

# THE COALITION FOR CIVIL SOCIETY FREEDOM

## SUBMISSION ON THE DEFINITION OF 'POLITICAL PURPOSES' AS CONTAINED IN THE ELECTORAL REFORM BILL (2022)

Submitted by the Coalition for Civil Society

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**the  
wheel**

Stronger Charities.  
Stronger Communities.



Irish Council for  
Civil Liberties

**UPLIFT** PEOPLE  
POWERED  
CHANGE

**AMNESTY  
INTERNATIONAL**



**f FRONT LINE  
DEFENDERS**



**TRANSPARENCY  
INTERNATIONAL**

Transparency International Ireland

## WHO WE ARE:

The Coalition for Civil Society Freedom (CCSF) is a coalition of civil society organisations working to influence public policy for the benefit of people living in Ireland. The CCSF is comprised of 5 component organisations (listed below) with secretarial, research and administrative support based in the Irish Council for Civil Liberties.

*The Wheel is Ireland's national association of community and voluntary organisations, charities and social enterprises. Every day, members of the Wheel are not only active in providing on-the-ground services but are also busy advocating for better living conditions and supports for the communities they represent.*

*The Irish Council for Civil Liberties (ICCL) exists to raise awareness in public of human rights issues.*

*Amnesty International Ireland researches and campaigns with the aim of preventing and ending grave human rights abuses.*

*Transparency International Ireland is the Irish chapter of the worldwide movement against corruption.*

*Front Line Defenders is an international human rights organisation based in Dublin, which works to advance the protection of human rights defenders at risk in all regions of the world.*

*Uplift is a people-powered campaigning tool which allows members of the public to join together online in order to create public pressure for change in laws or policies that cause them concern.*

## EXECUTIVE SUMMARY:

1. The purpose of this submission on the Electoral Reform Bill (2022) is to seek the removal of the existing definition of 'political purposes' from the 1997 Electoral Act (as amended) and its replacement with a definition that explicitly limits the fundraising and campaigning restrictions on 'third parties' to election and referendum periods. For the purposes of this Act, a 'third party' is taken to mean any organisation that engages in work around public policy.
2. The existing definition of 'political purposes', inserted in 2001 into section 22 of the 1997 Electoral Act, extended the restrictions on political donations to 'third parties' and applies at all times, not only in election and referendum periods. This in effect can be interpreted as prohibiting any person or organisation based in Ireland from accepting sizeable domestic donations or any international donations to assist them in campaigning on or seeking to change public policy. The definition is extremely broad and means that any 'third party' organisation which seeks to engage on public policy, either inside or outside of an electoral period, falls under its remit. We believe that this is an unintended consequence of the 2001 amendment to the principal act. The unintended consequence of this provision is that it significantly restricts freedom of expression and freedom of association by civil society organisations.
3. We support electoral integrity measures and we believe that the existing restrictions should continue to apply to political parties and candidates and also to the work of civil society during electoral periods, such as when we campaign in a referendum. But to allow these restrictions to remain outside of these periods represents a serious infringement on freedom of association and is highly unusual in a developed democracy. Because the restrictions only concern advocacy funded by donations, they do not apply to private companies engaged in advocacy work to change public policy. We contend that this misplaced approach is fundamentally undemocratic.
4. The practical implications of the Act in its current form means that 'third party' organisations such as ICCL, Amnesty International Ireland and so on are effectively banned from seeking funding for their domestic advocacy work and are dissuaded from engaging in the public policy process. Legislation equivalent to the 1997 Electoral Act is used to stifle civil society in countries such as Russia, similar laws in Hungary were recently found to violate EU regulations on privacy and the rules governing the single market.
5. In addition, we are concerned by the impact of the onerous tracking and reporting requirements that attach to small domestic donations. According to the wording of the 1997 Electoral Act, these donation, tracking and reporting restrictions also apply to civil society advocacy work at all times and not only when advocating an election or referendum result. The basic freedom of individuals and organisations in Ireland to raise funds and campaign on issues that affect them are constrained by the Electoral Act in ways that violate their constitutional rights, EU law and their freedom of assembly and association.
6. As part of the development of the Electoral Reform Bill (2022), the definition of political purposes should be updated to limit restrictions on donations and campaigning for civil society organisations to within electoral periods. The Electoral (Amendment) (Civil Society Freedom) Bill 2019 which is currently before the Oireachtas, would provide a legislative remedy to this matter. This solution was recommended by the joint Oireachtas Committee

in the pre-legislative scrutiny report of the Draft Heads of Bill in July 2021 but was not accepted by government.

7. To this end, we are proposing that in Chapter 2 of the Electoral Reform Bill (2022), (Amendments to the Electoral Act 1997) a new section 105 is inserted to update the definition of “political purposes” to reflect that proposed in the Electoral (Amendment) (Civil Society Freedom) Bill 2019 and as recommended in the pre-legislative scrutiny report of the Draft Heads of Bill.
8. This amendment could be inserted into the Bill as an interim solution until a complete review of the 1997 Act is carried out by the Electoral Commission which could make recommendations to Government on alternative solutions if they are deemed necessary.

## INTRODUCTION AND DEFINITIONS:

9. This submission concerns the definitions of ‘political purposes’ and ‘third parties’ contained in the Electoral Act 1997<sup>1</sup> and the 2001 Electoral (Amendment) Act<sup>2</sup>. The recently published Electoral Reform Bill (2022) sets out that;

*“political purposes” shall have the meaning assigned to it by section 22(2)(aa) of the Electoral Act 1997; <sup>3</sup>*

10. This definition of ‘political purposes’ as contained in the 1997 Electoral Act (as amended)<sup>4</sup> is too broad and means that any ‘third party’ organisation who seeks to engage on public policy, either inside or outside of an electoral period, falls under the remit of fundraising restrictions which were intended for political parties. A ‘third party’ is taken to be any organisation that engages in work around public policy, which encompasses everything from large national NGOs to community groups. We believe that this was an unintended consequence of the 2001 amendment to the Act.
11. The Coalition for Civil Society Freedom is seeking the removal of this definition of political purposes from the principal Act as part of the development of this Bill as it prohibits any person or organisation based in Ireland from accepting sizeable or any international donations to assist them in campaigning on or seeking to change public policy. These same restrictions do not apply to businesses who use private funds to achieve the same objectives.
12. These donation restrictions can apply to civil society advocacy work all of the time, and not just when advocating an election or referendum result. The basic freedom of individuals and organisations in Ireland to raise funds and campaign on issues that affect them are constrained by the Electoral Act in ways that violate their constitutional rights with respect to freedom of assembly and association<sup>5</sup>, freedom of conscience<sup>6</sup> and freedom of expression<sup>7</sup>, the International Covenant on Civil and Political Rights<sup>8</sup> and EU law on the free movement of capital.<sup>9</sup>

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<sup>1</sup> [Electoral Act \(1997\)](#)

<sup>2</sup> [Electoral \(Amendment\) Act 2001](#)

<sup>3</sup> [Electoral Reform Bill 2022 \(Section 4, 117-1\)](#)

<sup>4</sup> [1997 Electoral Act \(as amended\)](#)

<sup>5</sup> [Article 40.6.1 of the Irish Constitution](#)

<sup>6</sup> [Article 44.2.1° of the Irish Constitution](#)

<sup>7</sup> [Article 40.6.1 of the Irish Constitution](#)

<sup>8</sup> [International Covenant on Civil and Political Rights. Part 3 Articles 22 & 25](#)

<sup>9</sup> [Judgment of the Court \(Grand Chamber\) of 18 June 2020 European Commission v Hungary](#)

## THE CASE FOR ACTING NOW:

13. The Coalition for Civil Society Freedom remains deeply concerned that the issues which were identified in our submission<sup>10</sup> on the draft heads of bill have not been heeded in this revised bill. This is despite the Joint Oireachtas Housing Committee recommending that the matter be addressed in the context of the re-drafting process<sup>11</sup>, and the original draft Bill highlighting the difficulties that the 1997 Act and the subsequent 2001 amendment have presented for civil society in Ireland<sup>12</sup>.
14. It is also disappointing to note that the revised Bill proposes to further encode the problematic designation into law as it seeks to apply the definition to “political” advertising,<sup>13</sup> but crucially limits the application to “electoral periods”. This wording is essentially the same as that which is proposed by the Coalition with respect to restrictions on our advocacy work and is outlined below. This means that the problems arising at present around the definition of ‘political purpose’ in the context of donations will now be replicated in the area of advertising. At the same time the Government appears to accept the principle that such rules should only apply during an electoral period for advertising, while retaining the application of donation rules at all times.
15. International bodies such as the European Commission<sup>14</sup>, the UN<sup>15</sup>, the Council of Europe<sup>16</sup>, the European Union Fundamental Rights Agency<sup>17</sup> and others have repeatedly raised the issue of the impact of the restrictions contained in the 1997 Act with the Irish government and the impact this has on fundamental freedoms. The Coalition have also raised this matter with the Department of Foreign Affairs a number of times given the prominence of the importance of free civic space to the work of Ireland on the UN Security Council, in the bid to be selected for the UN Human Rights Council and in their previous work with the UNHRC<sup>18</sup>. It is disappointing that while the government champions free and vibrant civil society abroad, it has refused to address such a fundamental and long-running issue domestically.
16. The development of this bill has presented a timely opportunity to address this anomaly. The government have insisted that the problematic elements of the 1997 Act as they pertain to civil society can only be addressed in the context of a wider review of the political funding regime to be carried out by the as yet not established Electoral Commission. This argument however does not hold water when we consider that Minister O’Brien, in the second stage debate on the Bill stated;

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<sup>10</sup> [Submission on Definition of ‘Political Purposes’ as contained in the General Scheme of the Electoral Reform Bill \(2020\)](#)

<sup>11</sup> [Joint Committee on Housing, Local Government & Heritage Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill 2020](#)

<sup>12</sup> [Keeping the People’s Voice in Power: The Coalition for Civil Society Freedom Statement on the Electoral Act](#)

<sup>13</sup> [Electoral Reform Bill 2022 \(Section 4, 117-1\)](#)

<sup>14</sup> [European Commission 2021 Rule of Law Report: Country Chapter on the rule of law situation in Ireland](#)

<sup>15</sup> [December 2020 letter to the Irish Government from Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders](#)

<sup>16</sup> [Expert Council on NGO Law Conf/Exp\(2018\) International Standards Relating to Reporting and Disclosure Requirements for Non-Governmental Organizations](#)

<sup>17</sup> [European Union Fundamental Rights Agency \(2018\) Challenges facing civil society organisations working on human rights in the EU](#)

<sup>18</sup> [UN Human Rights Council unanimously adopts Irish-led Resolution on Civil Society Space, July 2021](#)

*“I wish to flag further amendments on electoral funding to protect our State from malicious interference in our democratic system.”<sup>19</sup>*

17. While we have not seen these amendments at the time of writing, the issues that the Minister has indicated his intention to legislate to address go to the heart of the role that civil society plays in our democracy and the existing anomaly which impedes our work. It is clear then, that in a number of substantive areas the present Bill is now engaging in amendments to the substantive provisions of the Electoral Acts. In this regard, any suggestion by Government that matters relating to the primary act should be deferred to a future review to be carried out by the Electoral Commission are not consistent with the wider approach they have taken within the Bill.
18. The 2001 amendment to the 1997 Electoral Act has limited the ability of civil society to address the types of “malicious interference” which the Minister referenced in his second stage speech by preventing organisations from raising funds to engage in day-to-day advocacy activity. Meanwhile, private businesses, who do not rely on donations to fund their work, are not subject to the same restrictions. The chilling effect this has had and continues to have on civil society is well documented<sup>20</sup> and extensive<sup>21 22 23</sup>. The impacts of the 2001 amendment to the 1997 Electoral Act have been acknowledged and flagged for action by SIPO since 2003.<sup>24</sup>
19. We are also increasingly concerned that the chilling effect of the Act is having a negative impact on key funding partners for civil society who have stated their concerns about continuing to finance critical work in the absence of clarity and resolution of the issue. Some funders are unwilling to raise these concerns in public as they believe that it will leave them open to targeting by hostile actors as has happened in the past or possible unjustified scrutiny of their legitimate grant-making activities. In recent years, we are aware of at least one very large-scale funder of the sector who was subject to the latter example and was forced to ascertain very costly legal advice to ensure that their work was in fact in compliance with the law.
20. As previously mentioned, the Government have indicated their intention to have the application of political donation rules to the everyday work of civil society examined “quickly” by the yet to be established Electoral Commission. They have indicated that this would involve a wholesale review of the 1997 Act and the issue of civil society funding would form part of this. Despite government assurances, we remain sceptical that any such review could be carried out in a short timeframe given the complexity and uncertainties associated with such a process:
  - a. If the Electoral Commission is established by September 2022 and is immediately tasked with reviewing the 1997 Electoral Act, a wide public consultation would be required and would be carried out by a new body which is also in the process of establishing itself.

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<sup>19</sup> [Electoral Reform Bill 2022: Second Stage, April 5th 2022](#)

<sup>20</sup> [Irish Times \(December 16<sup>th</sup> 2017\) “Human rights campaigners defend donations from abroad”](#)

<sup>21</sup> [Irish Times \(October 22<sup>nd</sup> 2019\) Group opposing Hellfire Club development resolves action against SIPO](#)

<sup>22</sup> [Irish Times \(October 15<sup>th</sup> 2018\) Group against Baptism bar derailed after complaints](#)

<sup>23</sup> [Irish Times \(December 16<sup>th</sup> 2019\) Humanist group reported to SIPO over €10,000 donation](#)

<sup>24</sup> [Standards in Public Office Commission Annual Report 2003 pp36-38](#)

- b. This review presumably would present a set of options for reform of the Act to the Minister, this may or may not include recommendations to address the civil society freedom issues which the Department are aware of already.
  - c. Issues may also arise with regard to the possible limitations on the extent to which an independent statutory body may review primary legislation under which it operates.
  - d. Any recommendations would then be translated into a draft Heads of Bill, which would require extensive pre-legislative scrutiny given the impact it would have on political funding.
  - e. Once this was completed, only then would we see a final version of a bill which may not address the issues we have identified at all.
21. Given the slow pace of the development and publication of the Electoral Reform Bill, and assuming the government doesn't fall in the interim, it is difficult to see how quick progress could be made by the Electoral Commission in this regard within the lifetime of this Oireachtas. During this period, however, the destabilising and chilling effect on civil society will continue.



## SOLUTIONS AND RECOMMENDATION:

22. As noted in our submission on the pre-legislative scrutiny, the contours of a solution to the civil society funding issues already exist in the form of the Electoral (Civil Society Freedom) Amendment Bill (2019)<sup>25</sup> which is before the Oireachtas. It is the strong view of the CCSF that it makes little sense for the government to propose to review the impact of the Act on civil society, where the impacts are already known and well documented and to propose a solution which, we believe would essentially achieve the same objectives as that proposed in the Electoral (Civil Society Freedom) Amendment Bill (2019).
23. Given the ongoing and real impact which the existing situation is having on civil society, it is open to the government to accept this amendment which would encode the solution proposed in the Electoral (Civil Society Freedom) Amendment Bill (2019) as an interim measure until such time as a review of the 1997 Act is carried out by the Electoral Commission. This would give civil society critical breathing space and would allow the government to conduct the wholesale technical review of the Act which it deems necessary.
24. The definition of political purposes should be updated to only restrict donations and fundraising for civil society organisations within defined electoral periods. The Civil Society Freedom Bill (2019) which is currently before the Oireachtas, provides an existing legislative remedy to the issue. To this end, we are proposing the following amendment to the bill;

That in Chapter 2 (Amendments to the Electoral Act 1997) a new section 105 is inserted to read as follows:

### **Amendment of section 22 of Principal Act**

*105. Section 22 of the Principal Act is amended by the substitution of the following for the definition of “political purposes”:*

*“political purposes” means any of the following purposes, namely—*

- (i) (I) *to promote or oppose, directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or*
- (II) *to present, directly or indirectly, the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament, or*
- (III) *to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament with regard to the policy or policies of another political party, political group, a member of either House of the Oireachtas, representative in the European Parliament or candidate at an election or referendum or otherwise, or*

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<sup>25</sup> [Electoral \(Civil Society Freedom\) Amendment Bill \(2019\)](#)

*(IV) to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome at a Dáil, Seanad, European or local election, or referendum, such campaign relating to an election for which the polling day has been set by Government or a referendum for which the Commission has published a referendum notice<sup>26</sup>,*

*(ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;*

*(iii) otherwise to influence the outcome of the election or a referendum or campaign referred to in paragraph (i)(IV) of this definition;”*

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<sup>26</sup> Note: This wording has changed very slightly from the original text proposed in the Electoral (Civil Society Freedom) Amendment Bill (2019) to reflect the new role for the Electoral Commission to issue notices for referenda. [The original text of the Electoral \(Civil Society Freedom\) Amendment Bill \(2019\)](#) stated “a referendum for which the Referendum Commission has been established”. This has been amended to “a referendum for which the Commission has published a referendum notice” to reflect the change.