.
- (2) The pending elector list shall not be part of the register of electors and it shall be the duty of each registration authority to ensure that the pending elector list is not published, does not form any part of the published register and is not available for inspection.
- (3) Where a person has reached the age of sixteen years but has not yet reached the age of eighteen years and otherwise meets the requirements set out in sections 7, 8, 9 or 10, a registration authority shall enter such person on the pending elector list, where:
- (a) the person applies to the registration authority in accordance with section 15D; or
- (b) in the course of the discharge of its duties under section 20.
- (4) On or after the day on which a person entered on the pending elector list reaches eighteen years, including such a day that falls within the period beginning on the last day on which applications for entry to the register can be received and ending on polling day in the case of a Dáil, Presidential, European or local election or a referendum, the registration authority shall enter that person onto the register of electors maintained under section 13 and shall delete such person from the pending elector list and notify the person.

NOTES:

Persons are eligible to vote provided they are 18 years old. The objective here is to provide for the pre-registration of 16 and 17 year olds in order to:

- contribute to the likelihood that their details will be accurate on entering the electoral register at 18 when compared with use of an address associated with a PPSN given at birth; and
- providing opportunities (such as the development of a schools programme) for young people to engage with the electoral register thereby improving the chances of their engagement post-18.

Critical to this provision is that pending electors are not included on the electoral register nor should their details be published on any list or report. While pending elector's details will be stored securely on the central database they will be flagged so that they will not appear on the electoral register for the purposes of reporting, publishing or the issuing of polling cards.

HEAD 105

ENTRY IN REGISTER OF NAME OF REVISED CONSTITUENCY

Provide that:

Section 19 is amended by deleting

“in force at the time of the revision and in every such register coming into force subsequent to such a revision”.

NOTES:

Section 19 is unchanged with the exception of removal of references to text at the end of the section referring to the register of electors in force at the time of the revision and every such register coming into force subsequent to such revision. Under a rolling register, this change can be made and will remain in place.

HEAD 106

REGISTRATION DUTIES

Provide that:

Section 20 is amended by replacing subsection (1) with –

- (1) It shall be the duty of each registration authority to:
 - (a) maintain the register of electors by:
 - (i) adding people entitled to be registered;
 - (ii) removing people not entitled to be registered; and
 - (iii) amending such details as necessary to ensure an accurate register,
 - and
 - (b) make available for inspection the register referred to in section 13(1) in accordance with the provisions of the Second Schedule.

Section 20 is amended by inserting new sections 1A, 1B and 1C

- (1A) Where a registration authority ascertains that corrections in the register are necessary because of errors of a clerical or typographical nature or because of misnomers or inaccurate descriptions, the registration authority shall correct the register accordingly and make available for inspection a list of corrections made in the previous month.
- (1B) The registration authority shall, in accordance with the provisions of the Second Schedule, make any corrections by way of the removal of duplicate entries (subject to any expression of choice, in accordance with section 11(1)(b), by the person affected by those entries), the deletion of the names of persons who are deceased, or the placing of marks or the correction of marks placed against the name of an elector, or otherwise as may be necessary in order to secure that –
 - (a) a person is not registered more than once as an elector, and
 - (b) the register is complete and accurate.
- (1C) The provisions of the Second Schedule shall apply to this section.

Section 20 (4) (b) is amended by replacing “preparing and publishing” with “maintaining and publishing”

Section 20 (5) (a) is amended by replacing “preparing and publishing” with “maintaining and publishing”

Section 20 (5) (b) is replaced with

“Without prejudice to the generality of paragraph (a), the Minister may under this subsection cause a greater proportion of the cost of maintaining, updating and publishing the register to be borne by the registration authority than that provided for under subsection (4) if in his opinion there are deficiencies attributable to the registration authority in the register”.

Section 20 (5) (c) is amended by replacing “preparing and publishing” with “maintaining and publishing”

NOTES:

- Section 20(1) is amended to replace the duty to “prepare and publish” the register with “maintain and make available for inspection” and to extend that to both the register and the lists of people added or removed in the previous month to maintain transparency.
- Section 20(1A) is a provision to enable the registration authority to make corrections of a typographical nature – this was previously provided for in section 15(3) related to the preparation of the supplement.
- Section 20(1B) is a provision, previously in Rule 10 of the Second Schedule, to enable the registration authority to make more substantive corrections to ensure the register is accurate and complete – the process for doing so, including the right of appeal by affected persons, is set out in the Second Schedule.
- Section 20(1C) is to specify that the provisions of the Second Schedule apply to this section in its entirety.
- Sections 20 (4)(b), 20 (5)(a) and 20 (5)(c) are amended to remove reference to publication of the draft register or the register or the list of claims and to update references to “prepare and publish” to “maintain, publish”.
- Section 20 (5) (b) is replaced so as to update references to “prepare and publish” to “maintain, update and publish” and to remove references to the draft register and claims process.
- Section 20 (5) (c) is amended to update references to “prepare and publish” to “maintain, update and publish”.

HEAD 107

OVERSIGHT AND REPORTING

Provide that:

A new section 20A is inserted:

- 20A (1) Each registration authority shall submit to the Minister, within three months of the end of each calendar year, a report, to include:
- (a) the activities undertaken in the preceding calendar year to ensure a comprehensive and accurate register of electors;
 - (b) the activities undertaken in the preceding calendar year to establish the comprehensiveness and accuracy of the register of electors for its area; and
 - (c) any other matters to be directed by the Minister, in relation to its functions as a registration authority.
- (2) Registration Authorities may discharge their duties under subsection (1) through joint reporting arrangements with other registration authorities.

NOTES:

Section 20A provides for a new report to be submitted by registration authorities setting out their activities in relation to the register each year.

This is a new provision and is intended to support the collection of better information on the register, as well as providing an opportunity for the sharing of best practice among local authorities.

Head 80 above provides for the Electoral Commission to take a role in relation to oversight of the electoral register and provides it with explicit functions in relation to research and reporting on the status of the register in terms of its quality (accuracy and completeness) as well as the management and operation of the registration process. Whilst the current provisions in this head provide that Registration Authorities report to the Minister on their activities. Head 80 make provision for these references be read as “the Commission” on commencement of the relevant section.

HEAD 108

APPEALS

Provide that:

Section 21 (1) is replaced with

- (1) An appeal shall lie to the Circuit Court against any decision by a County Registrar on an appeal made to him in accordance with Rule 30 of Part V of the Second Schedule.

Section 21 (3) is amended by replacing “Supreme Court” with “Court of Appeal”.

Section 21 (5) is amended by replacing “Supreme Court” with “Court of Appeal”.

NOTES:

Section 21 (1) is amended to reflect the new process, which will see only appeals of Registration authorities decisions – the claims process has been amended to provide for an initial application to the Registration Authority.

Section 21 is amended by the replacement of the Supreme Court to the Court of Appeal in subsections (3) and (5). This is on foot of the Court of Appeal Act, 2014. The section is otherwise unchanged with the exception of references in the Second Schedule in subsection 1.

HEAD 109

THIRD PARTY CLAIMS

Provide that:

A new Section 21A is inserted –

- 21A (1) Where a person, on inspecting the register, is of the view that there is an inaccuracy, they may submit a third party claim to the registration authority on a form directed by the Minister.
- (2) On receipt of a third party claim, the registration authority may make such enquiries as it considers necessary to satisfy itself as to the action it should take and inform the claimant and any affected person.
 - (3) The provisions of Rule 7 of the Second Schedule shall apply to this section.

NOTES:

The existing process of publishing the draft register and allowing for a period for the making of claims (from 1 -25 November) is one of the key ways in which people can update their details but also allows for a public inspection of the register and the notification of any additions, deletions or corrections that may be needed, to the registration authority. Under the current claims process any person can submit a claim – in practice these are mainly first person claims for corrections or additions to the register in respect of a person themselves. Third party claims tend to be rarer and usually relate to a family member who has died. Other third party claims can be from local representatives who are familiar with the area and the register and submit changes or corrections they consider necessary on that basis. Under the new process, all individuals need to apply themselves for addition or updates to the register. In order to preserve the checks and balances provided by the existing process, the third party element of the claims process is being retained here.

This section explicitly includes a third party claims process – whereby any person can notify the registration authority of any changes they consider necessary to the register in respect of entries not their own. These will be ruled on by the registration authority in much the same way as applications and an appeal will be possible to the county registrar.

The details of the process and appeal will be set out in the Second Schedule but crucial to that consideration is the notification to any affected person that a claim has been made.

HEAD 110

AMENDMENT OF SECTION 46 OF THE ELECTORAL ACT 1992

Provide that:

Section 46(7) is amended by deleting “a supplement to”

NOTES:

This amendment is to remove reference to the supplement as in the context of a rolling register there will be no supplement. Separately in Section 46(6) there are references to the Dáil register of electors “in force” and “ceasing to be in force” – these terms may need to be considered at drafting stage, though the move to a rolling register wouldn’t change the effect of that text.

HEAD 111

VOTING BY PERSONS IN THE EMPLOYMENT OF RETURNING OFFICERS

Provide that:

Section 99(2)(a) is amended by deleting “a supplement to” and “which the registration authority is empowered to prepare and publish in accordance with section 15A”

and

section 99(2)(c) – is replaced with

“Part III of the Second Schedule, with the exception of Rules 19 (c), 21 and 23 (3), shall apply for entry to the postal voters list under paragraph (a).

Section 99 (2)(d) is amended by replacing “Subsection (4) of section 15A” with “Section 14(1)”

NOTES:

Section 99 (2)(a) is amended to remove reference to the supplement to the postal voters register which will no longer be required in the context of move to a rolling register.

Section 99 (2)(c) provides for the same postal applications processes for polling station staff as for others except in relation to closing dates, the requirement for medical certification and for notices regarding postal votes to be issued by the registration authority. Consequential amendments are made to this section as a result of other changes in the proposed legislation.

Section 99 (2)(d) is being amended to remove reference to section 15A which is being repealed and to refer to section 14 (1) which sets out the timelines for applying for a postal vote.

HEAD 112

OFFENCES IN RELATION TO REGISTRATION OF ELECTORS

Provide that:

Section 133 (1) is replaced by –

(1) Any person who knowingly furnishes false information in any application under the Second Schedule, including a third party claim, or, having been duly required pursuant to the provisions of the Second Schedule to give any information in his possession which a registration authority or county registrar may require for the purpose of their duties, fails or refuses to give the information or knowingly gives false information, shall be guilty of an offence.

Section 133 (2) (d) is replaced by –

(2) (d) uses or causes to be used information in a copy of the register of electors for reasons other than electoral or other statutory purposes,

Section 133 (3)(a) is amended by deleting “draft register,” and “electors lists”

Section 133 (3)(b) is amended by deleting “draft register”

NOTES:

Section 133 is amended to remove references to the draft register and to include any application under Part II in the provisions of subsection (1), making it an offence to knowingly provide incorrect information in an application form.

Section 133(2)(d) is amended to remove references to the supplement, the draft register and electors lists.

Section 133 (3)(a) is amended by removing reference to the draft register and electors lists which are no longer required with the introduction of a rolling register.

Section 133(3)(b) is amended by deleting the reference to the “draft register”.

HEAD 113

AMENDMENTS TO THE SECOND SCHEDULE (REGISTRATION OF ELECTORS) TO THE ELECTORAL ACT 1992

Provide that:

The Second Schedule to the Electoral Act 1992 is amended as follows: –

Rule 1 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Register, published register and closing date for registration.

1.
 - (1) The register shall be the register of electors including the postal voters list and the special voters list, as maintained by the registration authority, in accordance with this Schedule.
 - (2) The register will be deemed closed for amendment from the fourteenth day (disregarding any excluded day) before polling day at an election or a referendum. References to the closing date shall be construed accordingly.
 - (3) The register in force at an election or referendum shall be the register published after the fourteenth day (disregarding any excluded day) before polling day at an election or a referendum.
 - (4) Where the date on, or by reference to, which any act or thing is required by this Schedule to be performed or done falls on an excluded day that act or thing shall be done on or by reference to the next following day which is not an excluded day.

NOTES:

In the context of a rolling register, the myriad dates that previously applied to the preparation of the draft and final registers, and the supplement to the register are no longer necessary.

Rule 1 is amended accordingly and provides that -

- (1) the register of electors is the register (referred to in section 13) and the postal and special voters lists as updated in accordance with this schedule.
- (2) provides that the register will be closed for amendments from the fourteenth day before polling day (disregarding any excluded day).
- (3) provides explicitly for the publication of the register to be used in an election or referendum.
- (4) provides that where any act or thing under this schedule falls to be done on an excluded day (defined in section 2 of the principal act as Sundays, good Friday and public holidays), it shall be done on the next day that is not an excluded day.

Rule 2 of Part I - The Register of Electors - of the Second Schedule is amended as follows –

Rule 2, subsection (1) is amended by deleting “the qualifying date for”

Rule 2, subsection (2) is replaced by

“(2) The names in the register for a registration area shall be arranged under polling districts and –

- (a) if the registration area is a city council, shall be arranged in street order unless the registration authority consider that, having regard to the general character of any part of the area, arrangement in street order for that part is inappropriate,
- (b) if the registration area is a county council, shall be arranged alphabetically in townland order unless the registration authority consider that, having regard to the general character of any part of the area, arrangement in street order or in any other order is possible and convenient, and
- (c) if the registration area is a city and county council, shall be arranged in street or townland order, having regard to the general character of any part of the area, as considered appropriate by the registration authority.

NOTES:

Rule 2 is amended in two places:

(1) the reference to the qualifying date is removed as it will have no relevance in a rolling register.

(2) is amended by the updating of references to the local authorities concerned – now referring to city councils, county councils and city and county councils, in line with the Local Government Reform Act 2014

Rule 4 of Part I – The Register of Electors – of the Second Schedule

Rule 4 of Part I - The Register of Electors - of the Second Schedule is to be repealed.

NOTES:

Rule 4 is to be repealed from Part I of the Second Schedule and re-enacted in Part VI of the Second Schedule. Part VI sets out the rules and procedures for postal voting.

Rule 5 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Updating of register

- 5 (1) In order to maintain the register, in accordance with section 20, each registration authority shall make sufficient inquiries in their registration area.
- (2) For the purposes of sub-paragraph (1), each registration authority may:
- (a) Conduct house to house inquiries;
 - (b) By means of public notice or public meeting, invite individuals to check/submit/update their details; or
 - (c) Undertake any other activity the authority deems appropriate to gather such information or invite individuals to participate.
- (3) The registration authority may for the purposes of their duties in relation to the preparation of a register require a person—
- (a) to provide any information in his possession which the registration authority may require,
 - (aa) without prejudice to the generality of subparagraph (3)(a), to provide in respect of their own registration,
 - (i) a Personal Public Service Number;
 - (ii) an Eircode;
 - (iii) a date of birth.
 - (b) to produce a certificate of birth, or, if that is not practicable or convenient, to make a statutory declaration as to his age,
 - (bb) to produce proof of address, or, if that is not practicable to make a statutory declaration that they are ordinarily resident at the address they have provided,
 - (c) to provide documentary evidence or to make a statutory declaration that he is a person entitled to be registered as a Dáil elector under section 8,

- (d) to produce a certificate of naturalisation or to make a statutory declaration that they are a citizen of Ireland, or
- (e) to make a statutory declaration that they are a national of a Member State of the European Union other than Ireland,

and where a declaration is so required, any fees payable in connection therewith shall be paid by the authority requiring it.

- (4) The registration authority shall, during office hours, allow any person to inspect and take a copy of any declaration furnished under paragraph (3) but not the documentary evidence of same.
- (5) The registration authority may require the superintendent registrar of births and deaths to furnish lists or other information in connection with deaths of persons in the district of the superintendent registrar. Where the superintendent registrar is an individual, payment for such lists or information shall be made by the registration authority at a rate approved from time to time by the Minister and in any other case no payment shall be made.”

NOTES:

This Rule has been amended to reflect the change to the role of the registration authority to maintain, rather than prepare a draft and publish a subsequent register.

Paragraphs (1) and (2) provide for an expanded range of activities that the registration authority can undertake to update the register, though the principle still remains “sufficient inquiry” as now.

The other amendment is the inclusion at paragraph (3)(aa) an explicit reference to the fact that the registration authority can require a person to provide a PPSN, an Eircode and/or a date of birth.

The remaining provisions are unchanged. Paragraph 4 is unchanged and continues to provide that any person can take a copy of any declaration made, however, this does not include documents such as birth certificates, details of Personal Public Service Numbers or documents showing dates of birth.

Rule 6 of Part I - The Register of Electors - of the Second Schedule is to be repealed.

NOTES:

Rule 6 deals exclusively with the draft register of electors. The move to a rolling register means there is no longer a need for a draft register, therefore this rule is no longer necessary.

Rule 7 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Third Party Claims in relation to the register.

- 7
- (1) Any person may claim to have a correction made in the register, including in particular a claim to have the name of a person added to or deleted from the register.
 - (2) A claim under this Rule shall not be considered by the registration authority in the period between the day after the closing date and the day after polling day.
 - (3) The registration authority shall, on the application of any person, supply forms on which third party claims may be made.
 - (4) A claim shall, at a minimum, include the details of the claimant, including contact details, and the details and reason for the claim.
 - (5) The registration authority shall prepare and make available for inspection a list of claims received in the previous month in such form as may be directed by the Minister.
 - (6) The registration authority shall allow any person during office hours to inspect and take extracts from a claim or may supply copies of a claim.
 - (7) The registration authority shall, on receipt of a claim:
 - (a) notify the claimant, and any other person appearing to them to be interested, of the process to be followed; and
 - (b) make such inquiries as they think fit for the purpose of considering such claim, and the provisions of paragraphs (2), (3), (4) and (5) of Rule 5 shall apply in relation to the consideration of such claims.
 - (8) The registration authority shall, as soon as practicable, consider and rule on any claim and amend the register in accordance with its decision.
 - (9) Where a claim relates to names that the claimant considers should be added to the register, the registration authority shall, where it considers it appropriate, supply the forms and information necessary for the subject(s) of a claim to make an application to be included on the register and the provisions of section 15D shall apply to those applications.

- (10) The registration authority shall inform the claimant and any person appearing to the registration authority to be interested of its decision within a period of one month following receipt of the claim and of the right of appeal under paragraph (11).
- (11) The subject of any claim may appeal the decision of a registration authority notified to him under paragraph (8) to the county registrar within a period of one month following the decision of the registration authority.”

NOTES:

The process for claims in the Act was in relation to the draft register rather than a rolling register. This meant that there was a set period in which claims would be considered and they went for hearing to the County Registrar.

The revised process has two significant changes – the change to individual registration, rather than household forms, means that every person applies on their own behalf to get onto the register or to amend their details, currently this is also done through the claims process. Since there is now provision under section 15D for an individual to apply for entry to the register, and to amend their details, the claims process will apply to third party claims only. In practice currently, the main use of third party claims is for relatives to notify the registration authority of a death but this could also be used to report an anomaly.

The second significant change is that claims, like applications, will be dealt with by the registration authority in the first instance and that there will be an option for the subject of the claim to appeal to the County Registrar.

- (1) provides that any person may make a claim for a correction in the register
- (2) is new and provides that claims will not be considered between the closing date and the day after polling day
- (3) provides that the local authority shall provide forms for making claims.
- (4) is new and provides that a claim shall, at a minimum, provide details of the claimant, including contact details, the details and reason for the claim.
- (5) provides that the local authority prepares and makes available for inspection a list of claims received each month.
- (6) provides that any person can inspect or take copies of claims during office hours.
- (7) is new in this context – this is the provision under which the authority previously considered applications to the supplement to the register.

- (8) provides that the local authority should rule and act as soon as practicable .
- (9) is new and provides that where a claim was to add a person or persons to the register that the local authority should contact the persons concerned.
- (10) is new and requires the local authority to inform the claimant and any interested person of its decision and the right of appeal.
- (11) provides the right of appeal to the subject of the claim.

Rule 8 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Consideration of appeals in relation to third party claims and registration authority corrections by the county registrar.

- 8
- (1) Subject to paragraph (2), the county registrar shall consider all appeals of which notice has been given to him in accordance with Rule 7 and Rule 11.
 - (2) Where a decision is received by the Registration Authority on or after the 14th day in advance of an election or referendum, it shall have no effect in respect of that election or referendum and shall be implemented on the day after polling day.
 - (3) Before considering an appeal in relation to the deletion of a person's name from the register the county registrar shall, except where he is satisfied that the person is deceased, give not less than five clear days' notice to the appellant and to the person in respect of whom the appeal is made of the time and place at which the appeal will be considered by him.
 - (4) If the county registrar is satisfied that an appeal, other than an appeal in relation to the deletion of a person's name from the register, should not be allowed without inquiry he shall give not less than five clear days' notice to the claimant and to any other person appearing to him to be interested of the time and place at which the appeal will be considered by him.
 - (5) The county registrar may require any officer of a registration authority and any person whose duty it is to make the house to house or other inquiry on which the register is based to attend at such times and at such places as he may consider necessary for the purpose of enabling him to decide any appeal or other matter arising out of his consideration of the appeal.
 - (6) The county registrar may, on consideration of any appeal or other matter, require that the evidence tendered by any person should be given on oath and may administer an oath for that purpose.

- (7) On the consideration of any appeal or other matter by the county registrar, any person interested may appear and be heard either in person or by any other person on his behalf.

- (8) The county registrar shall consider and rule on any appeal and inform the appellant and the registration authority of his decision within a period of one month following receipt of the appeal.”

NOTES:

These provisions are similar to those provided previously under Rule 8 with the exception of:

(2) which provides that appeals where the decision is received by the Registration Authority between the closing date and polling day shall not have effect in that election or referendum, and

(8) which requires that the County Registrar inform the appellant and the registration authority of his decision within one month of receipt of the appeal.

Rule 9 of Part I - The Register of Electors - of the Second Schedule is amended by replacing subsection (2) with –

- (2) The county registrar, if it appears to him that the register should be corrected in any respect, may himself make a claim for a correction and any such claim shall be considered in the same manner and on the same conditions as a claim under Rule 7.

and

by deleting subsection (3).

NOTES:

Rule 9 has been amended to provide that where the county registrar considers that the register should be corrected in any respect that he can make a claim to the local authority under Rule 7. In the current legislation, the County Registrar rules on claims so the process was different.

Rule 10 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Correction of register by registration authority.

- 10 (1) The registration authority shall take steps to ascertain if any corrections in the register are necessary because of errors of a clerical or typographical nature or because of misnomers or inaccurate descriptions and, if any such corrections are ascertained to be necessary, the registration authority shall correct the register and publish a list of the corrections.
- (2) The registration authority shall make any corrections by way of the removal of duplicate entries (subject to any expression of choice by the persons affected by those entries), the deletion of the names of persons who are deceased, or the placing of marks or the correction of marks placed against the name of an elector, or otherwise as may be necessary in order to secure that—
- (a) a person is not registered more than once as an elector, and
 - (b) the register is complete and accurate.
- (3) Where a registration authority considers it necessary under paragraph (2) for the purposes of a complete and accurate register to delete a name, other than that of a deceased person, from the register, it shall make no less than three documented attempts at contacting the person concerned giving appropriate notice and clear information on how to update the register should they wish to do so.”

NOTES:

In addition to the general provisions in section 20 about the duty of the registration authority to correct the register in order to ensure that it is complete and accurate, this Rule newly provides in paragraph (3) that where an authority seeks to delete a name from the register that it shall make no less than three documented attempts at contacting the person concerned informing them of the process to update their details.

1. contact details as provided (where mobile/email address is given)
2. writing to named individual at address on register
3. writing to occupier at address asking for information

Rule 11 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Appeal against registration authority corrections.

- 11 (1) Subject to paragraph (2), where the registration authority proposes to make any corrections in the register under Rule 10 otherwise than for the purpose of correcting an inaccuracy not involving a change of substance or deleting the name of a person who is deceased, they shall give notice to any persons affected by the correction of their right to appeal the decision to the County Registrar within one month of the decision.
- (2) Where a decision is received by the Registration Authority on or after the 14th day in advance of an election or referendum, it shall have no effect in respect of that election or referendum and shall be implemented on the day after polling day.

NOTES:

This Rule is amended to provide that no appeal shall be considered between the closing date and the polling day. It also provides that appeals where the decision is received by the Registration Authority between the closing date and polling day shall not have effect in that election or referendum.

Rule 12 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Notification of appeals to registration authority.

- 12 (1) Immediately on completing his decision on any appeal, the county registrar shall send to the appellant and to the registration authority a certified copy of his decision.
- (2) The registration authority shall, on receiving the decision of the county registrar, forthwith make any correction in the register necessary to give effect to his decision and shall send notice of the decision to the appellant (other than the county registrar or a claimant who is a person whose duty it is to make the house to house or other inquiry on which the register is based) and to any other person appearing to them to be interested, together with a notice of the right of appeal against the decision to the Circuit Court under section 21.”

NOTES:

This provision has been amended to take account of the rolling register and provides that as soon as the County Registrar rules on an appeal that he shall notify the local authority and they shall make any correction to give effect to his decision and the local authority shall notify the appellant and any other interested person.

Rule 13 of Part I - The Register of Electors - of the Second Schedule is replaced by –

“Publication, inspection and copies of registers.

13. (1) The registration authority shall make arrangements whereby any person during office hours may inspect a copy of the register maintained under section 13.
- (2) In addition to the requirement under paragraph (1), as soon as practicable following the closing date, the registration authority shall publish (i) the register and (ii) a list of names added or deleted since the making of an order under section 96 of the Electoral Act 1992 in the case of a Dáil election; under section 6 of the Presidential Elections Act 1993 in the case of a Presidential election; under section 10 of the European Parliament Elections Act 1997 in the case of a European Parliament election; under section 10 or section 12 of the Referendum Act 1994 in the case of a Referendum; or under Section 26 of the Local Government Act 2001 in the case of Local election.
- (3) As soon as may be after the publication of the register in accordance with paragraph (2), the registration authority shall send a copy of the register in electronic format to -
- (a) the Minister, if requested, and to the county registrar and each head postmaster in the area,
 - (b) each representative in the European Parliament for a European Parliament constituency to which the register relates,
 - (c) each member of the Dáil for a Dáil constituency to which the register relates and to each member of the Seanad residing in the constituency, and
 - (d) each local authority member for a local electoral area to which the register relates.
- (4) The registration authority shall, on the payment of a fee, not exceeding the reasonable cost of doing so, supply to any person a copy of the register or the appropriate part thereof in printed form.

- (5) Where a registration authority supplies to any person a copy of the register, or part thereof, the registration authority shall draw the attention of the person to the provisions of section 13D and section 133 of this Act.
- (6) No fee shall be charged by the registration authority for supplying on request—
- (a) one copy of the register for each Dáil constituency or part of a Dáil constituency or for a local electoral area, as the case may be, in their registration area, to—
 - (i) the local agent of each duly nominated candidate at a presidential election,
 - (ii) each candidate duly nominated for the constituency at a Dáil election, and
 - (iii) each candidate duly nominated for the local electoral area at a local election,
 - (b) one copy of the register for each European Parliament constituency or part thereof contained in the registration area to each candidate duly nominated at a European election for such constituency,
 - (c) one copy of the register for each Dáil constituency to each member of the Dáil for the constituency and each member of the Seanad resident in the constituency for use by a personation agent appointed by such member of the Dáil or the Seanad or a body declared to be an approved body under section 7 of the Referendum Act, 1998 at a referendum,
 - (d) such number of copies of the register for each Dáil constituency or part of a Dáil constituency or for a local electoral area, as the case may be, as the returning officer at a Dáil election or a local election or the local returning officer at a presidential election or a referendum requires for the purpose of his duties as returning officer or local returning officer, and
 - (e) such number of copies of the register for the registration area or any part thereof as the returning officer or local returning officer at a European election requires for the purpose of his duties at such election.
- (7) The registration authority shall supply, free of charge, on request, a copy, in standard computer medium and format, of any computer data files used in the production of the register which the returning officer at a Dáil election or a local election, the local returning officer at a presidential election or a referendum or

the returning officer or local returning officer at a European election may require for the purposes of his duties at such election or referendum.

- (8) The registration authority shall supply, free of charge, to the county registrar such number of copies of the register for a registration area as he shall require for the purposes of his duties as county registrar.

NOTES:

This Rule combines the existing requirements under Rule 6, Rule 13 and Rule 14 in relation to the publication of the register to provide that:

- the register should be available for inspection during office hours
- the register should be published as soon as possible after the closing date, and
- that copies should be made available to specified persons, including the Minister on request; and elected representatives.

This Rule also provides that a copy can be provided on request to any person (as now) but a new provision requires that the local authority draw the attention of any person being provided with a copy of the provisions of section 13D and section 133, regarding the proper use of the register and the offences related to use for purposes other than electoral or other statutory uses.

No fee will be charged for copies provided to candidates for election, as now.

Rule 14 of Part I - The Register of Electors - of the Second Schedule is to be repealed.

NOTES:

The provisions in Rule 14 are now included in Rule 13.

Part 1A – Edited version of the Register of Electors - of the Second Schedule is to be repealed.

NOTES:

This Rule relates to the edited register which is being abolished, by the removal of section 13A.

Part II Supplement to the Register of Electors

Part II – Supplement to the Register of Electors - of the Second Schedule is to be repealed.

NOTES:

Part II of the Second Schedule deals with the supplement to the register which will no longer be required with the rolling register.

Rule 19 of Part III – Special Voters List

Rule 19 of Part III – Special Voters List - of the Second Schedule is amended by replacing subsections (c) (i) and (c) (ii) with -

- “(i) that the applicant is suffering from a physical illness or physical disability,
- (ii) that the nature of the illness or disability is such that the applicant is unable to go to a polling station to vote, and”

and by the insertion of a part (iii) to subsection (c) -

- (iii) the likely duration of the illness or disability from the date of certification.”

and

by deleting subsection (d).

NOTES:

The provisions are amended by removing the requirement for the medical certification to provide details of the nature of the illness to the local authority as an unnecessary sharing of personal data that isn't relevant to this function of the local authority.

Rule 21 of Part III – Special Voters List

Rule 21 of Part III – Special Voters List - of the Second Schedule is amended by replacing “within the period specified for the purpose in Rule 1, arrange for the giving of public notice of” with “arrange annually for the giving of public notice of”

and

by deleting “and the time before which” from subsection (b).

NOTES:

This Rule is amended to reflect the need for an annual process for notifying the public of the options for relevant persons to apply to be entered on the special voters list, and where forms may be obtained – rather than a specified date which will not be relevant in the context of a rolling register.

Rule 23 of Part III – Special Voters List - of the Second Schedule is amended by deleting subsection (3).

NOTES:

This Rule is amended to reflect the fact that a specified date for Special Vote applications for a draft register will not be relevant in the context of a rolling register. Section 17(7) now provides the closing date.

Rule 26 of Part IV– General

Rule 26 of Part IV– General - of the Second Schedule should be replaced by –

“Methods of sending notices etc.

26. Any copy of a claim, objection, notice or other document which is required under this Schedule to be sent to any person shall be sufficiently sent if sent:

- (a) by such means as indicated by the person for the purpose; or
- (b) by post to the address of that person as appearing on the register, or if there is no such address, to his last known address or place of abode.

NOTES:

This Rule is amended to provide that contact can be made using the contact details provided by the person at the time of their application and by removing references to the draft register. The revised application form asks electors to provide a mobile phone number and email address. It explains that these may be used to contact electors.

Rule 27 of Part IV– General

Rule 27 of Part IV– General - of the Second Schedule should be replaced by —

“Inquiry by registration authority etc.

27. “An inquiry or request made pursuant to this Schedule by a registration authority or by a county registrar may extend to matters outside the registration area.”

NOTES:

This Rule is amended to reflect the amended local authority structure. The provision allows registration authorities to make enquiries with other registration authorities e.g. to clarify that someone who has moved house has been removed from another authority’s register.

A new Rule 28 of Part IV- General- of the Second Schedule is inserted -

“General provision on digitalisation

28. In relation to the registration of electors, where the giving of public notice or the submission of forms or documentation can reasonably and practicably be done digitally or electronically while in all other respects meeting the requirements set out in this Schedule, it may be done by electronic or digital means.”

NOTES:

This provision is intended to ensure where it is reasonable and practicable, that electronic or digital means of communication can be used. This should not preclude more traditional means of communication but is simply to ensure that both channels are possible and acceptable in implementing the provisions related to the registration of electors.

A new PART V – Application for inclusion in the Register – to the Second Schedule is to be inserted, with new Rules 29 – 32, as follows: -

PART V - APPLICATION FOR INCLUSION IN THE REGISTER

Rule 29 of Part V – New applications for inclusion in the register

A new Rule 29 of Part V- Application for inclusion in the Register- of the Second Schedule is inserted -

“New applications for inclusion in the Register

29. (1) An application to be entered on the register of electors under section 15D shall be in the form directed by the Minister and shall be made by the applicant directly to the registration authority where he is ordinarily resident, and shall include, at a minimum:

Name

Date of Birth

PPSN

Address and Eircode

(2) The application form shall be completed in accordance with the instructions provided thereon and the declaration on the form shall require the applicant to confirm the veracity of the details provided.

(3) Where the registration authority has put in place a means by which the identifying particulars can be successfully matched against other public sector records, the registration authority shall consider the application in accordance with paragraph 6.

(4) Where the registration authority has put in place an electronic means by which the identity of an applicant under paragraph (1) can be verified as follows:

(a) Name,

(b) Personal Public Service Number (as defined in section 262 of the Social Welfare Consolidation Act 2005),

(c) Date of Birth, and

(d) Address,

the registration authority shall consider the application in accordance with paragraph 6.

(5) Where a registration authority is not satisfied that information submitted under paragraph (3) is sufficient, the registration authority shall notify the person concerned and require them to resubmit the application and, before the application is resubmitted to the registration authority, require it to be signed by the applicant in the presence of:

- (a) a member of the Garda Síochána from the applicant's local Garda station,
or
- (b) an official of the registration authority,

who, on being satisfied of the applicant's identity, including if necessary by the production of photographic identification and any other documentation that may be requested, shall sign, date and stamp the application form.

- (6) On receipt of an application to be entered in the register of electors, the registration authority shall make such inquiries as they think fit for considering such application, and the provisions of paragraphs (2), (3) and (4) of Rule 5 shall apply in relation to the consideration of such application.
- (7) The registration authority shall, as soon as practicable, consider and rule on the application and shall notify the applicant of the ruling and, where the application is refused, of his right to appeal against the ruling to the county registrar.

NOTES:

This was previously Rule 14A, which related to applications to the supplement to the register, this Rule has been amended in two respects to provide for individual registration using PPSNs and to remove references to the supplement.

The overall purpose is to provide for a series of options for submitting an application. The prescribed form will include a requirement for Name, Address, Eircode, PPSN and Date of Birth. It is proposed to provide that where a local authority can match these details with each other i.e. that they all relate to the same individual and they can do this by checking against Public Service Identity (PSI) data held by the Department of Social Protection; and the registration authority has no other reason to doubt or dispute the application that it can then proceed to consider the application. This is a new provision and aims to add a verification step into the registration process.

- (1) requires all applicants to submit an application for inclusion on the register on a form directed by the Minister. The format of this form and the information requested can be changed at the discretion of the Minister. The applicant must provide information that will allow the registration authority to verify the information provided or confirm identity by some means. This information

should at a minimum include, Name, Date of Birth, PPSN, Address/ Eircode. The local authority can request further identifying information if required. The use of the term application allows for both electronic or paper application forms.

- (2) requires that the form is completed in accordance with the instructions thereon and that the declaration requires the person to confirm the veracity of the information provided.
- (3) provides that where a registration authority can match identifying particulars of a person by comparison against another public sector database the registration authority will consider the application in accordance with paragraph (6).
- (4) provides that where the identity of the person can be verified (using an electronic means such as MyGovID), the registration authority will consider the application and make further enquiries as it sees fit in accordance with paragraph (6). The use of the term application allows for both electronic or paper application forms.
- (5) provides that where it is not possible to confirm the data provided in accordance with paragraph (3), the registration authority will require the person to resubmit the application with a certification either from a member of the Garda Síochána (as now) or by an official of the registration authority that the person has provided photographic ID or other documentation as requested by the registration authority.
- (6) Previously Rule 15(1), this provision allows the registration authority to make any necessary inquiries so as to satisfy themselves that the applicant can be entered in to the register of electors.
- (7) Previously Rule 15(2), the provision requires registration authorities to notify applicants on whether or not they have been entered on to the register of electors, and if not, of their rights of appeal

Rule 30 of Part V – Appeal to the County Registrar

A new Rule 30 of Part V- Application for inclusion in the Register - of the Second Schedule is inserted -

“Appeal to county registrar

30. (1) In case the application for entry or amendment in the register is refused, an appeal, in writing, may be made to the county registrar against the ruling of the registration authority.
- (2) An appeal against the decision of a registration authority under paragraph (1) shall be made to the county registrar within a period of one month following the decision of the registration authority.
- (3) The county registrar shall consider and rule on an appeal made to him under paragraph (2) and shall notify the appellant and the registration authority of the ruling and the registration authority shall take such steps as may be necessary to give effect to the ruling.
- (4) Before ruling on an appeal made to him under paragraph (2) the county registrar may make such further inquiry as he may consider necessary and may require any person to give any information in his possession which the county registrar considers necessary for the purpose of his duties under this Rule.
- (5) The provisions of paragraphs (5) and (6) of Rule 8 shall apply to the consideration of an appeal under this Part by the county registrar.
- (6) The county registrar shall consider and rule on any appeal made to him under paragraph (2) within a period of one month following receipt of the appeal and inform the appellant and the registration authority of his decision
- (7) Where an appeal falls to be decided in the 14 day period in advance of an election or referendum, the decision shall have no effect in relation to that election or referendum.

NOTES:

This Rule provides for the appeal to the County Registrar of a local authority decision on an application – this is largely unchanged, previously Rules 16 and 17, with the exception of removing references to the supplement.

Rule 31 of Part V – Change of details regarding name or address

A new Rule 31 of Part V- Application for inclusion in the Register- of the Second Schedule is inserted -

“Change of details regarding name or address for registered electors.

31. (1) Notwithstanding sections 7(1), 8(1), 9, 10 and 15D and subject to section 11(1)(a), an application from a person who is registered as an elector in a constituency or local electoral area and takes up ordinary residence in another constituency or local electoral area or whose details have otherwise changed in respect of name or address shall in the form directed by the Minister and shall be made by the applicant directly to the appropriate registration authority.
- (2) The application form shall be completed in accordance with the instructions provided thereon and the declaration on the form shall require the applicant to confirm the veracity of the details provided.
- (3) The form shall contain such information as is necessary to enable the registration authority to carry out its duties in accordance with Rule 29 (3) and (4) or (5) and should include at a minimum: name, PPSN, address/Eircode, date of birth.
- (4) An applicant referred to in paragraph (1) shall satisfy the registration authority that he has taken up ordinary residence in the constituency or local electoral area, as the case may be, in respect of which the application applies and, in considering an application from such person, the registration authority may require the applicant to furnish proof of address, or where that is not possible, a statutory declaration that he or she has taken up ordinary residence in the constituency or local electoral area concerned.
- (5) The registration authority on receipt of a form referred to in paragraph (1) and carried out its duties under paragraph (3) and being satisfied that the person is ordinarily resident in its administrative area shall—
- (i) add his name to the register,
 - (ii) where the new address is within the registration area of the registration authority update his details accordingly.

- (iii) where the old address is in another registration area forward the details to the other registration authority and inform them that the person has been added to the register appropriate to the new address.
 - (iv) in the case of a change of name update his name on the register.
- (6) Upon receipt of a notification in paragraph (5) (iii) a registration authority shall delete the elector from its register.

NOTES:

These provisions are largely taken from the existing legislation and the provisions for applications to the supplement for reasons of a change of address which were set out in section 15(1A). However, while the existing legislation provided that upon changing address the elector would submit a form to his existing registration authority who would in turn forward details to the new registration authority, it is proposed that electors would now submit the form to the registration authority where they currently reside. Paragraphs (1), (3), (5) and (6) provide for this change. New additions are also provided for in (2) and (3) for the application form to be completed in accordance with the instructions thereon and the requirement for the form to include such information as to enable the local authority to identify the right record – this will require a PPSN to be provided and a check, similar to that in 29(3) to be carried out.

Rule 32 of Part V – Change of details regarding citizenship

A new Rule 32 of Part V- Application for inclusion in the Register- of the Second Schedule is inserted -

“Change of details regarding citizenship.

32. (1) Notwithstanding sections 7(1),8(1), 9, 10 and 15D and subject to section 11(1)(a), an application from a person who is registered in a constituency or local electoral area as a local or European elector, or as a Dáil elector with reference to section 8(2), and becomes a citizen of Ireland shall be in the form directed by the Minister and shall be made by the applicant directly to the registration authority where he is ordinarily resident.
- (2) The application form shall contain such information as is necessary to enable the registration authority to carry out its duties under Rule 29 (3) and (4) or (5); at a minimum: name, PPSN, address/eircode, Date of Birth, previous nationality and be completed in accordance with the instructions provided thereon and the declaration on the form shall require the applicant to confirm the veracity of the details provided.
- (3) An applicant referred to in paragraph (1) shall satisfy the registration authority that he is a citizen of Ireland and the registration authority may require the applicant to furnish evidence to that effect.
- (4) The registration authority, on receipt of an application under paragraph (1) and being satisfied under paragraph (3) shall delete the name of that person from the register of local, European or Dáil electors, as appropriate, and include his name in the register of electors as a presidential elector.

NOTES:

This is also largely based on the existing legislation for application to the supplement in respect of a change of citizenship. The existing legislation deals only with cases where a person takes Irish citizenship but this provision should also allow for a circumstance whereby a person switches from non-EU to EU as this would also impact their voting eligibility.

A new PART VI – Postal Voters List – to the Second Schedule is to be inserted, with new Rules 33 – 38, as follows: -

“PART VI - Postal Voters List

Rule 33 of Part VI - Postal voters list

A new Rule 33 of Part VI – Postal Voters List - of the Second Schedule is inserted -

“Postal voters list.

33. The registration authority shall prepare a separate list in such form as may be directed by the Minister for the whole registration area or, where the area includes all or part of more than one constituency, for each such constituency or part of a constituency in the registration area, of persons entitled to vote as postal voters without, however, removing the names of those voters from the register.

NOTES:

This is unchanged and was previously Rule 4.

Rule 34 of Part VI – Application for entry in the postal voters list

A new Rule 34 of Part VI – Postal Voters List - of the Second Schedule is inserted -

“Application for entry in the postal voters list.

34. The following provisions shall apply in relation to an application to be entered in the postal voters list pursuant to section 14 from a person who is not entered in the postal voters list —

- (1) The application shall be in the form directed by the Minister,
- (2) The application shall be completed in accordance with the instructions provided thereon.
- (3) Where the registration authority is satisfied that an applicant—
 - (i) is a person to whom section 14 applies, and
 - (ii) has duly completed his application form, and
 - (iii) where appropriate, has submitted the required certificate or statutory declaration required under this Part,

the registration authority shall rule that the application is granted and mark the application form accordingly, and notify the applicant of the decision.

- (4) Where the registration authority is not satisfied that an applicant—
 - (i) is a person to whom section 14 applies, or
 - (ii) has duly completed his application form, or
 - (iii) where appropriate, has submitted the required certificate or statutory declaration under this Part,

the registration authority shall rule that the application is refused and mark the application form accordingly, and notify the applicant of the decision; the reasons therefor and the right of appeal under paragraph (5).

- (5) Where an applicant is refused entry in the postal voters list, an appeal, in writing, may be made to the county registrar against the ruling of the registration authority.
- (6) The county registrar shall consider and rule on an appeal made to him under paragraph (5) and shall notify the registration authority of the ruling and the registration authority shall send notice in writing of the ruling to the applicant and shall take such steps as may be necessary to give effect to the ruling.
- (7)
 - (i) before ruling on an appeal made to him under paragraph (5), the county registrar may make such further inquiry as he may consider necessary and may require any person to give any information in his possession which the county registrar considers necessary for the purpose of his duties under this Rule.
 - (ii) the provisions of paragraphs (5) and (6) of Rule 8 shall apply to the consideration of an appeal under this Part by the county registrar.

NOTES:

These provisions were covered by section 14A of the Act, which applied the rules for entry to the Special Voters list, to applications for entry to the Postal Voters list. These are now made explicit here.

Rule 35 of Part VI – Supplemental provisions for applications to be entered in the postal voters list

A new Rule 35 of Part VI – Postal Voters List - of the Second Schedule is inserted -

“Supplemental provisions for applications to be entered in the postal voters list pursuant to section 14(a).

35. (1) the applicant shall furnish to the registration authority any information or documents in his possession or procurement which the registration authority may require from him—
- (i) so as to be satisfied that the applicant is a person to whom section 14 (a) applies,
or
 - (ii) for the purpose of their duties in relation to the preparation of the postal voters list,
- (2) whenever a registration authority requires, pursuant to paragraph (1) information or documents from the applicant, such applicant shall furnish the authority with the information or documents within the time (being not less than 7 days from the day on which the request is made) specified in the requirement and, if the applicant does not supply the required information or, as the case may be, documents within the time so specified, his application to be included in the postal voters list shall be deemed to have been withdrawn.

NOTES:

This Rule provides for the additional requirements in respect of entry to the postal voters list for a person who is a member of the Garda Síochána. These requirements are unchanged.

Rule 36

A new Rule 36 of Part VI – Postal Voters List - of the Second Schedule is inserted -

““Supplemental provisions for applications to be entered in the postal voters list pursuant to section 14(b).

36. (1) the applicant shall furnish to the registration authority any information or documents in his possession or procurement which the registration authority may require from him —
- (i) so as to be satisfied that the applicant is a person to whom section 14 (b) applies, or
 - (ii) for the purpose of their duties in relation to the preparation of the postal voters list.
- (2) whenever a registration authority requires, pursuant to paragraph (1) information or documents from the applicant, such applicant shall furnish the authority with the information or documents within the time (being not less than 7 days from the day on which the request is made) specified in the requirement and, if the applicant does not supply the required information or, as the case may be, documents within the time so specified, his application to be included in the postal voters list shall be deemed to have been withdrawn.

NOTES:

This Rule provides for the additional requirements in respect of entry to the postal voters list for a whole time member of the Defence Forces. These requirements are unchanged.

Rule 37

A new Rule 37 of Part VI – Postal Voters List - of the Second Schedule is inserted -

“Supplemental provisions for applications to be entered in the postal voters list pursuant to section 14(c)

37. (1) the applicant shall furnish to the registration authority any information or documents in his possession or procurement which the registration authority may require from him—
- (i) so as to be satisfied that the applicant is a person to whom section 14 (c) applies, or
- (ii) for the purpose of their duties in relation to the preparation of the postal voters list,
- (2) whenever a registration authority requires, pursuant to paragraph (1) information or documents from the applicant, such applicant shall furnish the authority with the information or documents within the time (being not less than 7 days from the day on which the request is made) specified in the requirement and, if the applicant does not supply the required information or, as the case may be, documents within the time so specified, his application to be included in the postal voters list shall be deemed to have been withdrawn.

NOTES:

This Rule provides for the additional requirements in respect of entry to the postal voters list for a person to whom section 12 applies (a diplomat or their partner). These requirements are unchanged.

Rule 38

A new Rule 38 of Part VI – Postal Voters List - of the Second Schedule is inserted -

“Supplemental provisions for applications to be entered in the postal voters list pursuant to section 14(d).

38. (1) the applicant shall, in the case of a first such application and in the case of subsequent applications whenever required by the registration authority, furnish in support of his application a certificate in the form directed by the Minister from a medical practitioner certifying—
- (i) that the applicant is suffering from a physical illness or physical disability,
 - (ii) that the nature of the illness or disability is such that the applicant is unable to go to a polling station to vote, and
 - (iii) the likely duration of the illness or disability from the date of certification.
- (2) the applicant shall furnish to the registration authority any information or documents in his possession or procurement which the registration authority may require from him—
- (i) so as to be satisfied that the applicant is a person to whom section 14 (d) applies, or
 - (ii) for the purpose of their duties in relation to the preparation of the postal voters list.
- (3) whenever a registration authority requires, pursuant to paragraph (2) information or documents from the applicant, such applicant shall furnish the authority with the information or documents within the time (being not less than 7 days from the day on which the request is made) specified in the requirement and, if the applicant does not supply the required information or, as the case may be, documents within the time so specified, his application to be included in the postal voters list shall be deemed to have been withdrawn.
- (4) where, on the date of his application, the applicant is entered in the special voters list, the application shall be deemed not to be a first application for entry in the postal voters list for the purposes of paragraph (1).

NOTES:

This Rule provides for the additional requirements in respect of application for entry to the postal voters list for a person suffering from a physical illness or physical disability. The current provisions include a requirement to provide the registration authority with medical certification detailing the nature of an individual's illness or physical disability. As there is no need for a registration authority to receive this information this provision has been removed. Applicants will still be required to submit medical certifications to state that they are suffering from a physical illness or physical disability and the likely duration of the illness or disability from the date of certification. As per head 94, section 14 (d) (ii), the duration of an illness or disability must be at least 1 year. They will also need to certify that the nature of the illness or disability is such that the applicant cannot attend the polling station in person on polling day.

A new PART VII – Anonymous Electors, Electors with No Fixed Address and Pre-Registration of Persons 16 Years of Age or Older – to the Second Schedule is to be inserted, with new Rules 39 – 41, as follows: -

“PART VII

Anonymous Electors, Electors with No Fixed Address and Pre-Registration of Persons 16
Years of Age or Older

Rule 39 – Anonymous Electors

A new Rule 39 of Part VII – Anonymous Electors, Electors with No Fixed Address and Pre-Registration of Persons 16 Years of Age or Older - of the Second Schedule is inserted -

“Anonymous electors.

- 39.
- (1) An application to be entered on the register of electors under section 15E shall be in the form directed by the Minister and shall be made by the applicant directly to the registration authority where he is ordinarily resident.
 - (2) An application for an anonymous entry must state—
 - (a) the applicant's full name,
 - (b) the address where ordinarily resident
 - (c) the reason for the application, and
 - (d) the date of the application.
 - (3) The application must be in writing, on the appropriate registration form and signed by the applicant.
 - (4) The application must be accompanied by evidence of the nature prescribed at (7).
 - (5) Where the evidence mentioned in paragraph (4) relates not to the applicant, but to another person of the same household as the applicant, the application must be accompanied by evidence that that person is of that household.
 - (6) The application must be accompanied by a declaration made by the applicant that the particulars given in accordance with paragraph (2) and that the accompanying evidence mentioned in paragraph (4) are true.
 - (7) Evidence which meets the following conditions is prescribed for the purposes of paragraph (4) –
 - (a) A specified order as defined by the Domestic Violence Act 2018;
 - (b) Any order made in favour of the person applying for anonymous registration or a person in their household preventing harassment under Section 10 of the [Non-Fatal Offences Against the Person Act 1997](#)

- (c) Any order made in favour of the person applying for anonymous registration or a member of their household under Section 46 of the Criminal Law (Sexual Offences) Act 2017 or
- (d) a declaration by a qualified officer stating that the safety of the applicant, or of another named person of the same household would be at risk if the register contained the name and address of the applicant.
 - (i) The declaration must state –
 - (I) the signature of the qualified officer
 - (II) the position held by the qualified officer
 - (III) the date on which the declaration was signed
- (e) For the purposes of paragraph (b) a qualified officer means –
 - (i) a member of An Garda Síochána at or above the rank of Superintendent; or
 - (ii) a registered medical practitioner.

NOTES:

This Rule sets out the details of an application to be an anonymous elector which is provided for in Section 15E. In particular, it sets out the evidence required in order to qualify under this provision.

Since the register is a public document and open for inspection by any person, this legislation provides for anonymous registration where a person’s safety may be compromised by their name and address details being publicly available e.g. where a barring order or similar court ordered provision is in place. The current legislation makes no provision for anonymous registration.

In determining who would be eligible to register anonymously it is imperative that we strike the correct balance in terms of providing proof that a person is at risk if they were to appear on the register. SafeIreland points out that very few survivors of domestic abuse will seek a court order. It cites research from the EU Fundamental Rights Agency that indicates only 21% of Irish Survivors reported to Gardaí, 20% contacted a hospital and 8% sought help from a women’s refuge. It would therefore appear reasonable to allow for a declaration to be made from a qualified person stating that the applicant could be in danger if their name and address were to appear on the register. The Department has examined provisions already in place in the UK, New Zealand and Australia in developing this provision. It has determined that at present the qualified officer will be restricted to a member of An Garda Síochána above at or above the rank of Superintendent and a registered medical practitioner. This can be reviewed as part of the 3 year review provided for in this legislation.

The Department has consulted with the Department of Justice regarding the development of this provision.

Rule 40 – Electors with no fixed address

A new Rule 40 of Part VII – Anonymous Electors, Electors with No Fixed Address and Pre-Registration of Persons 16 Years of Age or Older - of the Second Schedule is inserted -

“Electors with no fixed address.

40. An application to be entered on the register of electors under section 11(7) shall be in the form directed by the Minister and shall be made by the applicant directly to the registration authority.

NOTES:

This provision provides that the Minister may direct a form in order for a person to apply under the provisions set out in section 11(7).

Rule 41 – Pending elector list

A new Rule 41 of Part VII – Anonymous Electors, Electors with No Fixed Address and Pre-Registration of Persons 16 Years of Age or Older - of the Second Schedule is inserted -

“Pending elector list.

41. An application to be entered in the pending elector list under section 17A shall be in the form directed by the Minister and shall be made by the applicant directly to the registration authority.

NOTES:

This provides that the Minister may set out a specific form for application to the pending electors list.

**CHAPTER 2 –
AMENDMENTS TO THE ELECTORAL ACT 1997**

HEAD 114

AMENDMENT TO SECTION 63 OF THE ELECTORAL ACT 1997

Provide that:

Section 63 (1) of the Electoral Act 1997 is amended by deleting “not later than the last date for making claims for correction in the draft register,”;

NOTES:

Section 63 of the Electoral Act 1997 provides for postal voting for those people who are away for the purposes of work, or a course of study within the state and are therefore unable to attend a polling station in person. The amendments being made to the 1992 Act will remove references to the draft register and to dates for making claims. By removing this reference the intention is to apply the closing dates for applying for a postal vote – provided in head 94 to all of these applications. Head 94 amends the current section 14 of the Electoral Act 1992 including inserting a new section 14(1) which sets out dates for receipt of applications for postal votes after which they will not be considered for that election or referendum.

Head 115 below sets out details in relation to timelines for making applications.

HEAD 115

AMENDMENT TO SECTION 64 OF THE ELECTORAL ACT 1997

Provide that:

Section 64 (1) (c) of the electoral Act 1997 is replaced by –

“the application form, fully completed, and the certificate or declaration shall be delivered or sent by post to the registration authority.

NOTES:

Section 64 (1) (c) is being amended to reflect the move to a rolling register and closing dates in respect of postal voting applications. As set out in head 114, by removing this specific deadline, the intention is to apply the closing dates provided for in head 94 (which amends Section 14 of the 1992 Act) to all applications for postal voting.

HEAD 116

AMENDMENT TO SECTION 66 OF THE ELECTORAL ACT 1997

Provide that:

section 66 (1) of the Electoral Act 1997 is amended by replacing -

“The registration authority shall, within the period of fourteen days ending on the qualifying date for registration as an elector, arrange for the giving of public notice of” -

with

“The registration authority shall arrange, at least annually for the giving of public notice of” -

NOTES:

The section is amended to remove references to the qualifying date which is no longer applicable in the context of the rolling register. The section now reflects the need for an annual process for notifying the public of the options for relevant persons to apply to be entered on the postal voters list.

CHAPTER 3 –

AMENDMENTS TO THE ELECTORAL (AMENDMENT) ACT 2006

HEAD 117

AMENDMENT TO SECTION 2 OF THE ELECTORAL (AMENDMENT) ACT 2006

Provide that:

Section (2) (1) (a) of the Electoral (Amendment) Act 2006 is amended by deleting “not later than the last date for making claims for correction in the draft register, applies”.”;

NOTES:

Section 2(1) of the Electoral (Amendment) Act 2006 is amended to remove references to the draft register and the dates for making claims. By deleting reference to this deadline, the intention is to apply the closing dates set out in head 94, which amends the current section 14 of the Electoral Act 1992 to set out dates for receipt of applications for postal votes after which they will not be considered for that election or referendum.

HEAD 118

AMENDMENT TO SECTION 3 OF THE ELECTORAL (AMENDMENT) ACT 2006

Provide that:

Section (3) (1)(c) of the Electoral (Amendment) Act 2006 is amended by deleting “not later than the last date for making claims for corrections in the draft register”

NOTES:

Section 3 of the Electoral (Amendment) Act 2006 is amended to reflect the move to a rolling register and remove references to the draft register which will no longer be in existence. By removing reference to this deadline, the intention is that the overall deadlines set out in head 94, which amends the current section 14 of the Electoral Act 1992 by setting out dates for receipt of applications for postal votes after which they will not be considered for that election or referendum, will apply generally to all of these applications for postal voting.

HEAD 119

AMENDMENT TO SECTION 5 OF THE ELECTORAL (AMENDMENT) ACT 2006

Provide that:

Section 5 (1) of the Electoral (Amendment) Act 2006 is to be amended by replacing -

“The registration authority shall, within the period of 14 days ending on the qualifying date for registration as an elector, arrange for the giving of public notice of” -

with

“The registration authority shall arrange at least annually for the giving of public notice of” -

NOTES:

The section is amended to remove references to the qualifying date which is no longer applicable in the context of the rolling register. The section now reflects the need for an annual process for notifying the prisoners of the options for relevant persons to apply to be entered on the postal voters list.

PART 4: REGULATION OF ONLINE POLITICAL ADVERTISING

HEAD 120

BUYERS OF ONLINE POLITICAL ADVERTISEMENTS

Provide that:

- (1) The provisions of this Part shall apply when an online political advertisement is commissioned for placement, display or promotion on an online platform during an electoral period, either directly or indirectly, by any of the following persons or parties:
 - (a) a candidate, or a person acting on behalf of a candidate, standing for election to -
 - (i) Dáil Éireann,
 - (ii) Seanad Éireann,
 - (iii) the Office of the President,
 - (iv) the European Parliament,
 - (v) a local authority;
 - (b) a member, or a person acting on behalf of a member, of -
 - (i) Dáil Éireann,
 - (ii) Seanad Éireann,
 - (iii) the European Parliament,
 - (iv) a local authority;

- (c) the President, or a person acting on behalf of the President;
 - (d) a political party registered on the register of political parties;
 - (e) a European political party established in accordance with Regulation (EU, Euratom) No 1141/2014³ of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations;
 - (f) a third party within the meaning of section 22(2)(aa) of the Electoral Act 1997 as inserted by section 49 of the Electoral (Amendment) Act 2001 and as amended by section 7 of the Electoral (Amendment) (Political Funding) Act 2012; or
 - (g) such other person or entity seeking to influence the outcome of an election, including the election of a candidate, as set out in paragraph (a) or a referendum held in the State.
- (2) For the purposes of this Act, the persons and parties specified in subsection (1) shall be known as the buyers of online political advertisements.

NOTES:

This head defines the buyers of online political advertising as the persons specified who commission and pay for adverts which are intended for political purposes for display and/or circulation on an online platform during an electoral period.

³ OJ No. L 317, 4.11.2014, p.1

HEAD 121

PUBLIC INFORMATION REQUIREMENTS FOR ONLINE POLITICAL ADVERTISEMENTS

Provide that:

- (1) An online political advertisement shall include a button, icon, tab, or hyperlink with the text “Political Advert”, in a position where the viewer will readily see it, which shall link to a page clearly displaying a transparency notice.
- (2) For the purposes of this Act, a transparency notice shall be a notice that displays in a clear and conspicuous manner:
 - (a) the name, postal address, email address and, where applicable, the website address of the buyer who paid for the online political advertisement;
 - (b) confirmation of whether micro-targeting was applied in the placement, display and promotion of the online political advertisement and, where applicable, a description of the criteria used for any such micro-targeting;
 - (c) confirmation of whether the target audience contains a look alike targeting list and, where applicable, a description of the characteristics of the target audience;
 - (d) the amount paid for the online political advertisement, including the amounts paid for content creation and for online placement, display and promotion;
 - (e) the number of days during which the online political advertisement will be placed, displayed and promoted on the online platform and the start and end date of the online advertising campaign; and

- (f) the number of user impressions that the online political advertisement is intended to reach and the number of active engagements by user.
- (3) The information specified in the transparency notice by virtue of subsection (2) shall be maintained in real time by the online platform.
- (4) A transparency notice displayed by an online platform in accordance with subsection (2) shall be notified to the Commission as soon as may be after it has been displayed.
- (5) Subject to the provisions of subsection (6), an online platform shall establish and maintain an online archive or library which shall comprise the online political advertisements and accompanying transparency notices commissioned for placement, display or promotion on that online platform.
- (6) At the expiration of the period of the online advertising campaign as notified by the buyer under subsection (2)(e), the online platform shall:
 - (a) transfer each online political advertisement and its accompanying transparency notice displayed on that online platform in accordance with subsection (2) to the online archive or library established by virtue of subsection (5),
 - (b) make reasonable arrangements, either itself or with such person or persons as it chooses, to ensure public access to that online archive or library is maintained in the public interest and for the purpose of research relating to the holding of elections and referendums and on matters connected therewith, and
 - (c) retain in that online archive or library each online political advertisement and its accompanying transparency notice for a period of not less than 7 years after the expiration of the period of the online advertising campaign as notified by the buyer under subsection (2)(e).

- (7) Subject to the period specified in subsection (6)(c), if an online platform is about to be wound up, dissolved or cease trading, the online platform shall transfer the online archive or library, including the associated online political advertisements and their accompanying transparency notices, to the Commission to ensure the provisions of subsection (6)(b) continue to be maintained in the public interest and for the purpose of research relating to the holding of elections and referendums and on matters connected therewith.

NOTES:

This head provides that each online political advert commissioned for use during an electoral period is to be clearly labelled and is to be accompanied by a transparency notice which will set out certain prescribed information that is to be provided by the buyer of the advert. The information to be included in the transparency notice is set out in the detailed proposal from the Interdepartmental Group on the Security of Ireland's Electoral Process and Disinformation referred to earlier in the explanatory notes to head 2 of this general scheme.

The provisions require the development of an archive or library which is to be maintained for a period of 7 years which will facilitate the commissioning of research from academia, the media, political parties and other interested parties between electoral periods. The period of 7 years has been informed by the maximum periods that may apply under the Constitution in respect of the holding of a Dáil or a presidential election.

HEAD 122

OBLIGATIONS ON ONLINE PLATFORMS AND SELLERS OF ONLINE POLITICAL ADVERTISEMENTS

Provide that:

- (1) An online platform shall appoint a responsible person for the purposes of identifying and verifying the information and documentation provided by the buyer of an online political advertisement in accordance with the provisions of Heads 123, 124 and 125.
- (2) An online platform which is unable to obtain such information and documentation as a result of any failure on the part of the buyer, shall not provide the service sought by the buyer for so long as the failure continues.
- (3) An online platform shall monitor all dealings with a buyer with whom the person has a business relationship, including (to the extent reasonably warranted by the risk that the buyer may be involved in, or the commercial transaction, trade, business or activity, or advertising product sought by the buyer is for the purpose of, concealing or omitting the information required for a transparency notice under head 121) by scrutinising transactions and the source of funds for those transactions, to determine whether or not the transactions are consistent with -
 - (a) the responsible person's knowledge of the buyer and the buyer's business and pattern of transactions, and
 - (b) any knowledge that the responsible person may have that the buyer may be involved in, or the service sought by the buyer is for the purpose of, the display, placement or promotion of an online political advertisement on behalf of a person residing outside the island of Ireland.

- (4) Except as provided for by head 126, an online platform which fails to comply with the provisions of this head commits an offence.

NOTES:

The detailed proposal from the Interdepartmental Group on the Security of Ireland's Electoral Process and Disinformation referred to earlier in the explanatory notes to head 2 of this general scheme recommended that the identification and verification procedures should ideally align with sections 33 to 39 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. This head is modelled on certain provisions within section 35 of that Act. It provides for the appointment by an online platform of a responsible person to be responsible for, and undertake, the customer due diligence measures that will apply to the buyers of online political adverts and are integral to the provision of information for inclusion in a transparency notice. Responsible person is a term that is already provided for in the Electoral Act 1997, being a person in authority within either a third party or the accounting unit of a political party. Its inclusion in this Act may be considered consistent with the existing electoral code.

HEAD 123

IDENTIFICATION AND VERIFICATION OF BUYERS

Provide that:

- (1) A responsible person shall apply the measures specified in subsections (2) and, where applicable, (4), in relation to a buyer of an online political advertisement -
 - (a) prior to establishing a business relationship with the buyer,
 - (b) prior to carrying out a commercial transaction, trade, business or activity with, for, or on behalf of, the buyer or assisting the buyer to carry out a commercial transaction, trade, business or activity,
 - (c) prior to carrying out any service for the buyer and having regard to the provisions of head 124, if the responsible person has reasonable grounds to believe that there is a real risk that the buyer is involved in, or the service sought by the buyer is for the purpose of, the display, placement or promotion of an online political advertisement on behalf of a person residing outside the island of Ireland, based on any of the following, or other, circumstances:
 - (i) the buyer, or the type of buyer, concerned;
 - (ii) if that person has a business relationship with the buyer, the type of business relationship concerned;
 - (iii) the type of service or of any commercial transaction, trade, business or activity, or advertising product in respect of which the service is sought;

- (iv) the purpose (or the buyer's explanation of the purpose) of the service or of any commercial transaction, trade, business or activity, or advertising product in respect of which the service is sought;
 - (v) the value of any commercial transaction, trade, business or activity, or advertising product in respect of which the service is sought;
 - (vi) the source (or the buyer's explanation of the source) of funds for any such commercial transaction, trade, business or activity, or advertising product, or
- (d) prior to carrying out any service for the buyer if:
- (i) the responsible person has reasonable grounds to doubt the veracity or adequacy of documents (whether or not in electronic form) or information that the buyer has previously obtained for the purpose of verifying the identity of the buyer obtained under this Act or under any administrative arrangements that the online platform may have applied before the application of this Act; and
 - (ii) the responsible person has not obtained any other documents or information that the person has reasonable grounds to believe can be relied upon to confirm the identity of the buyer.

(2) The measures that shall be applied by a responsible person under subsection (1) are as follows:

- (a) identifying the buyer, and verifying the buyer's identity on the basis of documents (whether or not in electronic form), or information, that the responsible person has reasonable grounds to believe can be relied upon to confirm the identity of the buyer, including -
 - (i) documents from a Government source (whether or not a State Government source), or

- (ii) any prescribed class of documents, or any prescribed combination of classes of documents;
 - (b) identifying any person acting on behalf of, or connected with, the buyer or the commercial transaction, trade, business or activity, or advertising product concerned, and taking measures reasonably warranted in support of transparency in and around online political advertising -
 - (i) to verify the identity of the person acting on behalf of, or connected with, the buyer to the extent necessary to ensure that the responsible person has reasonable grounds to be satisfied that the responsible person knows who the person acting on behalf of, or connected with, the buyer is, and
 - (ii) in the case of a political party, third party or entity (whether having separate legal personality or not), to understand the ownership and control structure of the political party, third party or entity.
- (3) Nothing in subsection (2)(a)(i) or (ii) limits the kinds of documents or information that a responsible person may have reasonable grounds to believe can be relied upon to confirm the identity of a buyer.
- (4) Without prejudice to the generality of subsection (2)(a), one or more of the following measures shall be applied by a responsible person under subsection (1), where a buyer who is an individual does not present to the responsible person in person for verification of the buyer's identity:
 - (a) verification of the buyer's identity on the basis of documents (whether or not in electronic form), or information, that the responsible person has reasonable grounds to believe are reliable as confirmation of the identity of the buyer in addition to any documents or information that would ordinarily have been used to verify the buyer's identity if the buyer had presented to the responsible person for verification in person of the buyer's identity;

- (b) verification of documents supplied, for the purposes of verifying the identity of the buyer under this section, to the responsible person by the buyer;
 - (c) verification of the buyer's identity on the basis of confirmation received from a credit institution or a financial institution that the buyer is, or has been, a customer of that institution.

- (5) Notwithstanding subsection (1)(a), a responsible person may verify the identity of a buyer or a person acting on behalf of, or connected with, the buyer, in accordance with subsections (2) and, where applicable, (4), during the establishment of a business relationship with the buyer if the responsible person has reasonable grounds to believe that -
 - (a) verifying the identity of the buyer or a person acting on behalf of, or connected with, the buyer (as the case may be), prior to the establishment of the relationship would interrupt the normal conduct of business, and
 - (b) there is no real risk that the buyer is involved in, or the commercial transaction, trade, business or activity, or advertising product sought by the buyer is for the purpose of, concealing or omitting the information required for a transparency notice under head 121, but the responsible person shall take reasonable steps to verify the identity of the buyer or a person acting on behalf of, or connected with, the buyer, in accordance with subsections (2) and, where applicable, (4), as soon as practicable.

- (6) Notwithstanding subsection (1)(a), an online platform may allow an account to be opened with it by a buyer before verifying the identity of the buyer or a person acting on behalf of, or connected with, the buyer, in accordance with subsections (2) and, where applicable, (4), so long as the online platform ensures that any commercial transactions, trade, business or activities, or advertising products sought by the buyer in connection with the account are not placed, displayed or promoted on the online platform before carrying out that verification.

- (7) A responsible person who is unable to apply the measures specified in subsections (2) or (4) in relation to a buyer, as a result of any failure on the part of the buyer to provide the responsible person with documents or information required under this section -
- (a) shall not provide the advertising product or carry out the commercial transaction, trade, business or activity, sought by that buyer for so long as the failure remains unrectified, and
 - (b) shall discontinue the business relationship (if any) with the buyer.
- (8) The Commission may prescribe a class of documents, or a combination of classes of documents, for the purposes of subsection (2)(a)(ii), only if the Commission is satisfied that the class or combination of documents would be adequate to verify the identity of buyers to responsible persons.
- (9) For the purposes of subsection (2)(a)(ii), the Commission may prescribe different classes of documents, or combinations of classes of documents, for different kinds of responsible persons, buyers, commercial transactions, trade, business or activities, or political advertisements for placement, display or promotion on online platforms.
- (10) Except as provided for by head 126, an online platform which fails to comply with the provisions of this head commits an offence.

NOTES:

This head is modelled on the customer due diligence measures set out in section 33 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The head requires the responsible person, appointed by an online platform, to ascertain the identity of a buyer and to take such measures as are necessary to verify the identity of the buyer and the information to be provided for the purpose of placing, displaying or promoting an online political advert. These verification procedures must, in the main, be undertaken prior to accepting the buyer's business and prior to placing the political advert online.

HEAD 124

ONLINE POLITICAL ADVERTISEMENTS COMMISSIONED FROM OUTSIDE OF THE STATE

Provide that:

- (1) A responsible person shall take such steps, having regard to the provisions of head 123(1)(c), as are reasonable to determine whether or not the buyer of an online political advertisement, or a person connected with the buyer, is residing in a place outside of the State.
- (2) The responsible person shall take the steps prior to -
 - (a) establishing a business relationship with the buyer,
 - (b) carrying out any service for the buyer, or
 - (c) carrying out a commercial transaction, trade, business or activity in connection with the placement, display or promotion of an online political advertisement, with, for, or on behalf of, the buyer or assisting the buyer to carry out such a commercial transaction, trade, business or activity.
- (3) The steps to be taken are such steps as are reasonable for the responsible person to verify that -
 - (a) if the buyer is an individual, the buyer is a citizen of Ireland or is entitled to be a citizen of Ireland,
 - (b) if the buyer is a body corporate or an unincorporated body of persons, the buyer keeps an office in the island of Ireland, being an office from which the carrying on of one or more of the buyer's principal activities is directed, or

- (c) if the buyer is a European political party, the buyer is established in accordance with Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations.
- (4) If a responsible person knows or has reasonable grounds to believe that a buyer is residing in a place outside the State, the responsible person shall -
 - (a) ensure that approval is obtained from any senior management of the responsible person before a business relationship is established with the buyer, and
 - (b) determine the source of funds for any commercial transaction, trade, business or activity in connection with the placement, display or promotion of an online political advertisement in the State.
- (5) For the purposes of subsection (4), a responsible person is deemed to know that another person is residing in a place outside the State, on the basis of -
 - (a) information in the possession of the responsible person (whether obtained under subsections (1) to (3) or otherwise),
 - (b) in a case where the responsible person has contravened subsection (1) or (2), information that would have been in the possession of the person if the person had complied with that provision, or
 - (c) public knowledge,there are reasonable grounds for concluding that the responsible person so knows.
- (6) A responsible person who is unable to apply the measures specified in subsections (1), (3) or (4) in relation to a buyer, as a result of any failure on the part of the buyer to provide the responsible person with documents or information -

- (a) shall discontinue the business relationship (if any) with the buyer for so long as the failure continues, and
 - (b) shall not provide the service or carry out the commercial transaction, trade, business or activity in connection with the placement, display or promotion of an online political advertisement sought by the buyer for so long as the failure continues.
- (7) No person residing outside of the State, other than a person specified in subsection (3), may, either directly or indirectly, commission an online political advertisement for placement, display or promotion on an online platform.
- (8) An online platform which fails to comply with this section commits an offence.

NOTES:

This head is modelled on the certain provisions within in section 37 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and applies those provisions to citizens, political parties and corporate entities who may be resident outside of the State. The head specifies those persons, parties and entities who may commission online political advertising during electoral periods and requires the responsible person, appointed by an online platform, to apply the due diligence measures set out in head 123 to any such buyers in advance of formalising a business relationship with same. In addition, the responsible person is required to have such business relationships approved by a senior person within the online platform and must take appropriate action to examine the source of funding behind such adverts to ensure, in the public interest, that there is no undue foreign influence arising.

HEAD 125

DISCRETION TO APPLY ADDITIONAL DUE DILIGENCE MEASURES

Provide that:

- (1) Nothing in this Part prevents a responsible person from applying measures in relation to a buyer, or a person acting on behalf of a buyer, that are additional to those specified in this Part, for the purposes of supporting transparency in and around online political advertising, including the identification and verification of the buyers of online political advertising.
- (2) Without prejudice to the circumstances in which a responsible person may apply such additional measures, the responsible person may do so when the responsible person considers that there is a heightened risk of –
 - (a) the provision of false or misleading information, documentation, books or records to conceal the identity of the buyer, or a person acting on behalf of a buyer, of an online political advertisement, or
 - (b) the commission of an online political advertisement by a person residing outside of the State other than a person specified in head 124(3).
- (3) A buyer who fails to comply with a measure from responsible person under this section commits an offence.

NOTES:

This head is modelled on the certain provisions in section 39 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The provisions of this head are discretionary and would only apply in circumstances where the responsible person believes that either false or misleading has been provided (or there is sufficient risk that such is the case) or that a person from outside of the State may be attempting to place an online political advert in the State.

HEAD 126

EXEMPTIONS FROM PUBLIC INFORMATION REQUIREMENTS

Provide that:

A responsible person is not required to apply the requirements specified in Heads 123 and 125 if the buyer of the online political advertisement is:

- (a) the Electoral Commission established under head 4 of this Act;
- (b) a returning officer as set out in section 30 the Electoral Acts 1992 to 2019;
- (c) the presidential returning officer and a local returning officer as set out in sections 9 and 10 of the Presidential Elections Acts 1992 to 2006;
- (d) the referendum returning officer and a local returning officer as set out in sections 14 and 15 of the Referendum Acts 1992 to 2014;
- (e) a returning officer and a local returning officer as set out in sections 16 and 17 of the European Parliament Elections Acts 1992 to 2019 and the chief returning officer as set out in rule 94 of the Third Schedule to the European Parliament Elections Acts 1992 to 2019;
- (f) a returning officer as set out in section 14 of the Seanad Electoral (University Members) Acts 1937 to 2006;
- (g) the Seanad returning officer as set out in section 4 of the Seanad Electoral (Panel Members) Acts 1947 to 2018;
- (h) a returning officer as set out in article 4 of the Local Elections Regulations 1995.

NOTES:

The proposal from the Interdepartmental Group on the Security of Ireland's Electoral Process and Disinformation referred to earlier in the explanatory notes to head 2 of this general scheme recommended that online political advertising that is placed or promoted at the request of a Referendum Commission (whose functions under this Act are to be undertaken by the Electoral Commission) should be considered for exemption given the political impartiality of the Commission. Equally, it is intended that any online political adverts which are commissioned by the relevant returning officers at each type of electoral event are similarly exempted from the Act's requirements for the same reason, i.e. they are politically impartial.

HEAD 127

OBLIGATIONS ON BUYERS OF ONLINE POLITICAL ADVERTISEMENTS

Provide that:

- (1) The buyer of an online political advertisement shall provide the information required in head 121(2) to the online platform for display in a transparency notice when that advertisement is commissioned for placement, display or promotion on an online platform.
- (2) The buyer of an online political advertisement shall comply with a request under Heads 123, 124 or 125 for such information or documentation as may be required by the responsible person of an online platform for the purposes of identifying and verifying the buyer of the advertisement.
- (3) Except as provided for by head 126, a buyer who fails to comply with the provisions of this head commits an offence.

NOTES:

The proposal from the Interdepartmental Group on the Security of Ireland's Electoral Process and Disinformation referred to earlier in the explanatory notes to head 2 of this general scheme recommended that the buyer would be required to provide the seller with the information necessary to comply with the information requirements as set out in this Act. This head aims to ensure that there are reciprocal arrangements in place between both the sellers and the buyers of online political adverts in that one must acquire certain information in advance of placing, displaying or promoting an advert while the other must provide such information when commissioning the advert.

HEAD 128

APPOINTMENT OF AUTHORISED OFFICERS

Provide that:

- (1) The Commission may appoint such and so many persons, including members of the staff of the Commission, as it considers appropriate to be an authorised officer or authorised officers for the purposes of this Act.
- (2) A person appointed to be an authorised officer under this head shall on his or her appointment be furnished with a warrant of his or her appointment, and when exercising a power conferred by this Act shall, if requested by any person affected thereby, produce such warrant of appointment to that person for inspection.
- (3) An appointment under this section shall cease -
 - (a) if the Commission revokes the appointment,
 - (b) if the appointment is for a fixed period, on the expiry of that period, or
 - (c) in the case of a person who is a member of the staff of the Commission, if the person ceases to be a member of the staff.

NOTES:

This is a standard provision which enables the Electoral Commission to appoint authorised officers for the purposes of taking any investigative actions as may be required to ensure that the Act's provisions are being complied with.

HEAD 129

POWERS OF AUTHORISED OFFICERS

Provide that:

- (1) For the purposes of this Act, an authorised officer may -
 - (a) subject to subsection (3) enter (if necessary by the use of reasonable force) or, where the premises is a vehicle, stop and enter (if necessary by the use of reasonable force) at all reasonable times any premises -
 - (i) that he or she has reasonable grounds for believing has been or is being used in association with any trade, business or activity connected with the placement, display or promotion of an online political advertisement,
 - (ii) at which he or she has reasonable grounds for believing that information, documentation, books, records or relevant things in relation to that trade, business or activity connected with the placement, display or promotion of an online political advertisement are kept,and search and inspect the premises and any information, documentation, books, records or relevant things at that premises,
 - (b) secure for later inspection any premises or any part of any premises which is being used in association with any trade, business or activity connected with the placement, display or promotion of an online political advertisement, or where such information, documentation, books, records or relevant things are kept or there are reasonable grounds for believing that such information, documentation, books, records or relevant things are kept,

for such period as may reasonably be necessary for the purposes of his or her functions under this Act,

- (c) require any person who carries on such trade, business or activity associated with the placement, display or promotion of an online political advertisement or any person employed in respect of such trade, business or activity to produce to the authorised officer such information, documentation, books or records and where such information, documentation, books or records are kept in non-legible form to reproduce in a legible form and to give him or her any information as the officer may reasonably require in relation to such books, records or other documents,
- (d) inspect and take copies of, or extracts from, any such information, documentation, books, records or relevant things at the premises, including in the case of information in non-legible form, copies of or extracts from such information in a permanent legible form,
- (e) make a record whether in writing, by photography or otherwise of any information, documentation, books, records or relevant things at the premises,
- (f) remove and retain such information, documentation, books, records or relevant things for such periods as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (g) require any such person to give to the authorised officer any information which the authorised officer may reasonably require regarding such trade, business or activity associated with the placement, display or promotion of an online political advertisement or in respect of the persons carrying on such trade, business or activity or employed in connection with such trade, business or activity,
- (h) require any such person to give to the authorised officer any other assistance or information which the authorised officer may reasonably

require in respect of such trade, business or activity associated with the placement, display or promotion of an online political advertisement,

- (i) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the authorised officer all reasonable assistance in relation to it and assist in the retrieval of information connected with the operation of such data equipment, apparatus or material,
- (j) summon, at any reasonable time, any other person employed in connection with such trade, business or activity associated with the placement, display or promotion of an online political advertisement to give the authorised officer any information which the authorised officer may reasonably require in relation to such trade, business or activity and to produce to the authorised officer any records which are in control of that other person,
- (k) carry out, or arrange to have carried out, inspections and such checks of the premises or relevant things on the premises as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (l) without payment, take for analysis or examination samples of such relevant things as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act,
- (m) carry out, or arrange to have carried out such analysis or examinations and tests on samples taken under paragraph (l) and relevant things taken under paragraph (q) as he or she reasonably considers to be necessary, for the purposes of his or her functions under this Act,
- (n) pay or make tender of payment for the purchase of an online political advertisement, or confirm, by such other manner as he or she considers appropriate, that the required transparency notice is displayed in a clear and

conspicuous manner and that the identification and verification of buyers is undertaken in accordance with Heads 123, 124 and 125,

- (o) require a person, who makes available facilities such as post office boxes, telecommunications or electronic mail addresses or other like facilities, to give him or her such assistance and information as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act in any case where the officer has reasonable grounds for believing that any online political advertisements are being commissioned by mail or other means of delivery,
 - (p) serve compliance notices, and
 - (q) take possession of and remove from the premises for examination and analysis any relevant things, and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under this Act.
- (2) When performing a function under this Act, an authorised officer may, subject to any warrant under subsection (5), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.
- (3) An authorised officer shall not enter a dwelling, other than -
- (a) with the consent of the occupier, or
 - (b) pursuant to a warrant under subsection (5).
- (4) Where an authorised officer is, in the exercise of his or her powers under this section, prevented from entering any premises an application may be made under subsection (5) authorising such entry.

(5) Without prejudice to the powers conferred on an authorised officer under this section, where a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds to suspect that -

- (a) there is information required by an authorised officer for the purposes of his or her functions under this Act on or at any, or any part of any, premises,
- (b) information, documentation (including documentation stored in non-legible form), books, records or relevant things referred to in subsection (1)(a) are being stored or kept in any dwelling, or
- (c) a dwelling is occupied in whole or in part by an undertaking engaged in association with any trade, business or activity connected with the placement, display or promotion of an online political advertisement,

the judge may issue a warrant authorising an authorised officer (accompanied, where appropriate, by such other authorised officers or members of the Garda Síochána or both) at any time or times within one month of the date of issue of the warrant, on production if so requested of the warrant, to enter the premises or dwelling as the case may be, using reasonable force where necessary, and exercise all or any of the powers conferred on an authorised officer under this section.

(6) A person who -

- (a) falsely represents himself or herself as an authorised officer,
- (b) obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power under this section,
- (c) fails or refuses to comply with a requirement of an authorised officer or a member of the Garda Síochána under this section,

- (d) fails or refuses to comply with a request of the Commission or an authorised officer under subsection (9),
- (e) fails or refuses to comply with a compliance notice of an authorised officer under subsection (1)(p), or
- (f) in purported compliance with such a compliance notice gives information that is false or misleading in a material respect,

shall be guilty of an offence.

(7) Where an authorised officer, upon reasonable grounds, believes that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides and, if the authorised officer considers it necessary, to produce corroborative evidence of his or her name and address.

(8) Where the Commission is satisfied that an authorised officer or other member of the staff of the Commission has discharged his or her duties in relation to the enforcement of this Act in good faith, the Commission shall indemnify the authorised officer or other member of staff against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

(9) A statement or admission made by a person pursuant to a requirement under subsection (1) shall not be admissible as evidence in proceedings brought against the person for an offence under this Act (other than an offence under paragraph (b), (c), (d), or (f) of subsection (6)).

(10) In this section -

“data equipment” means any electronic, photographic, magnetic, optical or other equipment for processing data;

“record” includes, in addition to a record in writing -

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (c) a photograph,

and any reference to a copy of a record includes -

- (i) in the case of a record to which paragraph (a) applies, a transcript of the sounds or signals embodied therein,
- (ii) in the case of a record to which paragraph (b) applies, a still reproduction of the images embodied therein, and
- (iii) in the case of a record to which paragraph (a) and (b) apply, such a transcript together with such a still reproduction.

NOTES:

This is a standard provision which proposes a broad range of powers for authorised officers of the Electoral Commission in order to ensure that the appropriate investigative tools are available in the event that they are required. This head is modelled on section 25 of the Public Health (Alcohol) Act 2018 and on section 130 of the Data Protection Act 2018; the first such Act, inter alia, regulates certain matters concerning the advertising of alcohol products.

HEAD 130

PENALTIES

Provide that:

- (1) A person who commits an offence under this Act shall be liable -
 - (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years, or both.
- (2) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions.

NOTES:

This is a standard provision. The proposal from the Interdepartmental Group on the Security of Ireland's Electoral Process and Disinformation referred to earlier in the explanatory notes to head 2 of this general scheme recommended that a Class A fine would apply in the event of a summary conviction while an indictable offence would, on conviction, give rise to a fine and/or imprisonment for a period of up to 5 years.

PART 5:
FACILITATION OF ELECTORAL EVENTS WHERE COVID-19 RESTRICTIONS
ARE IN PLACE

HEAD 131

AMENDMENT OF SECTION 2 OF THE ELECTORAL ACT 1992

Provide that:

the following definitions are inserted in section 2 of the Electoral Act 1992:

““Covid-19” means a disease caused by infection with the virus SARS-CoV-2 and specified as an infectious disease in accordance with Regulation 6 of, and the Schedule to, the Infectious Diseases Regulations 1981 (S.I. No. 390 of 1981) or any variant of the disease so specified as an infectious disease in those Regulations;”

“polling day” has the meaning assigned to it in section 96;

NOTES:

This is a standard provision.

- The definition for Covid-19 is taken from section 2 of the Emergency Measures in the Public Interest (Covid-19) Act 2020.
- The definition for polling day mirrors definitions for polling day in the other electoral codes.

HEAD 132

AMENDMENT OF SECTION 96 OF THE ELECTORAL ACT 1992

Provide that:

Section 96 of the Electoral Act 1992 is amended by the insertion of a new subsection (1A) and (1B):

“(1A)(a) Notwithstanding subsection (1), in the public interest and having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and any public health restrictions that may be in place when the Dáil is dissolved, a poll at a Dáil election may be taken on such days, subject to a maximum period of 2 consecutive days, as shall be appointed by the Minister by order. For the purposes of this subsection, the first day of the poll appointed by the Minister shall be a day which (disregarding any excluded day) is not earlier than the eighteenth day and the second day of the poll appointed by the Minister shall not be later than the twenty-fifth day next following the day on which the writ or writs for the election is or are issued;

(b) A poll at a Dáil election taken in accordance with paragraph (a) shall continue for such period, not being less than twelve hours, between the hours of 7 a.m. and 10.30 p.m. on each of the polling days fixed by the Minister by order, subject to the restriction that, in the case of a general election, he shall fix the same period for all constituencies.

(1B) Where the Minister makes an order under subsection (1A)(a) of section 96, the provisions of Table A of the Fifth Schedule shall apply to said election or where the provisions of Chapter 1 of Part 3 of this Act have been commenced, the provisions of Table B of the Fifth Schedule shall apply to said election.”

NOTES:

1. Section 96 of the Electoral Act 1992 provides that the polling day at a Dáil election shall be appointed by order of the Minister, being a day which (disregarding any excluded day) is not earlier than the eighteenth day or later than the twenty-fifth day next following the day on which the writ or writs for the election is or are issued.

2. The insertion of a new subsection (1A) provides for the holding of a poll over more than one day if Covid19 restrictions are in place at the time of a Dáil election. The purpose of providing for the appointment of more than one polling day (subject to the appointment of a maximum of two consecutive days), is to avoid any unnecessary delay to the completion of the poll while at the same time to allow returning officers to conduct elections in a safe manner such as spreading out the numbers attending polling stations and mitigating against delays that would arise from social distancing and queuing. This new subsection provides that:
 - the first day of the poll shall be the day used to calculate the requirement to hold an election not earlier than 18 days (disregarding any excluded day) next following the day on which the writs or writs for the election is or are issued, and
 - the second day of the poll shall be the day used to calculate the requirement to hold an election not later than 25 days (disregarding any excluded day) next following the day on which the writs or writs for the election is or are issued.

3. The new subsection (1B) provides that where the Minister appoints more than one polling day for a Dáil election in accordance with the new subsection 1A(a), that the provisions set out in Tables A and B in the new *Fifth Schedule* apply. Table A of that Schedule sets out amendments to the Electoral Act 1992 that would take effect so that relevant references to “*polling day*” are clarified, and similar type amendments in Table B would take effect and apply to those provisions in Chapter 1 of Part 3 of this Bill if they are commenced and an election or referendum is held where Covid-19 restrictions are in place. It might be noted that all register related provisions referred to in Table A are repealed in Chapter 1 of Part 3 of this Bill.

HEAD 133

AMENDMENT OF SECTION 107 OF THE ELECTORAL ACT 1992

Provide that:

Section 107 of the Electoral Act 1992 is amended in subsection (1) by deleting “(disregarding any excluded day)”.

NOTES:

1. Section 107(1) provides for the adjournment of the poll at a polling station, until the next following day (disregarding any excluded day) if it is obstructed by violence. However, if for example a poll was held on a Saturday, this provision means that such poll would be adjourned to the following Monday, as Sunday is a disregarded day.
2. In light of this, it is proposed to delete the reference to “*(disregarding any excluded day)*” in section 107(1), as this would mean for example that a poll on a Saturday, if obstructed, would have to be adjourned to the Monday (as Sunday is a disregarded day). This amendment therefore means that if, for example, a polling day is held on a Saturday, the poll could be adjourned to the next day – Sunday. This provision would then apply regardless of the number of polling days appointed by the Minister.

HEAD 134

INSERTION OF FIFTH SCHEDULE IN THE ELECTORAL ACT 1992

Provide that:

A Fifth Schedule is inserted in the Electoral Act 1992 after the Fourth Schedule:

“FIFTH SCHEDULE

DÁIL ELECTIONS WITH MORE THAN ONE POLLING DAY

Each section of the Electoral Act 1992 mentioned in *column 1* of the *Fifth Schedule* to this Act is amended to the extent specified in *column 2* of that *Schedule* opposite such mention.

Table A

Section 96(1B) of the Electoral Act 1992, and Sections 10(2C), 12(2C) and 48(2B) of the Referendum Act 1994

Provision affected	Amendment
Section 15(1A)(c) insofar as it relates to the holding of a Dáil election or a referendum	Substitute <i>“the day the poll closes”</i> for <i>“polling day”</i>
Section 15(5) insofar as it relates to the holding of a Dáil election or a referendum	Substitute <i>“the day the poll commences”</i> for <i>“polling day”</i>
Section 15A(4)(c) insofar as it relates to the holding of a referendum	Substitute <i>“the day the poll commences”</i> for <i>“polling day”</i>
Section 15A(5)(c) insofar as it relates to the holding of a referendum	Substitute <i>“the day the poll commences”</i> for <i>“polling day”</i> .
Section 15B(4)(c) insofar as it relates to the holding of a referendum	Substitute <i>“the day the poll commences”</i> for <i>“polling day”</i>
Section 15B(5)(c)	Substitute <i>“the day the poll commences”</i> for <i>“polling day”</i>

insofar as it relates to the holding of a referendum	
Section 16(7)(ii) insofar as it relates to the holding of a Dáil election or a referendum	Substitute " <i>the day the poll commences</i> " for " <i>polling day</i> "
Section 41(b)	(a) substitute " <i>on the day the poll closes</i> " for " <i>on polling day</i> "; and (a) Substitute " <i>which is the day the poll closes generally</i> " for " <i>which is polling day generally</i> ".
Sections: 60(6); 60(7); and 60(8)	Substitute " <i>day the poll commences</i> " for " <i>polling day</i> "
Section 68(5)	Substitute " <i>the day the poll commences</i> " for " <i>polling day</i> "
Section 73(2)	Substitute " <i>day the poll commences</i> " for " <i>polling day</i> "
Section 85(1)(b)	Substitute " <i>day the poll closes</i> " for " <i>polling day</i> "
Section 85(2)	Substitute " <i>first day of the poll</i> " for " <i>polling day</i> "
Section 85(2)(c)	Substitute " <i>second day of the poll</i> " for " <i>polling day</i> "
Section 86(b)	Substitute " <i>second day of the poll</i> " for " <i>polling day</i> "
Section 92(2)	Substitute " <i>day the poll commences</i> " for " <i>polling day</i> "
Sections 94(3A)	Substitute " <i>the day the poll commences</i> " for " <i>polling day</i> "
Section 100	Substitute " <i>the day the poll commences</i> " for " <i>polling day</i> "
Section 107(1)	Substitute " <i>day the poll closes</i> " for " <i>polling day</i> "
Section 108(b)	Substitute " <i>day the poll closed</i> " for " <i>polling day</i> "
Section 113(1)	Substitute " <i>day the poll commences</i> " for " <i>polling day</i> "
Section 114(1)	Substitute " <i>day the poll closes</i> " for " <i>polling day</i> "
Rule (18)(1) of Part II of Second Schedule insofar as it relates to the holding of a Dáil election or a referendum	Substitute " <i>the day the poll commences</i> " for " <i>polling day</i> "

Table B

Section 96(1B) of the Electoral Act 1992, and Sections 10(2C), 12(2C) and 48(2B) of the Referendum Act 1994

Provision affected	Amendment
Section 11(2) (Head 86 – General Provisions relating to the Register of Electors) insofar as it relates to the holding of a Dáil election or a referendum	substitute “ <i>on the day the poll closes</i> ” for “ <i>on polling day</i> ”;
Section 13(2) (Head 88 - The Register of Electors)	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”
Section 13(5) (Head 88 - The Register of Electors)	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”
Section 14(1)(c) (Head 94 – Entry of Names in Postal Voters List) insofar as it relates to the holding of a referendum	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”
Section 15(D)(5) (Head 100 – Application to the Register of Electors)	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”
Section 17(7)(c) (Head 103 - Special Voters List)	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”
Section 17A(4) (Head 104 - Special Voters List) insofar as it relates to the holding of a Dáil election or a referendum	Substitute “ <i>the day the poll closes</i> ” for “ <i>polling day</i> ”
Rule 1(2) of Second Schedule (Head 113 – Amendment to Second Schedule to 1992 Act)	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”

insofar as it relates to the holding of a Dáil election or a referendum	
Rule 1(3) of Second Schedule (Head 113 – Amendment to Second Schedule to 1992 Act) insofar as it relates to the holding of a Dáil election or a referendum	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”
Rule 7(2) of Second Schedule (Head 113 – Amendment to Second Schedule to 1992 Act) insofar as it relates to the holding of a Dáil election or a referendum	Substitute “ <i>the day the poll closes</i> ” for “ <i>polling day</i> ”
Rule 8(2) of the Second Schedule (Head 113 – Amendment to Second Schedule to 1992 Act) insofar as it relates to the holding of a Dáil election or a referendum	Substitute “ <i>the day the poll closes</i> ” for “ <i>polling day</i> ”
Rule 11(2) (Head 113 – Amendment to Second Schedule to 1992 Act) insofar as it relates to the holding of a Dáil election or a referendum	Substitute “ <i>the day the poll closes</i> ” for “ <i>polling day</i> ”

NOTES for Fifth Schedule (Head 134):

General:

Table A of the Fifth Schedule provides for amendments to certain references to “polling day” in the Electoral Act 1992 if more than one polling day is appointed under the new section 96(1A), where Covid-19 restrictions are in place. These amendments cover matters relating to the register of electors (i.e. sections 15 – 16 and Rule 18 of Part II of the 1992 Act) as well as matters in that Act relating to the conduct of Dáil elections. Part II of the 1992 Act applies to Dáil, Presidential, European and local elections and referendums. However, as European/local and Presidential elections are not scheduled until 2024 and 2025 respectively it is not proposed at this early stage to amend those codes for the purposes of Covid-19 restrictions. Amendments to provisions in Part II of the Electoral Act 1992 that are listed in the new Fifth Schedule therefore only apply to Dáil elections and referendums as appropriate.

Chapter 1 of Part 3 of this Bill amends Part II of the Electoral Act 1992, which as indicated above relates to the register of electors. Table B of the Fifth Schedule provides for the amendment of references to polling day in Chapter 1 of Part 3 (of this Bill) that would be necessary if the provisions in that Chapter are commenced and a Dáil election or referendum was held over two days because of Covid-19 restrictions. It might be noted that all register related provisions referred to in Table A are repealed in Chapter 1 of Part 3 of this Bill.

TABLE A

NOTES for Head 134 - section 15(1A)(c):

1. Section 15 provides for the supplement to the register of electors and sets the polling day as a deadline for aspects of applications for entry in the supplement.
2. Subsection (1A)(c) provides that a person shall be eligible for entry in the supplement to the register on or after the day that person reaches 18 years of age, including such day that falls within the period beginning on the last day on which applications for entry in the supplement can be received and ending on polling day. This provision applies at a Dáil, Presidential, European or local election or referendum.
3. The reference to “*polling day*” in subsection (1A)(c) should be amended to read “*the day the poll closes*” to clarify that where there is more than one polling day, that the eligibility period for entry in the supplement ends on the day the poll closes – because ‘polling day’ could stretch over more than one day and a person could reach the age of 18 on any one of those days. This amendment would apply only insofar as it relates to the holding of a Dáil election or a referendum.

NOTES for Head 134 - section 15(5):

1. Section 15 provides for the supplement to the register of electors and sets the polling day as a deadline for aspects of applications for entry in the supplement.
2. Subsection 5 provides that an application to have a person’s name entered in the supplement received by the registration authority on or after the fourteenth day (disregarding any excluded day) before polling day at an election or referendum, shall not have effect for that election or referendum. This provision applies at a Dáil, Presidential, European or local election or referendum.
4. The reference to “*polling day*” should be amended to read “*the day the poll commences*” to clarify that if there is more than one polling day, an application to have a person’s name entered in the supplement received by the registration authority on or after the fourteenth day (disregarding any excluded day) **before the day the poll commences** at an election or

referendum, shall not have effect for that election or referendum. This amendment would apply only insofar as it relates to the holding of a Dáil election or a referendum.

NOTES for Head 134 - sections 15A(4)(c) and 15A(5)(c):

1. Section 15A provides for the supplement to the postal voters list and sets polling day as a deadline for aspects of applications for entry in the supplement.
2. Subsection (4)(c) provides that an application to have a person's name entered in the supplement to the postal voters list received by the registration authority on or after the twenty-first day (disregarding any excluded day) before polling day at a presidential, European or local election or a referendum, shall not have effect for that election or referendum.
3. Subsection (5)(c) provides that as soon as practicable after, in the case of a presidential, European or local election or a referendum, the twenty-first day (disregarding any excluded day) before polling day, the registration authority shall publish a list of the names of the electors on the supplement to the postal voters list that were received before that date and allowed by the registration authority.
4. The reference to "*polling day*" in section 15A(4)(c) should be amended to read "*the day the poll commences*" insofar as it relates to the holding of a referendum, to clarify that where there is more than one polling day, that an application to have a person's name entered in the supplement to the postal voters list received by the registration authority on or after the twenty-first day (disregarding any excluded day) **before the day the poll commences** at a referendum, shall not have effect for that referendum.
5. Similarly, The reference to "*polling day*" in subsection (5)(c) should be amended to read "*the day the poll commences*" insofar as it relates to the holding of a referendum, to clarify that where there is more than one polling day, that as soon as practicable after a referendum, the twenty-first day (disregarding any excluded day) **before the day the poll commences**, the registration authority shall publish a list of the names of the electors on the supplement to the postal voters list that were received before that date and allowed by the registration authority.

NOTES for Head 134 – sections 15B(4)(c) and 15B(5)(c):

1. Section 15B provides for the supplement to the special voters list and sets polling day as a deadline for aspects of applications for entry in the supplement.
2. Subsection (4)(c) provides that an application to have a person’s name entered in the supplement to the special voters list received by the registration authority on or after the twenty-first day (disregarding any excluded day) **before polling day** at a presidential, European or local election or a referendum, shall not have effect for that election or referendum.
3. Subsection (5)(c) provides that as soon as practicable after, in the case of a presidential, European or local election or a referendum, the twenty-first day (disregarding any excluded day) before polling day, the registration authority shall publish a list of the names of the electors on the supplement to the special voters list that were received before that date and allowed by the registration authority.
4. The reference to “*polling day*” in subsection (4)(c) should be amended to read “*the day the poll commences*” insofar as it relates to the holding of a referendum, to clarify that where there is more than one polling day, that an application to have a person’s name entered in the supplement to the special voters list received by the registration authority on or after the twenty-first day (disregarding any excluded day) **before the day the poll commences** at a referendum, shall not have effect for that referendum.
5. Similarly, the reference to “*polling day*” in subsection (5)(c) should be amended to read “*the day the poll commences*” insofar as it relates to the holding of a referendum, to clarify that where there is more than one polling day, that as soon as practicable after a referendum, the twenty-first day (disregarding any excluded day) **before the day the poll commences**, the registration authority shall publish a list of the names of the electors on the supplement to the special voters list that were received before that date and allowed by the registration authority.

NOTES for Head 134 - section 16(7)(ii):

1. Section 16 provides for electors lists to replace the draft register, register and supplement in the case of specified registration authorities. Subsection 7(ii) provides that that the

Minister may direct that an electors list be published on the specified date each year referred to in Rule 13(2) of Part 1 of the Second Schedule, or as soon as may be after the fourteenth day (disregarding any excluded day) before polling day at an election or referendum or such other time that the registration authority thinks fit.

2. The reference to “*polling day*” should be amended to read “*the day the poll commences*” insofar as it relates to the holding of a Dáil election or a referendum, to clarify that where there is more than one polling day, that an electors list is published as soon as may be after the fourteenth day (disregarding any excluded day) before **the day the poll commences** at a Dáil election or referendum, if that is the chosen option.

NOTES for Head 134 - section 41(b):

1. Section 41 provides for the disqualification for membership of Dáil Éireann. Paragraph (b) sets polling day as the date by which a person must have reached the age of 21 to qualify for membership or in circumstances where no poll is taken in a constituency (i.e. where the number of candidates equals the number of seats), the day which is polling day generally throughout the State.
2. If polling day is spread over two days, a person could reach the age of 21 on the second polling day, so the reference to “*on polling day*” should be amended to read “*on the day the poll closes*”, and the reference to “*which is polling day generally*” should be amended to read “*which is the day the poll closes generally*”, to clarify that where there is more than one polling day at a Dáil election, the day by which a person must have reached 21 years of age to qualify for membership of the Dáil **is on the day the poll closes** or in circumstances where no poll is taken in a constituency, **which is the day the poll closes generally** throughout the State.

NOTES for Head 134 - section 60(7), (8) and (9):

1. Section 60 provides for general provisions as to agents.
2. Subsections (6), (7) and (8) provide respectively that a candidate or his election agent shall not less than 2 days (disregarding any excluded day) before the polling day give written notice to the returning officer of the name and address of every personation agent appointed

by the candidate or his agent who wishes to attend the polling station for which he is appointed; of every agent appointed by the candidate or his agent who wishes to be present at the opening of the postal ballot boxes; and every agent appointed by the candidate or his agent who wishes to be present at the counting of votes.

3. The reference to "*polling day*" should be amended to read "*day the poll commences*" to clarify that where there is more than one polling day at a Dáil election that written notice (as outlined in subsections (6), (7) and (8)) must be given to the returning officer 2 days (disregarding any excluded day) before the **day the poll commences**.

NOTES for Head 134 - section 68(5):

1. Section 68 provides for the issue of ballot papers. Subsection (5), provides that where an envelope containing a ballot paper and certain other documents is, before polling day, returned to the returning officer as not having been delivered to a postal voter, the returning officer may readdress it and send it by post to that voter.
2. The reference to "*polling day*" should be amended to read "*day the poll commences*" to clarify that where there is more than one polling day, the provision in subsection (5) applies if an envelope containing a ballot paper and certain other documents is returned to the returning officer **before the day the poll commences**.

NOTES for Head 134 - section 73(2):

1. Section 73 provides for the opening of postal voters ballot boxes. Subsection (2) provides that not less than 4 days before the polling day, the returning officer shall give each candidate notice in writing of the time and place at which he will proceed to open the postal voters ballot boxes.
2. The reference to "*polling day*" should be amended to read "*day the poll commences*" to clarify that where there is more than one polling day at a Dáil election, the returning officer shall, not less than 4 days **before the day the poll commences**, give each candidate notice in writing of the opening of postal voters' ballot boxes.

NOTES for Head 134 - section 85(1)(b) :

1. Section 85 provides for advance voting on islands. This power is vested in the returning officer subject to certain conditions based on stress of weather and transport difficulties.

2. Subsection (1)(b) provides that if owing to stress of weather or transport difficulties and if the poll were taken on the day appointed by the Minister, it may be impracticable to deliver the ballot boxes to the count centre at or before 9 a.m. on the day next after the polling day, then the provisions of section 85 apply (i.e. advance voting on islands).
3. The reference to “*the day next after the polling day*” essentially means the day after the day the poll closes. If there are two polling days at an election, the reference to “*polling day*” in subsection (1)(b) should be amended to read “*day the poll closes*”.

NOTES for Head 134 - section 85(2):

1. Section 85 provides for advance voting on islands. This power is vested in the returning officer subject to certain conditions based on stress of weather and transport difficulties.
2. Subsection (2) provides that the returning officer must give public notice stating that he will take the poll on the island on a specified day being a day earlier than the polling day appointed by the Minister or six days earlier before said polling day. If the Minister appoints two polling days at an election, the references to “*polling day*” in subsection (2) should be amended to read “*the first day of the poll*” *appointed by the Minister*. This means that advance polling on the islands must take place between 1 and 6 days before **the first day of the poll appointed by the Minister** on the mainland.

NOTES for Head 134 - section 85(2)(c):

1. Section 85 provides for advance voting on islands. This power is vested in the returning officer subject to certain conditions based on stress of weather and transport difficulties.
2. Subsection (2)(c) provides that the poll on an island may be closed after the poll has continued for 4 hours if the presiding officer considers that the ballot boxes could not reach the count centre at or before 9 a.m. *on the day next after the polling day appointed by the Minister*. This essentially means the second day of poll appointed by the Minister. If there are two polling days at an election, the reference to “*polling day*” in subsection (2)(c) should be amended to read “*the second day of the poll*”.

NOTES for Head 134 - section 86(b):

1. Section 86 makes further provisions for polling on islands. Paragraph (a) provides that if because of weather or transport difficulties, the poll taken on an island on the day appointed by the Minister the poll cannot begin at the hour fixed by the Minister for the commencement of the poll it shall commence as soon as possible after that hour.
2. Paragraph (b) goes on to provide that the poll on an island may be closed after the poll has continued for 4 hours if the presiding officer considers that the ballot boxes could not reach the count centre at or before 9 a.m. on the day next after the polling day. This essentially means the day after the day the poll closes. If the Minister appoints two polling days at an election, the reference to "*polling day*" in paragraph (b) should be amended to read "*second day of the poll*" ... *appointed by the Minister*.

NOTES for Head 134 - section 92(2):

1. Section 92 provides for the issuing of polling information cards. Subsection (2) provides that a polling information card shall be delivered to the elector not later than the third day before the polling day.
2. The reference to "*polling day*" should be amended to read "*day the poll commences*" to clarify that where there is more than one polling day at a Dáil election, a polling information card shall be delivered to the elector not later than the third day **before the day the poll commences**.

NOTES for Head 134 - section 94(3A):

1. Section 94 provides for polling stations. Subsection (3A) provides that the returning officer, shall where practicable, give public notice of all polling stations which are inaccessible to wheelchair users not later than the eighth day before polling day.
2. The reference to "*polling day*" should be amended to read "*the day the poll commences*" to clarify that where there is more than one polling day at a Dáil election, that public notice of all polling stations which are inaccessible to wheelchair users is given not later than the eighth day **before the day the poll commences**.

NOTES for Head 134 - section 100:

1. Section 100 provides that where not less than 7 days before polling day, a Dáil elector whose name is not on the postal or special voters lists, satisfies the returning officer that the elector is unable, by reason of a physical illness or disability to vote at the polling station at which he is entitled to vote, the returning officer may in writing authorise the elector to vote at another polling station in the constituency.
2. The reference to "*polling day*" should be amended to read "*the day the poll commences*" to clarify that where there is more than one polling day at a Dáil election, that the returning officer may in writing authorise an elector with a physical illness or disability to vote at another polling station in the constituency provided such elector satisfies the returning officer not less than 7 days **before the day the poll commences**, that he is unable to vote at the polling station at which he is entitled to vote.

NOTES for Head 134 - section 107(1):

1. Section 107 provides for the adjournment of the poll at a polling station, if it is obstructed by violence. Subsection (1) provides that the adjourned poll shall be resumed at a time corresponding to the time fixed for the commencement of the poll and shall continue until a time corresponding to the time fixed for the close of the poll **on the polling day**.
2. If there is more than one polling day at a Dáil election, the reference to "*polling day*" should be amended to read "*the day the poll closes*" to clarify that if a poll is adjourned under the circumstances outlined in section 107(1) and if there is more than one polling day, that the poll should continue until the time fixed for the close of poll on the **day the poll closes**.

NOTES for Head 134 - section 108(b):

1. Section 108 provides for damage to polling stations. Paragraph (b) provides that where, for any reason, including damage to a polling station, the poll cannot be taken or continued, a fresh poll shall be held or continued on a day (not being later than seven days after the polling day) appointed for this purpose by the returning officer.

2. The reference to “*polling day*” should be amended to read “*day the poll commenced*” to clarify that where there is more than one polling day at a Dáil election that a fresh election must be held or continued on a day (not being later than seven days **after the day the poll commenced**).

NOTES for Head 134 - section 113:

1. Section 113 provides for attendance at the counting of votes. Subsection (1) provides that not less than 4 days (disregarding any excluded day) before the polling day the returning officer shall give written notice to each candidate of the time and place at which he will proceed to count the votes and of the number of agents each candidate may appoint to be present at the count of the votes.
2. The reference to “*polling day*” should be amended to read “*day the poll commences*” to clarify that where there is more than one day at a Dáil election, that the returning officer shall give written notice of the time and place at which he will count the votes not less than 4 days (disregarding any excluded day) before the **day the poll commences**.

NOTES for Head 134 - 114(1):

1. Section 114(1) provides for the commencement of the count at a Dáil election at 9 a.m. on the day next following polling day. This essentially means the day after the day the poll closes.
2. If there is more than one polling day, the reference to “*polling day*” should be amended to read “*day the poll closes*” to clarify that the count should commence at 9 a.m. on the day next following the **day the poll closes**.

Note for OPC: There is a similar provision in section 114(1)(a), which is inserted by section 79(1)(c) of the Electoral Act 1997. This provision, which essentially gives the Minister the power to appoint a time for the commencement of the count, hasn't yet been commenced. This provision (in section 114(1)(a)) is also referenced in sections 85(1)(b) and, 85(2)(c) and 86(b). Head 142 (Insertion of Second Schedule in Electoral Act 1997) provides for an amendment of section 79(1)(c) of the Electoral Act 1997 in relation to holding an electoral event if Covid-19 restrictions are in place.

NOTES for Head 134 - Rule 18(1) of Part II of the Second Schedule:

1. Rule 18 provides for the preparation and publication of the supplement to the register. Rule 18(1) provides that as soon as may be after the fourteenth day (disregarding any excluded day) before polling day, at an election or a referendum the registration authority shall prepare and publish a list of the names of persons whose applications to be entered in the supplement to the register were received before said fourteenth day (disregarding any excluded day) before polling day.
2. The reference to "*polling day*" should be amended to read "*the day the poll commences*", insofar as it relates to the holding of a Dáil election or a referendum, to clarify that where there is more than one polling day, that the list of persons whose applications to be entered in the supplement to the register, which were received before the fourteenth day (disregarding any excluded day) **before the poll commences** at a Dáil election or a referendum, shall be published by the registration authority as soon as may be after the fourteenth day (disregarding any excluded day) **before the poll commences**.

NOTES for TABLE B

Table B of the Fifth Schedule relates to the provisions of Chapter 1 of Part 3 of this Bill (the electoral register) that would require to be amended (in a similar fashion to the amendments in Table A) if that Chapter were commenced and a Dáil election or referendum was held over two days because of Covid-19 restrictions.

HEAD 135

AMENDMENT OF SECTION 2 OF THE REFERENDUM ACT 1994

Provide that:

Subsection (1) of section 2 of the Referendum Act 1994 is amended as follows:

- By the insertion of the following definition after the definition of a “constitutional referendum”-

““Covid-19” means a disease caused by infection with the virus SARS-CoV-2 and specified as an infectious disease in accordance with Regulation 6 of, and the Schedule to, the Infectious Diseases Regulations 1981 (S.I. No. 390 of 1981) or any variant of the disease so specified as an infectious disease in those Regulations;”

NOTES

This is a standard provision.

- The definition for Covid-19 is taken from section 2 of the Emergency Measures in the Public Interest (Covid-19) Act 2020.

HEAD 136

AMENDMENT OF SECTION 10 OF THE REFERENDUM ACT 1994

Provide that:

Section 10 of the Referendum Act 1994 is amended by the insertion of new subsections (2A), (2B) and (2C):

- “(2A) Notwithstanding subsections (1) and (2), in the public interest and having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and any public health restrictions that may be in place at the time whenever a Bill containing a proposal for the amendment of the Constitution shall have been passed by both Houses of the Oireachtas, the Minister shall by order appoint the days, subject to a maximum period of two consecutive days, in this Act referred to as “the polling day” upon which and the period during which the poll at the referendum on such proposal shall be taken.
- (2B) For the purposes of subsection (2A), the first day of the poll at the referendum appointed by the Minister shall be not less than thirty days after the date of the order and the second day of the poll at the referendum appointed by the Minister shall not be more than ninety days after the date of the order.
- (2C) Where the Minister makes an order under subsection (2A), the provisions of the Third Schedule to this Act shall apply to said referendum and Table A of the Fifth Schedule to the Electoral Act 1992 that relates to Part II of the Electoral Act 1992 shall apply to said referendum or where Chapter 1 of Part 3 of the Electoral Reform Bill 2020 has commenced, Table B of the Fifth Schedule to the Electoral Act 1992 shall apply to said referendum.”

NOTES:

1. Section 10(1) of the Referendum Act 1994 provides that the polling day at a constitutional referendum shall be appointed by order of the Minister, whenever a Bill containing a

proposal for the amendment of the Constitution shall have been passed by both Houses of the Oireachtas.

2. Section 10(2) goes on to provide that the polling day shall be not less than thirty days and not more than ninety days after the date of the order.
3. The new subsection (2A) provides for the holding of a poll over more than one day (subject to a maximum period of two consecutive days) if Covid-19 restrictions are in place at the time that a Constitutional Amendment Bill is passed in both Houses – the Minister is required to make the polling day order at that point . This is to allow Returning Officers to conduct referendums in a safe manner such as spreading out the numbers attending polling stations and mitigating against delays that would arise from social distancing and queuing.
4. The new subsection (2B) also provides that the first day of the poll shall be the day used to calculate the requirement to hold a constitutional referendum not less than thirty days and after the date of the order and the second day of the poll shall be the day used to calculate the requirement to hold a constitutional referendum not more than ninety days after the date of the order.
5. The new subsection (2C) provides that where the Minister appoints more than one polling day for a constitutional referendum in accordance with the new subsection (2A), that the provisions set out in the new *Third Schedule* apply. That Schedule sets out amendments that would take effect so that relevant references to “*polling day*” are clarified. In addition, the amendments in Table A of the Fifth Schedule to the Electoral Act 1992 (head 134) that relate to the electoral register would also apply to said referendum or where the provisions in this Bill relating to the register have commenced, Table B of the Fifth Schedule (head 134) shall apply to said referendum.

Note for OPC re definition of polling day:

1. Section 2(1) of the Referendum Act 1994 includes a definition for polling day as follows: “*the polling day*” has the meaning assigned to it in Part II. It is not proposed to amend this definition.

2. Notwithstanding this, it should be noted that sections 10(1) and 12(1) of the 1994 Act (which are in Part II of the Act) include the following text: *the Minister shall by order appoint the day (in this Act referred to as the “polling day”)*. It is not proposed to amend the references to “polling day” in Heads 136 (Amendment of Section 10 of the Referendum Act 1994) and 137 (Amendment of Section 12 of the Referendum Act 1994).

HEAD 137

AMENDMENT OF SECTION 12 OF THE REFERENDUM ACT 1994

Provide that:

Section 12 of the Referendum Act 1994 is amended by the insertion of new subsections (2A), (2B) and 2(C):

“(2A) Notwithstanding subsections (1) and (2), in the public interest and having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and any public health restrictions that may be in place at the time whenever -

(a) the Taoiseach is informed in accordance with Article 27 of the Constitution that the President has decided that a Bill to which that Article applies contains a proposal of such national importance that the will of the people thereon ought to be ascertained, and

(b) the Government determine that a referendum for the purpose of ascertaining the will of the people on the proposal shall be taken,

the Minister shall by order appoint the days, subject to a maximum period of two consecutive days (in this Act referred to as “the polling day”) upon which and the period during which the poll at the referendum shall be taken.

(2B) For the purposes of subsection (2A), the first day of the poll at the referendum appointed by the Minister shall be not less than thirty days after the date of the order and the second day of the poll at the referendum appointed by the Minister shall not be more than ninety days after the date of the order.

(2C) Where the Minister makes an order under subsection (2A), the provisions of the Third Schedule to this Act shall apply to said referendum and Table A of the Fifth Schedule to the Electoral Act 1992 that relates to Part II of the Electoral Act 1992 or where Chapter 1 of Part 3 of the Electoral Reform Bill 2020 has commenced, Table B of the Fifth Schedule to the Electoral Act 1992 shall apply to said referendum.”

NOTES:

1. Section 12(1) of the Referendum Act 1994 provides that the polling day at an ordinary referendum shall be appointed by order of the Minister, when the Taoiseach (in accordance with Article 27 of the Constitution) is informed that the President has decided that a Bill contains a proposal of such national importance that the will of the people thereon should be ascertained; and when the Government determines that a referendum on the proposal shall be taken.
2. Section 12(2) goes on to provide that the polling day shall be not less than thirty days and not more than ninety days after the date of the order. It might be noted that there has never been an ordinary referendum.
3. The insertion of a new subsection (2A) provides for the holding of a poll at an ordinary referendum over more than one day (subject to a maximum period of two consecutive days) if Covid-19 restrictions are in place at the time the Minister makes a polling day order, which happens after the Taoiseach has informed the President and the Government has decided that an ordinary referendum shall be held. This is to allow Returning Officers to conduct referendums in a safe manner such as spreading out the numbers attending polling stations and mitigating against delays that would arise from social distancing and queuing.
4. The new subsection (2B) provides that the first day of the poll shall be the day used to calculate the requirement to hold an ordinary referendum not less than thirty days and after the date of the order and the second day of the poll shall be the day used to calculate the requirement to hold an ordinary referendum not more than ninety days after the date of the order.
6. The new subsection (2C) provides that where the Minister appoints more than one polling day for a referendum in accordance with the new subsection (2A), that the provisions set out in the new *Third Schedule* apply. That Schedule sets out amendments that would take effect so that relevant references to “*polling day*” are clarified. In addition, the amendments in Table A of the Fifth Schedule to the Electoral Act 1992 (head 134) that relate to the electoral register would also apply to said referendum or where the provisions in this Bill relating to the register have commenced, Table B of the Fifth Schedule (head 134) shall apply to said referendum.

HEAD 138

AMENDMENT OF SECTION 48 OF THE REFERENDUM ACT 1994

Provide that:

Section 48 of the Referendum Act 1994 is amended as follows:

- In subsection (1)(a) by replacing “this section” with “this subsection; and
- By the insertion of new subsections (2A) and (2B) as follows:

“(2A) Notwithstanding subsection (1), in the public interest and having regard to the immediate, exceptional and manifest risk posed to human life and public health by the spread of Covid-19 and any public health restrictions that may be in place at the trial of a referendum petition where the court may order that the referendum to which the referendum petition relates shall be taken again in a constituency, and where the court so orders, the following provisions shall have effect:

(a) the court shall, in its order under this subsection, appoint the days, subject to a maximum period of two consecutive days, which shall be the polling days for the purposes of the retaking of the referendum in the constituency;

(b) the referendum shall be retaken in the constituency and the provisions of this Act in relation to the taking a referendum shall apply to the retaking, with the substitution of the polling days appointed by the order of the court for the polling days appointed by the Minister.

(2B) Where the court makes an order under subsection (2A), the provisions of the Third Schedule to this Act shall apply to said referendum and Table A of the Fifth Schedule to the Electoral Act 1992 that relates to Part II of the Electoral Act 1992 or where Chapter 1 of Part 3 of the Electoral Reform Bill 2020 has commenced Table B of the Fifth Schedule to the Electoral Act 1992 shall apply to said referendum.”

NOTES:

1. Section 48 of the Referendum Act 1994 provides for the retaking of a referendum in a constituency by a court order on foot of a trial at a referendum petition.
2. Section 48(1)(a) goes on to provide that the court shall, in its order under this section, appoint the polling day for the purpose of retaking the referendum in the constituency. As it is proposed to insert a new subsection 2(A) in section 48 to provide for more than one polling day in the event that Covid-19 restrictions are in place, the amendment to paragraph (a) of subsection (1) to refer to “this subsection”, is required to clarify and distinguish between subsection (1) and subsection 2(A).
3. The insertion of a new subsection (2A) provides for the holding of a poll over more than one day (subject to a maximum period of two consecutive days) if Covid19 restrictions are in place at the time of the trial of a referendum petition where the court may order that the referendum shall be taken again in a constituency. This is to allow Returning Officers to conduct the referendum in a safe manner such as spreading out the numbers attending polling stations and mitigating against delays that would arise from social distancing and queuing.
7. The new subsection (2B) provides that where the court appoints more than one polling day for a referendum in accordance with the new subsection (2A), that the provisions set out in the new *Third Schedule* apply. That Schedule sets out amendments that would take effect so that references to “*polling day*” are clarified. . In addition, the amendments in Table A of the Fifth Schedule to the Electoral Act 1992 (head 134) that relate to the electoral register would also apply to said referendum or where the provisions in this Bill relating to the register have commenced, Table B of the Fifth Schedule (head 134) shall apply to said referendum.

HEAD 139

INSERTION OF THIRD SCHEDULE IN THE REFERENDUM ACT 1994

Provide that:

A Third Schedule is inserted in the Referendum Act 1994 after the Second Schedule:

“THIRD SCHEDULE

REFERENDUMS WITH MORE THAN ONE POLLING DAY

Each section of the Referendum Act 1994 mentioned in *column 1* of the *Third Schedule* to this Act is amended to the extent specified in *column 2* of that *Schedule* opposite such mention.

Sections 10(2C), 12(2C) and 48(2B)

Provision affected	Amendment
Section 17(1)	(a) Substitute “ <i>before the day the poll commences</i> ” for “ <i>before the polling day</i> ”; and (b) Substitute “ <i>on the day the poll closes</i> ” for “ <i>on the polling day</i> ”
Sections: 26(6); 26(7); and 26(8)	Substitute “ <i>day the poll commences</i> ” for “ <i>polling day</i> ”
Section 31(2)	Substitute “ <i>the day the poll commences</i> ” for “ <i>polling day</i> ”

Notes for Third Schedule:

Notes for Head 139 - Section 17(1):

1. Section 17(1) provides that not later than five days before the polling day at an ordinary referendum that registration authorities shall furnish statements to the referendum returning officer of the number of presidential electors on the register of presidential electors in force on the polling day in each constituency or portion of a constituency in their registration area.
2. The amendment of “*before polling day*” to mean “*before the day the poll commences*” and the amendment of “*on polling day*” to mean “*on the day the poll closes*” is intended to clarify that where there is more than one polling day, the statements referred to in section 17(1) shall set out the number of presidential electors on the register in force on **the day the poll closes** and shall be furnished to the referendum returning officer five days **before the day the poll commences**.
3. It might be noted that presidential electors are entitled to vote at a referendum.

Notes for Head 139 - Section 26(6), (7) and (8)

1. Section 26 makes provisions for agents.
2. Subsection (6) provides that a member of the Dáil for the constituency and a member of the Seanad shall, not less than two days (disregarding any excluded day) before the polling day give written notice to the local returning officer of the name and address of every personation agent who will attend at the polling station.
3. Subsection (7) provides that a member of the Dáil for the constituency and a member of the Seanad shall, not less than two days (disregarding any excluded day) before the polling day give written notice to the local returning officer of the name and address of every personation agent who will be present at the opening of the postal ballot boxes.
4. Subsection (8) provides that a member of the Dáil for the constituency and a member of the Seanad shall, not less than two days (disregarding any excluded day) before the polling day give written notice to the local returning officer of the name and address of every personation agent who will be present at the counting of votes.

5. The amendment of “*polling day*” to read “*day the poll commences*” is intended to clarify that where there is more than one polling day the written notices required to be given to local returning officers referred to in subsections (6), (7) and (8) shall be given to local returning officers two days before **the day the poll commences**.

Notes for Head 139 - Section 31(2)

1. Section 31(2) provides that where not less than 7 days before polling day at a referendum, an elector whose name is not on the postal or special voters lists, satisfies the local returning officer that the elector is unable, by reason of a physical illness or disability to vote at the polling station at which he is entitled to vote, the local returning officer may in writing authorise the elector to vote at another polling station in the constituency.
2. The amendment to replace “*polling day*” with “*the day the poll commences*” is intended to clarify that where there is more than one polling day that the local returning officer may in writing authorise an elector with a physical illness or disability to vote at another polling station in the constituency, provided such elector satisfies the local returning officer not less than 7 days **before the day the poll commences**, that he is unable to vote at the polling station at which he is entitled to vote.

HEAD 140

AMENDMENT OF SECTION 2 OF THE ELECTORAL ACT 1997

Provide that:

The following definition is inserted in section 2(1) of the Electoral Act 1997:

““Covid-19” means a disease caused by infection with the virus SARS-CoV-2 and specified as an infectious disease in accordance with Regulation 6 of, and the Schedule to, the Infectious Diseases Regulations 1981 (S.I. No. 390 of 1981) or any variant of the disease so specified as an infectious disease in those Regulations;”

NOTES:

This is a standard provision.

- The definition for Covid-19 is taken from section 2 of the Emergency Measures in the Public Interest (Covid-19) Act 2020.

HEAD 141

INSERTION OF SECTION 4B IN ELECTORAL ACT 1997

Provide that:

A new section 4B is inserted after section 4A as follows:

“4B Where the Minister makes an order to provide for more than one polling day for a Dáil election or a referendum under:

- (a) subsection (1A)(a) of section 96 of the Electoral Act 1992; or
- (b) subsection (2A) of section 10 of the Referendum Act 1994 or
- (c) subsection (2A) of section 12 of the Referendum Act 1994,

the provisions of the Second Schedule shall apply to said election and referendum.”

NOTES:

1. The new section 96(1)(a) of the Electoral Act 1992, section 10(2A) and 12(2A) of the Referendum Act 1994 provide for more than one polling day at a Dáil election and referendum if Covid-19 restrictions are in place.
2. The new section 4B provides that where the Minister appoints more than one polling day for a Dáil election or referendum in accordance with the new subsection (1A)(a) of section 96 of the Electoral Act 1992 or the new subsection (2A) of section 10 or subsection (2A) of section 12 of the Referendum Act 1994, then the provisions set out in the new Second Schedule to the Electoral Act 1997 apply. That Schedule sets out amendments that would take effect so that references to “polling day” would be amended to read “the day the poll commences”; or “the day the poll closes” as appropriate.

HEAD 142

INSERTION OF A SECOND SCHEDULE IN THE ELECTORAL ACT 1997

Provide that:

A Second Schedule is inserted in the Electoral Act 1997 after ‘Schedule’ as follows:

“SECOND SCHEDULE

DÁIL ELECTIONS AND REFERENDUMS WITH MORE THAN ONE POLLING DAY

Each section of the Electoral Act 1997 mentioned in *column 1* of the *Second Schedule* to this Act is amended to the extent specified in *column 2* of that *Schedule* opposite such mention.

Section 4B

Provision affected	Amendment
Section 17(4B)(b)(ii)	Substitute “ <i>ceases to have effect on the day the poll commences</i> ” for “ <i>ceases to have effect on the polling day</i> ”
Section 19(2)(c)	(a) Substitute “ <i>apply from the day the poll commences</i> ” for “ <i>apply from the polling day</i> ”; (b) Substitute “ <i>the day before the day the poll commences</i> ” for “ <i>the day before polling day</i> ”; and (c) Substitute “ <i>the first-mentioned day of polling</i> ” for “ <i>the first-mentioned polling day</i> ”
Section 19(3)	Substitute “ <i>day the poll commences</i> ” for “ <i>polling day</i> ”
Section 23B(4)(a) insofar as it relates to polling day at a Dáil election	Substitute “ <i>the day the poll closes</i> ” for “ <i>polling day</i> ”
Section 24(2)(a) insofar as it relates to polling day at a Dáil election	Substitute “ <i>after the day the poll closes</i> ” for “ <i>after the polling day</i> ”
Section 34 insofar as it relates to polling day at a Dáil election	Substitute “ <i>the day the poll closes</i> ” for “ <i>the polling day</i> ”
Section 36(1)(a)	Substitute “ <i>day the poll closes</i> ” for “ <i>polling day</i> ”

insofar as it relates to polling day at a Dáil election	
Section 36(6) insofar as it relates to polling day at a Dáil election	Substitute <i>“the day the poll closes”</i> for <i>“polling day”</i>
Section 43(2)(a) insofar as it relates to polling day at a Dáil election	Substitute <i>“the day the poll closes”</i> for <i>“polling day”</i>
Section 79(1)(c) insofar as it relates to polling day at a Dáil election and at a referendum	Substitute <i>“the day the poll closes”</i> for <i>“polling day”</i>
Rule 1 (g) of the Schedule. insofar as it relates to polling day at a Dáil election	Substitute <i>“the day the poll commences”</i> for <i>“polling day”</i>

Notes for Second Schedule:

Notes for Head 142 – Section 17(4B)(b)(ii)

1. Section 17 of the Electoral Act 1997 provides for payments to political parties at a general election. Subsection (4B)(a) provides that payment will be reduced by 50% unless there are at least 30% women and 30% men authenticated as candidates.
2. Subparagraph (b)(i) provides that the provision in paragraph (a) comes into operation on the polling day at the general election next held after the enactment of the Electoral (Amendment) (Political Funding) Act 2012, i.e. this took effect at the 2016 general election.
3. Subparagraph (b)(ii) provides that the 30% requirement will cease to have effect at a general election 7 years after that referred to in subparagraph (b)(i) i.e. 7 years after the 2016 general election. The effect of this is that any general election from February 2023 onwards will require 40% women and 40% men to be authenticated as candidates in order to ensure that payments to relevant political parties are not reduced by 50%.
4. Given that subsection (4B)(b)(i) is historical and has already taken effect it is considered that it is not necessary to amend the reference to ‘polling day’ in this subsection.
5. The amendment in subsection (4B)(b)(ii) to replace “the polling day” with “the day the poll commences” is intended to clarify that there is more than one polling day at a general election, the 30% provision in relation to male and female candidates ceases to have effect on the day the poll commences at a general election after February 2023 and therefore the 40% provision would come into force at that election.

Notes for Head 142 – Section 19(2)(c) and 19(3):

1. Section 19 of Part III of the Electoral Act 1997 provides for the making of payments to political parties.
2. Subsection (2)(b) provides for payments to be made for the period between the general election which takes place after the commencement of Part III (this Part commenced on 1 January 1998) and the period up to and including the polling day at the next following general election. This is a historical provision and the time period has now passed. It is considered therefore that the reference to ‘polling day’ does not need to be amended here if there is more than one polling day.
3. Subsection (2)(c) provides for the payments to be made at the general election held after the commencement of Part III (1 January 1998) and each subsequent general election shall apply from the polling day at such election. The payments shall continue to be made in respect of the period up to and including the day before the polling day at the next general election.
4. If there is more than one polling day at a general election, the references to “*polling day*” in subsection 2(c) should be amended to refer to “*the day before the poll commences*”.
5. Subsection (3) provides that where the Dáil is dissolved, the period between the end of the quarter in respect of which payments were made or due before such dissolution and the polling day at the general election which occurred as a result of that dissolution is a period of less than a quarter, then payments shall be payment for such period.
6. If there is more than one polling day at a general election, it is necessary to amend the reference to *polling day* in subsection (3) to refer instead to *the day before the poll closes*.

Notes for Head 142 – Section 23B(4)(a):

1. Section 23B provides for political donations accounts.
2. Subsection 23B(4)(a) provides that an unsuccessful candidate at a Dáil, Seanad or European election shall submit a donation statement to the Public Offices Commission along with a statement from the financial institution with which he or she has opened an account, specifying transactions in the account in the period beginning on the date the account is opened and ending on polling day at the election.
3. If there is more than one polling day at a Dáil election, this amendment clarifies that the statement from the financial institution referred to in subsection 23B(4)(a) shall

specify transactions in the account in the period beginning on the date the account is opened and ending on *the day the poll closes* (at a Dáil election only). This amendment does not apply to a European Parliament election as the next scheduled election is 2024 and it is not proposed at this early stage to amend that electoral code for the purposes of Covid-19 restrictions. It also doesn't apply at a Seanad election as that poll is conducted by postal vote and therefore a single polling day would remain in place for that election.

Notes for Head 142 – Section 24(2)(a):

1. Section 24 provides for donation statements at a Dáil and European election.
2. Section 24(2)(a) provides that each candidate not elected at a Dáil or European election shall, not later than the 56th day after the polling day, submit a donation statement to the Public Offices Commission.
3. As there may be more than one polling day at a Dáil election, this amendment is necessary to clarify that a donation statement must be submitted not later than the 56th day after **the day the poll closes** (at a Dáil election only). This amendment does not apply to a European Parliament election as the next scheduled election is 2024 and it is not proposed at this early stage to amend that electoral code for the purposes of Covid-19 restrictions.
4. Please note that there is a second reference to “*polling day*” towards the end of subsection (2) that does not need to be amended. It relates to the date of the polling day order at a European election where the statement must include any donations received at any time before **the date of the order** appointing polling day.

Notes for Head 142 – Section 34:

1. Section 34 provides that every claim in respect of elections expenses at a Dáil or European Parliament election against a national agent of a political party, the election agent of a candidate or a person who proposes to incur election expenses, which is not delivered to the agent or person concerned on or before the 45th day after the polling day at the election shall not be paid and shall not be enforceable against the said agent or person.
2. As there may be more than one polling day at a Dáil election, this amendment clarifies that a Dáil election expenses claim which is not delivered to the agent or person concerned on or before the 45th day after **the day the poll closes** shall not be paid. This amendment does not apply to a European Parliament election as the next scheduled election is 2024 and it is not proposed at this early stage to amend that electoral code for the purposes of Covid-19 restrictions.

Notes for Head 142 – Section 36(1)(a) and (6):

1. Section 36 provides for statements in relation to election expenses at a Dáil and European election.
2. Subsection (1)(a) provides that agents (of a political party and of a candidate) and every person who incurs election expenses shall within the 56 days next following the polling day at an election furnish to the Public Offices Commission, a statement of all election expenses incurred.
3. Subsection (6) applies the same requirement to a person appointed as an agent appointed under section 28(5)(b) (i.e. a candidate who has appointed themselves as agent but dies before the statement of election expenses was submitted), subject to the proviso that the statement of election expenses is to be furnished to the Public Offices Commission within the 56 days next following the polling day at the election or as soon as practicable after the expiry of that period.
4. As there may be more than one polling day at a Dáil election, these amendments are necessary to clarify that a statement of expenses in respect of a Dáil election must be furnished within 56 days following **the day the poll closes** (or as soon as practicable after the expiry of that period in the case of the requirements under subsection 6). This amendment does not apply to a European Parliament election as the next scheduled election is 2024 and it is not proposed at this early stage to amend that electoral code for the purposes of Covid-19 restrictions.

Notes for Head 142 – section 43(2)(a):

1. Section 43 provides for offences and penalties in relation to election expenses at a Dáil election or a European Parliament election (where a Dáil and European Parliament election are held on the same day).
2. Subsection (2)(a) provides that it is an offence if an agent (of a political party or a candidate) incurs election expenses in excess of the limits that apply at a Dáil or European Parliament election (calculated in accordance with section 32 or 42 or an order under section 33(1)(b)). For the purposes of proceedings, the excess expenditure shall be deemed to have occurred on **polling day**.
5. The amendment is intended to clarify that if there is more than one polling day at a Dáil election the expenditure shall be deemed to have occurred on **the day the poll commences**. This amendment does not apply to a European Parliament election as the next scheduled election is 2024 and it is not proposed at this early stage to amend that electoral code for the purposes of Covid-19 restrictions.

Notes for Head 142 – Section 79(1)(c)

1. Section 79(1)(c) replaces the existing subsection (1) of section 114 in the Electoral Act 1992. The new subsection (1) would allow the Minister, by order, to appoint the time for the counting of votes at an election or referendum provided that such time is not later than 9 a.m. on the day following polling day. **Section 79 has not yet been commenced.**
2. It is considered necessary to amend the new subsection 114(1)(a) inserted by section 79(1)(c) in the event that section 79 is commenced at a future date. The amendment would change the reference to “polling day” to “the day the poll closes” if the Minister appoints more than one polling day where Covid-19 restrictions are in place.

Notes for Head 142 – Rule (1)(g) of the Schedule:

1. Rule 1 of the Schedule sets out the definitions of the expenses referred to in section 31(1)(b) (European Parliament and Dáil elections) and 52(1)(b) (Presidential election).
2. Rule (1)(g) sets out the type of expenses that may be incurred in respect of market research. This includes taking an opinion poll or similar survey relating to an election within the period of 60 days before polling day.
3. As there may be more than one polling day at a Dáil election, this amendment clarifies that the period within which expenditure on market research may be incurred is 60 days before **the day the poll commences** at a Dáil election only. This amendment does not apply to a European Parliament election or a Presidential election as the next scheduled elections are 2024 and 2025 respectively and it is not proposed at this early stage to amend those electoral codes for the purposes of Covid-19 restrictions.

Technical drafting question for OPC

There is no number on the existing Schedule in the 1997 Act. Should the existing Schedule be renumbered?