



Number 1 of 1998

REFERENDUM ACT, 1998

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Establishment and membership of Commission.
 3. Functions of Commission.
 4. Consultants and advisers.
 5. Advertisements etc., by Commission.
 6. Submissions to Commission in relation to referendum.
 7. Declaration that body is an approved body for purposes of a referendum.
 8. Publication of notices by Commission.
 9. Obligation to provide information or statutory declaration if required.
 10. Notification of referendum returning officer and local returning officer of details of approved body.
 11. Appointment by approved body of agents at a referendum.
 12. Referendum petition.
 13. Advances to Commission.
 14. Reports and information to Minister.
 15. Amendment of Act of 1994.
 16. Provisions in relation to offences.
 17. Short title, collective citation and construction.
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[No. 1.]

Referendum Act, 1998.

[1998.]

Acts Referred to

Broadcasting Authority Act, 1960

1960, No. 10

Radio and Television Act, 1988

1988, No. 20

Referendum Act, 1994

1994, No. 12

Referendum Acts, 1992 and 1994



Number 1 of 1998

REFERENDUM ACT, 1998

AN ACT TO ENABLE THE MINISTER FOR THE ENVIRONMENT AND LOCAL GOVERNMENT TO ESTABLISH IN RELATION TO A REFERENDUM A COMMISSION TO BE KNOWN AS A REFERENDUM COMMISSION HAVING AS ITS PRINCIPAL FUNCTION THE PROVISION OF INFORMATION TO THE ELECTORATE IN RESPECT OF THE REFERENDUM AND TO PROVIDE FOR MATTERS CONNECTED WITH THE MATTERS AFORESAID.

[26th February, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act except where the context otherwise requires— Interpretation.

“the Act of 1994” means the Referendum Act, 1994;

“approved body” means a body declared by the Commission under *section 7* to be an approved body;

“the Commission” means the commission established under *section 2*;

“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 the duties;

“the Minister” means the Minister for the Environment and Local Government;

“referendum” means a constitutional referendum or an ordinary referendum.

(2) In this Act—

(a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,

(b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,

S.1

- (c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Establishment and membership of Commission.

2.—(1) Whenever a referendum falls to be held, or, in the case of a constitutional referendum, may fall to be held, the Minister may, if he or she considers it appropriate, by order establish a commission which shall be known as the Referendum Commission and is referred to in this Act as “the Commission” to perform the functions conferred on it by this Act.

(2) An order under *subsection (1)* shall be made—

- (a) in the case of a constitutional referendum, not earlier than the date on which the Bill concerned is initiated in Dáil Éireann, and
- (b) in the case of an ordinary referendum, not later than the date of the making of the relevant order under section 12 of the Act of 1994.

(3) The Commission shall be independent in the performance of its functions.

(4) The Commission shall consist of a chairperson and 4 ordinary members.

(5) The chairperson shall be—

- (a) a former judge of the Supreme Court or a former judge of the High Court, or
- (b) following consultation with the President of the High Court, a judge of the High Court,

nominated by the Chief Justice.

(6) The ordinary members shall be—

- (a) the Comptroller and Auditor General, or where the office is vacant, the Secretary and Director of Audit of the Office of the Comptroller and Auditor General,
- (b) the Ombudsman, or where the office is vacant, the Director of the Office of the Ombudsman,
- (c) the Clerk of Dáil Éireann, or where the office is vacant, the Clerk Assistant of Dáil Éireann, and
- (d) the Clerk of Seanad Éireann, or where the office is vacant, the Clerk Assistant of Seanad Éireann.

(7) (a) Where, before the completion of the performance of the functions of the Commission, a member of the Commission notifies the Minister that he or she is for any reason temporarily unable to act as such member then—

- (i) in the case of the chairperson, a former judge of the Supreme Court, or a judge or former judge of the

[1998.]

Referendum Act, 1998.

[No. 1.]

High Court, nominated by the Chief Justice following consultation in the case of a judge of the High Court with the President of the High Court, S.2

- (ii) in the case of the Comptroller and Auditor General, the Secretary and Director of Audit of the Office of the Comptroller and Auditor General,
- (iii) in the case of the Ombudsman, the Director of the Office of the Ombudsman,
- (iv) in the case of the Clerk of Dáil Éireann, the Clerk Assistant of Dáil Éireann, and
- (v) in the case of the Clerk of Seanad Éireann, the Clerk Assistant of Seanad Éireann,

shall become and be a member of the Commission for the duration of such inability.

- (b) Where a person becomes a member of the Commission pursuant to *paragraph (a)* for the duration of an inability, the member of the Commission who is temporarily unable to act as such member shall be deemed for such duration not to be a member of the Commission.

(8) Where the Chief Justice nominates a person under *subsection (5)* or *(7)*, he or she shall notify the Minister in writing of the name of the person so nominated and upon receipt of the notification the Minister shall appoint a day for the purposes of those subsections and upon that day the person shall become and be a member of the Commission.

- (9) (a) Where, before the completion of the performance of the functions of the Commission, a member of the Commission ceases to hold the office by virtue of which he or she became a member of the Commission, he or she shall continue to be a member of the Commission until the performance of those functions have been completed, unless otherwise directed by the Minister.

- (b) The provisions of *subsection (6)* shall not apply in a case where a person continues to be a member of the Commission pursuant to *paragraph (a)*.

(10) The Commission may act notwithstanding one or more vacancies among its members.

(11) A member of the Commission shall not advocate or promote a particular result at the referendum in respect of which the Commission has been established.

(12) Subject to the provisions of this Act, a Commission shall determine, by standing orders or otherwise, the procedure and business of the Commission.

(13) The Minister for Finance shall make available to a Commission such reasonable facilities and services (including clerical, secretarial and executive services) as the Minister for Finance, after consultation with the Commission, shall determine.

S.2

(14) 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 officials and such statements wherever published subsequently;
- (d) submissions made to the Commission under *section 6*.

(15) Every order made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made.

Functions of
Commission.

3.—(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 the referendum in respect of which it is established:

(a) to prepare—

- (i) a statement or 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, and
- (ii) a statement or statements having regard to any submissions under *section 6* concerning the proposal to which the referendum relates and setting out the arguments for and against the proposal,

and the statements shall be fair to all interests concerned;

- (b) to publish and distribute such 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 foster and promote and, where appropriate, to facilitate debate or discussion in a manner that is fair to all interests concerned in relation to the proposal aforesaid.

(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.

[1998.]

Referendum Act, 1998.

[No. 1.]

(3) If the Commission is established before the passing of the Bill containing the proposal or proposals concerned to amend the Constitution, the Commission shall not publish any statement under this section or incur any expenditure without the consent of the Minister for Finance before such passing.

S.3

4.—The Commission may from time to time engage such consultants or advisers as it may consider necessary or expedient for the performance of its functions, and any remuneration due to a consultant or adviser engaged under this section shall be paid by the Commission out of moneys at its disposal having regard to guidelines issued from time to time by the Minister for Finance and, in addition to the foregoing, the Commission shall comply with any directions (which the Minister for Finance is hereby empowered to give) given by the Minister for Finance to the Commission with regard to such consultants and advisers.

Consultants and advisers.

5.—(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 *section 3* concerning the referendum.

Advertisements etc., by Commission.

(2) The Minister for Arts, Heritage, Gaeltacht and the Islands, 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 subsection.

(3) The Minister for Arts, Heritage, Gaeltacht and the Islands, 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 subsection.

6.—A person may make a submission in writing or by electronic mail to the Commission in relation to the proposal the subject of the referendum within such time as the Commission may specify.

Submissions to Commission in relation to referendum.

7.—(1) On application in that behalf in accordance with this section 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 concerned in respect of which the Commission was established.

Declaration that body is an approved body for purposes of a referendum.

(2) An application under *subsection (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.

S.7

(3) Where a body makes an application under this section, 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) A Commission may refuse to make a declaration under *subsection (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 section or *section 9*, 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 section, 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 section, 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 section.

(7) A person who contravenes this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 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 section, 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 section “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.

[1998.]

Referendum Act, 1998.

[No. 1.]

8.—The Commission shall as soon as may be after its establishment publish a notice in two or more national newspapers—

Publication of notices by Commission.

- (a) indicating that a person may make submissions in writing or by electronic mail to the Commission in relation to the proposal the subject of the referendum,
- (b) indicating that a body may apply to the Commission for a declaration under *section 7*,
- (c) specifying time limits for the receipt of such submissions and applications, and
- (d) specifying the procedures for making such submissions and applications.

9.—(1) The Commission may request from a body that applies for a declaration under *section 7* 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.

Obligation to provide information or statutory declaration if required.

(2) Whenever the Commission makes a request under *subsection (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 *section 7* shall be deemed to be withdrawn.

(3) The Commission may require that information furnished to the Commission under this section 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 section shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £500 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 section, 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.

10.—(1) As soon as practicable after the Commission has made a declaration under *section 7* or revoked a declaration under *section 7* or *9*, 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.

Notification of referendum returning officer and local returning officer of details of approved body.

(2) The referendum returning officer shall, as soon as practicable after receipt of a notification under *subsection (1)*, notify each local returning officer of the particulars so notified to him or her under *subsection (1)*.

Appointment by approved body of agents at a referendum.

11.—(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 section 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.

Referendum petition.

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

“(3) A provisional referendum certificate shall not be questioned by reason of a non-compliance by the Referendum Commission with any provision contained in the *Referendum Act, 1998*, or mistake made by the Referendum Commission if it appears to the High Court that the Referendum 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.”.

Advances to Commission.

13.—The Minister by whom the Bill containing the proposal the subject of the referendum concerned was initiated shall, with the consent of the Minister for Finance, advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may determine for the purposes of expenditure by the Commission in the performance of its functions.

Reports and information to Minister.

14.—(1) As soon as may be after the completion of the performance of its functions under this Act, but not later than 6 months thereafter, the Commission shall prepare and submit a report in writing to the Minister in relation to the performance by it of those functions and the Minister shall cause copies thereof to be laid before each House of the Oireachtas.

(2) The Commission shall, whenever so requested by the Minister, furnish to the Minister information in relation to such matters as he or she may specify relating to its activities generally or in respect of any report specified in *subsection (1)*.

(3) The Commission shall stand dissolved one month after the submission of the report under *subsection (1)* to the Minister.

[1998.]

Referendum Act, 1998.

[No. 1.]

15.—The Act of 1994 is hereby amended by—

Amendment of Act
of 1994.

(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 11 of the *Referendum Act, 1998*, 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*,

(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*”.

16.—(1) Where an offence under this Act 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

Provisions in
relation to offences.

[No. 1.] *Referendum Act, 1998.* [1998.]

S.16

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.

Short title,
collective citation
and construction.

17.—(1) This Act may be cited as the Referendum Act, 1998.

(2) The Referendum Acts, 1992 and 1994 and this Act may be cited together as the Referendum Acts, 1992 to 1998, and shall be construed together as one.