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ACCESS TO ELECTORAL RIGHTS

IRELAND

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September 2014



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European University Institute, Florence
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Access to Electoral Rights

IRELAND

John O’Dowd and Stephen Coutts¹

1. Introduction

Electoral rights for Irish citizens abroad and for foreign residents have been a topic of political debate (less so of legislative reform) for at least fifty years.² There is a long-standing demand that Irish emigrants be given some parliamentary representation, in either the upper house (Seanad Éireann) or the lower house (Dáil Éireann). The only electoral rights granted to Irish citizens not ordinarily resident in the State are the right to be elected to either house of parliament and, for graduates of certain universities within the State, a vote in the election of the Senators representing those universities. Elections to the European Parliament apart, in relation to the electoral rights of non-citizens ordinarily resident in Ireland, a sharp distinction exists between local elections (where all ordinarily resident in the State, irrespective of citizenship, have both active and passive electoral rights) and elections to Dáil Éireann, in which only Irish citizens have the right to be elected and only Irish citizens, British citizens (and, potentially, citizens of other European Union member states) have the right to vote. Wide extension of electoral rights in local elections has been uncontroversial and there was little opposition to the constitutional amendment in 1984 providing for the possibility of non-citizens voting in Dáil elections. Issues concerning the extension of electoral rights generally appear to provoke relatively little public interest; extending a form of postal voting to all prisoners in the State, irrespective of their crimes or the duration of their sentences attracted little public attention.

Ireland is a unitary state with a bicameral legislature (the Oireachtas).³ The lower house, Dáil Éireann, is directly elected, by means of proportional representation by the single transferable vote, from constituencies returning between three and five members. The upper house, Seanad Éireann is mainly elected—43 senators indirectly elected by local councillors

¹ John O’Dowd wrote a first version of this report in April 2014. The present version was subsequently completed, revised and updated by Stephen Coutts in September 2014.

² By contrast there has been no public discussion of the rights of non-Irish EU citizens, as such, to active or passive voting rights in Ireland. This is largely because in local elections, rights of both kinds are conferred on all persons who are ordinarily resident in the State, regardless of nationality.

³ There is no directly elected regional tier of government.

and members of the two houses of parliament and 6 by the graduates of two of the universities. Eleven members of Seanad Éireann are nominated by the Taoiseach (Prime Minister). A general election for members of Seanad Éireann follows each Dáil election, which itself follows no fixed schedule, but must occur within five years of the first assembly of the previous Dáil.⁴ The Seanad is very much the subordinate house; largely due to the 11 Taoiseach's nominees, is almost always firmly under government control. There is little public interest in the complicated Seanad electoral system.⁵ In a referendum which took place in November 2013, the electorate rejected the abolition of the Seanad in spite of the support of the leadership of the two governing parties for the reform.⁶ The President of Ireland (an almost entirely ceremonial office) is directly elected, by those citizens who are entitled to vote in a Dáil election, for a seven-year term.

The referendum has a crucial role in the constitutional system. It is only through a referendum that the Constitution can be amended. In relation to electoral rights, four such amendments have made—concerning reduction of the voting age, Seanad representation of institutions of higher education, empowering the Oireachtas to extend voting rights in Dáil elections to non-citizens and as part of placing local government on a constitutional footing.⁷ The background to the second of those illustrates the consequences of a written constitution that the High Court and Supreme Court may use as a basis for holding acts of parliament to be invalid. The Ninth Amendment was preceded by a Bill proposing to confer, without any constitutional amendment, the right to vote at a Dáil election, presidential election or referendum on British citizens (though not the right to be elected either a TD, ie Teachta Dála (member of Dáil Éireann) or President). Exercising one of his few non-ceremonial functions, the President referred this Bill to the Supreme Court under Article 26 of the Constitution. The Court held that the Bill was repugnant to the Constitution; taken as a whole, the Constitution indicated that the powers of government were not to be shared 'with persons who do not come within the constitutional concept of the Irish people'. The terms 'citizen', where the Constitution uses it in relation to electoral rights, must be read as being exclusive.⁸ The Ninth Amendment of the Constitution, responding to this decision, is much narrower than the initial Bill; it does not authorise any extension to non-citizens of the right to vote in a presidential election or at a referendum (or an extension of any passive electoral rights). Thus, the

⁴ The Constitution would permit a maximum interval of up to seven years between general elections but a short limit of five years has been fixed by law: Art 16.5; Electoral Act, 1992 s 33.

⁵ This can be gauged by the fact more than a third of a century has now passed since the Ninth Amendment of the Constitution Act, 1979 was passed to enable an extension of representation in the Seanad beyond the two universities initially designated by the Constitution—the National University of Ireland and the University of Dublin, but no legislation to bring about such an extension has yet been passed, despite the fact that tens of thousands of graduates of these other institutions are denied the right to representation in the Seanad as a result.

⁶ The abolition of the Seanad would remove one possible avenue of parliamentary representation for emigrants and, given that no-one has proposed separate representation for them in Dáil Éireann, leave them with only a very diffuse influence on the composition of the Oireachtas.

⁷ Fourth Amendment of the Constitution Act, 1972; Seventh Amendment of the Constitution Act, 1979; Ninth Amendment of the Constitution Act, 1984; Twentieth Amendment of the Constitution Act, 1999. Proposed amendments to abolish proportional representation by the single transferable vote in Dáil elections were defeated in 1959 and 1968, as was a proposal to change the basis of apportionment of the constituencies (voting on at the same time as the other 1968 proposal): Hogan and Whyte (eds) *JM Kelly The Irish Constitution* (4th ed 2003) para 4.3.55.

⁸ *Re Electoral (Amendment) Bill, 1983* [1984] IR 268 (SC) 275-76.

Government of the day proposed to preserve the paramount position of the People in the State.

Distinctive features of Irish electoral law may result from Ireland's political history. The State came into existence, after centuries of subordination to England or Great Britain (and, from 1801, an unequal union with it) and only through a revolutionary war of independence (1919-1921). The civil war (1922-23) that followed extinguished much of the dynamism and taste for innovation of the independence movement. This may account for the fact that—whilst that the Constitution exalts the position of the Irish people as the source of all powers government in the State⁹—almost nothing has been done to broaden that concept beyond those citizens ordinarily resident in the State (who thereby qualify to vote in Dáil elections, presidential elections and referenda). Irish citizens who do not qualify to vote on the basis of residence in the State are 'part of the Irish Nation', a broader concept than that of the People, but which does not seem to correspond to any active electoral rights.¹⁰ It may underpin the passive right of any Irish citizen anywhere in the world to be elected to the Dáil or Seanad or as President of Ireland. Debates about active electoral rights for Irish citizens living abroad (more specifically, emigrants) are complicated by the question of how to treat Irish citizens living in Northern Ireland. The entitlement of those persons to Irish citizenship is constitutionally guaranteed but the prospect of giving them the right to vote in Dáil elections raises serious issues of compatibility with respect for Northern Ireland's constitutional position, under the Belfast Agreement, as an integral part of the United Kingdom, unless a majority of the people of Northern Ireland expresses a wish to join a united Ireland. Demanding votes for emigrants (persons who were born or lived for a significant period within the State) differs significantly from requiring that all Irish citizens living abroad, whatever their connection to Ireland, should have the right to vote in Dáil elections. The demand for emigrant voting is understandable in a country that has a long and often painful history of mass emigration, given the unexpected renewal of this phenomenon in recent years. The official position that a constitutional amendment is necessary to meet this demand, coupled with a significant body of opinion that holds to the principle of 'no representation without taxation' (or the equivalent) has stymied any reforms. In contrast, the close economic, social, cultural and personal ties between Ireland and the United Kingdom and the unreciprocated electoral rights (passive and active) that the United Kingdom already gave Irish citizens meant that there was relatively little opposition, even during the Northern Ireland conflict, to extending active (though not passive) electoral rights to British citizens in Ireland.

⁹ Constitution of Ireland, Art 6.1.

¹⁰ *ibid*, Art 2.

2. Eligibility: Who has electoral rights under national law?

2.1 Citizen residents

2.1.1. Age:

Since 1973, the voting age has fixed at 18, by a constitutional provision for Dáil elections, presidential elections and referenda¹¹ and by law for election of university Senators.¹²

The Constitution guarantees the right to vote in local elections to all citizens who have the right to vote in a Dáil election; it may allow “such other persons as may be determined by law”, including those below the age of 18, to be given that right also.¹³ The voting age for local elections is fixed by law at 18.¹⁴ Prior to 1973, the voting age had been 21.

A citizen must have reached his or her “thirty-fifth year of age” to be eligible for election as President.¹⁵ A citizen must have ‘reached the age of twenty-one years’ to be eligible for membership of Dáil Éireann or Seanad Éireann.¹⁶ A person is eligible for membership of a local authority, if he or she has attained the age of 18 on or before polling day (or the day of co-option).¹⁷

The Constitutional Convention is a deliberative body bringing ordinary citizens and politicians together, to consider proposals for constitutional change and make recommendations to the Government. The Convention has recommended that the voting age at all elections be reduced, that the reduction be to 16 (in all cases) but that no change should be made in the ages of eligibility.¹⁸ A national referendum on the issue is expected in early 2015.

¹¹ *ibid*, Art 16.1.2° (as amended by the Fourth Amendment of the Constitution Act, 1972). See also Arts 12.2.2° and 47.3. The voting age at all elections was reduced to 18 by Electoral (Amendment) Act, 1973 s 2; the Fourth Amendment itself was held not to be self-executing or to require any postponement of elections in *Reynolds v Attorney General*, Unreported, High Court, 16 February 1973 (see Hogan and Whyte (eds) *JM Kelly The Irish Constitution* (4th ed 2003) para 4.3.18. See Electoral Act, 1992 ss 7(1) and 8(1).

¹² Seanad Electoral (University Members) Act 1937 s 7 (as amended by the Electoral (Amendment) Act, 1973 s 3.

¹³ *ibid*, Art 28A.4.

¹⁴ Electoral Act, 1992 s 10(1).

¹⁵ Constitution of Ireland, Art 12.4.1°. The (conclusive) Irish text is somewhat different (‘a bhfuil cúig bliana tríochad slán’ (lit ‘who has completed thirty five years’).

¹⁶ *ibid*, Arts 16.1.1° and 18.2.

¹⁷ Local Government Act, 2001 s 12.

¹⁸ *First Report of the Convention on the Constitution* (March 2013) 6

<https://www.constitution.ie/AttachmentDownload.ashx?mid=e1f8e128-2496-e211-a5a0-005056a32ee4> (Last accessed 15 April 2013)

2.1.2. Mental disabilities:

There is no disqualification from voting in any election or referendum on the ground of mental illness or mental disability. A person who is a patient or inmate in any hospital or home for persons suffering from mental disability or similar institution is registered to vote in respect of the place where he or she would otherwise have been residing or, if that cannot be ascertained, the place where he or she last resided before admission.¹⁹ Persons unable to go in person to vote at the polling place for their polling districts by reason of their physical illness or physical disability are accommodated by postal voting or special voting.²⁰ No equivalent provision is made for voting by persons who are prevented from going to a polling place by a *mental* illness or *mental* disability.

There is no disqualification on the ground of mental illness or mental disability from being elected President of Ireland. A ‘person of unsound mind’ is not eligible for election as a member of Dáil Éireann²¹ or to be a member of Seanad Éireann either.²² There appears to be no corresponding disqualification from membership of a local authority.²³

2.1.3. Persons convicted of criminal offences:

There is no disqualification from voting on the ground of conviction for criminal offences or of serving a sentence of imprisonment. Persons detained in any premises in legal custody are registered to vote based on the place where they would have been residing but for having been in legal custody.²⁴

The Irish Government responded pre-emptively to the decision in *Hirst v United Kingdom (No 2)*²⁵ by introducing a Bill to give prisoners (whether on remand or convicted) an actual opportunity to vote at elections and referenda, as well as the notional right to do so. This proposal was enacted with comparatively little public or political controversy.²⁶ Prisoners receive a postal ballot; they vote under the supervision of a designated official of the prison, who then returns the completed ballot papers to the returning officer by post.²⁷ This facility was first granted at the Dáil general election of 2007; the very low rate of participation by prisoners, particularly in the 2011 general election, has been noted in the media.²⁸

¹⁹ Electoral Act, 1992 s 11(6).

²⁰ Electoral Act, 1992 ss 14, 14A and 17 (as amended and inserted by the Electoral (Amendment) Act, 1996 s 4.)

²¹ *ibid* s 41(i).

²² Constitution of Ireland, Art 18.2.

²³ Local Government Act, 2001 s 13.

²⁴ Electoral Act, 1992 s 11(5).

²⁵ (2004) 38 EHRR 40.

²⁶ Electoral (Amendment) Act 2006.

²⁷ *Ibid* s 7.

²⁸ ‘Human rights court rules that prisoners should be allowed to vote’ *The Journal.ie* 23 May 2012 <http://www.thejournal.ie/human-rights-court-rules-that-prisoners-should-be-allowed-to-vote-460872-May2012/> (Last accessed 15 April 2013).

2.2 Citizens abroad

2.2.1 General residence requirements

Ordinary residence in the State is a general condition of the right to vote at referenda and in most elections.²⁹ The exception is the election of six Senators by university graduates; these must cast a postal ballot and may do so regardless of current place of residence.³⁰

For citizens, eligibility to be elected President of Ireland, a Teachta Dála, a Senator or a member of a local authority does not depend in any way on the person's place of residence.³¹

2.2.2. Temporary absence

There is no specific provision for citizens who are temporarily absent on election-day to cast their votes from abroad, in any type of election or referendum.

A voter may be granted a postal vote because his or her 'occupation, service or employment are such as to render it likely that he or she will be unable to go in person on polling day to vote at the polling place for the polling district'.³² If such a person is temporarily abroad on election-day he or she may have had the opportunity to cast a postal vote previously, but only 'in a Garda Síochána [Irish police] station in the presence of a member of the Garda Síochána'.³³

2.2.3. Permanent residence abroad

For the purposes of registration of voters, a person is deemed not to have given up ordinary residence if he or she intends to resume residence within eighteen months; a written statement to that effect shall, in the absence of contrary evidence, be accepted as correct.³⁴ Such a person may, therefore, continue to vote in respect of the place for which he or she is registered by returning to the State and voting as he or she would normally do so (at a polling

²⁹ Electoral Act, 1992 ss 7(1), 8(1) and 10(1);

³⁰ Seanad Electoral (University Members) Act, 1937 s 7.

³¹ Constitution of Ireland, Arts 12.4, 16.1 and 18.2; Seanad Electoral (University Members) Act, s 16(2); Local Government Act, 2001 s 12.

³² Electoral Act, 1997 s 63(1).

³³ *ibid* s 68(1).

³⁴ Electoral Act, 1992 s 11(3).

station, as a special voter or by postal ballot). No special facility is granted to him or her to vote from abroad.

The only other categories of citizens who can vote in any election or referendum notwithstanding that they are not ordinarily resident in the State are Irish civil servants or diplomats who, because of the requirements of their duties, are serving outside the State and the spouses or civil partners of such persons.³⁵ Such a person is deemed to be ordinarily resident, for the purposes of electoral registration, at the address in the State at which he or she would otherwise reside³⁶ and is given a postal ballot to be cast under the supervision of an official appointed by the Minister for Foreign Affairs and Trade.³⁷ This is the only facility that is granted for Irish citizens to vote from abroad and it is given to Irish citizens only. Even if the spouse or civil partner of an Irish diplomat, for example, would be able to vote in Ireland, he or she will receive such a postal ballot if he or she is an Irish citizen.

Current or previous place of residence has no effect on an Irish citizen's entitlement to be elected to any office, national or local.

2.3 Foreign residents:

2.3.1. The default category of foreign citizens

Persons who are not Irish or British citizens have no right to vote in any national election or referendum. The right to vote in Dáil elections could be extended to citizens of any other State or States of the European Union by ministerial order (see 2.3.2, below) but the right to vote at a presidential election or a referendum cannot be extended to any non-citizen, except as a result of a further amendment of the Constitution.

Only Irish citizens may be elected to any national office, namely President of Ireland, Teachta Dála or Senator.

Under the decision of the Supreme Court mentioned in the introduction, references to 'citizen' in the relevant constitutional provisions governing eligibility must be interpreted as exclusive, as also must those relating to right to vote in a presidential election or at a referendum.³⁸ The position is less clear-cut in Seanad elections. The franchise for the election of the 43 'panel members' of Seanad Éireann and for the election of the six university Senators is 'to be provided by law' in each case. (Article 18.4.2° and 18.6) While the TDs and Senators who vote in the election of the panel members must necessarily themselves be Irish citizens, the legislation makes no requirement as to citizenship of the (more numerous) members of county councils and county borough councils who are also entitled to a vote in

³⁵ *ibid* s 12(1).

³⁶ *ibid* s 12(2).

³⁷ *ibid* s 65.

³⁸ *Re Electoral (Amendment) Bill, 1983* [1984] IR 268 (SC); Arts 12.4.1°, 16.1.1° and 18.2; Arts 12.2.2° and 47.3.

that election.³⁹ Non-citizens may be elected members of these local authorities (see below) so gaining the right to vote in the election of 43 Senators. Despite the general principle that the powers of government are not to be shared with persons who are not within the constitutional concept of the Irish people, the Constitution leaves open the definition of the franchise for this election in a way that it does not for Dáil elections, presidential elections or referenda. In contrast, by law only Irish citizens who are graduates of one of the universities concerned may elect their representatives in Seanad Éireann.⁴⁰

All citizens who have the right to vote in a Dáil election ‘and such other persons as may be determined by law’ have a constitutional right to vote in a local election.⁴¹ It appears that the Oireachtas has great latitude to regulate who, other than Irish citizens, may vote in a local election.

By law, all persons, without distinction of citizenship, who have reached the age of eighteen years and who are ordinarily resident in a local electoral area have the right to vote in an election of the members of the local authority who represent that area.⁴²

A non-citizen is eligible for membership of a local authority if he or she is ordinarily resident in the State and has reached (or will by the appropriate date reach) the age of 18.⁴³ The legislation does not limit eligibility to persons who are ordinarily resident in the local electoral area for which they are seeking election or in the functional area of the authority concerned.

2.3.2. Specific other states

British citizens ordinarily resident in the State enjoy, on the same terms as citizens, the right to vote at a Dáil election, but not at a referendum or a presidential election.⁴⁴ A British citizen cannot be elected a member of Dáil Éireann or Seanad Éireann, or as President of Ireland.

The basis for extending the right to vote to British citizens is fundamentally that of reciprocity, though it is incomplete on the Irish side. Since 1922, Irish citizens in the United Kingdom have been entitled to vote in elections to the House of Commons and to be elected members of it, reflecting the close ties between the two countries. In 1983 it was decided that reciprocal treatment of British citizens ought to be afforded, at least in relation to the right to vote (but not eligibility for election). After the first abortive attempt to do so (see the Introduction, above) the Ninth Amendment of the Constitution established the constitutional basis of the franchise at Dáil elections—

³⁹ Seanad Electoral (Panel Members) Act, 1947 s 44(1)(c).

⁴⁰ Seanad Electoral (University Members) Act, 1937 s 7.

⁴¹ Art 28A.4.

⁴² Electoral Act, 1992 s 10(1).

⁴³ Local Government Act, 2001 s 12.

⁴⁴ Electoral Act, 1992 s 8(2)(a)(ii)(I).

2° i All citizens, and

ii such other persons in the State as may be determined by law,

without distinction of sex who have reached the age of eighteen years who are not disqualified by law and comply with the provisions of the law relating to the election of members of Dáil Éireann, shall have the right to vote at an election for members of Dáil Éireann.

Subject to general constitutional guarantees (such as equality before the law) this leaves it to the Oireachtas which ‘other persons in the State’ should be accorded the right to vote in Dáil elections. The amendment did not alter the constitutional provisions relating to membership of Dáil Éireann, to presidential elections or to referenda, precluding any extension by ordinary legislation of electoral rights to non-citizens in those areas. The second two lacunae could have been justified, as far as the United Kingdom was concerned, by reference to the principle of reciprocity—there is no election of the head of state of the United Kingdom, nor was there in 1984 a mandatory or binding referendum, as opposed to a merely consultative one. The Government’s rationale for the limits on the amendment was somewhat different—

[T]he basic concept of a Constitution is that of a fundamental law given by citizens to themselves. To give non-citizens the right in the Constitution to change the fundamental law enshrined in it would be contrary to this basic concept. To do so would be inappropriate and could constitute an in-built contradiction in the Constitution itself. Similar considerations apply as regards Presidential elections. The right to vote at such an election, which is a special election of the Head of State under the Constitution, is a right appropriately reserved to the people who gave themselves the Constitution.⁴⁵

The current legislation does not merely confer the right to vote at Dáil elections on British citizens; it also empowers the Minister for the Environment, Community and Local Government to make an order conferring the same entitlement on the citizens of any other European Union Member State that affords reciprocal treatment to Irish citizens who are resident in that Member State as regards the election of members of, or deputies or other representatives in or to, the National Parliament of that Member State.⁴⁶ To date, no such order has been made, nor does there appear to be any likelihood of one being made in the foreseeable future.

⁴⁵ Liam Kavanagh TD (Minister for the Environment) *An Bille um an Naoú Leasú ar an mBunreacht, 1984 — An Dara Céim. Ninth Amendment of the Constitution Bill, 1984 — Second Stage*. (11 April 1984) 349 *Dáil Debates* col 1684.

⁴⁶ These provisions were originally contained in the Electoral (Amendment) Act, 1985, s 2 and are now to be found in the Electoral Act, 1992 s 8 (as construed in accordance with the European Union Act 2009 s 5).

3. Electoral rights of EU citizens

3.1 Local elections:

Irish legislation has provided since 1963 that all persons, regardless of citizenship, ordinarily resident in the State are entitled to vote in a local election.⁴⁷ In addition, the Local Government Act 1994 ensured eligibility to be elected to a local authority, by providing that every person being a citizen of Ireland or ordinarily resident in the State who has reached the age of 18 years and who is not specifically disqualified is eligible to be a member.⁴⁸ Together with the Local Elections Regulations, 1995 these provisions secured the transposition of Directive 90/80/EC into Irish law.⁴⁹ There have been no derogations from the requirements of the Directive, no special conditions applied to EU citizens in relation to their exercise of the right to vote or stand and no relevant case law in the domestic courts or the ECJ.

The Department of the Environment, Community and Local Government provides information about registering to vote, exercising the right to vote and standing for election in a wide range of languages, including Latvian, Lithuania, Polish, Romanian, Russian and Slovak.⁵⁰

3.2 EP elections for EU citizens residing in the country

Elections for the Irish members of the European Parliament are governed by the European Parliament Elections Act 1997 (as amended) and by Regulations made under that Act.⁵¹

Citizens of other European Union Member States ordinarily resident in the State are generally subject to the same requirements as to registration to vote as Irish (or British) citizens, subject to special provisions concerning verification (by means of a statutory declaration) of the citizenship of persons who are not citizens of Ireland or of the United Kingdom.⁵² The rules for the conduct of the election, including the manner in which voting is carried out within the State, are essentially the same as in the case of Dáil elections.⁵³

The Minister for the Environment, Community and Local Government is the competent administrative authority for the purposes of Directive 93/109/EC (in contrast to the

⁴⁷ Electoral Act, 1963 s 5(2), a provision now to be found in the Electoral Act, 1992 s 10(2). This rule was adopted in 1963 purely for reasons of administrative convenience in the registration of electors, without any issues of political principle being considered: Neil Blaney TD (Minister for the Environment) *Committee on Finance. - Electoral Bill, 1962—Second Stage*. (27 February 1963) 200 *Dáil Debates* col 445.

⁴⁸ Local Government Act, 1994 s 5 (now Local Government Act, 2001 s 12).

⁴⁹ Local Election Regulations, 1995 (SI No 297 of 1995).

⁵⁰ <http://www.environ.ie/en/LocalGovernment/Voting/LocalElections/> (Last accessed 15 April 2013).

⁵¹ Electoral Act, 1992 s 9 remains the statutory basis for registration of 'European electors'.

⁵² European Parliament Elections Act, 1997 s 6; see also, Electoral Act, 1992 Sch II r 5(3).

⁵³ *ibid* Pt II and Sch II.

position from 1994 to 1997, when that function was given to the chief returning officer for the election).⁵⁴

3.3 EP elections for national citizens abroad.

The rights of Irish citizens who are ordinarily resident outside the State to vote in a European Parliament election in the State are the same as their rights to do so in a presidential election, a Dáil election, a local referendum or at a referendum. This means that, apart from Irish civil servants or diplomats and their spouses or civil partners, no special facility is given for such persons to vote in a European Parliament election and they will generally not be registered to vote to begin with (except in the case of citizens who intend to resume residence in the State within eighteen months of departing from it).

3.4 Regional and other elections.

There is no elected tier of regional government in Ireland. There were formerly elections to choose some members of Údarás na Gaeltachta (a regional development agency for Irish-speaking areas of the country). Every person entitled to vote in a local election (that is, irrespective of citizenship) was entitled to vote in these; these elections have now been abolished.⁵⁵

⁵⁴ *ibid* s 11(3); contrast European Parliament Elections (Voting and Candidature) Regulations, 1994 (SI No 14 of 1994) Art 4.

⁵⁵ Údarás na Gaeltachta Act, 1979 s 31; Gaeltacht Act 2012.

4. Exercising electoral rights

4.1 National and regional elections

4.1.1. Voter registration

In general, eligible voters are automatically registered in the electoral register, which is revised annually. This is the statutory responsibility of the local authority of the area in which the person is to be registered.⁵⁶ In compiling the register, it is the duty of each relevant local authority to ‘make a house to house or other sufficient inquiry’ in the relevant area.⁵⁷ The local authority has power to require a person to provide it with the information necessary to compile the register, including the power to require documentary evidence or a statutory declaration that the person is entitled to be registered as a Dáil elector as a British citizen (or potentially a citizen of another designated European Union Member State), the production of a certificate of naturalisation or the making of a statutory declaration that the person is a citizen of Ireland or the making of a statutory declaration that the person is a national of a Member State of the European Communities other than Ireland.⁵⁸ Based on these inquiries (and on the previous register of electors), the local authority publishes a draft electoral register, which is available for public inspection for several months, affording any person who wishes to do so to make a claim that the register is incorrect or incomplete in respect of his or her registration or non-registration as a voter.⁵⁹ In the event that the final published register still has errors or omissions, a person may (up to at least twelve days before polling day) apply for entry of his or her name in a supplement to the register.⁶⁰ In 1997 the function of this supplement was extended to allow changes of address and a person’s reaching the age of eighteen subsequent to the compilation of the register of electors to be reflected on the register of electors.⁶¹

In effect, a single register is compiled through this process, containing (with appropriate notation of the category to which each belongs) of the names of persons entitled to vote at each kind of election or at a referendum.⁶²

Irish citizens residing abroad and foreign citizens residing in Ireland are generally subject to the same registration system as Irish citizens residing in Ireland. However, some Irish citizens residing abroad are specifically required to furnish a statement to the registration authority in order to avail of their special entitlement to registration.⁶³ Similarly, as regards persons who were not included on the register of electors that came into force in

⁵⁶ Electoral Act, 1992 s 20(1). The Minister for the Environment, Community and Local Government may intervene, if necessary, in cases in which the registration authority has failed to perform its functions: eg Registration of Electors (County of Monaghan) (Special Difficulty) Order, 1997 (SI No 469 of 1997).

⁵⁷ Electoral Act, 1992 Sch II r 5(1)-(2).

⁵⁸ *ibid* r 5(3).

⁵⁹ *ibid* rr 5(6), 6-12 (as amended).

⁶⁰ Electoral Act, 1992 s 15

⁶¹ Electoral Act, 1997 s 76; see also the minor amendments made by the Electoral (Amendment) Act, 2001 s 6.

⁶² Electoral Act, 1992 s 13(1).

⁶³ *ibid* s 12(3).

1994, any citizen of a Member State other than Ireland or the United Kingdom who wishes to be registered as a European elector must apply to be so registered and supply the registration authority with a supporting statutory declaration.⁶⁴

4.1.2. Casting the vote

Citizen residents may vote in the following ways:

- at polling station in the district where the voter is registered
- under the supervision of an election official and a police officer who attend the voter's place of residence (in the case of institutions) ("special voting")
- absentee voting through mail ballot ("postal voting")

Voting in person at one's designated polling station is the default mode of voting.⁶⁵ A voter may be allowed to vote at a polling station other than that to which he or she has been assigned, but within the same constituency, on the ground of the voter's physical illness or disability or because of his or her employment as an election official.⁶⁶ Special voting is provided for those who by reason of physical illness or disability are unable to attend a polling station in person and who are ordinarily resident in a hospital or in a home or similar institution for persons with a physical illness or physical disability.⁶⁷ In the case of these special voters an election official and a member of An Garda Síochána attend the hospital, home or other institution, in order to supervise voting by these electors.⁶⁸

An unsupervised postal vote is available to members of the Defence Forces, the Garda Síochána, election officials who are employed on election-day in a constituency other than the one for which they are registered and physically ill or disabled people who reside in their own homes.⁶⁹ A supervised postal vote is available to persons whose occupation, service or employment (including study) are such as to render it likely that he or she will be unable to go in person on polling day to vote at his or her assigned polling place (who must vote in a Garda station under police supervision),⁷⁰ to Irish civil servants or diplomats and their spouses or civil partners (who may vote from abroad, under the supervision of a designated official)⁷¹ and to prisoners (whether on remand or convicted) (who vote under the supervision of a designated official of the prison).⁷²

⁶⁴ European Parliament Elections Act, 1997 s 6(1).

⁶⁵ Electoral Act, 1992 s 38(1).

⁶⁶ *ibid* s 99 (as amended by the Electoral (Amendment) Act, 2001 s 25), s 100.

⁶⁷ *ibid* s 17(2) (as amended by the Electoral (Amendment) Act, 1996 s 4).

⁶⁸ Electoral Act, 1992 s 82.

⁶⁹ *ibid* s 14 (as amended by the Electoral (Amendment) Act, 1996 s 4), s 99(2) (as inserted by the Electoral (Amendment) Act, 2001 s 25).

⁷⁰ Electoral Act, 1997 ss 63, 68.

⁷¹ Electoral Act, 1992 ss 14, 65.

⁷² Electoral (Amendment) Act 2006 ss 2, 7.

In Seanad elections an unsupervised postal vote is available to university graduates, whereas the TDs, Senators and local councillors who elected 43 Senators are required to complete their postal ballot in a Garda station, under the supervision of a member of An Garda Síochána.

Citizen residents may not vote in the following ways:

- at polling station anywhere in the national territory
- by proxy voting
- by e-voting

Although proxy voting may well be unconstitutional, in view of the interpretation given to the concept of a “secret ballot” by the Supreme Court,⁷³ voters who are blind, incapacitated or illiterate may be assisted to vote by others (by a companion, if a blind or incapacitated voter so chooses, and by an election official in all other cases.)⁷⁴ e-voting, in any form, is unlikely in the foreseeable future, following the debacle which resulted when the government attempted to introduce a form of electronic voting and vote counting a decade ago, only to have the system it had adopted rejected as unsuitable, on several different grounds, by an independent commission appointed to review it.⁷⁵

4.1.3. Running as candidate

Any Irish citizen may be nominated to run as a candidate in a Dáil election by returning the relevant form to the returning officer in the constituency. An individual may nominate him or herself or may be nominated by another with his consent, provided the proposer is registered as a Dáil elector in the constituency.⁷⁶ The returning officer is responsible for validating the nomination forms and publicising the nominations.⁷⁷ An individual may include the name of a political party if he or she obtains a certificate from the particular political party. The name of the party will be displayed alongside the candidate's name on the ballot. Otherwise he or she may opt for a ‘Non-Party’ denomination.⁷⁸ A candidate may withdraw his candidature by notice of withdrawal delivered to the returning officer up to 12 noon the day following the closure of nominations.⁷⁹

In order to run as a candidate an individual must either be affiliated with a political party, provide a deposit of €500 or obtain the backing of 30 ‘assentors’.⁸⁰ The options of political party affiliation or assentors in addition to a deposit were introduced following a

⁷³ *McMahon v Attorney General* [1972] IR 69.

⁷⁴ Electoral Act, 1992 s 103.

⁷⁵ Electoral (Amendment) Act, 2001 ss 35-48; Electoral (Amendment) Act 2004; *First Report of the Commission on Electronic Voting* (2004) http://m.epractice.eu/files/media/media_799.pdf (Last accessed 19 April 2013).

⁷⁶ Electoral Act 1992 s 46, as amended by Electoral (Amendment) Act 2007.

⁷⁷ Electoral Act 1992 ss 50-52.

⁷⁸ *Ibid* s 46 (4) and (5).

⁷⁹ *Ibid* s 54.

⁸⁰ *Ibid* s 46 as amended by the Electoral (Amendment) Act 2007. Note a deposit may be provided by another on behalf of the candidate, Electoral Act 1992 s 47 as amended by Electoral (Amendment) Act 2007.

finding by the High Court that requiring a deposit infringed the electoral rights of those with limited means.⁸¹ A deposit will not be refunded if the candidate fails to obtain a minimum number of votes.⁸²

Spending on elections is capped by law and statutory instrument. The current ceilings are €30,150 for a three seat constituency, €37,650 for a four seat constituency and €45,200 for a five seat constituency per candidate.⁸³ A political party may only cover 50% of a candidate's expenses.⁸⁴ The state will reimburse up to €8,700 of a candidate's expenses.⁸⁵

4.1.4. Assimilated or special representation of citizens residing abroad

Only very narrow categories of citizens residing abroad have the right to vote in Irish elections, on an assimilated basis. Individuals who due to their occupation, service or employment who are unable to vote at the polling place on polling day are entitled to be inserted onto the register for postal votes.⁸⁶ (see sections 2.2.2 and 2.2.3) The individual may then cast their vote by postal ballot in a Garda station in the presence of a member of an Garda Síochána prior to the election.⁸⁷ Individuals residing abroad for a period of up to 18 months may remain on the electoral register subject to making a written statement to the effect that he or she intends to resume residence within 18 months.⁸⁸ Members of the civil service or diplomats resident abroad and their spouses and civil partners retain the right to vote⁸⁹ and may do so under the supervision of a person designated by the Department of Foreign Affairs.⁹⁰ For the purposes of the election those persons are deemed to be resident in the place where, but for the requirements of their duties, they would otherwise be resident.⁹¹

⁸¹ *Redmond v Minister of the Environment* [2001] 4 IR 61 with the court making reference to a nomination or signature system as an alternative to deposits.

⁸² Electoral Act 1992 s 48 as amended by Electoral (Amendment) Act 2007.

⁸³ Electoral Act 1997 s 32 and Electoral Act 1997 (Limitation and Reimbursement of Election Expenses at Dáil Election) Order 2007 (SI No 113 of 2007).

⁸⁴ Electoral Act 1997 s 32 (b).

⁸⁵ *Ibid* s 21 (1)(b)(i) and Electoral Act 1997 Order 2007 s 2.

⁸⁶ Electoral Act 1997 s 63.

⁸⁷ *Ibid* s 68 (1).

⁸⁸ Electoral Act 1992 s 11 (3).

⁸⁹ *Ibid* s 12(1).

⁹⁰ *Ibid* s 65.

⁹¹ *Ibid* s 12(2).

4.2 Local elections

4.2.1. Voter registration

Voter registration for local elections is based on the same register compiled for Dáil elections insofar as it relates to individuals entitled to vote at local elections.⁹² The compilation and amendment of this register is outlined in section 4.1.1 above. As mentioned in section 2.3.1 the franchise for local elections extends to all persons over the age of eighteen ordinarily resident in the local electoral area.⁹³

4.2.2. Casting the vote

Voting arrangements for local elections are identical to those used for national elections in almost all respects. As with national elections, most voters cast their vote in person at a designated polling station.⁹⁴ Individuals on the lists for special voting cast their vote at a home or institution under the supervision of a member of an Garda Síochána and an election official,⁹⁵ whereas individuals on the list for postal voting may cast their vote via post. Members of an Garda Síochána, the Defence Forces and election officials may cast an unsupervised postal ballot. Electors who, due to their occupation, service or employment are unable to attend their designated polling station, may also cast a postal vote. Unlike national elections there does not appear to be a requirement that such votes be cast under the supervision of a member of an Garda Síochána in a Garda Síochána station. The lists for special voting and postal voting for local elections are the same as those used for national elections (for a description of the categories of electors entitled to be on these lists see section 4.1.2 above).⁹⁶ As with national elections blind, illiterate or incapacitated electors may be aided when casting their ballot under a designated procedure.⁹⁷

4.2.3. Running as candidate

The procedure for running as a candidate in local elections is modelled on that used for national elections. An individual may nominate him or herself, or may be nominated by another individual registered as an elector in the relevant area of the local authority.⁹⁸ The nomination papers are delivered in person or by the proposer to the returning officer, who rules on their validity.⁹⁹ A candidate may be affiliated with a political party if he or she obtains a certificate from the party in question and submits it with his or her nomination

⁹² Ibid s 13.

⁹³ Ibid s 10.

⁹⁴ Local Election Regulations 1995 (SI No 297 of 1995) s 10.

⁹⁵ Ibid s 46.

⁹⁶ Ibid ss 29 and 43.

⁹⁷ Ibid s 64.

⁹⁸ Ibid s 14.

⁹⁹ Ibid ss 18 and 20.

papers.¹⁰⁰ If a candidate is not affiliated to a political party he or she may opt to be designated as ‘non-party’.¹⁰¹ A deposit based system was abolished in 2002.¹⁰² Instead candidates must be either affiliated with a political party or obtain the assent of 15 electors registered to vote in the local authority area.¹⁰³ A candidate may withdraw his or her candidature by delivering a notice of withdrawal either in person or by his or her proposer to the returning officer no later than 12 noon the day following the deadline for nominations.¹⁰⁴

4.1.4. Assimilated or special representation of citizens residing abroad

The same electoral register is used for both national and local elections and the same categories of voters entitled to be considered ordinarily resident for the purposes of national elections are entitled to be considered ordinarily resident for local elections. Similarly individuals entitled to exercise their vote by postal ballot in national elections are also entitled to exercise their vote by postal ballot in local elections, including civil servants and diplomats residing abroad while carrying out their duties.¹⁰⁵ For the modalities of casting a postal vote see section 4.1.2 above.¹⁰⁶

¹⁰⁰ Ibid s 5.

¹⁰¹ Ibid s 6.

¹⁰² Electoral (Amendment) Act 2002 s 3(d).

¹⁰³ Local Election Regulations 1995 (SI No 297 of 1995) s 14 (6A) as inserted by Electoral (Amendment) Act 2002 s 3(c).

¹⁰⁴ Local Election Regulations 1995 (SI No 297 of 1995) s 22.

¹⁰⁵ Ibid s 29.

¹⁰⁶ Ibid ss 29, 30.

5. Conclusion

Ireland's electoral regime may be characterised as broadly liberal. Voting rights are widely distributed, particularly for those citizens who might otherwise be disqualified such as those suffering from mental illness or prisoners. There are a minimum of formalities in registering to vote and in exercising the right to vote. Furthermore, the voting age maybe be lowered to 16 following a referendum in 2015. Perhaps most notably Ireland has an exceptionally wide franchise for local elections, allowing all persons ordinarily resident in the state to both cast a vote and be elected to local authorities regardless of nationality. However, in conclusion it is worth highlighting two features that stand out in Ireland's otherwise liberal electoral law, namely differences in eligibility between national and local elections and restrictions on extra-territorial voting.

Firstly, national voting rights are restricted to Irish citizens and, in the case of elections, British citizens. In this regard the differences between national and local elections are striking. At a local level all individuals ordinarily resident in the state regardless of nationality are entitled to both vote and to stand for election to a local authority. The picture at a national level is rather different with only Irish nationals entitled to vote in referendums and presidential elections and only Irish and British nationals entitled to vote in national parliamentary elections. Furthermore, the right to stand for election to both houses of the national parliament and the presidency is restricted to Irish nationals alone. The legal position reflects a formal understanding of the Irish people rooted in the Constitution as restricted to only those of Irish nationality. However, if in current practice the national franchise is limited to Irish nationals with the narrow exception of voting rights in Dáil elections for British citizens, this latter exception points to a *potentially* broader national franchise. Rights to vote in national elections may be extended, by the relatively simple means of a ministerial order, beyond those holding Irish nationality to other European Union citizens if a condition of reciprocity is met. Thus while in practice the restriction to Irish (and British) nationals remains in place, there is a constitutional possibility for a potentially much broader franchise and a conception of democracy in Ireland less bounded by nationality.

The second feature of Irish electoral law worth highlighting is the absence of virtually any possibility of extraterritorial voting. Ordinary residence in the state is a necessary condition to be registered on the electoral register and there are only very limited possibilities for voting abroad. Only public servants, diplomats and members of the military resident abroad by reason of their responsibilities are entitled to vote outside the state. All other voters, even those temporarily outside the state, must return to Ireland to vote. This strict geographic limitation is even more striking when taken together with Ireland's complex relationship with the Irish abroad. Not only does Ireland have a long history of emigration, which combined with generous laws on citizenship acquisition has given rise to a substantial diaspora and a large number of more recent emigrants, but the complicated historical and constitutional position of Northern Ireland and provisions of the peace accord bringing an end to the conflict in that part of the world, has resulted in a large number of co-nationals and potential co-nationals in a neighbouring state. That there is no possibility for any of these

groups to vote regardless of their actual relationship with the state is striking. Nonetheless, bar some calls for representation of Irish abroad or those in Northern Ireland in the recent referendum on the Senate¹⁰⁷ and in relation to the presidency,¹⁰⁸ there have been no serious efforts to extend voting rights to any Irish residing abroad.

¹⁰⁷ Conor Mulvagh, 'Seanad must be kept but retooled for inclusiveness' *The Irish Times* (Dublin, 18 September 2013) 16.

¹⁰⁸ Fergal Davis, 'Diaspora deserve vote in presidential polls to select who represents them' *The Irish Times* (Dublin, 22 January 2013) 16.

