



Coimisiún
na Meán

Consultation Document: Broadcast Moratorium

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Summary

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.

This Consultation Document asks whether, and if so how, the broadcast moratorium should be reformed. The Commission considers that the five main options for reform are to:

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.

The Commission seeks your view on the appropriateness of any of these options, or any other option for reform of the broadcast moratorium not considered in this Document that you consider should be brought to the Commission’s attention.

It is important to note that the moratorium applies only to broadcasters. Extending the moratorium to apply to types of media that are not currently covered, such as print media, online media, or audiovisual media on-demand, is not an option for reform considered in this consultation.

To support consideration of the available options set out above, this Document notes relevant research on media use and news consumption, including media use in the run-up to the March 2024 referendums and in the aftermath of the June 2024 local and European elections. Understanding how the public access political news and information through a variety of media sources is crucial to understand the effective reach of the broadcast moratorium.

Additionally, Annex A of this Consultation Document contains information on moratorium-like provisions in other jurisdictions. These are legal provisions, whether administrative or legislative, that place some restriction on freedom of speech in the time leading up to a public vote. This places the Irish moratorium—which is an example of an electoral silence provision—in international perspective. Based on the jurisdictions considered in that Annex, there is no clear international consensus on electoral silence provisions. Some jurisdictions provide for them, and some do not.

Annex B of this Consultation Document contains a report of research commissioned by the Commission and carried out by IPSOS B&A following the local and European elections held on 7 June 2024. The Commission hopes that these data will help to inform its consideration of the broadcast moratorium as well as the public consultation arising from this Document.

A description of **how to respond to this Document** is set out in section 5.



1. Introduction

Coimisiún na Meán is Ireland's regulator for broadcasting, audiovisual media on-demand, online safety and media development. The Commission was established on 15 March 2023 by section 6 of the Broadcasting Act 2009 (the '2009 Act') as inserted by section 8 of the Online Safety and Media Regulation Act 2022 (the '2022 Act').¹ The powers and functions of the Broadcasting Authority of Ireland (the 'Authority') were transferred to the Commission under Part 16 of the 2022 Act.

1.1. Structure of this document

This Consultation Document consists of five sections.

The **Summary** sets out a high-level summary of the Consultation Paper, including the options for reform of the moratorium that the Commission is considering.

Section 1: Introduction describes the context for the moratorium, including the statutory powers of the Commission under which it is issued, and the text of the most recent moratorium made by the Commission. With respect to elections, this was the moratorium made in advance of the 2024 local, European and mayoral elections. With respect to referendums, this was the moratorium made in advance of the March 2024 referendums on the family and care.

Section 2: Objectives of the broadcast moratorium describes the general policy goals of the moratorium. These are to facilitate personal reflection on the part of voters ahead of elections and referendums, and also to reduce the likelihood of harmful misinformation or disinformation circulating widely and harming the voting process itself.

Section 3: Research on news consumption outlines some available research on what media people commonly use for news consumption and how this consumption affects their voting choices. This is a way of approximating the effect or reach of the moratorium.

Section 4: Options for reform of the broadcast moratorium sets out the options for reform of the moratorium under consideration by the Commission. These range from simply keeping the moratorium to abolishing it without replacement. There is a range of options between these two positions that either change the moratorium or attempt to pursue its policy objectives by different means.

Section 5: Responding to this consultation gives directions to respondents on how to respond to the questions for consultation posed in this Document.

1.2. Basis of the moratorium

The moratorium is a long-standing regulatory policy applied by the Commission as well as its predecessor broadcasting regulators and has been applied for over 30 years. Under what was previously section 42 of the 2009 Act, prior to the amendments made to that Act by the 2022 Act, the Authority was required to make broadcasting codes providing for certain matters. These were codes governing standards and practices to be observed by broadcasters, including standards of fairness in the broadcast treatment of current affairs. Under this section, the Authority prepared several broadcasting codes, including a Code of Fairness,

¹ [Online Safety and Media Regulation Act 2022 \(Commencement\) Order 2023](#) (SI No 71 of 2023).

Objectivity and Impartiality in News and Current Affairs (the 'Code'). Paragraph 27 of the Code requires coverage of an election or referendum by broadcasters to comply with guidelines or codes of practice that are issued by the Commission.² This includes the application of the moratorium.

1.3. Precursor to this review

During 2022 and 2023 the Authority conducted a review of several of its statutory codes under what was then section 45 of the 2009 Act. The Code was considered as a part of this review and there were specific calls from stakeholders to review the moratorium during this process. The Commission is therefore progressing a review of the moratorium and the consultation process described in this Document forms a part of that review.

1.4. The most recent guidelines

As currently formulated, the moratorium period **begins at 2pm on the day before polls open** and it concludes **on polling day when polls close (usually 10pm on that day)**. It applies to **broadcasters only**.

With respect to elections, the guideline issued by the Commission is that during the moratorium period broadcasters should not cover—

- (1) discussion and analysis of election issues,
- (2) the merits or otherwise of election candidates and/or their policies (or related policies of their political party).

With respect to referendums, the guideline issued by the Commission is that during the moratorium period broadcasters should not cover—

- (1) material that relates directly to referendum issues and related constitutional amendment(s), including material pertaining to the merits or otherwise of referendum issues and/or constitutional amendments proposed.

Whether the moratorium is in respect of an election or a referendum, the Commission publishes general guidance to assist broadcasters in applying the moratorium. This guidance includes the following principles:

- The moratorium is not intended to preclude coverage of legitimate news and current affairs stories that are unrelated to the election or referendum. However, broadcasters should avoid airing content (including breaking news stories) that the broadcaster believes is intended and/or likely to influence or manipulate voters' decisions during the moratorium period. This is an editorial matter to be considered on a case-by-case basis.

Particular care should be taken around the opinions expressed by any programme contributors during the period covered by the moratorium.

- Steps should be taken to ensure that programme repeats scheduled during the moratorium do not contain material that would breach the moratorium. Broadcasters are advised to schedule an alternative programme so as to avoid accidental breaches of the moratorium.

² The Code still refers to the Broadcasting Authority of Ireland. However, all references to the Authority are to be construed as references to the Commission: [section 60\(2\) of the Online Safety and Media Regulation Act 2022](#).

- Coverage of uncontroversial facts related to the poll are permitted (e.g. the opening hours of polling stations, factual reports on voting by political party leaders and other representatives of election or referendum interests) once such coverage abides by the moratorium.
- The moratorium extends to all areas of programming, including newspaper reviews, coverage of opinion polls, information announcements etc. Particular care is necessary when commenting upon or covering newspaper reviews, online content or social media as they are not subject to the moratorium.
- Exit polls, which are conducted outside polling stations on voting day and assess what people have actually voted, are to be broadcast only after the closure of the polling booths.

2. Policy objectives of the broadcast moratorium

The broadcast moratorium is a restriction on the right to freedom of expression as protected under Articles 40.6.1°i and 40.3 (as an unenumerated right) of the Constitution and Article 10 of the European Convention on Human Rights. As a restriction of this right, the moratorium must satisfy certain proportionality conditions³ and any conditions in the constitutional text itself.⁴ This means that it must pursue an objective of sufficient importance that relates to pressing and substantial needs in a free and democratic society and the means chosen to fulfil the objective must be rationally connected to that objective, impair the right as little as possible, and be generally proportionate.

Restrictions of this nature are not completely unknown under Irish law. For example, section 147 of the Electoral Act 1992 prohibits a range of speech and assembly activities within 50 metres of a polling station.⁵ These restrictions are intended both to promote civility and order in the vicinity of polling stations as well as to allow voters to vote in an environment free from coercive actions or communications.

In the case of the broadcast moratorium, which in other jurisdictions and academic literature is more usually called a ‘silence period’, the overall objective is to protect and facilitate deliberative democracy. This is the idea that citizens in a democracy engage with each other freely and equitably on political issues that affect them. High-quality deliberation strengthens democracy, and this kind of deliberation requires participants in the democracy to have access to accurate information on which they may base their policy preferences and proposals. Circulation of misinformation or disinformation can disrupt this.

At a very general level, the broadcast moratorium aims to promote at least two policy objectives:

- (1) it attempts to **enhance democracy** by—
 - (a) helping to ensure **parity** among voters, such that every voter, no matter at which time of day they vote, has the same information available to them as other voters on salient political issues;
 - (b) helping to achieve a **good information environment** by making it more difficult for information that may be unverified, difficult to verify, or whose significance may be difficult

³ See *Heaney v Ireland* [1994] 3 IR 593, at page 607 for the original statement of the test in the Irish courts. For a recent consideration in the Supreme Court, see the judgment of O’Donnell CJ in *O’Doherty v Minister for Health* [2022] IESC 32.

⁴ For instance, [Article 40.6.1°i](#) permits the State to restrict freedom of expression to protect ‘public order and morality’.

⁵ The restriction was originally within 100 metres of a polling station. This was reduced to 50 metres by an amendment to section 147 made by [section 33 of the Electoral \(Amendment\) Act 2001](#).

- to evaluate, to circulate widely close in time to an election, which may lead to that information having an enhanced or distortive impact on the outcome of the vote;
- and,
- (2) it attempts to **respect voter autonomy** by leaving time to the voter to reflect on their opinion and position and freeing the voter from interference in that process through the media, including by reducing voter exposure to misinformation and disinformation that might undermine their voting autonomy.

2.1. The modern media and news environment

In an age of a rapidly-moving media and news cycle, with increasing consumption of online news, it is arguable that the moratorium as currently formulated no longer effectively achieves these policy aims.

In today's news environment, wide and last-minute circulation of information can occur online. An incident of this sort occurred during the moratorium period prior to the referendums held earlier this year, when a website published a leaked Government document just after 2 pm the day before the referendum. In the time before the polls opened, it was difficult for voters or other news outlets to verify whether the document was genuine or to fully understand the implications for the issues at stake in the referendums.

The current moratorium prevents such information being amplified by broadcasters and thus aggravating the negative impact on the information environment. Amplifying unverified online information amplifies the potential harm done by that information as it receives a wider audience that may be swayed by it or act on foot of it despite its being false. This can seriously impact election events.

On the other hand, the current moratorium prevents broadcasters from presenting fair, impartial and accurate coverage when last-minute information is circulating online and this could prevent them from usefully mitigating negative impacts on the information environment. The moratorium may also damage voter parity because voters who obtain information online could have different information from those who rely solely on other sources of information.

The Commission's review of the moratorium is based on an evidence-based approach to evaluating the extent to which the moratorium (or alternatives) serves the policy objectives outlined above in the current news environment. Respondents are therefore encouraged to reflect on these policy objectives in making their responses, to refer to the data and research presented in Section 3, and to provide any other evidence or data to support their views.

Questions for consultation

- Q. 1** How important are the policy objectives set out in Section 2 in enhancing the right of individuals to participate in free elections? Are there other policy objectives that you consider Coimisiún na Meán should take into account? How much weight should be placed on the objectives set out in Section 3 when balancing the impact of different options set out in this Document against liberty of expression?
- Q. 2** Do you consider that, on balance, the current moratorium is more likely to support the policy objectives set out in Section 2, or to undermine them?

3. Research on the moratorium and news consumption

Whether the moratorium achieves its policy objectives is partly an empirical matter that will depend on questions such as:

- do voters interact with broadcast media as a source of news?
- if voters engage with several sources of news, do they trust some sources more than others?
- do voters use news information in forming their preferences in how to vote? If so, when and how do they do this?

In other words, voters must significantly interact with broadcast media, voters must trust and use the information that they get from broadcast media, and this information must be influential for voters in forming their actual voting preferences. Additionally, if voters form their preferences before the moratorium comes into operation, even if they use and trust broadcast media, then it (the moratorium) is not having any real effect on outcomes.

While there is limited research available probing these questions in an Irish context, this section describes in overview some available studies and data.

3.1. IPSOS B&A poll

The Commission engaged IPSOS B&A to conduct a survey asking several questions on media use around elections and the effectiveness of the moratorium specifically. The survey was put to a nationally representative sample of 1,000 adults between the dates of 8 June and 14 June, immediately following the local and European elections held on 7 June 2024.

With respect to media use, the results of the IPSOS B&A poll are similar to those found in the Reuters Digital News Report Ireland 2024 (discussed below). Regarding sources of information generally, the IPSOS B&A poll found that significant numbers of respondents use informational leaflets, doorstep visits and posters (74%), followed by radio (64%), television (62%), online news (56%) and social media (51%). However, when asked which of these sources was the most important for the respondent in terms of getting information for the elections specifically, results were more even across each of those sources.

The survey shows that TV and radio broadcast media are consumed by more than seven in ten people across all age groups. These media attract higher than average audiences in the 55+ age group (89% for television and 87% for radio). Online news is consumed to a higher-than-average degree by those aged 35-54 (66%), by women (65%), and those at work (66%). Use of messaging apps peaks among those aged 35-54 (91%), and among women (87%). Social media use peaks among younger audiences, specifically those aged 18-34 (95%) and 35-54's (82%).

Among the 55+ age group, Irish TV and radio are the leading sources of information in the context of elections and referendums. More than half (58%) of respondents in this age group identified TV or radio as their leading source of election or referendum information. Similarly, among those in the C2DE socio-economic group, those who are not at work and who finished education before 3rd level, broadcast media features in top position. Radio features particularly strongly in the Connacht/Ulster region.

As almost all of the 18-34 year-old group use social media, it is unsurprising that this platform emerges as the most important source of election information among this group (29%) followed by candidate information (24%) and online news and websites (18%). Only 13% of this group mention either radio or TV.

Social media is also the most important source for the 35-54 age group (22%) but closely followed by radio and online news (18% each).

Respondents to the survey were also asked some specific questions about the moratorium. When asked if they considered whether the moratorium is effective, most respondents (52%) considered that it is **not**, while 40% considered that it is.⁶ However, when asked whether the moratorium should be changed, kept as-is or removed, the results were slightly more mixed. 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.⁷

Among those who use broadcast media as their main source of information for elections or referendums, 47% believed that the moratorium should be kept as-is, 22% thought that the moratorium should remain but with modifications, and 28% believe the moratorium is not necessary and should be removed. Suggesting that the moratorium should be retained with modifications was most prominent among the 18-34 age cohort (30%) and women (26%). 32% said the restrictions are not necessary and should be removed and this proposal received higher mentions among the 35-54 age group.

Some observations were made in respect of the reasons why individuals thought that the moratorium should be either retained or removed. Respondents were asked to identify the main reason in support of their position. Among those who favoured **retaining** the moratorium in some form, the three most popular reasons were:

1. people have already made up their minds before the restrictions come into effect (27%);
2. last minute information, whether accurate or misleading, can influence decisions (22%);⁸
3. people need time and space to make their decision (21%).

Among those who thought that the moratorium should be **removed**, the three most popular reasons were:

1. people are exposed to election coverage on social media or in newspapers anyway (32%);⁹
2. the restrictions make no difference to how people vote (30%);¹⁰
3. people need access to information as it could be helpful in deciding how to vote (12%).

It is interesting to observe that the most popular reasons either for retaining or abolishing the moratorium converge on the point that respondents in both groups believe that the moratorium makes no difference in how people vote. This broadly coheres with a slight majority of respondents to the survey expressing the view that the moratorium is not effective.

⁶ The remaining 8% of respondents either had no view or did not express their view.

⁷ The remaining 4% either did not have a view or did not express that view.

⁸ Among the younger 18-34-year cohort who support retention of the moratorium, 38% think that last minute information, whether accurate or not, can influence voting decisions. This is the group most likely to be using social media as their main source of information.

⁹ This opinion is held to a greater extent among the ABC1 socio economic group (41%) and those who use another, non-broadcast media, as their main source for information (38%).

¹⁰ Those aged 55+, those in the C2DE socio economic group, and those relying on broadcast media for information on the elections are more likely to say that the restrictions make no difference on how people vote.

3.2. Reuters Digital News Report Ireland 2024

The Digital News Report Ireland reports each year on the Irish news and media landscape. This Report is published by the Commission in collaboration with DCU FuJo (the DCU Institute for Media, Democracy and Society). It reports in greater detail on Ireland as a part of the annual Reuters Digital News Report commissioned by the Reuters Institution for the Study of Journalism at the University of Oxford. The 2024 Digital News Report Ireland, the tenth such Report, was published on 7 June 2024 and it contains several salient findings that relate to the moratorium:¹¹

- There is a large difference between age cohorts on attitudes to news: fewer members of younger cohorts (eg, 18-24) are “extremely” or “very” interested in news relative to older cohorts (eg, 65+).¹²
- Those over 35 years of age showed particularly stark greater interest in local news, international news and political news.¹³
- 40% of respondents either “strongly agreed” or “tended to agree” that they were worn out by the amount of news.¹⁴ Relatedly, there was a sharp increase the proportion of those who reported actively avoiding the news (44% in 2024, up from 34% in 2023).¹⁵
- For the first time since the Report has been published, online news sources¹⁶ overtook TV as a main source of news for survey respondents.¹⁷
- There are some differences in how different age cohorts consume online media: in both the 18-24 and 65+ age groups, the proportion of respondents who reported “online news” (**excluding** social media) as their main source of news was similar; however, the proportion of respondents reporting “social media” as their main source of news was significantly higher among the 18-24 cohort.¹⁸
- In general, use of more traditional print, TV and radio formats increases steadily with age and, conversely, use of social media decreases with age. Use of online sources excluding social media is relatively even across all age cohorts, with a slight increase among older cohorts. Print has a low total share (18%). TV (56%) and radio (37%) still emerge as significant even when compared with online (62%) and social media (47%); however, a significant amount of this share in the case of TV and radio comes from older cohorts.¹⁹
- A high proportion (~70%) across all age cohorts was concerned about what is real and what is fake regarding online content.²⁰

In general, the survey shows that online media continues to grow as a source of news, even if social media use is more prevalent among younger cohorts. From the point of view of the moratorium, there is no significant distinction between social media and online news sources as neither is covered by the

¹¹ The text of the Report is available here: https://www.cnam.ie/wp-content/uploads/2024/06/20240607_DNR-2024_DMB.pdf

¹² Reuters Digital News Report Ireland 2024, page 24.

¹³ *Ibid*, page 28.

¹⁴ *Ibid*, page 35.

¹⁵ *Ibid*, page 36.

¹⁶ This refers specifically to sources excluding social media and blogs.

¹⁷ Reuters Digital News Report Ireland 2024, page 46.

¹⁸ *Ibid*, page 48.

¹⁹ *Ibid*, page 49.

²⁰ *Ibid*, page 66.



moratorium. While TV and radio are used more often by older cohorts, online sources are commonly used across all age cohorts.

3.3. National Election and Democracy Study

Regarding the March 2024 referendums, the Electoral Commission and the National Election and Democracy Study published data from the first pilot National Election and Democracy Study.²¹ Those data contain several useful indications concerning voter media usage:

- broadcast media (television and radio) emerged as more frequently used and more trusted by respondents than other media, such as online news media or social media;
- usage of online news and social media as a source of news increased in the lead up to the referendum, whereas usage of broadcast media declined;
- around 28% (family referendum) and 30% (care referendum) of voters made up their minds about how to vote either the day before the referendum, on the day of the referendum, or at the polling station itself.

It follows from the above that nearly 30% of people who cast their vote in the referendums²² made up their minds on how to vote under moratorium conditions.²³ In other words, to the extent that the moratorium had any effect at all, it affected about 30% of those who voted. While this is less than a majority, it is still a highly significant proportion.

It is also interesting to observe the increase in use of online news and social media in the lead up to the referendum. There are several plausible explanations for this. The moratorium may be one factor in a perception of diminishing usefulness of broadcast media near voting day. On the other hand, it may simply be a consequence of the fact that online media is more interactive and reactive than those traditional media. It is notable that the samples for both the NEDS referendum report and the Reuters Digital News Report would have been drawn at similar times.²⁴ The reported decline in the use of online news sources for the referendums must be viewed in light of the general strong support for the use of online sources reported in the Reuters Digital News Report Ireland 2024.

On 31 July, following the pilot study conducted on the basis of the March 2024 referendums, An Coimisiún Toghcháin published further NEDS data relating to the 7 June elections.²⁵ Again data relating to when voters made up their minds about how to vote was collected. For the local elections, 56% of voters made

²¹ See both the pre-referendum report ([Pre- Referendum Report 2024 \(neds.ie\)](#)) and post-referendum report ([Referendums Voter Survey Report \(neds.ie\)](#)).

²² Note, this is not the electorate (those who were eligible to vote), it is the smaller group of the electorate that actually cast their votes. Turnout for the referendums was recorded at around 44%.

²³ 2% of the respondents to the survey either didn't know or could not remember when they decided how they would vote.

²⁴ The Reuters Digital News Report sample was collected at the end of January/beginning of February 2024. The NEDS pre-referendum surveys were conducted 1-2 weeks before the referendum date (meaning they would have been fielded in late February/early March 2023). The NEDS post-referendum survey was conducted on the polling day (early March 2024) at the polling station on those who had cast their votes.

²⁵ A report of these data is available here: [Electoral Commission – Care and Family Pre- Referendum Report 2024 \(neds.ie\)](#). There is also a report relating to the election for mayor of Limerick held on the same day: [24-038380-Electoral Commission Limerick Voter Survey \(neds.ie\)](#), however, data relating to when voters determined how they would vote was not collected as a part of that survey.

up their minds about how to vote within a week of the election and 20% made up their minds about when to vote on the day of the election (when the broadcast moratorium was in place). For the European elections, 64% of voters had made up their minds within a week of the election and 28% on the day of the election.

3.4. An Coimisiún Toghcháin Report on the Referendums on Family and Care

In its report on the Referendums on Family and Care, An Coimisiún Toghcháin expressed the opinion that the moratorium should be removed:

At a time when online media and social media is so prevalent, [the moratorium] guidelines are now anomalous and open to potential exploitation.

An Coimisiún [Toghcháin] recommends that the broadcast moratorium is removed from the guidelines for radio and television broadcasters before the next electoral event.

We have invited An Coimisiún Toghcháin to respond to this consultation and to elaborate on the reasons for its recommendation.

4. Options for reform of the broadcast moratorium

In this section, several options for types of modification that the Commission may make to the moratorium are set out. They are ordered roughly from the least radical departure from the current policy to the most significant departure from that policy.

The options on which the Commission seeks views are as follows:

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.

It is important to stress that certain options for reform are **not** being considered by the Commission at this stage. In particular, the **extension of the moratorium to other media (print media, social media, or audiovisual media on-demand)** is not currently under consideration and does not form a part of this consultation. In the case of print and online media, this is because the extension of the moratorium to these media is beyond the Commission's legal powers.²⁶ In the case of audiovisual media on-demand, this is because the Commission has not yet issued codes pertaining to these media; in light of the differences between audiovisual media on-demand and traditional broadcast media, any application of a moratorium

²⁶ The experience of countries (such as France) that do extend moratorium-type restrictions to social media would also suggest that even if it were legally possible for the Commission to extend the moratorium to social media it would be impractical to do so.

rule, or rule similar in kind and objective to the moratorium, would be considered in a separate consultation specific to audiovisual media on-demand.

4.1. Option 1: Retain the moratorium as-is

One option is to simply leave the current moratorium rules in place as they currently stand. An advantage of this approach is that the current moratorium rules have been in place for more than a decade at this point and broadcasters are familiar with their operation. If adopted, this option would mean no change from existing, established practice.

A difficulty with this approach (and indeed retaining the moratorium in **any** form) is that as the extension of the moratorium to other media is not under consideration different media are treated differently in the run-up to voting events such as elections and referendums. Because the Commission's statutory powers do not extend to print or online news media, there is a degree of regulatory fragmentation involved in retaining the moratorium. This fragmentation must be viewed in the context of a growing market share for online media as a source of news and raises at least two connected issues:

- (1) it undermines the policy objectives of the moratorium insofar as it means that the moratorium rule—
 - (a) is a less effective limit on the spread of information that may be harmful to the democratic process, and
 - (b) leaves voters exposed to print and online content that may disturb the personal reflection that the moratorium is intended to facilitate;
- (2) it creates a media environment in which some services are subject to a restriction to which other services are not restricted, including services offered by the same parent entity (for example, RTÉ's broadcasting services are subject to the moratorium, but its online news service is not).²⁷

The first of these points is a matter of degree. That is, while the application of the moratorium only to some forms of media and not others might make the moratorium less effective at maximising its policy objectives, that is not necessarily to say that it is ineffective at achieving them. The second point is not a matter of degree in this way: either all media services are treated the same or they are treated differently.

While the differential treatment of media services may, on its face, seem unequal or unfair, it is important to remember that equality requires the treatment of like objects alike and allows the treatment of unlike objects differently. Respondents may wish to offer any reasons they might have for considering that broadcast media is materially different to other media in a way that makes it appropriate for it be treated differently.

Possible advantages

Broadcasters are already familiar with the current rules, which may enhance compliance.

The relatively general phrasing of the rule, which is aimed at any election- or referendum-related

Possible disadvantages

Moratorium applies only to broadcasters, notably exempting print and social media; this undermines the policy objectives of the moratorium and places broadcast media at a disadvantage compared with other media.

The relatively general phrasing of the rule may be construed as overreach, or it may discourage

²⁷ The practice of RTÉ has been to observe the moratorium in respect of its online coverage even though is not strictly obligated to do so.



coverage, may give it wider application to a greater variety of potential harms.

broadcasters from covering material that may not in fact breach the moratorium.

Table 1. Possible advantages and disadvantages of keeping moratorium as-is

Question for consultation

Q. 3 To what extent do you think Option 1 would contribute to achieving the policy objectives set out in Section 2? Do you have any views on how this option could best be implemented in order to best serve those policy objectives? Please provide reasons and evidence for your view.

4.2. Option 2: Change the duration of the moratorium

There is no one duration for an electoral silence period that is necessarily best. There are bands of plausible times that could achieve a balance between the freedom of expression of media services and the public policy aims of the moratorium. At present the duration of the Irish moratorium—2pm on the day before the polls open to the time at which polls close—is somewhat shorter than similar rules in other jurisdictions (see Annex A).

Under this option, the fundamental content of the moratorium rule would be retained; however, it would apply for a shorter or longer period of time than it does under the current rule.

Special considerations may attach to the period during which the polls are open.²⁸ This would mirror the Ofcom guidance in the United Kingdom. It is an important democratic principle that every eligible voter is treated equally and fairly. An extension of this principle is that voters should, to the greatest extent possible, have the same information available to them regardless of the time of day at which they vote.

Possible advantages

A **longer** duration might be valuable for certain kinds of information, such as opinion polls, where more time is necessary to validate the information and its impact on voting behaviour may be more pronounced.

A **shorter** duration is a lesser restriction on freedom of speech.

Possible disadvantages

A **longer** duration is, all else held equal, a greater restriction on freedom of expression. This might be counterbalanced by directing the moratorium only to certain kinds of coverage, such as reports on scientific polls.

A **shorter** duration would be less effective at achieving the policy objectives of the moratorium as it leaves greater time in which a disruptive event could happen.

²⁸ For most elections in Ireland, this is specified by statute to be a period of at least 12 hours falling between 7am and 10:30pm on the designated polling day. See [section 96 of the Electoral Act 1992](#) in respect of Dáil Elections (General Elections and Bye-Elections); [section 7 of the Presidential Elections Act 1993](#) in respect of elections to the office of President of Ireland; [section 13 of the Referendum Act 1994](#) in respect of referendums on Bills to amend the Constitution; [section 10 of the European Parliament Elections Act 1997](#) in respect of elections to the European Parliament.



A moratorium covering polling hours only helps to ensure that all voters, regardless of the time of day at which they vote, have access to similar information on which to base their voting preference and that information has had more time to be vetted and validated.

Table 2. Possible advantages and disadvantages of a longer or shorter moratorium

Question for consultation

Q. 4 To what extent do you think Option 2 would contribute to achieving the policy objectives set out in Section 2? Do you have any views on how this option could best be implemented in order to best serve those policy objectives? Please provide reasons and evidence for your view.

4.3. Option 3: Adapt the moratorium so that it applies to more narrow categories of speech

Another potential option for reform is to alter the types of actions or speech to which the moratorium applies. The current moratorium rule recommends that broadcasters avoid coverage of election- or referendum-related material. In practice, because the current moratorium is relatively general, reform along these lines would likely take the form of restricting the moratorium to apply to a narrower class of speech than it does at present.

Inspiration for what types of speech might pose particular policy issues might be drawn from other jurisdictions. Where other jurisdictions prohibit specific types of speech in advance of elections and referendums, some common examples include **political advertising** and **opinion and exit polls**.

Political advertising is already prohibited on broadcast media by section 46M(2)(a) of the Broadcasting Act 2009, which prohibits broadcasters from transmitting advertisements that are ‘directed towards a political end’. It is therefore outside the scope of this consultation, which relates expressly to the moratorium.

In the case of opinion and exit polls,²⁹ there are two major considerations—

- (1) because polls claim a degree of scientific rigour and objectivity as a result of the statistical methods that they employ, it is important to be able to verify that a poll is scientifically valid and, therefore, a trustworthy source of information, and
- (2) because both types of poll, and particularly exit polls, relate to information not about any particular policy matter but rather about the way that other voters have, or intend to, vote, it is arguable that their publication has a weaker democratic justification; what deliberative democracy requires is that voters are well-informed and discursive about **policy matters** relating to the election or referendum, not that they are informed about the voting intentions of other voters to facilitate a more strategic or tactical approach to voting.

²⁹ For a recent consideration in the Irish media of issues that can arise in interpreting and reporting on opinion polls, see: [Elections 2024: General election polls are poor predictors of local elections – here’s why \(thejournal.ie\)](https://www.thejournal.ie/elections-2024-general-election-polls-are-poor-predictors-of-local-elections-1234567890/).

Unlike political or policy information, which is primarily damaging to voters' interests where it is false or misleading, data that telegraphs candidates' electoral prospects can potentially distort the democratic process even where it is true. It can affect electoral outcomes either by discouraging turnout or by encouraging those voters that do exercise their vote to convert to a different candidate. These effects could manifest by, for example, generating a 'bandwagon' effect (voters converting to the frontrunner candidate) or an 'underdog' effect (voters converting to the trailing candidate). The political science literature is inconclusive on which effect is more likely or the strength of either effect, though it does seem well-supported that access to information on other voters' actual or intended voting patterns may impact how an individual votes and whether they choose to vote at all.³⁰

It is worth stressing that the Commission is not suggesting that opinion or exit polls should be banned more generally. They are informative for voters and, after the vote, political scientists in understanding important trends to inform policy and public administration. The point being made is that this informational and policy-informing rationale is what primarily justifies such polls, rather than the role that they play in citizens' exercise of their individual democratic rights. As such, they might be restricted in the time around and during polling to keep focus on election and referendum issues.

Possible advantages	Possible disadvantages
Restrictions on coverage of opinion poll results during a defined period before a public vote may help to avoid voters being misled by an inaccurate poll (that is, one with methodological deficiencies) or inaccurate reporting of a poll (that is, reporting that overstates what can reasonably be inferred from the poll)	A ban on opinion polls may not be the most proportionate means to achieve the objective of avoiding public misinformation arising from such polls; it may be preferable for the Commission to issue guidance to broadcasters to treat such reports with care, particularly as polling day draws closer.
Restrictions on the publication of opinion or exit polls may help to curtail distortions to the democratic process that may arise from strategic voting or bandwagon/underdog effects.	

Table 3. Possible advantages and disadvantages of a narrower moratorium

Question for consultation

Q. 5 To what extent do you think Option 3 would contribute to achieving the policy objectives set out in Section 2? Do you have any views on how this option could best be implemented in order to best serve those policy objectives? Please provide reasons and evidence for your view.

4.4. Option 4: Abolish the moratorium and replace with guidance imposing positive obligations rather than negative obligations

At present the moratorium is framed as **negative** obligation **not to cover** election- or referendum-related material in broadcasts while the moratorium applies. In this sense, the moratorium pre-emptively weighs the

³⁰ See Victor Araújo and Malu AC Gatto, 'Casting Ballots When Knowing Results' (2022) 52 British Journal of Political Science 1709 at pages 1711–12 for a recent overview of some of the studies and literature on this topic.

case for a broadcast and, where the broadcast contains such material, will always require the conclusion that the broadcast not go ahead.

An alternative would be to put certain **positive** obligations on broadcasters to undertake certain actions and adhere to defined standards. This could take the form of, for example, guidance to broadcasters to exercise special or particular care in considering whether to broadcast certain material. A standard could be articulated by which the broadcaster should assess the case for going ahead with the broadcast. This standard could be something like that the broadcaster is satisfied that the material to be broadcast furthers the public interest and democracy and does not clearly benefit or prejudice an electoral candidate, party or side of a referendum.

Other positive obligations could include requiring a broadcaster to prepare a policy to guide appropriate decision-making around political coverage near in time to a public vote. The broadcaster could be required to notify this policy to the Commission.

Possible advantages	Possible disadvantages
Positive obligations would allow individual broadcasters to weigh the case for a broadcast themselves.	This would be a departure from the approach to date and so may present challenges for broadcasters to adapt to it.
Positive obligations place the emphasis on standards to be achieved by the broadcaster in its decision-making rather than focusing on whether the content falls within a certain pre-emptively banned category.	A focus on standards is a contextual and value-laden and could be more challenging from both a compliance and enforcement perspective.

Table 4. Possible advantages of positive obligations over negative obligations

Question for consultation

Q. 6 To what extent do you think Option 4 would contribute to achieving the policy objectives set out in Section 2? Do you have any views on how this option could best be implemented in order to best serve those policy objectives? Please provide reasons and evidence for your view.

4.5. Option 5: Abolish the moratorium in its entirety, leaving only remaining provisions of the Code in application

Getting rid of the moratorium would allow coverage of all election- and referendum-related material up to and during polling hours on all media, including broadcast media. Broadcast media would remain subject to the more general provisions of the Code; however, the specific rules of the moratorium would no longer apply. In effect this would leave the matter of whether a story should be covered as a matter of journalistic ethics and editorial discretion.

As discussed above under Option 1, there are issues of regulatory fragmentation that are involved in retaining a moratorium in any form. However, the degree to which this fragmentation is problematic depends on the form of the moratorium, and a narrower version of the moratorium than exists at present would raise fewer problems.

While abolition of the moratorium would resolve the fragmentation problem, the considerations that might attach to **polling hours** (considered above under Option 2) and **certain types of reporting or information** (considered above under Option 3) still apply. Respondents in favour of abolishing the moratorium entirely are encouraged to consider these issues in their response.

Possible advantages	Possible disadvantages
Removes differential treatment of broadcasters compared to print and online media.	Where there are strong considerations in respect of certain restrictions—such as, for example, restrictions on reporting during polling hours—these policy objectives may be more effectively achieved by a straightforward ban.

Table 5. Possible advantages and disadvantages of abolishing the moratorium

Question for consultation

Q. 7 To what extent do you think Option 5 would contribute to achieving the policy objectives set out in Section 2? Do you have any views on how this option could best be implemented in order to best serve those policy objectives? Please provide reasons and evidence for your view.

5. Responding to this consultation

At the outset, respondents may wish to refer to the Commission’s Consultation Guidelines, which can be accessed at https://www.cnam.ie/wp-content/uploads/2023/06/ConsultationGuidelines_June-2023-1.pdf.

Coimisiún na Meán seeks views, information, and evidence in relation to each of the consultation questions in **section 4** of this document, as well as any other option for reform of the moratorium that respondents believe the Commission should consider.

In some cases, different options for reform could be combined. For example, a respondent may wish to advocate for a shorter duration (Option 2) that applies only to broadcasting relating to opinion polls (Option 3). Respondents may combine compatible options in this way in their submission.

5.1. Timeframe for responses

All responses to this consultation must be submitted to the Commission **no later than 5pm on 4 September 2024**.

If you require any assistance with making a response, please contact the Commission by email at codes@cnam.ie or by phone on 01 644 1200.

5.2. Making a response

Submissions to this consultation must be made **in writing**. Respondents may make their submissions by:

- **email** to codes@cnam.ie, by attaching their submission as a .docx or .pdf format file, or
- **post** to Coimisiún na Meán, One Shelbourne Building, Shelbourne Road, Dublin 4, D04 NP20

When preparing your response please give reasons for your preferred position. You may also offer observations on why you believe other options would be unsuitable.

5.3. Use of information

5.3.1. Personal data

The Commission shall comply with its obligations under the General Data Protection Regulation (“GDPR”), the Data Protection Act 2018 and any other applicable data privacy laws and regulations. The Commission is obligated and committed to protecting all personal data submitted. The Commission has an appointed Data Protection Officer who is registered with the Data Protection Commission. You can find out more on how the Commission processes personal information in our published policy.³¹

For this process, the Commission will collect the name, email address, and any other personal information that is included in your response. The name of the respondent to the consultation and the response provided will be made publicly available. However, the Commission will not make publicly available your contact details, such as your address, phone number or email. The information collected will be used only for the purposes of this review and for no other purpose.

5.3.2. Confidential information

It is the Commission’s intention to publish submissions received in response to this consultation. Please provide your response as a non-confidential document, with confidential information contained in a separate annex, or submit a redacted non-confidential version together with your response. The Commission will treat confidential information in accordance with its Consultation Guidelines.

5.3.3. Freedom of information

Information held by the Commission is subject to its obligations under law, including under the Freedom of Information Act 2014. The Commission will consult you about information you mark as confidential before deciding on any request to it made under the Freedom of Information Act 2014.

³¹ See <https://www.bai.ie/en/about-us/data-protection-policy/>; references to the Broadcasting Authority of Ireland (‘BAI’) are references to Coimisiún na Meán.

Annex A

Electoral silence in other jurisdictions

Comparative legal research on this question is difficult. There is no consistent definition of a ‘silence period’ among different jurisdictions, and there are at least three significant dimensions along which a ‘silence period’ may vary:

- (1) to whom the prohibition is directed (broadcasters, social media, print media, ‘persons’ etc);
- (2) what content is prohibited (all coverage of election topics, opinion polls, political advertising, etc);
- (3) for how long the prohibition is in place.

There is significant variation along these dimensions across all the jurisdictions discussed in this Annex and this should be borne in mind when reading the material below.

A.1. Summary of key observations

- There is no clear international consensus on electoral silence periods: some jurisdictions have no such provisions, others have provisions that range from relatively narrow (eg, restricting only opinion polls) to broad (eg, restricting public meetings to discuss issues relating to the relevant voting event). Only very few jurisdictions purport to enforce silence periods on social or digital media; where this is tried compliance is low and enforcement is generally weak.
- Some other common law jurisdictions have found silence periods to violate freedom of speech; however, this finding will be highly contextual relative to both: (a) the specific measure under consideration, and (b) the degree of protection afforded to free speech under the law of the jurisdiction. It cannot be concluded that electoral silence provisions in general are likely to be found to be an impermissible restriction on free expression.
- Relative to the other jurisdictions considered in this Annex, the Irish moratorium provision:
 - is an outlier for being an administrative rather than a legislative provision;³²
 - covers a slightly shorter period than the average;
 - covers a somewhat wider class of communications;
 - is narrower in only covering broadcast media and not print (or online) media.
- Of the 31 jurisdictions considered in this Annex:
 - **10 impose no electoral silence restrictions** (Austria, Belgium, Denmark, Estonia, Finland, Germany, Lithuania, the Netherlands, Sweden and the United States of America);
 - **6 impose either particularly strict or long silence periods in at least one respect—**
 - ♦ Cyprus, which has a 7-day ban on opinion polls;
 - ♦ France, which has a slightly longer-than-average ban on opinion polls that applies to all means of publication (including social media);
 - ♦ Italy, which has a 15-day pre-poll ban on the publication of opinion polls, and a 1-day-pre-poll ban on ‘political propaganda’;

³² The only other jurisdiction considered in this Annex in which the electoral silence provision(s) are administrative is the United Kingdom.

- ♦ Slovakia, which imposes a 48-hour ban on a wide variety of information, including information about candidates and opinion polls;
- ♦ Spain, which imposes a 24-hour ban on election campaigning, and a 5-day ban on the publication of opinion polls on all media, including social media;
- ♦ Australia, which imposes a 3-day ban on all election advertising on broadcast media only;
- **9 countries impose a ~24-hour silence period** (Croatia, Cyprus, France, Greece, Latvia, Malta, Poland, Portugal and Romania);
- **5 impose restrictions on opinion polls only** (Bulgaria, Czech Republic, Hungary, Luxembourg and Slovenia).

A.2. Other European jurisdictions

A [Briefing Paper for the European Parliament](#) has set out election silence periods as they apply in the 27 Member States of the European Union as at 2024. There are some important points to emphasise about how the Briefing Paper treats silence periods:

- (1) it describes the law of each Member State on **European elections only**;
- (2) it appears to consider that a country has a silence period only where that silence period is provided for in strict **legislative** terms; for example, it considers that Ireland does not have a 'specific' silence period, given that there is no Act of the Oireachtas that provides for one.

The focus on Member State law regulating European elections means that any difference in how other voting events (referendums, elections to national parliaments) are handled is not captured by the Paper. This caveat being noted, it is reasonable to assume that most states look to achieve congruence among the laws regulating different kind of voting events. It can therefore be assumed that the provisions set out in the Paper on silence periods for European elections likely reflect similar treatment of domestic voting events.

The Paper notes that sixteen Member States out of the EU-27 apply a silence period;³³ however, there is significant variation in how the prohibition is framed among those states:

Even among those Member States that do apply a silence period, national provisions vary: some restrict or prohibit the publication of public opinion polls or surveys (e.g. France, Portugal and Slovakia) and electoral canvassing (Lithuania, the Netherlands, Slovenia), or apply a broader set of restrictions covering electoral canvassing, the publication of opinion polls and political advertising in the mass media, in different combinations. In Poland, for example, the silence period covers electoral 'agitation' (electioneering), meetings, rallies, demonstrations as well as the publication of opinion polls. Cyprus prohibits meetings, debates, political advertising and the publication of opinion polls.

³³ These are: Bulgaria, Croatia, Cyprus, France, Greece, Italy, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain.

A.3. Observations of the Venice Commission on electoral silence

The Venice Commission has observed that in practice most Council of Europe Member States³⁴ prohibit electoral campaigning during a short period of time (usually a day) in the run up to voting events.³⁵ It also notes that in some cases (the Czech Republic, Denmark, Georgia, the United Kingdom and the Republic of Moldova) the relevant prohibitions are more narrowly tailored to either certain spaces (inside or near polling stations) or communication through the media but not other channels. The Venice Commission's observation that most Council of Europe Member States have **some** kind of silence period must be interpreted in the context of significant differences among those states in the strength and ambit of the silence period.

On the publication of election-related opinion polls, the Venice Commission noted that it is common to prohibit the publication of the results of opinion polls and outcome projections immediately before voting day and until the polls close. However, it also cautioned that these bans should not be excessively long, pointing to a seven-day ban in Cyprus and a fourteen-day ban in Slovakia as potentially problematic.³⁶

A.4. Other common law jurisdictions

A.4.1. The United Kingdom

Like Ireland, the silence period that operates in the United Kingdom is based on an administrative rule adopted by Ofcom. Under the Ofcom rules, discussion and analysis must finish when polling stations open and must not resume until they close. Broadcasters may not publish the results of any opinion polls during this time.

Ofcom's rules should also be understood in the context of a more general set of conventions known as the [pre-election period of sensitivity](#). This is more broadly aimed at preventing governmental figures from unfairly distorting the election by announcing new or controversial initiatives that might be advantageous to particular candidates or parties. The existence of this sensitivity period addresses, to a degree, some of the concerns that motivate election silences: both measures address the impacts of single-instance large announcements or news items having a distortive impact on electoral outcomes.

In terms of legislative restrictions, section 66A of the [Representation of the People Act 1983](#) makes it an offence to publish an exit poll before polling has closed. In a sense this is a very narrowly drawn kind of election silence provision. The House of Lords Select Committee on Political Polling and Digital Media issued a Report in 2018 in which it recommended against wider bans on publication of polls.³⁷ It cited

³⁴ The Council of Europe is a separate institution to the European Union. The Council was established following World War II to uphold human rights and democracy in Europe. It has 46 Member States (the Netherlands, Belgium, Luxembourg, Denmark, France, Norway, Sweden, the United Kingdom, Ireland, Italy, Greece, Iceland, Turkey, Germany, Austria, Cyprus, Switzerland, Malta, Portugal, Spain, Liechtenstein, San Marino, Finland, Hungary, Poland, Bulgaria, Estonia, Lithuania, Slovenia, the Czech Republic, Slovakia, Romania, Andorra, Latvia, Moldova, Albania, Ukraine, North Macedonia, Croatia, Georgia, Armenia, Azerbaijan, Bosnia and Herzegovina, Serbia, Monaco, Montenegro). Until March 2022 it also included Russia.

³⁵ [European Commission for Democracy through Law \(Venice Commission\), Report on Electoral Law and Electoral Administration in Europe](#), at paragraph 186.

³⁶ European Commission for Democracy through Law (Venice Commission), *Report on Electoral Law and Electoral Administration in Europe*, at paragraph 187.

³⁷ [Select Committee on Political Polling and Digital Media, The politics of polling \(HL Paper 106\)](#).



research conducted by the Oireachtas Library and Research Service noting that 16 out of 28 EU countries³⁸ endorse bans on the publication of opinion polls. Ultimately the Committee concluded that it was not 'convinced of the case for introducing a ban on the undertaking and publication of voting intention polls in the run-up to elections. In the future, if polls continue to be a poor predictor of the eventual outcomes of elections, and if the media reporting of such polls continues to influence public and political discourse in a misleading way, then arguments by supporters of a ban would be strengthened'.

A.4.2. The United States of America

In *Mills v Alabama*³⁹ the United States Supreme Court considered a part of the Alabama Corrupt Practices Act. Section 285 of that Act made it an offence 'to do any electioneering or to solicit any votes ... in support of or in opposition to any proposition that is being voted on on the day on which the election affecting such candidates or propositions is being held'. The appellant, James Mills, was a newspaper editor who had published an editorial strongly urging voters to adopt the mayor-council form of government in an election on that issue. He challenged the constitutionality of section 285. The Alabama Supreme Court initially upheld the constitutionality of the section, suggesting that:

It is a salutary legislative enactment that protects the public from confusive last-minute charges and countercharges and the distribution of propaganda in an effort to influence voters on an election day when, as a practical matter, because of lack of time, such matters cannot be answered or their truth determined until after the election is over.

On appeal, the Supreme Court of the United States found this argument to be flawed:

The state statute leaves people free to hurl their campaign charges up to the last minute of the day before election. The law held valid by the Alabama Supreme Court then goes on to make it a crime to answer those "last-minute" charges on election day, the only time they can be effectively answered. Because the law prevents any adequate reply to these charges, it is wholly ineffective in protecting the electorate "from confusive last-minute charges and countercharges."

The Supreme Court found that the Alabama Corrupt Practices Act was too restrictive and struck it down for violating the First Amendment.

Perhaps as a result of this case, and the Court's First Amendment case law more generally, electoral silence provisions seem to have been avoided by American state legislatures for fear of encroaching unconstitutionally on free speech. This trend is quite clearly seen in the regulation of spaces around polling stations following the judgment of the Supreme Court in *Burson v Freeman*.⁴⁰

A.4.3. Canada

Like the United States, the Canadian courts have addressed the constitutionality of certain electoral silence provisions in a way that has likely affected the trajectory of subsequent silence provisions.

³⁸ At the time the Oireachtas research was published, the United Kingdom was a member of the European Union.

³⁹ [384 US 214 \(1966\)](#).

⁴⁰ [504 US 191 \(1992\)](#). For the influence of *Burman* on how state legislatures construct spatial zones restricting speech around polling stations, see: [Nicholas Petrosky, 'Election Silence: Revisiting *Mills v Alabama* in the Modern Context' \(2022\) 47 University of Dayton Law Review 135.](#)

In *Thomson Newspapers v Canada*⁴¹ the Supreme Court considered section 322(1) of the Canada Elections Act. This section provided that:

No person shall broadcast, publish or disseminate the results of an opinion survey respecting how electors will vote at an election or respecting an election issue that would permit the identification of a political party or candidate from midnight the Friday before polling day until the close of all polling stations.

A majority of the Supreme Court found that this was an unconstitutional interference with section 1 of the Canadian Charter of Rights and Freedoms. This despite the Court finding that the prohibition only applied to 'new' poll results (that is, results that are undisclosed as of midnight on the Friday before election day). This contrasts with bans in other jurisdictions that also prohibit **commentary** on poll results, which bans would also cover further commentary on polls conducted and published at an earlier date.

More recently, what was section 329 of the Canada Elections Act—which prohibited the distribution of election results in regions of Canada where polls had not yet closed—was repealed. This provision had been unsuccessfully challenged before the Supreme Court, a majority of which found the objective of preventing some Canadians of having knowledge of the voting outcomes in other parts of Canada to be a permissible restriction on free speech.⁴² Notwithstanding this victory for the Canadian Government in the courts, it repealed section 329 in 2014 by the Fair Elections Act. Its reason for doing so appears to have been that it considered the provision effectively unenforceable given the 'widespread use of social media and other modern communications technology'.⁴³ Interestingly, as far back as 1991 the Royal Commission on Electoral Reform and Party Financing was critical of the enforceability of the ban even based on the telecommunications technology of that time:

The Canada Elections Act makes it an offence to publish election results in any area before voting ends in that area. This provision, adopted at the time the telegraph was used to communicate election results, has been rendered obsolete by developments in broadcasting and telecommunications technology, which have made controlling the diffusion of election results more difficult. U.S. border stations can broadcast election results from eastern Canada before viewers or listeners in western Canada have finished voting. It is also impossible to stop results being relayed to the West via telephone or facsimile before the polls close and increasingly difficult to block eastern Canadian television stations carrying election news from being received in the West by satellite or cable.⁴⁴

Under Canadian law at time of writing there remains a ban on election advertising on polling day;⁴⁵ however, there is not really a 'silence period' as such in federal Canadian law following the *Thomson Newspapers* case and the repeal of section 329.

⁴¹ [\[1998\] 1 SCR 877](#).

⁴² *R v Bryan* [\[2007\] 1 SCR 527](#).

⁴³ [Harper Government Committed to Repealing Dated Ban on Early Communication of Election Results - Canada.ca](#)

⁴⁴ Report of the Royal Commission on Electoral Reform and Party Financing ('Lortie Report'), volume 2, [page 84](#).

⁴⁵ [Section 323](#) of the Canada Elections Act.

A.4.4. Australia

Under sections 3A and 3B of Schedule 2 of the [Broadcasting Services Act 1992](#) television and radio broadcasters are prevented from broadcasting any 'election advertisement' during the 'relevant period' with respect to both elections and referendums. The 'relevant period' is defined as commencing on the 'end of the Wednesday' (ie, midnight on Wednesday) prior to the day of polling/voting. In Australia, the polling/voting day is always a Saturday and so functionally this is a silence period covering **48 hours prior to polling** as well as the polling period itself.

Notably, however, this ban extends only to **election advertisements** and **referendum advertisements**. Each of these is defined as follows:

election advertisement, in relation to an election, means:

- (a) an advertisement:
 - (i) that contains election matter that relates to that election; and
 - (ii) in respect of the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration; or
- (b) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or
- (c) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party.

...

referendum advertisement, in relation to a referendum, means an advertisement:

- (a) that contains referendum matter (within the meaning of the Referendum (Machinery Provisions) Act 1984)⁴⁶ that relates to that referendum; and
- (b) in respect of the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration.

The Australian rule bears some resemblance to the Irish rule. In particular, the Australian rule applies only to broadcasters in just the same way as the Irish rule does. It is narrower than the Irish rule with respect to the material covered. In the case of both election or referendum material the Australian legislation requires either that the material was paid for or sponsored in some way.

Parliamentary reviews in respect of the 2016, 2019 and 2022 Australian federal elections have been critical of the blackout laws.⁴⁷ In more recent years, the reviewing committee has suggested that the rules are inconsistent and witnesses to the committees have stressed both the significance of the fact that the digital arena is not captured and the fact that pre-poll voting means that some Australian voters cast their ballots before the blackout period even comes into effect. While this pre-poll voting issue has no analogue in

⁴⁶ This definition specifies referendum matter as 'matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote at a referendum'.

⁴⁷ [Review of 2013 Election](#), [Review of 2016 Election](#), [Review of the 2019 Election](#), [Review of the 2022 Election](#).

Ireland, as pre-poll votes are only possible for a very limited number of voters in this jurisdiction, the issues raised with respect to digital media clearly resonate.

Despite the committee having called first for its review and, more recently, for its abolition, the blackout provision remains in Australian law. The principal reason for this recommendation appears to be creating a level playing field between traditional broadcast media and digital media, with the only plausible way of achieving this being to deregulate broadcast media rather than to regulate online media, which would pose significant enforcement challenges.



Annex B

Coimisiún na Meán Attitudinal Survey: Election Coverage and Broadcasting Restrictions

B.1. Introduction

As part of its commitment to informed, evidence-based policy and decision-making, Coimisiún na Meán commissioned market research consultancy Ipsos B&A in June 2024 to research public views on broadcasting restrictions during election and referendum coverage, both regarding the most recent local and European elections and more generally.

In terms of methodology, a customised survey was conducted using CATI (computer-aided telephone interviewing) technology. The telephone interviews were conducted with a nationally representative sample of 1,000 adults aged 18+. The data was weighted by age, gender, region, socio-economic status and education attainment, to ensure the sample reflected the population. The fieldwork commenced on June 8, 2024, the day after the European and local elections, and concluded on June 14, 2024. The following is a summary of the key findings of the IPSOS B&A research.

B.2. Findings

B.2.1. Surveying media sources ever used

The opening question asked respondents which media sources they ever use, offering TV, radio, print, messaging apps, social media and online forums as options. The responses indicated that 82% use messaging apps, 75% use social media, 75% use Irish radio, 71% use Irish TV, 60% use Irish online news and TV/radio news sites, 40% read Irish printed papers, while 17% used online forums and blogs.

Media Sources Ever Used		
Messaging apps (e.g. WhatsApp, Snapchat, Telegram)	82%	821
Social Media (e.g. Facebook, Twitter/X, Instagram, Youtube, Tiktok, Snap)	75%	752
Irish Radio (e.g. Today FM, Newstalk, RTÉ, Local Radio)	75%	750
Irish TV (e.g. RTE, Virgin One)	71%	711
Irish Online News and TV/Radio sites (e.g. Journal, RTÉ online)	60%	599
Printed Irish newspapers (e.g. Irish Times, Independent, The Sun)	40%	398
Online discussion forums and blogs (e.g. Boards, Quora)	17%	166

Q1: Which of the following media sources do you ever use?

Base: All respondents: 1,001.

Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.

The survey found that while TV and radio broadcast media are consumed by 71% of people across all age groups, they are particularly popular among those aged 55 and older, with 89% and 87% consuming TV and radio broadcast media, respectively. Irish online news and TV/radio news sites are consumed by 65% of women and 55% of men, while in relation to age categories they are especially popular across the 35-44 age bracket (70%). Social media use peaks among those aged 18-34 (95%), and goes down to 53% for those 55+. Use of messaging apps is at its highest for 35-54-year-olds (91%), reducing to 61% for those over 65. Online discussion forums were most popular with the 18-24 cohort (25%), while only 8% of over 55s said they accessed them.



B.2.2. Media sources used by interviewees for news and information around elections and referendums

When the respondents were asked about news and information sources they had accessed around the recent European and local elections, and around elections and referendums more generally, the sources of information increased to include candidate information (e.g. posters, leaflets, door-step visits) and information from An Coimisiún Toghcháin/the Electoral Commission (e.g. booklets, website, information videos).

Candidate information was the top-ranked source of news and information in this context (74%), followed by Irish radio (64%), Irish TV (62%), Irish online news websites (56%), social media (51%), An Coimisiún Toghcháin/Electoral Commission information (35%), messaging apps (23%) and online discussion forums (9%).

Media Sources Used for News and Information Around Elections and Referendums		
	All	
Candidate information – posters, leaflets, door-step visits	74%	737
Irish Radio (e.g. Today FM, Newstalk, RTÉ, Local Radio)	64%	638
Irish TV (e.g. RTÉ, Virgin One)	62%	619
Irish Online News and TV/Radio sites (e.g. Journal, RTE online)	56%	563
Social Media (e.g. Facebook, Twitter/X, Instagram, Youtube, Tiktok, Snap)	51%	514
An Coimisiún Toghcháin/Electoral commission Information (e.g. booklet, website, information videos)	35%	350
Printed Irish newspapers (e.g. Irish Times, Independent, The Sun)	32%	318
Messaging apps (e.g. WhatsApp, Snapchat, Telegram)	23%	232
Online discussion forums and blogs (e.g. Boards, Quora)	9%	94

Q2: Thinking specifically around news and information around the recent elections, and more generally on elections and referendums, please tell me if you have used any of the following as a source for news and information about the elections?

Base: All respondents: 1,001

Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.

When respondents were then asked to identify the one most important source to get news and information around elections, Irish radio and social media were tied in top position with 18% each. Irish TV and candidate information both scored 17%, Irish online news and TV/radio sites was identified by 16%, An Coimisiún Toghcháin/the Electoral Commission registered 3%, while only 1% identified either messaging apps or online discussion forums as their main information source around elections.

Most Important Sources for News and Information Around Elections and Referendums		
Irish TV (e.g. RTÉ, Virgin One)	17%	173
Irish Radio (e.g. Today FM, Newstalk, RTE, Local Radio)	18%	177
Printed Irish newspapers (e.g. Irish Times, Independent, The Sun)	5%	48
Irish Online News and TV/Radio sites (e.g. Journal, RTÉ online)	16%	156
Social Media (e.g. Facebook, Twitter/X, Instagram, Youtube, Tiktok, Snap)	18%	177
Messaging apps (e.g. WhatsApp, Snapchat, Telegram)	1%	9
Online discussion forums and blogs (e.g. Boards, Quora)	1%	6
An Coimisiún Toghcháin/Electoral commission Information (e.g. booklet, website, information videos)	3%	31
Candidate information – posters, leaflets, door-step visits	17%	170



None/Don't Know	5%	55
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Q3: And which ONE of these sources was the MOST IMPORTANT source to get news and information about the recent election or elections/referendums more generally.

Base: All source mentions in Q2.

Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.

Irish TV was the leading source of election information among the 55+ group (31%), while among the 18-34-year-old group the percentage who identified Irish TV as their primary source of information came down to 7%. Conversely, candidate information, such as posters, leaflets, door-stepping etc., registered as the top source of information and news among the younger groups, 30% of 18-24s, with only 12% of the 55+ cohort registering it as their top preference. Radio was the leading source for 55-65s (30%), while only 5% of 18-24s selected it as their top choice. Overall, Irish TV and radio remains a strong choice for the older 55+ cohort, with 58% selecting either TV or radio for this question.

Among the 18–34-year-olds, social media is the top source at 29%, while candidate information came in second (24%). In this group 7% chose TV, 6% radio and 3% printed newspapers. Social media was also the most important choice for the 35-54 age group (22%), followed by radio and online news (18% each), candidate information (16%) and TV (12%).

B.2.3. Influence of most important media on the voting decision

When asked about the influence their most important media had, 54% believed their most important media source was indeed influential on their voting decision, with this level rising to 72% among 18–24-year-olds.

Influence of Main Media on Voting Decision		
Yes, it was influential on my decision	54%	542
No, it was not influential on my decision	39%	392
Refused/Don't Know	7%	67

Q4: And would you say this information source was influential or not influential on your decision on which party or candidate to vote for, or more generally, is influential or not influential on your views on elections and referendums?

Base: All main source mentioned at Q3.

Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.

Among the respondents 60% of women and 48% of men said their main media source was influential on their voting decision. Those working (64%) and with a higher education level (61%) were more likely to say their media choice influenced their voting choice. Among those who had selected broadcast media – radio or TV – as their most important source, 55% said media did not influence their voting decision.

B.2.4. Interviewee opinion on broadcasting rules

At this stage in the telephone interview, details of the broadcasting moratorium rules were read out to the interviewees, with the following text presented:

Coimisiún na Meán (the Irish Media Commission) currently has a rule that Irish radio and television broadcasters must stop their coverage of elections and referenda at 2pm on the day before the vote takes place. This means that Irish broadcasters cannot discuss the content of a referendum or the policies of different political parties or candidates from 2pm on the day before the vote, until the polling stations close on the day of the vote. It only applies to Irish TV and radio broadcasters and does not apply to newspapers, social media or websites.

Interviewees were then asked, “In your opinion, do you think these rules are effective, or not effective, in restricting coverage of the elections from 2pm the day before the elections until the time the polling closes?” In response to this question, 52% said the restrictions were not effective, while 40% said they were effective.

Effectiveness of Rules of Broadcast Media		
Effective	40%	399
Not effective	52%	524
Refused/Don't Know	8%	78
Q5: In your opinion do you think these rules are effective, or not effective, in restricting coverage of the elections from 2pm on the day before elections until the time polling closes? Base: All respondents 18+: 1,001 Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.		

Of those who said they voted in the most recent local and European elections, 57% said the rules were not effective, while 38% said they were effective. Of the non-voters, 41% said the rules were not effective and 13% did not express an opinion. Among specific age groups, the view that the rules were not effective was supported most strongly by those in the 45-54 age bracket, at 60%. 50% of those who say broadcast media is their most important source of election information said the rules were not effective, while 43% said they were.

B.2.5. Opinion in relation to retaining, removing or modifying the broadcasting restrictions

When asked if they felt the restrictions should be retained, removed or modified, 41% said the restrictions should be kept in place as they are, 23% said they should be modified to cover only the period when the polling stations are open, while 32% said the restrictions were not necessary and should be removed.

Opinion in Relation to the Broadcasting Restrictions		
The restrictions should be kept as is, i.e. from 2pm on the day prior to the election	41%	410
The restrictions should be kept but modified to run only during polling hours, i.e. on the day of the election	23%	230
The restrictions are not necessary and should be removed	32%	321
Refused/Don't Know	4%	40
Q6: These referendum and election restrictions are currently under review, and we would value your feedback on their relevance. Which of these responses best matches your own opinion in relation to the broadcast restrictions? Base: All respondents 18+: 1,001 Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.		

Among those who stated broadcast media was their main source of information, 47% said the restrictions should remain, 22% said they should remain but be modified, while 28% said the restrictions were not necessary and should be removed. Support for retaining restrictions was strongest among the 55+ age group (46%) and among males (43%). Among those supporting modification to restrictions, the highest levels of support came from 18-34s (30%) and from females (26%). 37% of the 35-54 age group said the restrictions are not necessary and should be removed.



B.2.6. Supporting reasons for keeping restrictions

Respondents who said the restrictions should remain as they currently are or with some restrictions (64% of total) were offered a selection of possible reasons why restrictions should be maintained, and asked to select the one that most closely matched their view. 27% said people had already decided at that point; 22% said that last minute information – whether accurate or misleading – can influence decisions; 21% said people need time and space to make their decisions; 14% said that by that point there will have been sufficient coverage; while 13% said too much coverage can be confusing.

Reasons for Keeping Restrictions in Place Even if Modified (Prompted)		
People need time and space to make their decision	21%	133
Too much coverage can be confusing	13%	86
There has been sufficient coverage by that stage	14%	89
Last minute information whether accurate or misleading can influence decisions	22%	142
People have already decided who to vote for at that stage	27%	171
Other	2%	15
Refused/Don't Know	1%	4

Q7: I am going to read out some reasons why restrictions could be kept in place, even if modified. Please listen to all the comments and then select the ONE that most closely matches your own opinion. Or there may be another reason that you wish to put forward.

Base: All code 1 or 2 @ 640.

Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.

Only 4% of the 65+ age group felt that last minute information can influence decisions, while that number rose to 38% among the 18-34 age bracket. And among those over 65, 50% said that people had already decided who to vote for at that stage, while only 15% of 18-34s felt this to be the case.

B.2.7. Supporting reasons for removing restrictions

Respondents who said they believed restrictions were not necessary (32% of total) were offered a selection of possible reasons why restrictions should not be maintained, and asked to select the one that most closely matched their view. 32% said that people were exposed to election coverage on social media or in newspapers anyway, while 30% felt the restrictions made no difference to how people voted. Among other responses, 12% said they need access to information as it could be helpful in deciding how to vote, 8% said relevant news may become available during the cut-off time, 7% said the restrictions do not allow time for the media to combat misinformation and disinformation on the elections, while 5% said people see or hear coverage on the elections on British/foreign media outlets anyway.

Reason for Removing Restrictions		
The restrictions make no difference to how people vote	30%	98
Relevant news and information may become available during the cut-off time	8%	26
People are exposed to election coverage on social media or in newspapers anyway	32%	104
It does not allow time for the media to combat disinformation and misinformation on the elections	7%	21
I need access to information as it could be helpful in deciding how to vote	12%	39
People see or hear coverage on the elections on British/foreign outlets anyway	5%	15



Other	5%	15
Refused/Don't Know	1%	3
<p>Q8: I am going to read out comments in relations to why restrictions are not necessary and should be removed. Please listen to all comments and select the ONE that most closely matches your own opinion. Or there may be another reason you would like to put forward.</p> <p>Base: All code 3 @ Q.6: 321</p> <p>Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.</p>		

Considering variations among specific age groups, 61% of over-65s said the restrictions make no difference to how people vote, while only 18% of 18-34s felt this to be the case. Similarly, 18% of 18-34s said that relevant information may become available during the cut-off time, while only 4% of 35-54s identified this as their primary issue. The C2DE socio economic group and those who primary source of news is broadcast media (39%) were also more likely to say that the restrictions make no difference to how people vote.

B.2.8. Voting behaviour in the local and European elections

Finally, respondents were asked if they had voted in the recent local and European elections, with 73% saying they did vote while 27% saying they did not.

Recent Voting Behaviour in Local/European Elections on June 7th	Total %	Total
Yes	73%	726
No	27%	271
Would rather not say	0%	4
<p>Q9: Did you vote or not in the recent local and European elections on June 7th?</p> <p>Base: All respondents 18+: 1,001.</p> <p>Survey conducted by IPSOS B&A (©) on behalf of Coimisiún na Meán.</p>		

The voting levels increased among older cohorts, with the breakdown standing at: 18-34 (53%), 35-54 (73%) and 55+ (87%). Among the regions, 84% of respondents from Connaught/Ulster said they voted, 77% from Leinster (excluding Dublin), 75% from Munster and 60% from Dublin. 81% of those who use broadcast media as their primary source of election news said they voted.

