

# **Presidential Election 2018**

## **Information Note for Candidates**

**Department of Housing, Planning and Local Government**

**August 2018**

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This note is provided for the information of candidates. For a definitive statement of the law on any point reference should be made to the relevant statutory provisions.

### 1. Who can be a candidate?

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

### 2. Who can nominate a candidate?

A candidate can be nominated by not less than **20 members of the Oireachtas** or by not less than **4 county, city or city and county councils**. A former or retiring President may become a candidate on his or her own nomination. No person and no council is entitled to subscribe to the nomination of more than one candidate in respect of the same election.

The law relating to the nomination of candidates is contained in Article 12.4 of the Constitution (copy at Appendix 1) and in the Presidential Elections Act 1993.<sup>1</sup>

### 3. Nomination papers

A nomination must be made on the nomination paper prescribed in the Presidential Elections (Forms) Regulations 2011 – [S.I. No. 258 of 2011](#) as amended by [S.I. No. 329 of 2018](#). Once the Presidential Election Order<sup>2</sup> is made by the Minister for Housing, Planning and Local Government, he will appoint a Presidential Returning Officer. Nomination papers for use by members of the Oireachtas may be obtained from the Presidential Returning Officer or from the Clerk of the Dáil or the Clerk of the Seanad.

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<sup>1</sup> More generally, 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 and the Electoral (Amendment) Acts 1998 – 2014.

<sup>2</sup> The Presidential Election Order sets out the date on which the poll at the election will be held, the hours during which polling will be conducted, the last day for receiving nominations, the address of the Presidential Returning Officer and the place at which he will sit to rule on nominations.

Nomination papers for use by county, city or city and county councils or a former or retiring President may be obtained from the Presidential Returning Officer. Nomination papers are also available for download at <http://www.presidentialelection.ie>

In the case of a nomination by members of the Oireachtas, a **single nomination paper** should be used. Each intending nominator should sign the paper.

In the case of a county, city or city and county council, a **separate nomination paper should be used by each council**. Three clear days' notice of the proposal to nominate a candidate must be given to each member of the council. A resolution by a council to nominate a candidate may not be rescinded.

Every nomination paper must show the full name, address and the occupation (if any) of the candidate and must include a declaration that the person proposed to be nominated is eligible for election to the Office of President and has consented to the proposed nomination.

#### 4. **Candidate photograph**

If a candidate wishes to have his or her photograph included on the ballot paper, they must provide with the nomination paper:

- a photograph in digitised format and two identical printed copies of the photograph (passport size – 35mm x 45mm) with the candidate's name clearly shown on the back,
- the photograph must be of good quality and in colour showing the candidate's full face, head and shoulders only, on a light background (any colour) and taken to a professional standard, and
- the photograph must have been taken not more than 12 months prior to the date for the taking of the poll at the election.

These requirements are set out in S.I. No. 329 of 2018 and if they are not met, the Presidential Returning Officer may not include the photograph on the ballot paper. If no

photograph is supplied, the space for the candidate's photograph will be left blank on the ballot paper.

## 5. Delivery of nomination papers to the Presidential Returning Officer

Nomination papers must be received by the Presidential Returning Officer no earlier than 10 a.m. on the second day following the date of the Presidential Election Order and not later than 12 noon on the last day for receiving nominations.

Completed nomination papers should be **delivered** to the Presidential Returning Officer (at the Custom House, Dublin 1) **by the person or one or more of the persons making the nomination OR by the candidate nominated. They should not be sent by post.** An appointment for delivery should be made by telephoning the office of the Presidential Returning Officer (01 – 888 2235).

On receipt of a nomination paper, the Presidential Returning Officer will send an acknowledgement by post or otherwise to the person named in the nomination paper to be a candidate at the election and he will give public notice, on the website of the Presidential Returning Officer of the receipt of the nomination paper.

## 6. Ruling on nominations

### **When and where**

**At 3 p.m. on the last day for receiving nominations**, the Presidential Returning Officer will rule on the validity of the nomination papers received. The ruling will take place in the Custom House, Dublin 1. The President of the High Court (or another judge of the Court nominated by him) shall attend the ruling on nominations as judicial assessor.

### **Attendance at the ruling**

Each candidate **must attend** the ruling on nominations in person or through an authorised representative<sup>3</sup>. A candidate wishing to appoint an authorised representative

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<sup>3</sup> Authorised representative is a person authorised in the prescribed form (copy at Appendix 2) by a person purported to be nominated as a candidate at a Presidential Election to represent the person at the ruling

must use the prescribed form (copy at Appendix 2) which may be downloaded at <http://www.presidentialelection.ie>. The nomination of a candidate may be ruled to be invalid if he or she fails to attend in person or through an authorised representative at the ruling on nominations.

The candidate, the authorised representative (if any) and not more than two other persons brought by either the candidate or the authorised representative are entitled to attend the ruling on nominations.

### **Description of candidate**

The Presidential Returning Officer is required to object to the description of a candidate which is, in his opinion, incorrect, insufficient to identify the person or unnecessarily long and he may require the description to be amended or deleted.

### **Questions open at the ruling**

At the ruling on nominations, every question relevant to the nomination of a person to be a candidate (including his or her eligibility for election) shall be open. For the purpose of deciding such questions the Presidential Returning Officer or the judicial assessor may receive and act on evidence, including evidence on oath, and may require the candidate or his or her authorised representative to furnish information.

### **Objections and appeal**

Where, at the ruling on nominations, a person purported to be nominated as a candidate at the election or the authorised representative of such a person objects, on grounds which shall be stated there and then, to:

- (a) the ruling by the Presidential Returning Officer on the validity of any nomination,  
or
- (b) the eligibility for election to the office of President of any person declared to stand nominated as a candidate

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on nominations at the election.

and states that it is intended to **appeal** to the **High Court** against the ruling or declaration, the Presidential Returning Officer shall adjourn the ruling on nominations until such time after the appeal is finally determined or withdrawn as the Presidential Returning Officer may fix or, if such an appeal is not instituted within the period of 2 days from the date of the adjournment, until the expiration of that period.

#### **Withdrawal of candidature**

A person may **withdraw** from his or her candidature at any time before the completion of the ruling on nominations but not afterwards. Withdrawal is effected through delivery by the person, or by the person's authorised representative to the Presidential Returning Officer before the completion of the ruling on nominations, of a notice in writing of such withdrawal signed by the person or his or her authorised representative.

### **7. Appointment of agents by a candidate**

Under section 50 of the Electoral Act 1997 each candidate is required, on or before the last day for receiving nominations, to appoint an election agent (the Presidential Election Agent) and to notify the Presidential Returning Officer of the name and address of the agent. The candidate may appoint himself, or herself, as presidential election agent. The presidential election agent has responsibilities under this Act in relation to donations and election expenses. Further information on these provisions is available from the Standards in Public Office Commission ([www.sipo.gov.ie](http://www.sipo.gov.ie)). The general provisions as to the appointment and functions of agents, apart from functions relating to donations and election expenses, are set out in sections 33 and 34 of the Presidential Elections Act 1993. A copy of section 50 of the Electoral Act 1997 and sections 33 and 34 of the Presidential Elections Act 1993 is at Appendix 3.

A candidate or the election agent of the candidate 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 election agent. The candidate, the election agent or the local agent may appoint with respect to each polling district in a constituency one deputy local agent to assist the candidate in the polling district and to act therein as deputy for the candidate's election agent or local agent. The person by whom a local or deputy agent is appointed shall immediately after the appointment give written notice of the appointment to the local returning officer.

## 8. **Election Expenses**

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 or by a person authorised by the presidential election agent to do so. The spending limit period commences when the Minister makes the Presidential Election Order. The Electoral (Amendment) Act 2011 also provides that the maximum amount that can be reimbursed to a candidate at a presidential election is €200,000. To qualify for recoupment of expenses, a candidate must receive in excess of one quarter of the quota at the poll.

## 9. **Free Postage**

A candidate is entitled to send, free of postage, one communication to each household in each constituency. An Post should be consulted regarding the detailed arrangements. (Contact: Mr. Damien Murray, Strategic Account Manager, An Post. Mobile: 087 8508758.)

## 10. **The Poll**

The date and time for the poll is set by the Minister for Housing, Planning and Local Government in the Presidential Election Order that he is required to make under section 6 of the Presidential Elections Act 1993.

The taking of the poll at a presidential election will be conducted in the same manner as the poll at a Dáil election and the detailed rules in this regard contained in the Electoral Act 1992 are applied to a Presidential election with the necessary modifications. The rules in question include those governing procedures at polling stations, postal voting, special voting, voting on islands and authorisation of disabled persons to vote at an alternative polling station. Notice of the poll must be given by the Presidential Returning Officer who is also responsible for printing the ballot papers in the form prescribed in the Presidential Elections (Forms) Regulations 2011 – S.I. No. 258 of 2011 as amended by S.I. No. 329 of 2018.

## 11. The counting of the votes

The counting of the votes will be carried out entirely in the 40 constituencies for Dáil elections specified in the Electoral (Amendment) (Dáil Constituencies) Act 2013. The Presidential Returning Officer will ascertain and declare the result of the election on the basis of the reports furnished to him by the local returning officers for the individual constituencies. The candidates may be present or represented at the ascertainment of the results by the Presidential Returning Officer.

The first count will be carried out by the local returning officer in each constituency and the results notified to the Presidential Returning Officer who will calculate the quota. If a candidate reaches the quota on the first count he or she will be declared elected; if not, the Presidential Returning Officer will direct the exclusion of the lowest candidate or candidates. The votes of the excluded candidate(s) will be transferred by the local returning officers and the results notified to the Presidential Returning Officer. The process of exclusion of candidates and transfer of their votes will continue until a candidate can be declared elected. The rules for the counting of the votes are essentially the same as those applying at a Dáil bye-election.

A candidate or the agent of a candidate present at the count at constituency level may request the local returning officer, at the conclusion of a count, to re-examine and recount all or any of the papers dealt with during that count. The local returning officer must comply with such request. One request only may be made by a candidate or the election agent of a candidate to the Presidential Returning Officer during the ascertainment of the result of the election for a complete re-examination and recount of all parcels of ballot papers. Such a request can only be made at the conclusion of a count. Following such a request the Presidential Returning Officer must, unless he feels that the request is frivolous or vexatious, instruct each local returning officer to carry out the re-examination and recount and to notify him of the result in such manner as is directed by him.

## APPENDIX 1 Article 12.4 of the Constitution

4. 1° Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.
- 2° Every candidate for election, not a former or retiring President, must be nominated either by:
  - i. not less than twenty persons, each of whom is at the time a member of one of the Houses of the Oireachtas, or
  - ii. by the Councils of not less than four administrative Counties (including County Boroughs) as defined by law.
- 3° No person and no such Council shall be entitled to subscribe to the nomination of more than one candidate in respect of the same election.
- 4° Former or retiring Presidents may become candidates on their own nomination.
- 5° Where only one candidate is nominated for the office of President it shall not be necessary to proceed to a ballot for his election.

## APPENDIX 2 Form of Appointment of Authorised Representative

Presidential Election \_\_\_\_\_ (Insert month and year)

I# \_\_\_\_\_

\_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

being a person purported to be nominated as a candidate at the above-mentioned election hereby authorise<sup>+</sup>

\_\_\_\_\_

\_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

to represent me at the ruling on nominations at the said election.

Signed: \_\_\_\_\_

Signed by the above-named in the presence of\*\*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*(# Insert here the full name, address and description of the person purported to be nominated as a candidate at the election.)*

*(+ Insert here the full name, address and description of the person being authorised as representative.)*

*(\*\* Form should be signed in presence of a witness who must sign his/her name, and include his/her address and description.)*

## APPENDIX 3 Legislative Provisions on Agents

### Electoral Act 1997 – Agents

Appointment of presidential election agent. 50. (1) (a) Before incurring any election expenses at a presidential election each candidate at the presidential election shall appoint an agent (in this Part referred to as a "presidential election agent") for the purposes of this Part **and to assist the candidate generally in relation to the election\*** and shall, not later than the last day for receiving nominations at the election, notify in writing the name of the said agent and the address of the office of the agent to the presidential returning officer.

**\* Inserted by S.50(q) of Electoral Amendment Act of 2001.**

(b) A candidate may appoint himself or herself as presidential election agent and, on so doing or on being deemed under this section to have so done, shall, so far as circumstances permit, be subject to the provisions of this Part both as a candidate and as an agent and, except where the context otherwise requires, any reference in this Part to a presidential election agent shall be construed as including a reference to the candidate acting as presidential election agent.

(2) Where a candidate has not, at the time referred to in subsection (1) (a), notified the presidential returning officer of the name of the presidential election agent appointed by the candidate and the address of the agent's office, the candidate shall be deemed to have appointed himself or herself as presidential election agent and to have revoked the appointment of any other person as such agent.

(3) A candidate may at any time revoke the appointment of a presidential election agent appointed or deemed to have been appointed by the candidate under this section.

(4) (a) If, before the presidential election donation statement and the statement of election expenses have been furnished to the Public Offices Commission in accordance with sections 48 and 56, respectively, the appointment of a presidential election agent is revoked or the person appointed as such agent dies, resigns or is otherwise unable to act, the candidate shall forthwith appoint another presidential election agent and shall notify in writing the name of the person so appointed and the address of the person's office to the presidential returning officer.

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- (b)
    - (i) Where a candidate at a presidential election who has appointed himself or herself as election agent dies before a statement of election expenses has been furnished by him or her in accordance with section 56, the personal representative of the candidate may appoint another election agent in respect of the candidate.
    - (ii) The personal representative of a candidate at a presidential election referred to in subparagraph (i) may appoint himself or herself as election agent in respect of that candidate.
  - (c) The provisions of this section shall apply to a presidential election agent appointed under this subsection.
- (5) The presidential returning officer shall as soon as may be notify the Public Offices Commission in writing and give public notice of the name and the address of the office of every presidential election agent appointed or deemed to have been appointed under this section.
- (6) A presidential election agent appointed or deemed to have been appointed under this section shall have an office or place in the State to which claims, notices, writs, summonses and other documents relating to the presidential election may be sent.
- (7) Any claim, notice, writ, summons or other document delivered to the office or place of a presidential election agent and addressed to the agent shall be deemed to have been served on the agent and the presidential election agent may, in respect of any matter connected with the presidential election, be sued in any court having competent jurisdiction at the place where the said office is situated.
- (8)
  - (a) Subsections (1) (a) and (2) (a) of section 33 of the Act of 1993 are hereby repealed and every reference to an election agent in the said Act shall be construed as a reference to a presidential election agent appointed under this section.
  - (b) The following subsection is hereby substituted for subsection (4) of section 33 of the Act of 1993—
    - "(4) The person by whom an agent is appointed under this section shall immediately after the appointment give written notice of

the appointment and the name and address of the agent to the local returning officer for the constituency concerned.".

- (9) The provisions of this section, insofar as they apply to a presidential election held before the first day of January, 1998, shall have effect in relation to that election as if in subsection (1)(a) "On or before the last day for receiving nominations" was substituted for "Before incurring any election expenses" and "said" was inserted after "not later than the".

## Presidential Elections Act 1993 – Agents

- Appointment of agents.
33. (1) Where a poll is to be taken at an election—
- (a) [Repealed by s.50 of the Electoral Act 1997]
  - (b) each candidate or the election agent of the candidate may appoint one local agent for each constituency to assist the candidate in the constituency and to act as deputy in the constituency for the election agent of the candidate, and
  - (c) each candidate or the election agent or the local agent of the candidate may appoint with respect to each polling district in a constituency one deputy local agent to assist the candidate in the polling district and to act therein as deputy for the candidate's election agent and local agent.
- (2) An appointment under this section may be revoked—
- (a) [Repealed - s.50 of the Electoral Act 1997]
  - (b) in case the appointment is made under subsection (1) (b), by the candidate or the election agent of the candidate, and
  - (c) in case the appointment is made under subsection (1) (c), by the candidate or the election agent or local agent of the candidate for the constituency concerned.
- (3) Where the appointment of an agent under this section is revoked or an agent appointed under this section dies, resigns or becomes incapable of acting during an election, another agent may be appointed under this section in the place of that agent.
- Inserted by S.50 of Act of the Electoral Act 1997
- General provisions as to agents.
34. (1) A candidate at an election (referred to subsequently in this section as "a candidate") or the election agent of the candidate may appoint agents to be present on the candidate's behalf at the ascertainment of the result of the election.
- (2) A candidate or the election agent or local agent of the candidate for the constituency concerned may appoint agents to be present on the candidate's

behalf—

- (a) at the issue of ballot papers to postal voters,
  - (b) at the opening of the postal ballot boxes, and
  - (c) at the counting of the votes.
- (3) Subject to the provisions of subsection (4) the number of agents who may be appointed to be present on behalf of a candidate shall be fixed—
- (a) in the case of agents appointed to be present at the ascertainment of the result of the election, by the presidential returning officer, and
  - (b) in the case of any other agents appointed under this section, by the local returning officer,

so, however, that the same number shall be fixed in respect of every candidate.

- (4) A candidate or the election agent or local agent of the candidate may appoint one person (in this Act referred to as "a personation agent") to be present as the candidate's agent in each polling station for the purpose of assisting in the detection of personation, and such appointment shall be in writing.
- (5) An appointment under this section may be revoked by the candidate concerned or the election agent of the candidate and, if it was made under subsection (2) or (4), may also be revoked by the local agent of the candidate for the constituency concerned.
- (6) A candidate or the election agent or local agent of the candidate shall, not later than the time for the commencement of the issue of ballot papers to postal voters, give written notice to the local returning officer for the constituency concerned of the name and address of every agent appointed by the candidate or the election agent or local agent to be present at the said issue and the local returning officer may refuse to admit to the place where the ballot papers are to be issued any agent whose name and address have not been so notified to him.
- (7) A candidate or the election agent or local agent of the candidate shall, not less than 2 days (disregarding any excluded day) before the polling day, give written notice to the local returning officer for the constituency concerned of the name and address of every personation agent appointed by the candidate or the

election agent or local agent together with the name of the polling station for which the personation agent is appointed. A personation agent appointed in accordance with this section and whose name and address have been duly notified to the local returning officer shall be entitled to be present in the polling station referred to in the notification during the period commencing 30 minutes before the time fixed by the Minister for the commencement of the poll and ending when the ballot boxes have been sealed by the presiding officer pursuant to section 110 of the Act of 1992 (as applied by section 44) and the documents and materials specified in that section have been placed in sealed packets.

- (8) A candidate or the election agent or local agent of the candidate shall, not less than 2 days (disregarding any excluded day) before the polling day, give written notice to the local returning officer for the constituency concerned of the name and address of every agent appointed by the candidate or the election agent or local agent to be present at the opening of the postal ballot boxes and the local returning officer may refuse to admit to the place where the postal ballot boxes are to be opened any agent whose name and address have not been so notified to him.
- (9) A candidate or the election agent or local agent of the candidate shall, not less than 2 days (disregarding any excluded day) before the polling day, give written notice to the local returning officer for the constituency concerned of the name and address of every agent appointed by the candidate or the election agent or the local agent to be present at the counting of the votes and the local returning officer may refuse to admit to the place where the votes are to be counted any agent whose name and address have not been so notified to him.
- (10) A candidate or the election agent of the candidate shall, not less than 2 days (disregarding any excluded day) before the polling day, give written notice to the presidential returning officer of the name and address of every agent appointed by the candidate or the election agent to be present at the ascertainment of the result of the election and the presidential returning officer may refuse to admit to the place where the result is to be ascertained any agent whose name and address have not been so notified to him.
- (11) Where the appointment of an agent under this section is revoked or an agent appointed under this section dies, resigns or becomes incapable of acting during an election, another agent may be appointed under this section in the place of the agent and, where such an appointment is made, the person making the appointment shall forthwith give written notice of the name and address of the agent appointed to—

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- (a) in case the appointment is made under subsection (1), the presidential returning officer, and
  - (b) in case the appointment is otherwise made under this section, the local returning officer for the constituency concerned.
- (12) A candidate may lawfully do or assist in the doing of any thing which may lawfully be done on behalf of the candidate by an agent appointed under this section or section 33 and may be present (in addition to or in substitution for any such agent) at any place at which any such agent may, pursuant to this Act, be present.
- (13) Any thing required by this Act to be done in the presence of an agent of a candidate shall not be invalidated by reason only of the agent's not being present at the time and place appointed for doing such thing.