



# Irish Council for **Civil Liberties**

**ICCL Submission to the**

**Public Consultation on the Establishment of an Electoral Commission**

March 2019

## Terms of Public Consultation

As set out in the consultation process documentation, the Government is considering four options with regard to the establishment of an Electoral Commission. The Department makes clear in the consultation document that its ultimate aim is to have an electoral commission on a statutory basis and the four options relate to the sequence and legal basis under which the Commission should be established (or the status quo retained). In this submission, ICCL sets out its position on the key question of the establishment of an Electoral Commission, and also sets out its views on those related areas of Electoral Law Reform which it considers urgent and which should be addressed as part of the present reform process.

## Background to our Submission

ICCL approaches the subject of regulation of elections and political activity from the perspective of ensuring that any regulations in this area (statutory or otherwise) should advance and respect human rights standards. In particular, we are concerned that restrictions on political activities should be based in law, necessary and proportionate, with specific reference to the need to respect the rights to freedom of expression and freedom of association.

As part of the Coalition for Civil Society Freedom, we have set out our position on these matters in detail in our [position paper](#) "*Keeping the Peoples' Voice in Power*", published in October 2018.

We contributed to a [comparative study](#) on how the complex question of advocacy by civil society organisations has been dealt with in three other EU members States in contrast to the approach taken in Ireland.

Simultaneously, ICCL recognises the importance of protecting the integrity and security of democratic elections. We are conscious that in many parts of the world, repressive forces that seek to restrict civil society and the exercise of freedom of expression are also attempting to subvert the rule of law and electoral politics. We note the very real threats that are presented in this context by sovereign and commercial interests who may seek to interfere with or influence elections in a covert manner, or by circumventing electoral regulations.

ICCL also made a submission to the Inter-Departmental Group on Electoral Security (IDG) as part of its consultation process in July 2018. In that submission, we recognised the importance of strengthening "integrity" protections in electoral processes generally. We also argued that there is a need to treat separately (i) issues of electoral security and integrity, which require strict regulation and intervention; and (ii) issues of free speech or 'disinformation' which should be dealt with through transparency, free access to information and through general regulation of the media.

## **We support the Establishment of an Electoral Commission on a Statutory Basis**

- ICCL supports the establishment of an Electoral Commission. We are supportive of strengthening the cohesiveness and transparency of electoral regulation that an Electoral Commission can bring. We support the general recommendations for the establishment of an Electoral Commission, including the commitment in the Programme for Government and the recommendation of the Joint Oireachtas Committee on Environment, Culture and the Gaeltacht (2016). We note that the Department does not anticipate that there should be any additional costs associated with transferring across these functions to a Statutory Electoral Commission.
- The issues that will fall to be regulated by the Electoral Commission engage important questions of human rights and democratic participation. Furthermore, it is essential that any regulatory body operating in this area should be fully independent of Government in all respects. Such independence should be guaranteed by ensuring that the body is established by primary legislation; and by ensuring that funding for any Electoral Commission comes directly from the central fund of the exchequer.
- We also believe that the introduction of establishing legislation will afford an opportunity to address existing deficiencies in the Electoral Act, including the difficulties surrounding the regulation of civil society advocacy set out in our Position Paper *“Keeping the Peoples’ Voice in Power”*. Specifically, we are concerned with certain aspects of the current Electoral Law and Regulation as they apply to civil society: in particular that electoral regulation should not apply to advocacy by civil society on matters of policy outside of elections and referendums; and that regulation of the activities of civil society in referendums should respect (or be consistent with) freedom of expression and freedom of association.

## **Role and Functions of the Electoral Commission in Regulating and Overseeing Election and Referendum Funding**

- We note that the Joint Oireachtas Committee identified the following specific functions to be given to an Electoral Commission in the first phase: the regulation of political funding as currently carried out by the Standards in Public Office Commission (SIPO); and the functions of the Referendum Commission. In transferring these core functions to the Electoral Commission, it is essential that clear provision be put in place for fair procedures for all affected parties that are subject to such regulations.
- We recognise the issues of electoral security identified in the IDG report, including the need to address transparency of online political advertising, and reform of political funding rules. We see these threats as linked to threats experienced by civil

society from hostile actors who wish to suppress democratic processes more generally.

- If an Electoral Commission is to effectively address the threat of excessive spending corrupting our politics, the rules on campaign funding need to be expanded to regulate the spending of previously existing resources as well as regulating the receipt and use of donations.
- We also agree with the Transparent Referendum Initiative that requirements for real-time disclosure of information during election periods are essential.
- The ICCL is supportive in principle of attempts to improve transparency around on-line political advertising, and we have engaged with James Lawless TD in relation to his proposed Bill in this area. The ICCL believes that any future Electoral Commission must be properly equipped to protect individuals' privacy rights including the right to be free from unlawful micro-targeting in online advertising. However, we believe it is also important that any regulations in this area must be proportionate with regard to the right to freedom of expression and the legitimate advocacy role of civil society organisations. We are concerned that any measures to regulate online speech or advertising must ensure that dissent is not stifled by over-burdensome regulation.
- We also support recommendations to transfer other core electoral regulation issues to the Electoral Commission including:
  - Oversight of the Register of Electors engages several human rights issues, including issues of discrimination that may arise from proof of identity requirements (as arose in UK), and which could be addressed by automatic registration procedures.
  - Providing for and resourcing a research function for the Electoral Commission would be a positive step which would allow the Commission to develop capacity to respond to developments in technology.
  - Providing for and resourcing a voter education function for the Electoral Commission would provide an independent source of information which could encourage higher levels of democratic participation, and higher levels of political awareness.