Standards in Public Office Commission
Coimisiún um Chaighdeáin in Oifigí Poiblí

Regulation of Online Political Advertising in Ireland
Public Consultation

Observations of the Standards in Public Office Commission

The Standards in Public Office Commission

Functions of the Standards Commission under the Electoral Acts

1. The Standards in Public Office Commission (Standards Commission) is an independent body established in December 2001 by the Standards in Public Office Act 2001. It has six members and is chaired by a former Judge of the High Court. It has supervisory roles under four separate pieces of legislation, including the Electoral Act 1997, as amended.

2. The Electoral Acts require the Standards Commission to monitor and, where it considers it appropriate to do so, to report to the Chairman of Dáil Éireann on matters relating to -
    - the acceptance and disclosure of donations received by political parties, Members of both Houses and of the European Parliament and candidates at Dáil, Seanad, European Parliament and presidential elections;
    - the opening and maintenance of political donations accounts;
    - the limitation, disclosure and reimbursement of election expenses;
    - State financing of qualified political parties, and
    - the registration of "third parties" (i.e. campaign / lobby groups or individuals which accept a donation for political purposes which exceeds €100 in value) and "other persons" (i.e. persons who are not connected to a candidate or a political party).
3. The Standards Commission may refer possible criminal offences to the DPP. In practice, at the request of the DPP, the Commission makes such referrals to An Garda Síochána.

4. The Local Elections (Disclosure of Donations and Expenditure) Act 1999 provides for regulation of political donations to candidates at local elections and elected members of local authorities and for election expenses incurred on behalf of candidates at local elections and by national political parties in regard to those elections. The provisions are

similar to those in the Electoral Acts concerning national, European and presidential elections. However, the provisions are overseen by the relevant local authority and the Standards Commission has no role in this regard.

Political Advertising

5. Expenditure on advertising by a candidate or political party at a Dáil, European or Presidential election during the "election period" is an election expense, which must be declared to the Standards Commission. In addition, expenditure on advertising by "other persons", i.e. those not connected to a candidate or political party, during the "election period" is an election expense, which must be declared by the "other person" to the Standards Commission.

6. There are no provisions in the Electoral Acts regulating spending by any person or party, including a third party, or by persons based outside the State at a Seanad election or a referendum.

Standards Commission's Annual Report for 2017

7. In his introduction to the 2017 Annual Report, the Chairperson of the Standards Commission stated:

   "The Electoral Act 1997 is silent on expenditure on referendums, with neither expenditure limits nor disclosures contemplated by the Act. Moreover, the landscape of political engagement has changed in the years since the Act was passed, with the internet and social media now featuring heavily in any campaign. While there are prohibitions on foreign political donations other than in specific circumstances, the Commission notes with concern that individuals and organisations based outside of Ireland may fund political advertising or launch digital campaigns financed outside the State. As no legislative framework currently exists to address these matters, it would appear that an important and continually evolving tool in modern Irish political discourse (i.e. the internet) is unregulated. This allows for foreign actors to influence Irish elections and referendums, with potentially significant consequences. The Commission recommends that the Act be reviewed with a view to addressing this. This should preferably be done in the context of the creation of an electoral commission."

8. This submission will address most of the questions raised in the Discussion Paper, where they may be relevant to the work of the Standards Commission.

Questions on the definition and scope of political advertising

9. How should political advertising be defined?

The Standards Commission is of the view that political advertising should be defined as paid advertising in whatever medium which is for political purposes. The Commission has previously drawn attention to the difficulties which arise from the definition of political purposes in the Electoral Act 1997, as amended, which applies to political donations, particularly as it applies to 'third parties'. As the discussion paper notes, a number of civil society groups have also expressed concerns in this regard. The Commission has recommended that the definition of a 'third party' should be determined by reference to whether it intends to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes, rather than whether it accepts a donation for political purposes. The definition of political purposes could be amended to address this. The Commission is of the view that the definition of political advertising should be aligned to the definition of political purposes and that in the event that the latter is amended, the definition of political advertising should also be amended to ensure consistency.

10. Should it be limited to the promotion of candidates or proposals (the subject of potential elections or referendums)?

    The Standards Commission is of the view that the scope of the provision should be aligned to the provisions of the Electoral Acts with particular regard to the definition of 'political purposes'. The Commission further notes that the current definition of 'political purposes' includes *"the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority".* If this is not the intention of the Oireachtas, this should be clarified.

11. Should any regulation in this area apply to both candidates and political parties campaigning at elections and also apply to referendum proposals?

    Yes. The Standards Commission has previously recommended that provision should be made for transparency in funding and expenditure on referendum campaigns, that third parties and political parties should be required to disclose details of expenditure on referendum campaigns, and that information should be made available on the sources of funding available to both third parties and political parties. Similarly, any new provisions regarding political advertising should be in line with the scope of the provisions of the Electoral Acts regarding political donations and election expenses.

12. Should controls be limited to defined time periods in advance of referendums and/or elections?

    The Standards Commission considers that the controls should apply for a period not less than the 'election period' under the Electoral Act 1997, as amended, during which election expenses are regulated. The Commission has previously recommended that

consideration be given to imposing some accountability, in the context of the spending limits, in respect of a specified period prior to commencement of the legally defined election period (i.e., that the election period might be extended to include a period prior to the dissolution of the Dáil or moving of the writ at an election). The Commission considers it essential that controls on political advertising be applied for at least the same period as the spending rules at an election (and, if the law is amended to provide it) at a referendum.

Transparency questions:

13. What should be made transparent?

    Information on political advertising should be made publicly available in regard to the person who publishes the advertising, the person who has paid for the advertising, the intended audience and what the cost of the advertising is. This should apply equally to any advertising on social media.

14. Are there models or proposals which assist in defining these issues?

    The Standards Commission is not aware of any models or proposals in this area, other than those listed in the discussion paper.

15. Which stakeholders will be impacted?
    - Political parties and candidates
    - Referendum campaigns
    - Advocacy groups
    - Advertising platforms – social media platforms, online platforms of traditional media, non-linear audio-visual media services, video sharing platforms
    - The Electorate

    Each of the above will be impacted by the regulation of political advertising.

16. Are there other stakeholders likely to be impacted?

    The Standards Commission has no information in this regard.

17. What impact will regulation have on which stakeholders?

    Persons who are required to disclose information on political advertising will have additional administrative obligations. However, these should not be overly onerous as, for the most part, such persons would already be required to make similar returns to the Standards Commission. The electorate would benefit from greater transparency around the source and cost of political advertising. It may also help delineate whether advertising has originated inside or outside the State.

Technical / Operational Capability to Control Advertising/ Governance:

18. What technical capability have social media and online platforms to control advertising?
19. What limitations are there for online platforms?
20. What organisations should come within the scope?
21. How can regulations protect against/prepare for technological advancements?
22. How to control right to be free from microtargetting/right to know origin of microtargetting concerning political preferences?

    The Standards Commission has no information in regard to these issues.

Legal Framework for Regulating Online Communications:

23. How can transparency of online political advertising be regulated – Obligations placed on sellers or buyers of advertising or both?

    Buyers of advertising in support of election candidates (be they the candidate, their election agent or the national agent of their political party) currently have disclosure obligations in respect of election expenses incurred during the election period. Such persons should be obliged to comply with any new requirements in respect of online political advertising as an extension of their existing obligations under the Electoral Acts.

    Sellers of online political advertising should also be required to provide details of this in order to ensure compliance by buyers, and ensure that it is broadcast as part of the advertising message.

24. What challenges arise from extraterritoriality?

    Irish jurisdiction cannot be enforced against persons who are based entirely outside the State. However, the major social media platforms operate within the State and obligations should be placed on them under the legislation to operate a notice and take down procedure in line with the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No 68 of 2003) in regard to advertising which contravenes any new provisions enacted.

25. Who should monitor compliance with governance norms?
    - Short-term – existing authority e.g. SIPO?
    - Long-term – Electoral Commission?

    The Standards Commission has recommended the establishment of an Electoral Commission, which would take over the functions of the Standards Commission under the Electoral Acts. The Commission considers that the Electoral Commission, when established, would be best placed to monitor compliance and that this role should be assigned in the meantime to the Standards Commission.

26. How will enforcement work?

    The regulatory body (be it the Standards Commission or eventually an Electoral Commission) should be given investigation and prosecution powers similar to those under the Regulation of Lobbying Act 2015.

27. The Standards Commission is willing to provide any further information which may be required.

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October 2018