



Number 9 of 2009

ELECTORAL (AMENDMENT) (No. 2) ACT 2009

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[No. 9.] *Electoral (Amendment) (No. 2) Act* [2009.]
2009.

ACTS REFERRED TO

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| Electoral (Amendment) Act 2001 | 2001, No. 38 |
| Electoral Act 1992 | 1992, No. 23 |
| European Parliament Elections Act 1997 | 1997, No. 2 |
| Litter Pollution Act 1997 | 1997, No. 12 |
| Litter Pollution Acts 1997 to 2003 | |
| Local Elections (Disclosure of Donations and Expenditure) Act 1999 | 1999, No. 7 |
| Local Government Act 2001 | 2001, No. 37 |
| Planning and Development Act 2000 | 2000, No. 30 |
| Presidential Elections Act 1993 | 1993, No. 28 |
| Referendum Act 1994 | 1994, No. 12 |
| Údarás na Gaeltachta Act 1979 | 1979, No. 5 |



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ELECTORAL (AMENDMENT) (No. 2) ACT 2009

AN ACT TO REGULATE EXPENDITURE BY POLITICAL PARTIES AND CANDIDATES; TO AMEND THE LOCAL ELECTIONS (DISCLOSURE OF DONATIONS AND EXPENDITURE) ACT 1999; TO AMEND THE LITTER POLLUTION ACT 1997; AND TO PROVIDE FOR RELATED MATTERS.

[25th March, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Act of 1999” means the Local Elections Definition. (Disclosure of Donations and Expenditure) Act 1999.

2.—Section 2 of the Act of 1999 is amended by—

Amendment of section 2 of Act of 1999.

(a) substituting the following definition for the definition of “clerk”:

“ ‘clerk’, in relation to a city, borough or town council means the town clerk;”,

(b) substituting the following definition for the definition of “local authority”:

“ ‘local authority’ has the same meaning as in the Local Government Act 2001;”,

and

(c) inserting the following definition:

“ ‘local election’ means an election under Part 4 of the Local Government Act 2001;”.

3.—Section 6 of the Act of 1999 is amended—

Amendment of section 6 of Act of 1999.

(a) in subsection (1)(b) by repealing subparagraph (v), and

(b) in subsection (3) by substituting the following paragraph for paragraph (a):

“(a) all election expenses incurred by or on behalf of a political party or a candidate at any time during the period specified by the Minister by order under section 12B (inserted by *section 4* of the *Electoral (Amendment) (No. 2) Act 2009*);”.

Insertion of Part IIIA in Act of 1999. **4.**—The Act of 1999 is amended by inserting the following Part after Part III:

“PART IIIA

EXPENDITURE BY POLITICAL PARTIES AND
CANDIDATES AT LOCAL ELECTIONS

Limitation of election expenses at local election. 12A.—(1) (a) Subject to paragraphs (b) and (c), the aggregate of election expenses which may be incurred by or on behalf of a candidate in connection with his or her candidature at a local election shall not exceed—

- (i) in the case of a county or city council electoral area with a population in excess of 32,500, €15,000;
- (ii) in the case of a county or city council electoral area with a population of between 22,501 and 32,500, €13,000;
- (iii) in the case of a county or city council electoral area with a population of between 12,001 and 22,500, €11,500;
- (iv) in the case of a county or city council electoral area with a population of 12,000 or less, €9,750;

and

- (v) in the case of an electoral area of a borough council or a town council, €7,500.

(b) Where a candidate contests an election for both a county council and a borough or town council, the election expenses which may be incurred by or on behalf of the candidate in connection with his or her candidature at the election shall be the limit appropriate to the electoral area in the county in which the candidate is nominated plus one quarter of the spending limit appropriate to the electoral area in the borough council or town council in which the candidate is also a candidate.

- (c) (i) Where a political party authenticates the candidature of a candidate at a local election, the party shall incur 10 per cent of the amount of the election expenses which that candidate is entitled to incur at that election, or such alternative percentage of the amount as may be agreed in writing between the candidate and national agent of the political party.
- (ii) The election expenses which a political party may incur under subparagraph (i) may relate to expenditure in the electoral area concerned, or otherwise.
- (iii) In the case of a candidate whose candidature is authenticated by a political party at a local election, the national agent of the party may by agreement in writing authorise the designated person of the party to incur such proportion of election expenditure at the election which the candidate is entitled to incur under paragraph (a) as may be agreed in writing between the national agent and the designated person.

(2) The aggregate of election expenses which may be incurred by the national agent of a political party on behalf of that party at a local election shall be the sum of the amounts of election expenses incurred pursuant to subsection (1)(c)(i), between candidates whose candidatures were authenticated by the party at the election and the party.

(3) Subject to subsection (1)(c)(iii), the aggregate of election expenses which may be incurred by the national agent and designated person of the party on behalf of that party within an electoral area of a county council, city council, borough council or town council at a local election, shall not exceed the sum of the amounts of election expenses for all candidates of that party in that electoral area, provided for under subsection (1)(c)(i).

(4) In this section, 'population' means population as ascertained by the Central Statistics Office in the Census Report setting out the final result of the most recent Census of Population.

Period in respect of which election expenses are reckoned at local election.

12B.—(1) After the Minister has made an order under section 26 of the Local Government Act 2001 fixing the polling day at a local election, he or she may by order specify the period during

which election expenses at the local election concerned shall be reckoned for the purposes of this Part.

(2) An order under subsection (1) shall specify—

- (a) a date not less than 50 and not more than 60 days prior to the polling day at the local election concerned, as the date on which the period shall commence, and
- (b) the polling day at the local election concerned, as the date on which the period shall end.”.

Amendment of section 19 of Act of 1999.

5.—Section 19 of the Act of 1999 is amended by inserting the following subsection after subsection (3):

“(4) An annual report of a local authority prepared in accordance with section 221 of the Local Government Act 2001, in respect of the year in which a local election is held, shall include details of—

- (a) the aggregate election expenditure in respect of each candidate, designated person, third party and national agent, and
- (b) donations received in respect of each candidate, designated person, third party and national agent,

as contained in the statements and declarations furnished to it pursuant to section 13.”.

Amendment of section 19C of Act of 1999.

6.—Section 19C (inserted by section 58(m) of the Electoral (Amendment) Act 2001) of the Act of 1999 is amended, in subsection (1), by inserting “12A,” before “19A”.

Amendment of section 20 of Act of 1999.

7.—Section 20(5) of the Act of 1999 is amended by inserting “or section 21(3A) (inserted by section 8 of the *Electoral (Amendment) (No. 2) Act 2009*)” after “subsection (4)”.

Amendment of section 21 of Act of 1999.

8.—Section 21 of the Act of 1999 is amended—

(a) in subsection (1) by inserting the following paragraph after paragraph (b):

“(bb) directly, or through any other person, incurs election expenses in excess of the relevant amount calculated in accordance with section 12A (inserted by section 4 of the *Electoral (Amendment) (No. 2) Act 2009*), or”,

(b) in subsection (2)—

(i) in paragraph (c) by substituting “section 13, or” for “section 13.”, and

(ii) by inserting the following paragraph after paragraph (c):

“(d) directly, or through any other person, incurs election expenses in excess of the relevant amount calculated in accordance with section 12A (inserted by *section 4* of the *Electoral (Amendment) (No. 2) Act 2009*).”

(c) by inserting the following subsection after subsection (3):

“(3A) A candidate at a local election shall be guilty of an offence if he or she directly, or through any other person, incurs election expenses in excess of the relevant amount calculated in accordance with section 12A (inserted by *section 4* of the *Electoral (Amendment) (No. 2) Act 2009*).”

(d) by inserting the following subsection after subsection (4B):

“(4C) A person shall be guilty of an offence if, at a local election, he or she incurs election expenses, or makes any payment, advance or deposit in respect of such expenses—

- (a) on behalf of a political party unless the person is the national agent of the party concerned or a person authorised by such national agent acting within the limit of such authorisation, or
- (b) on behalf of a candidate unless the person is a designated person, or a person authorised by such person acting within the limit of such authorisation.”

and

(e) in subsection (5)(a), by substituting the following for subparagraph (ii):

“(ii) where the offence is an offence to which subsection (1)(b), (2)(b), (3)(c), (3A) (inserted by *section 8(c)* of the *Electoral (Amendment) (No. 2) Act 2009*), (4A)(b), or (4B)(d) relates, he or she shall be liable on conviction on indictment to a fine not exceeding €25,000 or, at the discretion of the court, to imprisonment for a period not exceeding 3 years or to both such fine and such imprisonment.”

9.—Section 19 of the Litter Pollution Act 1997 is amended by substituting the following subsection for subsection (7):

Amendment of section 19 of Litter Pollution Act 1997.

“(7) Notwithstanding subsection (6), it shall not be an offence for a person to exhibit an advertisement if the advertisement—

- (a) is exempted development within the meaning of the Planning and Development Act 2000, or is a notice displayed or erected in pursuance of a requirement by or under any enactment,

- (b) advertises a public meeting, other than an auction, unless the advertisement has been in place for 30 days or more prior to, or for 7 days or more after, the date specified in the advertisement for the meeting,
- (c) relates to—
- (i) a presidential election within the meaning of the Presidential Elections Act 1993,
 - (ii) a general election or a bye-election, within the meaning, in each case, of the Electoral Act 1992,
 - (iii) a local election within the meaning of the Local Government Act 2001, or
 - (iv) an election of members of the European Parliament under the European Parliament Elections Act 1997,
- unless the advertisement has been in place prior to the making of an order by the Minister appointing the day upon which the relevant poll shall be taken or for 30 days prior to the date of the poll, whichever is the shorter period, or for 7 days or more after the latest day upon which the poll was taken for the election or bye-election concerned,
- (d) relates to an election of members of *Údarás na Gaeltachta* under the *Údarás na Gaeltachta Act 1979*, unless the advertisement has been in place prior to the making of an order by the Minister for Community, Rural and Gaeltacht Affairs appointing the day upon which the poll shall be taken or for 30 days prior to the date of the poll, whichever is the shorter period, or for 7 days or more after the latest day upon which the poll was taken, or
- (e) relates to a referendum, within the meaning of the Referendum Act 1994, unless the advertisement has been in place prior to the making of an order by the Minister appointing the day upon which the poll shall be taken, or for 7 days or more after the latest day upon which the poll was taken.”.

Short title,
construction and
collective citations.

10.—(1) This Act may be cited as the Electoral (Amendment) (No. 2) Act 2009.

(2) The Electoral Acts 1992 to 2009 and this Act (other than *section 9*) shall be read together as one and this Act shall be included in the collective citation “Electoral Acts 1992 to 2009”.

(3) The Local Elections Acts 1974 to 2009 and this Act (other than *section 9*) shall be read together as one and this Act shall be included in the collective citation “Local Elections Acts 1974 to 2009”.

(4) The Litter Pollution Acts 1997 to 2003 and *section 9*, may be cited together as the Litter Pollution Acts 1997 to 2009, and shall be read together as one.