

# **Recommendations on the Establishment of an Electoral Commission**

*March 2019*



**Coimisiún na hÉireann um Chearta  
an Duine agus Comhionannas**  
Irish Human Rights and Equality Commission





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# **Response to the Public Consultation on a Regulatory Impact Analysis on the Establishment of an Electoral Commission**

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## Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014. The Commission has a statutory mandate to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality, and to make recommendations to the Government to strengthen, protect and uphold human rights and equality in the State.

In this response to the Public Consultation on a Regulatory Impact Analysis on the Establishment of an Electoral Commission the Commission calls on the Government to expedite the establishment of an electoral commission on a statutory basis and comments on its potential mandate with regards to:

- standards in political discourse,
- the right to participate in public life as set out in domestic and international human rights law,
- regulation of online political advertising, and
- evidence based policy development particularly with regards to advancing the equal participation of all groups in Ireland's democratic process.

## Standards in political discourse during election and referendum campaigns

The Commission proposes that an electoral commission should promote the equal participation of all groups in the electoral process by developing and promoting standards for political discourse during election and referendum campaigns.

The Commission is of the view that while political debates during elections and referendums should be free and open, they should not be characterized by political discourse that is of a

discriminatory nature, or which amounts to hate speech.<sup>1</sup> Political discourse that fosters a climate of hostility and intolerance can exclude targeted groups from the public sphere. Such exclusion restricts the extent to which these groups can participate at all levels in the democratic process.<sup>2</sup>

The use of discriminatory rhetoric in election campaigns can be addressed by the development and promotion of guidance on standards in political discourse.<sup>3</sup> In the UK, the Equality and Human Rights Commission has developed and promoted voluntary principles on standards in political discourse for political candidates.<sup>4</sup> These principles call on political parties to commit to ensuring that their members refrain from conduct that: generates hostility, discrimination, prejudice or division; is abusive or denigrating; promotes stereotypes; or uses false, erroneous or misleading information.<sup>5</sup>

At a regional level, the Council of Europe has recommended that States should encourage political parties to self-regulate the standard of their political discourse by adopting codes of conduct, recommending in particular that political parties adopt its *Charter of European Political Parties for a non-racist society*.<sup>6</sup> By adopting the Charter, political parties commit “To refuse to display, to publish or to have published, to distribute or to endorse in any way views and positions which stir up or invite, or may reasonably be expected to stir up or to

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<sup>1</sup> The Committee of Ministers of the Council of Europe define hate speech as “all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”. See Council of Europe, *Recommendation No. R(97) 20 of the Committee of Ministers to Member States on ‘Hate Speech’*, 1997. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680505d5b>.

<sup>2</sup> Alexander Tsesis, ‘Dignity and Speech: The Regulation of Hate Speech in a Democracy’, *Wake Forest Law Review*, Vol. 44, 2009, p.497-532. Available at <https://lawcommons.luc.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1040&context=facpubs>

<sup>3</sup> The Inter-Parliamentary Union’s *Declaration on Free and fair Elections* declares that “States should take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. In so doing, they should, among other matters ... Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period”. See Inter-Parliamentary Union, *Declaration on Free and fair Elections*, 1994, Article 4(2). Available at <http://archive.ipu.org/cnl-e/154-free.htm>

<sup>4</sup> Equality and Human Rights Commission, *Voluntary principles on standards for political discourse*. Available at <https://www.equalityhumanrights.com/sites/default/files/voluntary-principles-on-standards-for-political-discourse.pdf>.

<sup>5</sup> Equality and Human Rights Commission, *Voluntary principles*.

<sup>6</sup> Council of Europe’s European Commission against Racism and Intolerance (ECRI), *General Policy Recommendation No.15 on Combating Hate Speech*, 2015, para.6. Available at <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>.

invite prejudices, hostility or division between people of different ethnic or national origins or religious beliefs, and to deal firmly with any racist sentiments and behavior within its own ranks”.<sup>7</sup> Other codes of conduct offering more general guidance for political parties during election campaigns set out similar standards for political discourse.<sup>8</sup>

Equinet, the European Network of Equality Bodies, has developed a *Recommendation on promoting equality and combatting discrimination in election campaigns*.<sup>9</sup> Noting reports that a growing number of election campaigns in Europe have been marred by scapegoating and discriminatory language or hate speech, the recommendation calls on political parties and candidates to refrain from using discriminatory language or hate speech and from proposing discriminatory laws and policies.

The Commission is of the view that an electoral commission may be best placed to develop and promote similar guidance on standards in political discourse in Ireland. It is proposed that an electoral commission be assigned an oversight role for electoral events, in addition to an independent policy development role that would enable it to drive further electoral reform free from the perception of partisan motive.<sup>10</sup> With this mandate, an electoral commission would be suitably placed to develop and promote guidance on standards in public discourse in consultation with political parties and candidates. Existing codes of conduct,<sup>11</sup> previous work on protocols for political parties<sup>12 13</sup>, and the approaches of other electoral commissions<sup>14</sup> could inform future guidance.

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<sup>7</sup> Council of Europe, *Charter of European Political Parties for a Non-Racist Society (Revised)*, 2017. Available at <https://rm.coe.int/16806fe48b>.

<sup>8</sup>For example, the International Institute for Democracy and Electoral Assistance’s *Code of Conduct for Political Parties Campaigning in Democratic Elections* sets out a commitment for party candidates to “avoid using language that – (a) is inflammatory, or defamatory; or (b) threatens or incites violence in any form against any other person or group of persons” during election campaigns International Institute for Democracy, *Code of Conduct for Political Parties*, p.18.

<sup>9</sup> Equinet, *Recommendation on Combatting Discrimination and Hate in Election Campaigns*, 2019. Available at [http://www.equineteurope.org/IMG/pdf/equinet\\_election\\_recommendation\\_final.pdf](http://www.equineteurope.org/IMG/pdf/equinet_election_recommendation_final.pdf).

<sup>10</sup> Joint Committee on Environment, *Report of the Joint Committee*, p.117.

<sup>11</sup> There are codes of conduct for office holders, TDs, and Senators published by the Standards in Public Office Commission in accordance with section 10 (11) of the Standards in Public Office Act, 2001. See: <http://www.sipo.ie/en/Codes-of-Conduct/Office-Holders/Introduction-and-General-Principles.html>; <https://www.sipo.ie/en/Codes-of-Conduct/TDs/> <https://www.sipo.ie/en/Codes-of-Conduct/Senators/>

<sup>12</sup> In 2001, the National Consultative Committee on Racism and Interculturalism (NCCRI) introduced an Anti-Racism Protocol for Political Parties and a Declaration of Intent for Candidates for Elections. The Protocol was signed by all the political parties in the State and was formally launched by the Minister for Justice, Equality and Law Reform in June 2001. Signatories to the Protocol undertook to ensure that: “election campaigns including campaigns for local elections, general elections and elections to the European Parliament are conducted in such a way that they do not incite hatred or prejudice on the grounds of ‘race’, colour, nationality

## Recommendation

**The Commission recommends that an electoral commission would be mandated to address the use of discriminatory rhetoric and hate speech in political campaigning by developing and promoting standards in political discourse during elections and referendums.**

## Participation in public life

The right to participate in public life is set out in domestic and international law. At the domestic level, Article 16 of the Constitution of Ireland provides for the right of all citizens who have reached the required age to both contest and vote, by secret ballot, in elections for membership to Dáil Éireann.<sup>15</sup> The right to vote by secret ballot was upheld by the High Court in the 2017 case *Sinnott v Minister for The Environment*, in which the court vindicated the right of a visually impaired man to vote privately and without assistance in referendums and elections.<sup>16</sup>

At the regional level, Article 3 (right to free elections) of Protocol No. 1 to the European Convention on Human Rights sets out the state's obligation to determine membership of the

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*or ethnic or national origins, religious belief and membership of the Traveller Community.*" See NCCRI, 'Towards the Development of a National Action Plan Against Racism In Ireland - A Discussion Document to Inform The Consultative Process', 2002. Available at

<http://www.justice.ie/en/JELR/Towards+a+Nat+Action+Plan.pdf/Files/Towards+a+Nat+Action+Plan.pdf>

<sup>13</sup> The European Network Against Racism (ENAR) Ireland further developed and published the NCCRI Anti-Racism Election Protocol in 2011 for the General Elections and in 2014 for the Local and European Elections. ENAR invited all the Political Parties that had signed the original protocol to renew their commitment by signing the updated declaration as well as inviting other parties or groups established more recently to sign up as well. Ibid. p21

<sup>14</sup> The Electoral Commission in the UK publishes guidance to candidates and their agents on the election campaign they are involved in. In one example of such guidance, related to hate speech, it states that: "*Under the Public Order Act 1986, it is an offence to publish or distribute threatening, abusive or insulting material that is intended to stir up racial hatred or which is likely to stir up racial hatred.*" See Electoral Commission (UK), *Local elections in England and Wales: Guidance for candidates and agents, Part 4 of 6 – The campaign*, 2018. Available at [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0011/141788/Part-4-The-campaign-LGEW.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/141788/Part-4-The-campaign-LGEW.pdf).

<sup>15</sup> Article 16 of the Constitution of Ireland, Bunreacht na hÉireann. Further, Article 28(a)(4) of the Constitution of Ireland provides that every citizen who has the right to vote at an election for members of Dáil Éireann has the right to vote at an election for members of local authorities.

<sup>16</sup> See *Sinnott -v- Minister for The Environment*. Available at <http://www.courts.ie/Judgments.nsf/0/BB79198BD8EB5FF7802580FB00463F32>



legislature by holding free elections at reasonable intervals by secret ballot.<sup>17</sup> At the international level, various human rights treaties set out the right to participate in elections. Article 21(c) of the Universal Declaration of Human Rights provides that elections held by universal and equal suffrage and by way of a secret vote or equivalent free voting procedures shall be the basis for the authority of government.<sup>18</sup> Article 29 of the United Nations Convention on the Rights of Persons with Disabilities sets out the rights of persons with disabilities to vote, be elected and participate in the conduct of public affairs.<sup>19</sup> Article 5(c) of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination sets out the State's duty to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to vote and stand for election and take part in the conduct of public affairs.<sup>20</sup>

## Regulating online political advertising

The Commission notes that the development of a regulatory framework for online political advertising is being considered by the Department of the Taoiseach<sup>21</sup> and that in the consultation on this matter a number of bodies have proposed that an electoral commission be assigned the function of monitoring compliance with prospective regulations on online political advertising.<sup>22</sup> While the Department has noted that the definition of 'political

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<sup>17</sup> See European Court of Human Rights, *Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights: Right to free elections*, 2018. Available at [https://www.echr.coe.int/Documents/Guide\\_Art\\_3\\_Protocol\\_1\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf)

<sup>18</sup> Article 21(c) of the Universal Declaration of Human Rights. Available at <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>19</sup> Ireland ratified the convention in March 2018. Article 29 of the convention is available at <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-29-participation-in-political-and-public-life.html>

<sup>20</sup> Article 5(c) of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. Available at <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

<sup>21</sup> Department of Taoiseach, *Discussion Paper – Regulation of Online Political Advertising in Ireland*, 2018, p.4-5. Available at <https://assets.gov.ie/2222/241018105631-b7dee452b7014ce595a20c2b74648675.pdf>.

<sup>22</sup> See: SIPO, *Regulation of Online Political Advertising in Ireland, Public Consultation: Observations of the Standards in Public Office Commission*, 2018, p.5. Available at <https://assets.gov.ie/3710/041218154841-622bdf5f90d4eb4ad1c99608fc4c3bc.pdf>; Irish Council for Civil Liberties, *Public Consultation on Regulation of Online Political Advertising in Ireland: Submission by the Irish Council for Civil Liberties*, 19 October 2018, p. 4. Available at <https://assets.gov.ie/3722/041218155905-7aea9f034578467cac1562aad4be6527.pdf>; Broadcasting Authority of Ireland, *Response from the Broadcasting Authority of Ireland: Consultation on the*

purposes’ set out in the *Electoral Acts* could be used as a basis for defining ‘political advertising’ in this regard, it also noted the need to carefully consider the concerns raised by civil society organisations regarding the scope of such a definition “in order to minimise the risk of unintended consequences”.<sup>23</sup> The Commission has recently considered these concerns and recommended that a review of the *Electoral Acts* be undertaken with a view to considering a clearer linkage of the restrictions placed on ‘third party’ activity and activity for ‘political purposes’ with electoral matters.<sup>24</sup>

The Commission is of the view that there should be definitional alignment between ‘political purposes’ as set out in the *Electoral Acts* and ‘political advertising’ to ensure consistency; and again that regulatory measures based on these definitions should avoid placing undue restrictions on civil society activity engaging in legitimate advocacy aiming to influence political decision making and policy making, including with regards to human rights and equality issues.

## Recommendation

**The Commission reiterates its call that a review of the *Electoral Acts* be undertaken with a view to considering a clearer linkage of the restrictions placed on ‘third party’ activity and activity for ‘political purposes’ with electoral matters.**

**The Commission further recommends that any issues identified in the course of that review be duly considered in the process of defining the scope of provisions to regulate online political advertising so as to avoid placing undue restrictions on civil society activity.**

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*Transparency of Online Political Advertising*, 2018, p.6. Available at <https://assets.gov.ie/3708/041218154557-e51e8c3713014c959e15bfba34f1e17a.pdf>.

<sup>23</sup> Department of Taoiseach, *Regulation of Online Political Advertising in Ireland*, p.5.

<sup>24</sup> Irish Human Rights and Equality Commission, *Policy Statement on the Electoral Acts and Civil Society Space in Ireland*, 2019. Available at <https://www.ihrec.ie/app/uploads/2019/01/Policy-Statement-on-Civil-Society-and-the-Electoral-Acts-F-11012019.pdf>.

## Proposed policy development role

The Commission welcomes the proposal that an electoral commission take on a broad policy development role that includes conducting independent research on electoral policy, and developing and implementing voter education and engagement initiatives.<sup>25</sup> The Commission believes that as part of its policy development role the electoral commission should be mandated to promote more equal political participation through information, education and facilitation programmes that aim to engage groups facing barriers to participating in the Irish electoral process, such as women, persons with disabilities, young people, migrants and people from ethnic minority backgrounds including Travellers and Roma.

In acting on its policy development role to engage such groups, an electoral commission could lead the way in progressing current government policy objectives. The *National Traveller and Roma Integration Strategy 2017 – 2021* sets the objective that “Traveller and Roma people should be supported to participate in political processes at local and national levels”, with the Department of Housing, Planning, Community and Local Government (DHPCLG) assigned the responsibility to “support the work of Traveller and Roma organisations on voter education and voter registration initiatives for the Traveller and Roma communities” to progress this objective.<sup>26</sup> Further, one of the actions set out in *The Migrant Integration Strategy* is that “migrants will be supported and encouraged to register to vote and to exercise their franchise”, again with DHPCLG assigned responsibility to progress this action.<sup>27</sup> Under the *National Disability Inclusion Strategy 2017 – 2021*, DHPCLG is responsible for implementing the commitment to “progress the accessibility of voting and voter information, building on learning from National Disability Authority research and from

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<sup>25</sup> Houses of the Oireachtas Joint Committee on Environment, Culture and the Gaeltacht, *Report of the Joint Committee on the Consultation on the Proposed Electoral Commission 2016*, p.117. Available at <https://webarchive.oireachtas.ie/parliament/media/committees/archivedcommittees/environmentcultureandthegaeltacht/report-on-electoral-commission-final-20160113.pdf>

<sup>26</sup> Department of Justice and Equality, *National Traveller and Roma Inclusion Strategy 2017 – 2021*, p.42. Available at

<http://www.justice.ie/en/JELR/National%20Traveller%20and%20Roma%20Inclusion%20Strategy,%202017-2021.pdf/Files/National%20Traveller%20and%20Roma%20Inclusion%20Strategy,%202017-2021.pdf>.

<sup>27</sup> Department of Justice and Equality, *The Migrant Integration Strategy*, action 59, p.32. Available at [http://www.justice.ie/en/JELR/Migrant\\_Integration\\_Strategy\\_English.pdf/Files/Migrant\\_Integration\\_Strategy\\_English.pdf](http://www.justice.ie/en/JELR/Migrant_Integration_Strategy_English.pdf/Files/Migrant_Integration_Strategy_English.pdf).

experience and best practice”.<sup>28</sup> The *National Youth Strategy 2015 – 2020* as a priority set out to “Work to increase young people’s political engagement through the promotion of voter education programmes and other initiatives”.<sup>29</sup> An electoral commission using a broad policy role to progress these objectives would also be in line with the work of electoral commissions in comparable jurisdictions such as the UK and New Zealand (see boxes 1 and 2)

### **Case study 1: The UK Electoral Commission’s *Elections for everyone* report**

Following the general election in the UK on 8 June 2017, the UK’s Electoral Commission researched the experiences of persons with disabilities as voters.<sup>30</sup> The Electoral Commission partnered with a wide range of disability organisations to produce and distribute a survey questionnaire, which was used to gather evidence about the specific barriers that persons with disabilities face as voters.<sup>31</sup> On the basis of this research the Electoral Commission recommended a range of measures that could be taken by Government, political parties and candidates, the people running elections, and carers and support workers to address these barriers.<sup>32</sup> The recommendations included changing election forms to be more easily understood, amending legislation to give persons with disabilities more choice as to who can accompany them to vote, encouraging candidates to publish easy to read materials in good time, ensuring polling station staff are adequately ready to support people to vote, and raising awareness amongst care staff and support workers of persons with disabilities’ right to vote.<sup>33</sup>

<sup>28</sup> Department of Justice and Equality, *National Disability Inclusion Strategy 2017 – 2021*, action 29, p.17. Available at <http://www.justice.ie/en/JELR/dept-justice-ndi-inclusion-strategy-booklet.pdf/Files/dept-justice-ndi-inclusion-strategy-booklet.pdf>.

<sup>29</sup> Department of Children and Youth Affairs, *National Youth Strategy 2015 – 2020*, action 5.5, p.33. Available at <https://www.dcy.gov.ie/documents/publications/20151008NatYouthStrat2015to2020.pdf>.

<sup>30</sup> Electoral Commission (UK), *Elections for everyone: Experiences of people with disabilities at the 8 June 2017 UK Parliamentary general election*, 2017, p.2. Available at [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0008/237194/Accessibility-report-call-for-evidence.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/237194/Accessibility-report-call-for-evidence.pdf).

<sup>31</sup> Electoral Commission (UK), *Elections for everyone*, p.3.

<sup>32</sup> Electoral Commission (UK), *Elections for everyone*, p.3-4.

<sup>33</sup> Electoral Commission (UK), *Elections for everyone*, p.4.

## **Case study 2: The New Zealand Electoral Commission's *Voter and Non-voter Satisfaction Surveys***

The Electoral Commission in New Zealand has been conducting research on voters and non-voters after every general election since 2002.<sup>34</sup> The primary aims of this research, which is done by way of a survey questionnaire, is to understand the level of engagement with the voting process, uncover barriers to voting and how to address these barriers for different population groups, and measure voter satisfaction with the services that the Electoral Commission provides.<sup>35</sup>

The survey is designed to gather data on the electorate as a whole and on specific groups who have traditionally had lower levels of political participation, such as people of ethnic minority backgrounds, young people (aged 18-29), persons with disabilities, and non-voters. The Electoral Commission highlights the responses of these groups when reporting on survey results, and where possible compares results with those of previous surveys.<sup>36</sup> The survey questions address topics such as understanding of the registration and voting process, knowledge of where to vote, experiences of and satisfaction with voting on polling day (including polling facilities and staff, ballot papers and occurrences of issues when voting), and non-voters reasons for not voting.<sup>37</sup> The Electoral Commission uses the results of these surveys to develop evidence-based action plans that promote the equal participation of all groups in the electoral process, such as its current disability access strategy *Access 2020*.<sup>38</sup>

## **Recommendation**

**The Commission recommends that the Electoral Commission would have a policy development role and should be specifically mandated to promote more equal political participation.**

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<sup>34</sup> See <https://www.elections.org.nz/research-statistics/research/voter-and-non-voter-surveys>.

<sup>35</sup> See <https://www.elections.org.nz/events/2017-general-election/reports-statistics/voter-and-non-voter-satisfaction-survey-2017>.

<sup>36</sup> Electoral Commission (New Zealand), *Report into the 2017 General Election*, 2018, p.5; p.8. Available at [https://www.elections.org.nz/sites/default/files/plain-page/attachments/voter\\_and\\_non-voter\\_satisfaction\\_survey\\_2017.pdf](https://www.elections.org.nz/sites/default/files/plain-page/attachments/voter_and_non-voter_satisfaction_survey_2017.pdf).

<sup>37</sup> Electoral Commission (New Zealand), *Report into the 2017 General Election*.

<sup>38</sup> Electoral Commission (New Zealand), *Access 2020: Electoral Commission Disability Strategy*. Available at [https://www.elections.org.nz/sites/default/files/bulk-upload/documents/access\\_2020\\_disability\\_strategy.pdf](https://www.elections.org.nz/sites/default/files/bulk-upload/documents/access_2020_disability_strategy.pdf).

**The Commission recommends that the Electoral Commission should engage groups facing barriers to participating in the Irish electoral process, such as women, persons with disabilities, young people, migrants and people from ethnic minority backgrounds including Travellers and Roma.**

## Accessibility of polling stations

The Commission notes the proposal to assign an electoral commission a duty to oversee the running of elections, with this to include a statutory remit to oversee and monitor the performance of Returning Officers and local authorities in carrying out their functions in electoral events.<sup>39</sup> The functions of Returning Officers include requisitioning buildings for use as polling stations and recruiting personnel to take the poll.<sup>40</sup> The Commission has been advised by its Disability Advisory Committee (DAC) of concerns regarding the performance of Returning Officers in carrying out these duties.<sup>41</sup> These concerns regard the accessibility of polling stations and the current arrangement whereby if a polling station is inaccessible for a person with a disability, the obligation falls on that person to apply to their Returning Officer for permission to vote at an alternative polling station which is accessible to them.<sup>42</sup> The Disability (Miscellaneous Provisions) Bill 2016, currently awaiting report stage before Dáil Éireann, proposes to amend the Electoral Acts so that all polling stations must be

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<sup>39</sup> Department of Housing, Planning and Local Government, *Regulatory Impact Analysis*, p.10. Available at [https://www.housing.gov.ie/sites/default/files/public-consultation/files/18.11.27\\_-\\_ria\\_-\\_electoral\\_commission\\_final\\_-\\_english.pdf](https://www.housing.gov.ie/sites/default/files/public-consultation/files/18.11.27_-_ria_-_electoral_commission_final_-_english.pdf).

<sup>40</sup> Department of Environment, Community and Local Government, Consultation Paper on the Establishment of an Electoral Commission in Ireland, 2015, p.20. Available at <https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/LocalGovernment/Voting/FileDownload%2C40119%2Cen.pdf>. For elections to Dáil Éireann and the European Parliament, Returning Officers are either a County Registrar or a City or County Sheriff who is a statutory officer of the Courts Service; local authority officials are Returning Officers for elections to local authorities. Ibid, p.20.

<sup>41</sup> The Commission's Disability Advisory Committee was formally appointed on 28 January 2019 to advise the Commission on its statutory function of monitoring Ireland's implementation of the UNCRPD. See Irish Human Rights and Equality Commission, *New Departure on Rights of Persons with Disabilities as Formal Committee Begins Work in Monitoring Ireland's Obligations*, 28 January 2019. Available at <https://www.ihrec.ie/new-departure-on-rights-of-persons-with-disabilities-as-formal-committee-begins-work-in-monitoring-irelands-obligations/>.

<sup>42</sup> This arrangement arises from s.100 of the Electoral Act 1992. Available at <http://www.irishstatutebook.ie/eli/1992/act/23/section/100/enacted/en/html#sec100>

accessible to wheelchair users.<sup>43</sup> However, the concerns of the Commission's DAC address accessibility issues for all persons with disabilities.

In raising these concerns, the Commission draws attention to the Public Sector Equality and Human Rights Duty provided for in Section 42 of the *Irish Human Rights and Equality Act, 2014*.<sup>44</sup> Under this provision, all public bodies in Ireland are obliged to promote equality, prevent discrimination and protect the human rights of their customers, service users and everyone affected by their policies and plans. The Commission is of the view that in order for the requirements of this duty to be met in the running of elections, actions need to be taken to ensure that all polling stations are accessible to persons with disabilities.

It is proposed that an electoral commission develop performance indicators with which to measure its progression of high level objectives.<sup>45</sup> Relevant indicators could be developed to monitor the performance of Returning Officers as they seek to meet the requirements of the Public Sector Equality and Human Rights Duty. These indicators should capture the extent to which the services provided by Returning Officers are compliant with the *Equal Status Acts*.<sup>46</sup>

In the course of addressing this issue, an electoral commission should consult persons with disabilities. This consultation could be done by way of an electoral commission seeking representation of persons with disabilities, or by way of engaging the Commission's DAC.

## Recommendation

**The Commission recommends that an electoral commission should set standards for the use of polling stations that are compliant with the constitutional right to vote and the obligations of all public bodies under S.42 of the *Irish Human Rights and Equality Act, 2014*. Persons with disabilities should participate in the setting of such standards, the**

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<sup>43</sup> Section 2, *Disability (Miscellaneous Provisions) Bill 2016*. Available at [https://data.oireachtas.ie/ie/oireachtas/bill/2016/119/eng/ver\\_a/b119a16d.pdf](https://data.oireachtas.ie/ie/oireachtas/bill/2016/119/eng/ver_a/b119a16d.pdf).

<sup>44</sup> S.43, *Irish Human Rights and Equality Commission Act, 2014*. Available at <http://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/html>.

<sup>45</sup> Department of Housing, Planning, Community and Local Government, *Regulatory Impact Analysis*, p.15

<sup>46</sup> The *Equal Status Acts 2000-2015* prohibit discrimination in the provision of goods and services, accommodation and education. They cover the nine grounds of gender, marital status, family status, age disability, sexual orientation, race, religion, and membership of the Traveller community. For more information, see <https://www.ihrec.ie/guides-and-tools/human-rights-and-equality-in-the-provision-of-good-and-services/what-does-the-law-say/equal-status-acts/>.

implementation of which an electoral commission could monitor by developing appropriate performance indicators.







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