

## **Appendix 2**

# Electoral (Amendment) Act 2004 – extract



## Electoral (Amendment) Act 2004 (May 2004) – extract

### PART 3

#### COMMISSION ON ELECTRONIC VOTING

**17.**—(1) The Commission constituted by the Government prior to the passing of this Act as the Commission on Electronic Voting and Counting and styled in the Irish language “An Coimisiún um Vótáil Leictreonach” and in the English language “Commission on Electronic Voting” shall continue in being and continue to be so known and styled (and in this Act is referred to as the “Commission”).

Commission on  
Electronic Voting.

(2) A person who immediately before the passing of this Act is the chairperson or an ordinary member of the Commission shall continue in office as such chairperson or ordinary member subject to and in accordance with this Act.

**18.**—The Commission and its members shall be independent in the performance of their functions under this Part.

Independence of  
Commission.

**19.**—The Commission shall consist of the following members:

Membership.

(a) a judge of the High Court who shall be the chairperson of the Commission;

(b) the Clerk of the Dáil;

(c) the Clerk of the Seanad; and

(d) 2 other persons with knowledge or experience in the field of information technology.

**20.**—(1) Where, before the reports of the Commission referred to in *section 21* have been presented to the Chairman of the Dáil under *section 22*, the person appointed to be chairperson of the Commission—

Provisions in  
relation to  
members.

(a) through ill-health or other reasonable cause becomes unable to act as such chairperson, the President of the High Court shall assign another judge of the High Court to be a member and the chairperson of the Commission,

(b) ceases to hold office as a judge of the High Court, the person shall continue as such chairperson until the reports of the Commission have been presented unless the President of the High Court assigns another judge to be a member and the chairperson of the Commission,

and the person so assigned shall be a member and the chairperson of the Commission accordingly.

(2) Where the holder of an office referred to in *paragraph (b) or (c) of section 19* or a person referred to in *paragraph (d) of that section*, through ill-health or other reasonable cause, is unable to act as a member of the Commission, or any such office is vacant, the Government may appoint, in the case of—

- (a) the Clerk of the Dáil, the Clerk-Assistant of the Dáil,
- (b) the Clerk of the Seanad, the Clerk-Assistant of the Seanad,
- (c) the person referred to in *paragraph (d) of that section*, another such person,

to be a member of the Commission and the person so appointed shall remain a member of the Commission until the reports of the Commission are presented to the Chairman of the Dáil under *section 22*.

(3) Where, before the reports of the Commission have been presented to the Chairman of the Dáil under *section 22*, a person who is a member of the Commission ceases to hold an office referred to in *paragraph (b) or (c) of section 19*, that person shall continue as a member of the Commission until the reports of the Commission have been presented unless the Government by order directs that the person's successor in office or the appropriate person referred to in *paragraph (a) or (b) of subsection (2)* shall be a member of the Commission.

(4) Subject to *subsections (1), (2) and (3)*, the Commission may act notwithstanding vacancies in its membership.

Functions of  
Commission.

**21.**—It shall be the function of the Commission to make—

- (a) such reports as are required by the terms of reference given by the Government to the Commission before the passing of this Act and which terms of reference are set out in *Schedule 5* to this Act, and
- (b) such reports (if any) as may be required pursuant to *section 22(5)*, and, for the purposes of this Act, the references in those terms to elections shall be deemed to include references to any other poll or polls held throughout the State on the date concerned pursuant to any enactment.

Presentation  
of reports of  
Commission.

**22.**—(1) The Commission shall present the reports which it is required to make in accordance with *section 21(a)* to the Chairman of the Dáil.

(2) The Commission shall present any report which it is required to make pursuant to *subsection (5)* to the Chairman of the Dáil.

(3) As soon as may be after the receipt of a report referred to in *subsection (1)* or *(2)* the Chairman of the Dáil shall cause the report to be laid before each House of the Oireachtas.

(4) Subject to *subsection (5)*, upon the expiry of 2 months from the presentation by the Commission of the last of the reports (the “final report”) which it is required to make in accordance with *section 21(a)*, the Commission shall stand dissolved.

(5) If, before the presentation of the final report, the Government by order (which order the Government is, by virtue of this section, empowered to make) request the Commission to make such further report or reports in relation to such matters as may be specified in the order, the Commission shall not stand dissolved until the presentation of the report, or the last of the reports, pursuant to that order.

(6) An order under *subsection (5)* shall not have effect unless and until it is confirmed by resolution passed by each House of the Oireachtas.

**23.**—(1) The Commission may, in accordance with its terms of reference, invite and consider submissions from the public on such basis as it may consider appropriate.

Commission to invite and consider submissions.

(2) The Commission shall consider submissions made to it pursuant to this section.

**24.**—The Secretary General of the Office of the Houses of the Oireachtas shall make available to the Commission such services, including the services of staff of the Houses of the Oireachtas Commission, as may reasonably be required by the first-mentioned Commission.

Staff and assistance.

**25.**—(1) The expenses of the Commission, including the reasonable travelling and other expenses of the members of the Commission and expenses arising from the provision of services to the Commission pursuant to *section 24* shall, subject to such conditions as the Minister for Finance may determine, be charged on and paid out of the Central Fund or the growing produce thereof.

Expenses.

(2) Notwithstanding the provisions of any other enactment, *subsection (1)* shall apply and have effect in relation to all expenses incurred by the Commission prior to the passing of this Act and such expenses shall be recouped from the Central Fund in accordance with such arrangements as may be determined by the Minister for Finance.

(3) Section 5(3) of the Houses of the Oireachtas Commission Act 2003 shall not apply to any monies recouped pursuant to this section.

(4) The Commission shall keep all proper and usual accounts of all

moneys received or expended by it in the performance of its functions under this Part and shall comply with any direction of the Minister for Finance as to the form and manner and period in respect of which such accounts are to be kept.

(5) Accounts kept in pursuance of *subsection (4)* shall be submitted by the Minister for Finance to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts and a copy of the report of the Comptroller and Auditor General on the accounts shall be laid by that Minister before each House of the Oireachtas.

Procedure of Commission.

**26.**—Subject to the provisions of this Act, the Commission shall regulate its own procedure.

Prohibition on disclosure of information and absolute privilege of certain matters.

**27.**—(1) No person shall, without the consent of the Commission, disclose to any person any information obtained while serving as (or during service as) a member of the Commission or as a person whose services are made available to the Commission under *section 24* or as a consultant or other person providing services to the Commission, being information relative to the business of the Commission or the performance of its functions.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,500.

(3) The following shall be absolutely privileged:

- (a) documents of the Commission, and documents of its members connected with the Commission or its functions, wherever published;
- (b) reports of the Commission, wherever published;
- (c) statements made in any form at meetings or sittings of the Commission by its members or staff, consultants or other persons providing services to the Commission and such statements wherever published subsequently.

Prohibition of certain communications.

**28.**—(1) Subject to the provisions of *section 23*, it shall not be lawful for any person to communicate with the members of the Commission, or staff whose services are made available to the Commission under *section 24* or a consultant or other person providing services to the Commission, for the purposes of influencing the Commission in performing its functions.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,500.

29.—(1) The Government shall, on such terms as it thinks appropriate, indemnify the Commission and each of its members against all actions and claims however they arise in respect of the performance by the Commission or a member of it of functions under this Part.

Indemnification of Commission and certain other persons.

(2) The costs of any indemnification under *subsection (1)* shall, to such extent as may be determined by the Minister and the Minister for Finance, be met in the same manner as *section 25* provides that the expenses of the Commission shall be met.

(3) The Commission may, with the consent of the Minister for Finance and subject to any conditions that the Minister for Finance specifies in the consent, indemnify, on such terms as it thinks appropriate—

- (a) any person against any loss or damage in respect of intellectual property rights or loss or damage that may arise from the performance by it of functions under this Part, or
- (b) any persons against all actions or claims however they arise in respect of any act or omission of that person if it considers such indemnification of that person to be necessary or expedient for the purpose of the performance by it of functions under this Part.

(4) References in this section to the performance by the Commission or a member of it of functions under this Part shall be deemed to include references to activities undertaken by the Commission or a member, before the passing of this Act, in fulfilment or purported fulfilment of the terms of reference as set out in *Schedule 5* to this Act (including those terms as they are to be construed in accordance with *section 21 (b)*); accordingly an indemnity under this section may be given in respect of an act done or an omission made before the passing of this Act, including in respect of any damage resulting from such an act or omission.

(5) For the avoidance of doubt, nothing in the Insurance Acts 1909 to 2000, regulations made under those Acts or regulations relating to insurance made under the European Communities Act 1972 shall affect anything required or authorised to be done by this section.

*Section 21.*

SCHEDULE 5

COMMISSION ON ELECTRONIC VOTING

*Text of Terms of Reference*

The Commission, which shall be independent in the performance of its functions, shall prepare a number of reports for presentation to the Ceann Comhairle on the secrecy and accuracy of the chosen electronic voting and counting system, i.e. the Powervote/Nedap system.

The Commission shall make one or more of such reports to the Ceann Comhairle not later than 1 May, 2004 comprising recommendations on the secrecy and accuracy including the application or non-application as the case may be of the electronic voting and counting of the Powervote/Nedap system for the European and Local Elections on 11 June, 2004.

The Commission's subsequent report or reports will record its views of the operation and experience of electronic voting and counting at elections.

In carrying out its work, it will be open to the Commission to review the tests already undertaken to validate the electronic voting and counting system, and to have further tests undertaken. It may also retain the service of such consultants or other persons that it considers are desirable.

The Commission shall be entitled to invite and consider submissions on such basis as it thinks appropriate.