



Coimisiún
na Meán

Response to Consultation and Decision Paper: Broadcast Moratorium

Publication date: 1 November 2024

Disclaimer

Please note that any views on the interpretation of legislation or Coimisiún na Meán's obligations are provisional and non-binding and should not be read as reflecting Coimisiún na Meán's final position. Please refer to the underlying legislative provisions for a statement of the law in this area.

Table of Contents

1. Introduction	4
2. The consultation options and responses	4
3. Basis of the Commission's decision	5
4. Commission decision	6

1. Introduction

The broadcast moratorium is an aspect of regulatory guidance issued by Coimisiún na Meán (‘the Commission’) under the Code of Fairness, Objectivity and Impartiality in News and Current Affairs that applies to broadcasters. The moratorium bans discussion of election/referendum issues on broadcast media from 2pm on the day preceding the election/referendum until the time at which the polls close on voting day, usually 10pm on that day.

During 2022 and 2023 the Broadcasting Authority of Ireland (‘BAI’, now Coimisiún na Meán) conducted a review of several of its statutory codes under what was then section 45 of the Broadcasting Act 2009. The Code of Fairness, Objectivity and Impartiality in News and Current Affairs was considered as a part of this review and there were specific calls from stakeholders to review the moratorium during this process. The Commission therefore undertook a review of the moratorium and this document marks the final outcome of the Commission’s review.

The Commission published on its website¹ a public consultation document on the broadcast moratorium on 7 August 2024. The closing date for submissions was 4 September 2024. The Commission received 18 submissions in response to this consultation and is grateful to the authors of those submissions, which were extremely helpful to it in arriving at its final policy determination.

This document sets out the Commission’s policy position and decision arising from its consultation.

2. The consultation options and responses

The Commission consulted on five policy proposals in its Consultation Document:

1. keep the moratorium exactly as it currently is,
2. make the moratorium last for a longer or shorter period,
3. change the moratorium to cover only more limited types of broadcast coverage,
4. abolish the moratorium and replace it with a positive obligation on broadcasters, for example an obligation to exercise particular care with regard to material addressing election or referendum issues in the lead-up to a referendum or election,
5. abolish the moratorium and not replace it, leaving broadcast coverage of election or referendum material to be regulated by the rest of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs.

Of the 19 responses received, seven came from broadcasters, all of which favoured abolition of the moratorium. There were five responses from organisations performing a regulatory, political or advocacy role. These were mixed on a combination of options 2, 3, 4 and 5. There were six responses from individuals, split between leaving the moratorium as-is and abolishing it entirely.

¹ [Coimisiún na Meán seeks views on future of broadcast moratorium for elections and referendums - Coimisiún na Meán \(cnam.ie\).](https://www.cnam.ie/en/news/2024/08/07/coimisiun-na-meán-seeks-views-on-future-of-broadcast-moratorium-for-elections-and-referendums)

3. Basis of the Commission’s decision

In considering its decision, the Commission was guided by the observations made in submissions to the consultation, the research it had conducted and reviewed as described in the Consultation Document—in particular the IPSOS B&A study carried out on behalf of the Commission, the Reuters Digital News Report, the NEDS data gathered and analysed by An Coimisiún Toghcháin, and a detailed comparative review of the law in other jurisdictions—and important policy considerations including:

1. supporting a thriving, diverse, creative, safe and trusted media landscape;
2. countering misinformation and disinformation, particularly in the context of elections, by—
 - (a) preserving and fostering media plurality in the State, with a particular view to encouraging diversity of content,
 - (b) allowing a variety of media channels to report on important information to allow voters to best understand issues that are important to them in deciding how to vote, and
 - (c) promoting high standards of editorial integrity and information validation on the part of entities regulated by the Commission where those entities exercise editorial control over media content;
3. upholding fundamental human rights, particularly the right to freedom of expression.

It is notable that the trend in the responses to the Consultation Document differs from the findings of the IPSOS B&A research carried out on behalf of the Commission in June of this year.² A majority (52%) of those surveyed considered the moratorium ineffective. However, 41% of respondents—almost the same number as considered the moratorium effective—thought that the moratorium should be kept as-is. 23% thought that there should be restrictions during polling hours only and 32% thought that restrictions were unnecessary and should be removed. Taken together, these results suggest that most survey participants considered the current moratorium ineffective, but a sizeable cohort thought that **some** restrictions are welcome.³

It is also notable that in other jurisdictions with similar provisions, reviews have suggested that ‘blackout’-type provisions such as the moratorium are increasingly difficult to maintain because of the prominence of the online media environment. For example, sections 3A and 3B of Schedule 2 of the Broadcasting Services Act 1992 in Australia prohibit certain advertisement and sponsored communications relating to elections and referendums for 48 hours prior to polling and the polling hours themselves. Several parliamentary reviews have been strongly critical of these provisions and have called for their abolition, noting the pervasiveness of online communications.⁴

The Commission has also been cognisant of risks that have emerged in some elections in recent years around the timing of information entering the public sphere. For example, the leak of Emmanuel Macron’s emails immediately prior to the run-off vote for President of France on 7 May 2017. This information was released into the public sphere minutes before the silence period took effect in France and so appeared calculated to cause damage to the Macron campaign. In the referendums earlier this year, a leak of relevant legal advice from the Attorney General to the Government came into the public domain the

² A full description of this research is contained in the Consultation Document.

³ Only 32% of respondents considered that no restrictions should be put in place. This is in sharp contrast to the ~60% of submissions converging on the view that there should be at least some restrictions.

⁴ [Review of 2013 Election](#), [Review of 2016 Election](#), [Review of the 2019 Election](#), [Review of the 2022 Election](#).

afternoon of the day before the referendums were held. This left little time for the significance or accuracy of the information to be established. However, there is no evidence about whether the leak had a material impact on the referendum outcome.

Information of the type just described can contain items of genuine public interest and importance; however, the media must treat this kind of information with great care where it has the potential to give rise to misleading or confusing inferences. This is particularly the case as electoral or referendum campaigns increase in intensity closer in time to polling day.

In the Commission's research for the Consultation Document, broadcast media emerged as a highly trusted medium and one that is still popular among many audiences, particularly older audiences. This trust and reach are important values of broadcast media, particularly in the context of civic discourse around election and referendum issues.

4. Commission decision

The Commission has determined that **option 4** is its preferred policy. This is to abolish the moratorium and replace it with a revised guidance to broadcasters to exercise additional care with regard to material addressing election or referendum issues during the Critical Election Period in the lead-up to a referendum or election.

In arriving at this view, the Commission considers that maintaining the integrity of elections is a legitimate objective in protecting fundamental rights but that the broadcast moratorium can no longer be regarded as a necessary restriction on freedom of speech in a democratic society in light of the growth of online media.

The impact of the moratorium on information manipulation is two-fold. On the one hand, it reduces the scope for information manipulation by reducing the reach of last-minute circulation of information that may confuse or mislead voters. On the other hand, it prevents broadcasters from contributing to a healthy information environment around elections and referendums. Broadcasters enjoy a relatively high level of public trust and their coverage is also distributed and circulated online. For these reasons, the risk of broadcasters contributing to information manipulation is reduced, and the benefit of enabling broadcasters to rebut or correct information manipulation is enhanced.

This leads the Commission to conclude that the moratorium should be abolished, and that the risks of broadcasters amplifying information manipulation can be mitigated by an enhanced level of editorial scrutiny during the critical election period.

The Commission also considers that the objective of providing voters with a period of reflection on the eve of, and during, a public vote can no longer be achieved through the broadcast moratorium in a world where online news and social media play an increasingly significant role.⁵ For these reasons the Commission considered that the case for abolishing the general prohibition on election- and referendum-related coverage on broadcast media was well-made.

At the same time, the Commission notes that particular risks arise in the context of public votes such as elections and referendums. These risks are especially acute in the day immediately prior to polling and polling day itself. Public votes are moments of immense public significance and access to high-quality

⁵ See [Reuters Digital News Report 2024](#) page 46 and see generally discussion of the Report at page 12 of the Commission's Consultation Document.



information is an essential ingredient of meaningful exercise of voters' democratic franchise. False information, or even true information whose significance is difficult to assess in a short timeframe, can undermine these democratic values.

In light of the above, the Commission considers that instead of a prohibition on election- or referendum-related coverage, there should instead be a period of heightened scrutiny and caution on the part of broadcasters during what the Commission has termed the 'critical election period' to safeguard against certain acute risks. Broadcasters should handle with special care information that they believe, or ought reasonably to believe, has been circulated with the intention of causing harm or misleading people. This information may be true but may, for example, be circulated in a selectively-timed way to maximise (and potentially exaggerate) its significance. Broadcasters should also avoid speculating on the outcome of the vote during polling hours – reporting on exit polls or opinion polls should wait until the polls have closed.

This approach is in line with the Commission's overall objective to support democratic processes and ensure that participants in public life and the general public have confidence in the integrity of electoral processes. The Commission also undertakes activities such as developing the Elections Candidate Information Pack. In our role as Digital Services Coordinator, the Commission notes that in the online space these matters are now subject to increasing regulation under the Digital Services Act—which requires very large online platforms (VLOPs) and very large online services (VLOSEs) to mitigate risks to electoral processes and civic discourse—and the Code of Practice on Disinformation, to which many platforms are signatories. The European Commission has published guidelines under Article 35(3) of the Digital Services Act on the mitigation of risks relating to electoral processes.⁶ These guidelines include, among other matters, measures for VLOPs and VLOSEs to implement and engage on media literacy initiatives and to provide users with contextual information on the content and accounts they engage with. The Commission believes that under its revised guidelines broadcasters could play a complementary role to these initiatives that now apply to the very large online platforms and search engines.

In light of the above, the Commission has now removed the moratorium in its Election Guidelines to broadcasters. It has instead provided for broadcasters to undertake heightened scrutiny with respect to certain risks that are particularly acute during that the Commission has termed the 'critical election period'. The Commission has published revised Guidelines in Respect of Coverage of Elections, which take effect immediately.

The replacement of the prohibition on election and referendum coverage with this encouragement to take special care strikes, in the Commission's view, the appropriate balance between the editorial independence of broadcasters and their general obligation to act fairly, objectively and impartially in their news and current affairs activities.⁷

⁶ [Communication from the Commission – Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to Article 35\(3\) of Regulation \(EU\) 2022/2065.](#)

⁷ Section 46L of the Broadcasting Act 2009.

