

COUNT REQUIREMENTS AND COMMENTARY ON COUNT RULES

Update No. 7 dated 14 April 2002

Available surpluses and candidates with zero votes

1. Background

The ERS 23, 24 and 26 elections have highlighted an anomaly with the existing count rules in certain cases relating to distributing available surpluses where the lowest candidates(s) has zero votes.

2. Existing rules

The existing rules governing a surplus distribution are set out in Section 5 of the Count Requirements document on pages 5-6. Updating these rules to take account of the High Court ruling on the unconstitutionality of deposits at Dáil elections, these rules are as follows:

“In cases where a “filling of last seat(s)” shortcut does not apply, the distribution of the only or the largest available surplus is mandatory if it - or, where there is more than one surplus, the sum of the surpluses - could possibly do any of the following:-

- ❑ Elect a continuing candidate. This condition is satisfied if the (sum of the) surplus(es) and the votes of the highest continuing candidate equals or exceeds the quota;
- ❑ Save the lowest candidate from exclusion. This condition is satisfied if the (sum of the) surplus(es), together with the sum of the votes of the lowest continuing candidate, is equal to or greater than the number of votes credited to the second lowest continuing candidate;
- ❑ Qualify the lowest candidate for recoupment of his/her election expenses, if he/she has not already so qualified. This condition is satisfied if the

number of votes credited to the lowest candidate is equal to or less than one quarter of the quota and the number of such votes, together with the (sum of the) surplus(es), exceeds one quarter of the quota.¹”

In certain cases where the lowest candidate(s) has zero votes, the application of these rules can result in the (largest) available surplus not being distributed immediately and the lowest candidate with any votes being excluded instead, even though the distribution of the available surplus(es) could possibly have saved that candidate from exclusion.

3. Rules modification

The existing rules should continue to apply. However, in the case where the lowest candidate(s) has zero votes (and only in such cases), if the outcome of applying these rules is that (the largest) available surplus is not to be immediately transferred, the system should

1. in relation to the only or the largest available surplus, check both –
 - If the distribution of such surplus could bring the lowest candidate with any votes level with or above the second lowest candidate with any votes. If the answer is YES, such surplus should be distributed and the statement should state - as a reason for distributing such surplus –
“bring the lowest candidate with any votes level with or above the second lowest candidate with any votes”, and
 - If the distribution of such surplus could qualify the lowest candidate with any votes for recoupment of his/her election expenses, if he/she has not already so qualified. If the answer is YES, such surplus should be distributed and the statement should state - as a reason for distributing such surplus –
“qualify the lowest candidate with any votes for recoupment of his/her election expenses, if he/she has not already so qualified”.

¹ In the case of a Dáil bye-election, see Section 14 entitled “**THRESHOLD FOR RETURN OF DEPOSIT AT DÁIL BYE-ELECTIONS**”.

If the answer to both questions is NO, and there is only one available surplus, that surplus should not be distributed. The existing statement in this situation should remain unchanged, viz. “The available surplus will not be distributed because it cannot materially affect the progress of the count, either by electing a continuing candidate or by bringing the lowest candidate level with or above the second lowest candidate or by qualifying the lowest candidate for recoupment of his/her election expenses.”

If the answer to both questions is NO but there is more than one surplus available, the system should

2. in relation to the sum of the available surpluses, check both –
 - If the distribution of such surpluses could bring the lowest candidate with any votes level with or above the second lowest candidate with any votes. If the answer is YES, the largest available surplus should be distributed and the statement should state - as a reason for distributing such surplus – “bring the lowest candidate with any votes level with or above the second lowest candidate with any votes”, and
 - If the distribution of such surpluses could qualify the lowest candidate with any votes for recoupment of his/her election expenses, if he/she has not already so qualified. If the answer is YES, the largest available surplus should be distributed and the statement should state - as a reason for distributing such surplus – “qualify the lowest candidate with any votes for recoupment of his/her election expenses, if he/she has not already so qualified”.

If the answer to both questions is NO, the largest available surplus should not be distributed. The existing statement in this situation should remain unchanged, viz. “The available surpluses will not be distributed because they cannot materially affect the progress of the count, either by electing a continuing candidate or by bringing the lowest candidate level with or above the second lowest candidate or by qualifying the lowest candidate for recoupment of his/her election expenses.”