

How The President is Elected



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Pleanála agus Rialtais Áitiúil**
Department of Housing,
Planning and Local Government

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How the President is Elected

1. Introduction

This note is intended as a practical guide. It is not a definitive legal interpretation of electoral law. For more information you should consult the law relating to the election of the President (see section 18 below).

2. The Office of the President

The office of President of Ireland was established by the Constitution. The President takes precedence over all other persons in the State and exercises powers and functions conferred by the Constitution and by law. With specified exceptions, the functions of the President are performed on the advice of the Government. The President is not answerable to either House of the Oireachtas or to any court in the performance of his or her functions but the Constitution lays down a procedure under which the President may be impeached for stated misbehaviour. The President holds office for seven years and is eligible for re-election only once.

3. Who can become President?

Every citizen of Ireland who has reached the age of 35 years is eligible for election to the office of President.

4. When must an election take place?

A presidential election must take place within the sixty days before the expiration of the term of office of the outgoing President. If a vacancy occurs before the completion of a normal term of office, the election takes place within 60 days after the occurrence of the vacancy. The Minister for Housing, Planning and Local Government makes an order appointing the last day for receiving nominations, the polling day and the period for voting, which must last at least 12 hours between 7 a.m. and 10.30 p.m.

5. Who can vote at a presidential election?

There are in excess of 3.2 million registered electors entitled to vote at a presidential election. Every citizen of Ireland ordinarily resident in the State who is aged 18 years or over and whose name is entered on the register of electors is entitled to vote.

A register of electors is compiled each year by City/County/City and County Councils. A draft register is published on 1st November and is displayed for inspection in public libraries, post offices, and other public buildings. Claims for corrections to the draft may be made up to 25th November. Claims are adjudicated on by the county registrar who is a legally qualified court officer. An appeal may be made to the Circuit Court against a county registrar's decision. The register of electors comes into force on 15th February and remains in force for a year from that date. Voters can look at www.checktheregister.ie or contact their local authority to see if they are on the register. Persons eligible to vote who are not included in the register may apply to their local authority for inclusion in a supplement to the register, the closing date for which is 15 days (excluding Good Friday, Sundays and Public Holidays) before polling day. For persons who wish to be included in the postal and special voters supplement to be published at an election, the application must be received by the City/County/City and County Councils at least 22 working days before polling day.

6. Nomination of candidates

A candidate must be nominated by either:

- (a) not less than 20 members of the Oireachtas (Parliament), **or**
- (b) at least 4 City/County/City and County Councils.

A member of the Oireachtas or a City/County/City and County Council may not nominate more than one candidate at the same election. A former or the retiring President may nominate himself or herself as a candidate. Nominations must be on a prescribed nomination paper and must be delivered to the presidential

returning officer (see section 9 below) by 12 noon on the last day for receiving nominations. A candidate may have their photograph included on the ballot paper by providing a photograph in the specified format with their nomination.

At 3 p.m. on the last day for receiving nominations, the presidential returning officer, accompanied by a judicial assessor, who is either the President of the High Court or some other judge of the High Court nominated by the President of the High Court, rules on the validity of the nominations received. Every prospective candidate or his or her representative must attend at the ruling on nominations and must furnish all relevant information required by the presidential returning officer or the judicial assessor.

Having examined all the nomination papers, the presidential returning officer rules on them and ascertains who is validly nominated. The presidential returning officer is required to object to the description of a candidate which is, in his or her opinion, incorrect, insufficient to identify the candidate or unnecessarily long. The candidate, his or her authorised representative or the presidential returning officer may amend the particulars shown on the nomination paper. A candidate may appeal to the High Court against the presidential returning officer's ruling on the validity of a nomination or in regard to the eligibility of a candidate.

A candidate may withdraw his or her candidature at any time before the completion of the ruling on nominations but not thereafter. If no candidate stands nominated or if all candidates withdraw, the proceedings in relation to the election commence afresh. If only one candidate stands nominated, the presidential returning officer declares that candidate elected. If two or more candidates stand nominated, a poll is taken.

7. Free postage for candidates

Each candidate at a presidential election is entitled to send one election letter, free of postage charge, to each household. The cost of this facility is met by the State and relevant details at election time are available from An Post.

8. Appointment of election agents

Before incurring any election expenses, each candidate must appoint an election agent, known as the presidential election agent, to assist the candidate generally in relation to the election, to account for the expenditure incurred by or on behalf of the candidate at the election and to disclose donations received by or on behalf of the candidate (see sections 15 and 16 below). The presidential election agent may be the candidate himself or herself. The appointment must be made no later than the last day for receiving nominations and be notified to the presidential returning officer.

A candidate or the presidential election agent may appoint one local agent for each Dáil constituency to assist the candidate in the constituency and to act as deputy in the constituency for the presidential election agent. A candidate or the presidential election agent or the local agent may appoint for each polling district one deputy local agent to assist the candidate in the polling district and to act as deputy for the candidate's presidential election agent and local agent in the polling district. An appointment of a local agent or deputy local agent must be notified in writing to the local returning officer for the constituency by the person making the appointment.

9. The poll

The Minister for Housing, Planning and Local Government appoints a presidential returning officer who has responsibility for nominations, the count and the declaration of the result. The Dáil returning officer for a constituency (i.e. the sheriff or county registrar) is the local returning officer for the constituency at a presidential election. Generally, the country is divided into the same constituencies as for a Dáil election.

The local returning officer is responsible for the detailed polling arrangements in each constituency. He or she must send a polling information card to each presidential elector informing the elector of his or her number on the register of presidential electors and the polling station at which he or she may vote. The

local returning officer also makes arrangements for voting by postal and special voters.

Polling places are appointed by City/County/City and County Councils. The local returning officer provides polling stations at each polling place - schools or public buildings are normally used. Each polling station is supervised on polling day by a presiding officer assisted by a poll clerk. Each candidate may be represented at a polling station by a personation agent who assists in the prevention of electoral offences.

10. Voting arrangements

Generally, electors vote in person at their local polling station.

Postal voting is available to the Garda Síochána (police force), Defence Forces and civil servants (and their spouses/partners) attached to Irish diplomatic missions abroad, as well as to electors living at home who are unable to vote at a polling station due to a physical illness or disability. A person employed by a returning officer on polling day in a constituency other than where they are registered to vote may apply for entry on the supplement to the postal voters list.

Postal voting is available to electors whose occupations are likely to prevent them from voting at their local polling station (including full-time students registered at home who are living elsewhere while attending an educational institution in the State). Under this arrangement, a ballot paper is posted to the elector at home who must arrange to have his or her declaration of identity witnessed by a Garda before marking the ballot paper and returning it by post to the returning officer. Postal voting is available to electors who, because of the circumstances of their detention in prison pursuant to an order of court, cannot vote in person.

Special voting arrangements are made for electors living in a hospital, nursing home or similar institution who are unable to vote at a polling station due to a

physical illness or disability. The ballot paper is brought to them in the hospital, nursing home or similar institution and they vote in the presence of a special presiding officer accompanied by a Garda.

Application must be made to the relevant City/County/City and County Council for inclusion in the special or postal voters list in the electoral register. The supplement to this list closes within **two** days of the making of the polling day order.

Electors with physical disabilities who have difficulty in gaining access to their local polling station may be authorised to vote at a more accessible station in the constituency by applying to their local returning officer not less than **seven** days before polling day.

11. Voting

The President is elected by the direct vote of the people. Voting is by secret ballot on the single transferable vote system. The system enables the elector to indicate his or her first and subsequent choices on the ballot paper. The form of ballot paper is prescribed by law. The names of the candidates appear in alphabetical order and no political affiliations are given.

The elector applies for a ballot paper in the polling station by stating his or her name and address. The elector may be required to produce evidence of identity and, if he or she fails to do so, or if the presiding officer is not satisfied that the identity document relates to the elector, he or she will not be permitted to vote. Where the presiding officer is satisfied as to the elector's entitlement to vote, a ballot paper is stamped with an official mark and handed to the elector.

The elector votes in secret in a voting compartment. The voter indicates the order of his or her choice by writing 1 opposite the name of his or her first choice and, if he or she so wishes, 2 opposite the name of his or her second choice, 3 opposite the name of his or her third choice and so on. In this way the voter instructs the returning officer to transfer the vote to the second choice candidate

if the first choice is eliminated. If the same situation applies to the second choice, the vote may be transferred to the third choice and so on. The voter folds the ballot paper to conceal how it has been marked and places it in a sealed ballot box. A person may vote only once at the election.

Persons with a visual impairment, physical disability or a person with literacy difficulties may be assisted by the presiding officer or by a companion.

The presiding officer may order the arrest of any person suspected of committing an electoral offence such as personation, interfering with the ballot box or destroying a ballot paper.

12. The count

The votes are counted in the individual constituencies. The count commences at 9 a.m. on the day after polling day. Each ballot box is opened and the number of ballot papers checked against a return furnished by the presiding officer. The papers are sorted according to the first preferences shown on them and the number of first preference votes recorded for each candidate is notified to the presidential returning officer. That officer calculates the quota (the number of votes necessary for election). With a single position to be filled, the quota is fifty per cent of the valid votes plus one. If a candidate receives a number of votes equal to or greater than the quota, he or she is declared elected.

If no candidate reaches the quota, the presidential returning officer directs the local returning officers to exclude the candidate with the lowest number of first preference votes, to transfer these votes in accordance with the next preference shown on them and to notify the presidential returning officer of the result. The two or more lowest candidates must be excluded together where the sum of their votes is less than the votes of the next lowest candidate and where there is no scope for a candidate to exceed one quarter of the quota if candidates were to be excluded individually. The process of excluding candidates and transferring their votes continues until one of the candidates has sufficient votes to be deemed elected by the presidential returning officer. A candidate is entitled

to be represented at the counting of the votes in each constituency and at the count centre appointed by the presidential returning officer.

At the conclusion of any count in a constituency, a candidate or his or her agent is entitled to have all the parcels of ballot papers dealt with at that count re-examined and recounted by the local returning officer. A candidate or his or her agent is entitled to ask the presidential returning officer at the conclusion of a count, but only once during the counting process, for a complete re-examination and recount of all parcels of ballot papers in every constituency.

13. Access to court if election result is disputed

The result of a presidential election may be questioned by way of petition to the High Court, presented by the Director of Public Prosecutions or by a candidate or the election agent of a candidate at the election. A petition may be presented only if the High Court, by order, grants leave to a person to do so. Application for leave to present a petition must be made within seven days of the declaration of the result of the election.

The High Court, at the trial of an election petition, must determine the correct result of the election and, for this purpose, may order the votes to be recounted or the poll to be taken again in any constituency, or it may declare the election void, in which case, a fresh election is held. The decision of the High Court is final, subject only to appeal on a question of law to the Supreme Court.

14. Taking up Office

The newly elected President takes up office on the day following the expiration of the term of office of the outgoing President and holds office for seven years from that date.

15. Political donations

The value of donations that may be accepted by candidates, their election agents and third parties at a presidential election is governed by law. In the case of candidates and presidential election agents, the maximum donation that

may be accepted from a person (or a body) in a particular year cannot exceed €1,000. In the case of a third party, the maximum donation that may be accepted cannot exceed €2,500. The acceptance of donations from non-Irish citizens residing abroad is prohibited.

The presidential election agent of each candidate (see section 8 above) is required to furnish to the Standards in Public Office Commission, within 56 days of polling day at the election, a statement indicating whether any donations exceeding €600 were received by or on behalf of the candidate at the election and giving particulars of any such donations and the persons who made them. In addition, a candidate, a presidential election agent or a third party who receives a donation for political purposes greater than €100 must open a political donation account through which all donation transactions after the opening of account and ending on polling day must take place. Post election donation statements must be accompanied by a statement from the financial institution in which the account is held specifying the transactions that have taken place in the account together with a certificate stating that all donations were lodged to the account and were used for promoting the election of the candidate. Further information on these provisions is available from the Standards in Public Office Commission (www.sipo.gov.ie).

16. Election expenditure

The Electoral (Amendment) Act 2011 provides for the limitation of expenditure at a presidential election to €750,000 per candidate. Election expenses may only be incurred by the presidential election agent (see section 8 above) or by a person authorised by the presidential election agent to do so. The presidential election agent is responsible for accounting for expenditure incurred on behalf of the candidate. Expenditure incurred by a political party or by a body in support of the candidature of a candidate is deemed to have been incurred on behalf of the candidate and must be accounted for by the candidate's election agent.

The presidential election agent of each candidate is required to furnish to the Standards in Public Offices Commission, within 56 days of polling day at the

election, a statement in writing of all election expenses incurred on behalf of the candidate. A copy of this statement is laid before each House of the Oireachtas.

The Electoral (Amendment) Act 2011 also provides that a candidate who is elected or who receives in excess of one quarter of the quota may seek reimbursement of expenses – the lesser of actual expenses or €200,000. Further information on these provisions is available from the Standards in Public Office Commission (www.sipo.gov.ie).

17. Holders of the Office of President

Nine persons have held office as President of Ireland - Douglas Hyde (1938-45), Seán T O'Kelly (1945-59), Eamon de Valera (1959-73), Erskine Childers (1973-74), Cearbhall O Dálaigh (1974-76), Patrick Hillery (1976-90), Mary Robinson (1990-97), Mary McAleese (1997-2011) and Michael D Higgins (2011 -).

18. Presidential election law

The law relating to the election of the President is contained in:

- The Constitution of Ireland
- The Electoral Act 1992
- The Presidential Elections Act 1993
- The Electoral Act 1997
- The Electoral (Amendment) Act 1998
- The Electoral (Amendment) Act 2001
- The Electoral (Amendment) Act 2004
- The Electoral (Amendment) Act 2006
- The Electoral (Amendment) Act 2009
- The Electoral (Amendment) Act 2011
- The Electoral (Amendment) Act 2015

19. Other Leaflets

Other leaflets available in this series on the Department's website (www.housing.gov.ie) are as follows:

- The Referendum in Ireland
- How the Dáil (House of Representatives) is Elected
- How the Seanad (Senate) is Elected

- European Parliament: How Ireland's MEPs are Elected
- How Members of Local Authorities are Elected
- The Register of Electors
- Information for Voters with Disabilities

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