



REPORT

**ON THE REFERENDUM ON
THE REGULATION
OF DIVORCE**



An Coimisiún Reifrinn
Referendum Commission

Foreword

At the end of its public information campaign, the Referendum Commission established in relation to any referendum must prepare a report for the Minister for Housing, Planning and Local Government on the performance of its functions. This report outlines the approach taken by the Referendum Commission to the referendum on the regulation of divorce, and provides some detail on the main elements of its information campaign.

On 26 February 2019, the Minister established a Referendum Commission in relation to the referendum on the Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Bill 2016, which provided for a referendum on the regulation of divorce. The referendum took place on 24 May 2019.

This gave the Commission just over twelve weeks to prepare and deliver its public information campaign, a longer period than was given to some past Referendum Commissions. However, this was still an inadequate period, and we would request government departments sponsoring future referendums to be mindful of the need to allow enough time for an effective public information campaign.

The Commission is very grateful to suppliers and contractors for producing information material of various kinds for us within tight timeframes. We are particularly grateful to broadcasters for their cooperation in scheduling our free-to-air broadcasts explaining the referendum proposal, often provided to them at short notice and broadcast at peak viewing and listening times. These free-to-air broadcasts play an important role in providing information, and in particular in encouraging people to vote on the day and we would like to acknowledge that support and express our gratitude for it.

Pursuant to Section 14(1) of the Referendum Act 1998, I hereby present to the Minister the report of the Referendum Commission on the performance of its functions in respect of the referendum on the Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Bill 2016.



Ms Justice Tara Burns

Chairperson – Referendum Commission
August 2019



Chapter 1

Introduction

The referendum on the Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Bill 2016 (which provided for a referendum on the regulation of divorce) was held on Friday 24 May 2019. Under the Referendum Act 1998, on each occasion that a referendum falls to be held, the Minister for Housing, Planning and Local Government may, at his/her discretion, establish a Referendum Commission.

Establishment of the Referendum Commission

On 26 February 2019, the Minister established a Referendum Commission for the referendum on the regulation of divorce. The Chairperson of the Commission must be a former judge of the Supreme Court, the Court of Appeal or the High Court, or a serving judge of the High Court. On this occasion Ms Justice Tara Burns, of the High Court, accepted the nomination of the Chief Justice to act as Chairperson of the Referendum Commission.

The other members of the Commission are ex officio members. They were:

- **Seamus McCarthy**, Comptroller and Auditor General
- **Peter Tyndall**, Ombudsman
- **Peter Finnegan**, Clerk of Dáil Éireann
- **Martin Groves**, Clerk of Seanad Éireann

The Commission is granted by law such powers as are necessary or expedient for the performance of its functions. The Commission must report on the performance of its functions to the Minister for Housing, Planning and Local Government no later than six months after polling day and the Commission stands dissolved one month after submitting its report.

Role of the Commission

The Commission's primary functions pursuant to statute are:

- to prepare one or more statements containing a general explanation of the subject matter of the proposal and of the text thereof in the relevant Bill and any other information relating to those matters that the Commission considers appropriate
- to publish and distribute those statements in such manner and by such means including the use of television, radio and other electronic media as the Commission considers most likely to bring them to the attention of the electorate and to ensure as far as practicable that the means employed enable those with a sight or hearing disability to read or hear the statements concerned
- to promote public awareness of the referendum and encourage the electorate to vote at the poll

Chapter 2

Key features of the referendum

Time available to the Referendum Commission

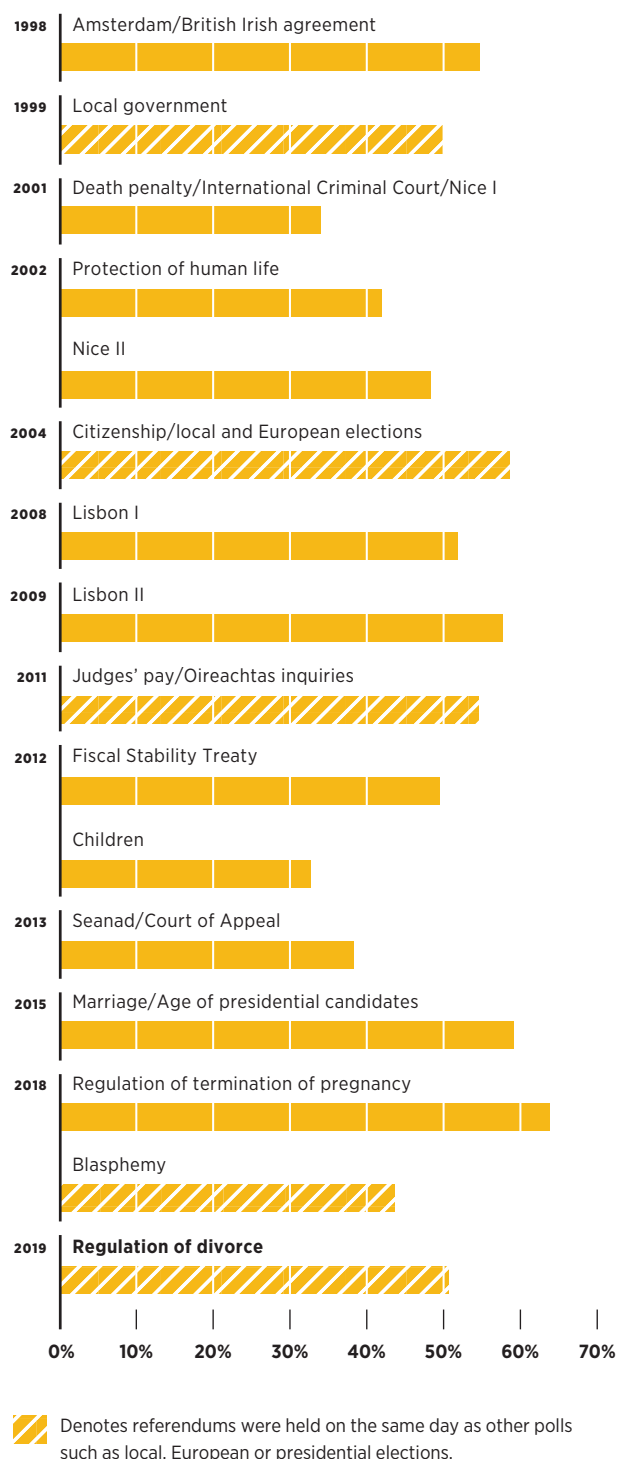
The Referendum Commission in respect of the referendum on the regulation of divorce was established on 26 February 2019. That gave the Commission a timeline of just over twelve weeks for its public information campaign, an inadequate period in the Commission's view. The Commission met on 15 occasions prior to polling day.

Voter turnout

Voter turnout for the referendum was 50.8%. This was considerably lower than the 64.1% turnout for the referendum on the regulation of termination of pregnancy in May 2018. Turnout for referendums is of course influenced by a number of factors including whether there are other polls taking place at the same time and in this case, the referendum co-incided with the local government and European parliament elections.

Figure 1 shows the variability in voter turnout in referendums since 1998, when the first Referendum Commission was established. Encouraging people to vote is one of the central functions of the Referendum Commission. In any referendum campaign, the Commission's information campaign is one of many factors which contribute to the voter turnout. Other key elements are the level of public awareness of the referendum proposal, the nature of the campaigns for and against the proposal and the extent of the public debate on the issues. Turnout on this occasion would undoubtedly have been lower had the local and European elections not taken place on the same day.

Figure 1. Variability in voter turnout



Chapter 3

The Commission's information campaign

The Commission's information campaign was designed to fulfil its functions as set out in law: to promote awareness of the referendum, to encourage people to vote and to explain the referendum proposal.

i Promoting awareness: The Commission was aware that on this occasion, high-profile European Parliament and local government election campaigns would attract significant public attention, while at the same time the subject matter of this referendum might not give rise to lively public debate. It was therefore particularly important to promote awareness of the referendum, and in the process engender interest in the subject matter.

Much of the advertising produced by the Commission therefore focussed on drawing voters' attention to the fact that a referendum was to take place, and that it was important to vote.

ii Encouraging voting: The Commission ran an advertising campaign encouraging people to check the voting register and if they were not on it, to register before the deadline to ensure they were eligible to vote. This involved press statements to national and regional press, broadcast interviews by the Commission's Chairperson, an online and radio advertising campaign and considerable social media activity. The message was one of encouraging voters to visit the website checktheregister.ie, check there whether or not they were registered and then if necessary to download the forms required either to register or to amend their details.

On this occasion, the Chairperson Ms Justice Tara Burns made several visits to locations around the country to meet potential voters,

to encourage those not already registered to register, and to encourage all to vote. These trips to address groups of voters were selected to ensure direct contact with particular constituencies and cohorts of voters often seen as less likely to vote than the average. The Commission also worked to ensure that these visits received media coverage so that the point about registering and voting was made and understood widely.

In advance of the closing date for entry onto the voting register, the Chairperson addressed a group of students at Letterkenny IT to encourage them to register and to vote. This event marked the launch of the Commission's register-to-vote campaign. The Chairperson also addressed secondary school students at Mercy College Sligo, spoke to over 2,000 new Irish citizens at citizenship ceremonies in Killarney and later in the campaign spoke to students at the Dublin Adult Literacy Centre in Dublin's North Inner City.

Local media coverage was significant. In parallel with these visits, the Chairperson did interviews with Highland Radio (Co Donegal), Ocean FM (Co Sligo), Radio Kerry and Newstalk in which she explained the reasons for the visits, and the importance of voting. Local newspapers in the areas visited gave significant coverage to these events, and there was positive comment in several media outlets of the fact that the Commission had chosen to hold events outside Dublin – something it has not done before – and in particular that it had chosen to launch its campaign outside Dublin. In the course of the campaign, the Chairperson did over a dozen live interviews with regional radio stations to explain the referendum proposal and encourage people to vote.

iii Explaining the proposal: The role of the Referendum Commission is to communicate factual information about referendums in a neutral and impartial manner. We did so in a guide, and on our website. This included an explanation of the constitutional position as it stood before the referendum, what the law currently says about foreign divorce and the living apart period before people can apply for a divorce, an account of the proposed constitutional change, as well as the effects of a Yes vote and the effects of a No vote.

This material was published in a guide distributed to all 2.2 million homes in the State. It was also published on the website refcom.ie, along with other background information on relevant legislation, previous court judgements, and practical information on voting. The Chairperson and Commission representatives gave a number of national and local radio interviews raising awareness of the referendum, explaining the proposal and encouraging people to vote. The Commission also ran a substantial advertising and social media campaign.

In approaching the task of explaining the proposal, we were conscious that there were two distinct elements to it. The first related to the period for which a couple must be living apart before an application for divorce is made, the second concerned the recognition of foreign divorces. It was important for us to explain each of these elements, while stressing to voters that they were being asked either to vote Yes to both, or to vote No to both. We emphasised this point in a number of our publications and advertisements, and in radio interviews given by the Chairperson on behalf of the Commission. Among the queries the Commission received from the public – by phone, email and through social media – the question as to why there was just one vote on two separate proposals was raised frequently. Responding invariably involved explaining the Commission's role which does not involve drawing up referendum proposals, but is about raising awareness of them, explaining them and encouraging people to vote.



Campaign elements

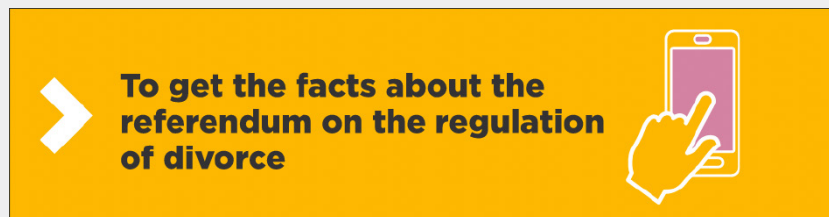
The key communications elements used by the Commission to fulfil the three objectives detailed above were:

1. The website, refcom.ie, which used written and video content to explain the proposal, to encourage voting and to give additional relevant material to help voters understand the background and context.
2. A bi-lingual guide to the referendum delivered to 2.2 million homes explaining the current situation, the proposed change, and the effects of a Yes and No vote.
3. A social media presence on Twitter, Facebook and Instagram giving campaign news and information, and encouraging people to check the register and to vote.
4. Versions of the referendum guide produced in braille, Irish Sign Language video, audio, large-print format and easy-to-read format for people with intellectual disabilities.
5. A national advertising campaign on television, radio, online, press and outdoor to raise awareness of the referendum, to encourage voter registration and voting and to direct voters to the refcom.ie website where further information was available.
6. Free-to-air broadcasts provided to the Commission as required by law by national and regional broadcasters giving a more detailed account of the referendum proposal.
7. Well-publicised visits by the Chairperson to address various groups of voters and events, designed to highlight to particular voters' groups the importance of voting, and to explain the proposal. The impact of these visits was amplified by media coverage.
8. A series of interviews given by the Chairperson to over a dozen regional radio stations explaining the proposal and encouraging people to vote. Some of these interviews coincided with visits to the regions in which the stations were located, others were conducted over the telephone. The Chairperson also gave two interviews to RTE's Morning Ireland programme, the first encouraging people to register to vote and the second answering detailed questions from listeners on the referendum proposal. In the final week of the campaign, the Chairperson gave a live interview to the RTE Six One News to explain the referendum and to encourage voting.
9. Operating a lo-call phone line through which people could ask specific questions and get material posted to them.

Campaign snapshot



Outdoor advertising



Online ad



Localised press ad

Chapter 4

Resources

Funding of the Referendum Commission

The Commission was allocated €3 million by the Department of Justice and Equality for the referendum.

Overall expenditure was €2.34 million, broken down as shown in Figure 2.

The Commission is entitled to certain media-buying volume rebates arising from the referendum information campaign. The value of the rebates has not yet been established, but is estimated to be of

the order of €20,000. When received, the proceeds of the rebates will be remitted to the Department of Justice and Equality, and a note confirming the outturn and remission will be added to this report.

Throughout the information campaign, the Referendum Commission was highly conscious of achieving value for money and ensuring maximum effectiveness of the campaign. The Commission is satisfied that both these objectives were realised.

Figure 2. Expenditure on the referendum information campaign

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Campaign management fees	359,728
Content research	27,737
Guide production and distribution	484,772
Television / audio visual	570,548
Radio	159,744
Outdoor advertising	230,684
Print media	76,970
Online media	403,298
Administration and other costs	22,880
Total expenditure	2,336,361

Procurement

During 2018, the office of the Ombudsman entered into draw-down contracts with the following service providers:

- **Empirica Ltd.** (Advise and assist with specification development to procure services for the Referendum Commission)
- **Murray** (public relations/communications services)
- **BBDO** (Creative and Digital)
- **Mindshare** (media planning/buying)
- **Colorman** (booklet design, printing and distribution)

In line with the terms of those contracts, the parties agreed to extend them until the Spring of 2020.

Legal services for the Commission, including engagement of Counsel, were provided by the Legal Services Unit of the Office of the Ombudsman.

Dept Agency provided website design (and content management services) for the Referendum Commission website, and translation services were provided by **Context**.

Acknowledgements

The Commission would like to acknowledge the team of service providers for their advice, assistance and support in helping it to achieve its remit through the Commission's public information campaign. Together they devised and implemented a substantive public information campaign, notwithstanding very challenging time constraints.

The Commission would like to thank the national and regional press for its support and broadcast outlets also deserve thanks for their active co-operation with the Commission in relation to the provision of Free to Air broadcasts.

As marketing/communications consultant to the Commission, Murray played a vital role in advising on the overall communications strategy and in ensuring that the various strands of the campaign were delivered on time and in a coordinated fashion. Murray Creative designed a high-quality and visually engaging guide to the referendum.

The creative advertising agency BBDO, media buying agency Mindshare, website designers Dept Agency, translators Context and booklet producers Colorman all delivered work of high quality under great time pressure. Special thanks are due to Ms Nicola Hart of Down Syndrome Ireland for her assistance in producing the Easy to Read version of the Commission's Guide for people with a learning disability, and to Rannóg an Aistriúcháin in the Houses of the Oireachtas for their work on the translation of the Commission's guide.

The Commission is also grateful to its legal advisors, Senior Counsel Ms Niamh Hyland SC, Mr Francis Kieran BL and Madeleine Delaney, legal advisor to the Office of the Ombudsman.

The Commission would like to particularly thank its secretariat, provided by the Office of the Ombudsman, for its assistance in managing the public information campaign. We would like to thank the team of Rebecca Coyle, Fergus Keegan and Bernie Kelly, and in particular Sean Garvey, who served as Secretary to the Commission. We would also like to thank Elaine Cassidy, Director General of the Office of the Ombudsman, for providing us with staff and other necessary facilities, and Liam Duffy, the Head of ICT, and his team for their work on IT and the website. The Commission is grateful to the Office of the Ombudsman for this assistance.

Chapter 5

Conclusions and recommendations

Voter turnout

The current Commission agrees with the comment by the previous Commission that holding a referendum on the same day as an election generally drives higher voter turnout, as opposed to having a standalone referendum. This is particularly the case when the subject matter of the referendum is not a matter of significant public engagement and debate. Future referendums on which a high level of public debate is not anticipated should be put to the people either at the same time as an election, or at the same time another matter is being put to the people.

Information to Commission

Before legislation enabling a referendum is passed by the Houses of the Oireachtas, Referendum Commissions hold informal discussions internally and with their service providers on how best to explain the particular referendum proposal being considered. It would be very helpful for future Commissions if the Government Department sponsoring any particular referendum proposal would inform the Commission as early as possible of its intentions. While the details in a Bill enabling a referendum may be changed in the course of its passage through the Houses of the Oireachtas, an early indication of what is proposed would allow important preliminary work to be done on the preparation of the Commission's information material.

On this occasion, in the early part of its work, the Commission found itself relying for guidance on media reports concerning the Government's intentions. For example, the Commission held its early discussions without being clear on whether the Government intended to replace the four-year

living apart period before a divorce application could be made with a two-year period, or to remove the living apart period from the Constitution altogether. Similarly, it was unclear for some time what the proposal in relation to foreign divorces was going to be. A commitment by the sponsoring government department to keep the Commission informed of current plans, and possible changes of plan, would be of assistance to our work.

Time

Most previous Referendum Commissions have asked that more time be allowed for Commissions to do their work. A Commission cannot finalise its information material and begin the time-consuming and expensive process of printing 2.2 million guides for distribution until it is sure of what the precise wording of the referendum proposal will be. The time between the passage of the legislation through the Houses of the Oireachtas (April 11th) and polling day (May 24th) allowed just six weeks for the finalisation and distribution of the Commission's information material. We would request Government departments sponsoring future referendum proposals to be mindful of the need to give the Commission enough time to ensure the public are aware of and understand the referendum proposal.

There is also a significant financial cost to the short time-frame that has often been given to Referendum Commissions to do their work. Commissions typically spend around €1 million on buying advertising space, including television, radio, newspapers, online and outdoor advertising. Late booking of advertising space can add significantly to the cost and in the case of TV advertising – the single most expensive medium – late booking can add up to 25% to the cost.

Focus groups

The use of focus group research on the content of the Commission's independent guide to the referendum again proved very valuable in informing content and ensuring that it was clear and understandable. This was particularly the case in a situation where two parts of a referendum proposal were put to the people in one vote. The Commission would advise future Commissions to continue to seek to ensure that adequate time is provided for such research.

The supplemental voting register

In recent referendums, the Commission has devoted considerable resources in the early part of its campaign to encouraging people to check the voting register, and if they are not registered to have their names added to the supplemental register of electors in time to vote. In recent referendums local authorities, each of which is responsible for compiling the register of electors for their own area, report that this campaign has had a significant effect.

However, we receive regular feedback from people who choose to add themselves to the supplemental register that they find the process laborious and time consuming. It involves either downloading or requesting postal delivery of a form, completing it, bringing it to a Garda station to have one's identity certified, and then posting it to one's local authority office. Younger voters in particular find this process very old-fashioned and off-putting. The Commission is aware that in some other countries, for example, in the UK, it is now possible to register to vote online while in others there are systems of automatic voter registration. We suggest that the voter registration system here be reviewed with the intention of modernising it.

Electoral Commission

Previous commissions have also called for the Referendum Commission to be given a continuing legal identity. The Commission on the referendum on blasphemy made a submission to the Department of Housing, Planning and Local Government on the Department's public consultation on the possible establishment of a permanent electoral commission in which it supported such establishment (see Appendix 1). The current Referendum Commission endorses the position adopted by its predecessor and would like to see a permanent electoral commission having an ongoing role in relation to voter registration and education in particular. In that regard, the Commission welcomes the recent announcement by the Government that an Electoral Commission is to be established on a statutory basis.

Appendix 1

The Oireachtas Joint Committee on Environment, Culture and the Gaeltacht proposed that a permanent Electoral Commission should be established which would, along with other electoral functions, carry out the functions currently carried out by the Referendum Commission. The Department of Housing, Planning and Local Government undertook a public consultation process on the possible establishment of such

a Commission. As part of that process, the Department completed a Regulatory Impact Analysis on the Joint Committee's proposal in which it set out a range of options on the mechanics of how a permanent Electoral Commission might be established. The Referendum Commission made a submission to the Department in which it supported one of the proposed options. The text of that submission is reproduced below.

Summary of Regulatory Impact Analysis (RIA) on the Proposed functions of the Electoral Commission

Dear Sir/Madam,

I refer to the above prepared by the Department.

In their reports on referendums, previous Referendum Commissions have recommended establishment of an Electoral Commission to consolidate the various electoral functions, including those of the Referendum Commission. In light of that, the Referendum Commission (the Commission) welcomes the proposal of the Joint Committee on Environment, Culture and the Gaeltacht for the establishment of an Electoral Commission.

As regards how best such an Electoral Commission might be established, the Commission has considered the RIA and favours Option 3 as set out within it - ie to establish the Electoral Commission on a statutory basis and assign a limited number of functions initially, with a view to assigning further functions over time. The Commission's rationale for this position is set out following.

The Standards in Public Office Commission (SIPOC) currently administers the functions of monitoring and reporting on political spending and donations. In the Referendum Commission's view, it would be administratively efficient to assign the Referendum Commission functions and those functions of the SIPOC to an Electoral Commission at the outset, because administration of both SIPOC and the Commission is currently performed by staff of the same organisation (the Office of the Ombudsman). Being part of the same organisation would also provide an opportunity to efficiently deal with any staffing issues arising from such assignment.

The electoral functions currently administered by the Department and by the Houses of the Oireachtas could be the next tranche of functions to be considered for assignment to an Electoral Commission. The remaining functions identified in the RIA are currently not being formally administered or are ones on which there is not full clarity. These functions should then be assigned as and when appropriate. This gradual approach would allow for any bedding down issues on amalgamation of those functions currently administered by existing public bodies to be dealt with before functions that have not yet been developed or on which issues of clarity arise are taken on.

Among the functions currently carried out by the Commission are those of encouraging people to register to vote for referendums, and then to actually turn out to vote. As Referendum Commissions are currently established as separate entities as referendums are called, they necessarily operate on an ad hoc basis. This means the functions described above are carried out periodically. Previous Commissions have called in a number of their reports for this to be addressed by having a permanent legal status for the Referendum Commission. As an Electoral Commission would be permanent, it could perform the above functions on a continuous basis.

The Commission would also like to comment on the reference to the salary costs of a Referendum Commission as set out in Paragraph 4.3 of the RIA. These costs are estimated at €700,000 and include salaries and overheads for the Commission's Secretariat. The Commission understands that this estimate is based on apportionment of costs, including of certain support staff salaries, and was presented to give a picture of the cost of the function. The RIA appears to assume that the transfer of functions and directly employed staff might/ would result in a saving of that amount. This is not the case. Accordingly, in the Commission's view the figure of €700k substantially overestimates the saving that could be achieved. It is a matter for the Office of the Ombudsman to provide details of the salary costs of the Secretariat staff it provides to both the Commission and the SIPOC, and any savings that might be achieved through reassignment of staff.

The Commission welcomes this opportunity to engage further with the Joint Committee.

Yours sincerely,

Sean Garvey

Secretary to the Referendum Commission



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