



**An Bille Toghcháin (Saoirse na Sochaí Sibhialta)
(Leasú), 2019**
Electoral (Civil Society Freedom) (Amendment) Bill 2019

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE TOGHCHÁIN (SAOIRSE NA SOCHAÍ SIBHIALTA)
(LEASÚ), 2019
ELECTORAL (CIVIL SOCIETY FREEDOM) (AMENDMENT)
BILL 2019**

EXPLANATORY MEMORANDUM

Background

Over twenty years ago the Oireachtas passed the Electoral Act 1997 to regulate the disclosure of donations received for political purposes i.e. donations received in support of a particular candidate for election or a political party.

The requirements under the Act will be familiar to all current Oireachtas members as they are the provisions that regulate donations to campaigns for both Houses and applied for the most recent election. They include stringent restrictions on donation limits, anonymous donations and donations-in-kind amongst other provisions.

In 2001, an amendment to the 1997 Act was made which was intended to extend the provisions of the Act to include donations received in relation to referendum campaigns and to include donations received by third parties for ‘political purposes’ i.e. donations received by third parties which are used to further the prospects of a candidate for election or referendum campaign.

Unintended Consequences

However in doing so, the wording in the Electoral (Amendment) Act 2001 used to define ‘political purposes’, which determines which third parties are subject to these strict campaign spending rules and requirements, was unfortunately extremely ambiguous and has had unintended consequences.

The intention of the Oireachtas at the time, as evidenced through the debates on the legislation, was to ensure that electoral donations i.e. relating to elections or a referendum, would be covered by the Act.

However, the wording inserted in 2001 referred to donations received 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.” This is far broader than regulating donations received solely for electoral purposes and clearly could feasibly apply to any political advocacy conducted by a third party within the State.

Practical Implications

As a result of the problematic wording of section 22 of the Electoral Act 1997, the Standards in Public Office Commission are obliged to apply the same rigorous and high financial declaration standards devised specifically for donations received by candidates for election and for referendum

campaigns to any group who advocates for any particular outcome in relation to any policy by Government or a public authority whatsoever.

The disclosure requirements for candidates and political parties are high and onerous precisely because they should be; the integrity of our elections is vital and those involved in elections should have to fully disclose how their campaigns are financed. Strict regulations exist around international donations, anonymous donations, cash donations, the need for registration of donations by corporate actors, specific financial accounting practices requirements and strict requirements on the returning of donations outside the legal limits. These are enforced by significant criminal offences; the penalty for non-compliance for a third party could be as high as a €25,394 fine and three years' imprisonment.

However, civil society organisations engaged in their normal political lobbying and advocacy work are objectively different to electoral activity and yet under our laws they are treated the same. The threat of serious criminal sanction itself serves as a huge chilling effect on the valid lobbying work of civil society groups and NGOs and as many civil society organisations are run by volunteers, some campaign groups have been forced to close in the face of the disproportionately high compliance standards required by the Act.

There have even been deeply concerning reports of political actors using the ambiguity in the law to report organisations working on the opposing side of a particular policy issue to SIPO, with the express intention of using the high compliance standards required to divert resources from valid advocacy work.

Need for Change

The wording inserted into the Electoral Act in 2001 has been the subject of domestic criticism with many civil society organisations sharing concerning accounts of their treatment under the Act. The Standards in Public Office Commission themselves even raised their own concerns in their Reviews of the Electoral Acts first published in 2003 and on an ongoing basis thereafter.

The Act has also been highlighted by the EU Fundamental Rights Agency as a threat to the basic democratic right to freedom of expression. The Act also undermines Ireland's leading role internationally on the importance of vibrant civil society spaces, as evidenced by the Irish contribution to the development of the EU Guidelines on Human Rights Defenders and our sponsorship of a UN Human Rights Council Resolution on Civil Society Space.

Ultimately, the impact of the problematic wording inserted in 2001 may have been unintended but it has proven to be actively problematic and has had a chilling effect on civil society advocacy in Ireland. It is in urgent need of reform and the Electoral (Civil Society Freedom) (Amendment) Bill 2019 is tabled with the intention of resolving the issue at hand.

Provisions of the bill

Section 1 is a standard interpretation section.

Section 2 amends Section 22 of the Electoral Act 1997 (as amended in 2001) to provide for a new definition of 'political purposes'. The new definition ensures that third parties will comply with donation disclosure requirements where the donation was received in relation to advocacy in a specific election or referendum.

Section 3 is a standard citation and commencement section.

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