Houses of the Oireachtas

Joint Committee on Environment, Culture and the Gaeltacht

Report of the Joint Committee
on the
Consultation on the Proposed Electoral Commission 2016

January 2016

Laid before both Houses of the Oireachtas 13 January 2016
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APPENDIX 2: PRIVATE MEMBERS’ BILLS RELEVANT TO THE ESTABLISHMENT OF AN ELECTORAL COMMISSION 175
In January 2015, the Department of the Environment, Community and Local Government published a Consultation Paper on the Establishment of an Electoral Commission in Ireland. The Minister for the Environment, Community and Local Government, Alan Kelly TD, then requested the Joint Committee on Environment, Culture and the Gaeltacht to examine the paper, to consider undertaking a consultation process on it, and to report back to the Minister with its views on the planned legislation.

The Joint Committee duly conducted a public consultation process, which attracted a large number of high quality submissions. It followed that up with a series of public hearings in June and July of this year, in which various stakeholders and experts were invited to address the Joint Committee and inform its deliberations on this very important subject.

This report summarises the evidence received and heard by the Joint Committee, highlighting key issues and policies and actions recommended throughout the consultation process. It is presented in five sections or themes: the rationale for an Electoral Commission;
eolas an tuarascála, mar atá: An Réasúnaíocht is bun le Coimisiún Toghcháin; Feidhmeanna is cóir a shannadh do Choimisiún Toghcháin; Neamhspleáchas, Comhaltas agus Sásraí Cuntasachta; An Próiseas Bunaithe; agus An Costas.

functions which should be assigned to an Electoral Commission; independence, membership and accountability mechanisms; establishment process; and cost.

De thoradh a phléití ar na saincheisteanna seo agus ar shaincheisteanna eile a eascraíonn as bunú beartaithe Coimisiún Toghcháin, tá an Comhchoiste tar éis teacht ar roinnt tátal nó moltaí, agus is féidir iad a léamh ag deireadh na tuarascála seo. Ar an iomlán, fáiltíonn an Comhchoiste roimh bhunú beartaithe Coimisiún Toghcháin mar bheart riachtanach ar mhaithe le comhtháthú agus comhordú a dhéanamh le linn toghcháin a riaradh agus chun aghaidh a thabhairt ar fhadhbanna a sainaithníodh ó thaobh riaradh agus beartas toghcháin de.

On foot of its deliberations on these and other issues arising out of the proposed establishment of an Electoral Commission, the Joint Committee has arrived at a number of conclusions or recommendations, which can be read at the end of this report. Overall, the Joint Committee welcomes the proposed establishment of an Electoral Commission as a necessary measure to bring cohesion and co-ordination to the administration of elections and to address problems identified with electoral administration and policy.

Ba mhaith liom buíochas a ghabháil le gach aon duine a chabhráigh linn agus muid ag breithniú an ábhair seo, ní leo siúd amháin a tháinig os comhair an Choiste ach leis na daoine a rinne aighneachtaí freisin. Is mian liom buíochas a ghabháil, freisin, le comhaltaí an Choiste as an obair a rinneadar maird leis an tuarascáil seo a ullmhú agus le foireann Rúnaíocht an Choiste agus le foireann Sheirbhís Leabharlainne agus Taighde an Oireachtais as a gcomhairle don Choiste agus as an gcúnamh a thug siad le linn an dréacht-tuarascáil a chur i dtoll le chéile.

I would like to thank all the individuals and who contributed to our consideration of this subject, not only those who appeared before the Committee but also those who made submissions. I wish also to thank the members of the Committee for their work in preparing this report and the staff of the Committee Secretariat and the Oireachtais Library Research Service for their advice to the Committee and their assistance in compiling the draft report.
Mar fhocal scoir, ba mhaith liom a iarraidh ar an Aire Comhshaoil, Pobail agus Rialtais Áitiúil staidéar a dhéanamh ar an tuarascáil seo, agus tá súil agam go mbeidh sí ina treoir le haghaidh b páirtí a bheas ann nuair a chuirfear bailchrioch ar na tograí maidir le Coimisiún Toghcháin. Tá mé féin agus an Coiste ag gníomhú le haghaidh a bhéilte i mbun comhchainte go luath leis an Aire faoin ábhar seo.

To conclude, I call on the Minister for Environment, Community and Local Government to study this report, and I hope it will inform deliberations in finalising proposals for an Electoral Commission. I and the Committee look forward to engaging with the Minister on this subject in the near future.

__________________
Michael Mc Carthy TD
Cathaoirleach
13/01/2016
INTRODUCTION

BACKGROUND

The Department of the Environment, Community and Local Government published a Consultation Paper on the establishment of an Electoral Commission in Ireland in January 2015. This report outlines the policy and operational issues that would arise from the establishment of an Electoral Commission. The report focuses on what should be the precise functions of an Electoral Commission, the cost implications, and how to ensure its independence whilst also ensuring its accountability to the Government and/or the Oireachtas. The Minister for the Environment, Community and Local Government, Alan Kelly TD, asked the Joint Committee on Environment, Culture and the Gaeltacht to examine the consultation paper, to consider undertaking a focused and time-bound consultation process on it, and to report back to the Minister with its views on the planned legislation.

Having considered the Department’s consultation paper in discussion with the Minister on 10 March 2015, and a paper outlining the policy rationale for an Electoral Commission (Library and Research Service, March 2015), the Joint Committee created a Web site Web site for the consultation on which it issued an open invitation for submissions on the Department’s consultation paper in April 2015, with a deadline of 8 June 2015.

In its call for submissions, the Committee asked for comments on the four themes identified by it from the consultation paper (outlined in Table 1 below). The Committee also identified and directly contacted experts and stakeholders in electoral administration, and a number of representative groups including political parties, to request that they submit comments.

The Committee received 33 submissions in total, a list of which appears in Appendix 1, along with a list of those appearing before the Committee on 16 June, 23 June, 30 June, 7 July, and 14 July 2015.

\[1\]
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/environmentcultureandthegaeltacht/electoralcommission/
### Table 1: Themes identified in Department’s Consultation Paper

<table>
<thead>
<tr>
<th>Theme</th>
<th>Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Functions</strong></td>
<td>• What existing functions in the conduct and management of elections and referendums would be transferred to such a Commission?</td>
</tr>
<tr>
<td></td>
<td>• What functions would remain with existing actors and why?</td>
</tr>
<tr>
<td><strong>Independence, accountability and membership of an Electoral Commission</strong></td>
<td>• How would the Commission’s independence be promoted along with its accountability to the Houses of the Oireachtas / Government for carrying out the functions assigned to it?</td>
</tr>
<tr>
<td></td>
<td>• What mechanisms would be used to promote this accountability?</td>
</tr>
<tr>
<td></td>
<td>• Who should be a Member and how should members of the Commission be appointed?</td>
</tr>
<tr>
<td><strong>Establishment process</strong></td>
<td>• Should the establishment of the Commission be undertaken on a phased basis, as recommended by the report commissioned by the Department’s from the Geary Institute, or in some other way?</td>
</tr>
<tr>
<td></td>
<td>• For example, should it exist alongside SIPO (Standards in Public Office Commission), within SIPO, or should it subsume SIPO?</td>
</tr>
<tr>
<td><strong>Cost implications</strong></td>
<td>• What is the sum of the costs incurred by all actors involved in electoral (including referendum) management?</td>
</tr>
<tr>
<td></td>
<td>• How would and should costs be affected by a Commission’s establishment?</td>
</tr>
</tbody>
</table>
OUTLINE OF THIS REPORT

This report summarises the evidence received and heard by the Committee, highlighting key issues and policies and actions recommended throughout the consultation process. It is presented in five sections which are largely based on the themes identified from the Department’s consultation paper:

1. The Policy rationale for an Electoral Commission;
2. Functions which should be assigned to an Electoral Commission;
3. Independence, membership and accountability mechanisms;
4. Establishment process; and
5. Costs.

An executive summary highlights the key issues raised during the consultation process. The Committee’s recommendations, which are made in light of the evidence presented, are outlined in the Conclusion.

**Where submissions and hearings are cited throughout this report, they are referenced by name; where the date is included, it indicates that comments were made during a committee meeting rather than in a submission.**
EXECUTIVE SUMMARY

Key issues raised and recommendations made by witnesses regarding the establishment of an Electoral Commission are outlined below under the five sections in this report.

This section is a summary of submissions and hearings which are outlined in greater detail and fully attributed and referenced in Sections 1-5 of this report.

1) POLICY RATIONALE FOR ESTABLISHING AN ELECTORAL COMMISSION

The vast majority of submissions and witnesses recommended that an Electoral Commission should be established without delay by legislation as an independent statutory body accountable to the Houses of the Oireachtas.

While there is a relatively high level of trust in electoral administration and management in Ireland, all submissions and witnesses to the Committee highlight aspects of the electoral process that require urgent attention lest that trust and reputation be suddenly eroded. Further, some witnesses argue that trust in the electoral registration process is not high.

Identified as in urgent need of attention were:

- reform of the electoral registration process;
- voter education;
- turnout and the minimal efforts made to encourage people to register and to vote;
- the absence of centralised election results and data; and
- political finance - primarily the lack of transparency in the accounts of political parties and tight resources which present obstacles to the enforcement of the rules around donations and spending regulations.

For some, reform of the practice of drawing constituency and local area boundaries and of managing referendum campaigns are priorities.
Yet while reform is identified as an urgent priority, there is no one actor responsible for devising and pioneering a reform agenda in the sensitive area of electoral policy. This piecemeal approach has led to a ‘moribund system of electoral administration which has not moved into the 21st century’ (Reidy, 16 June 2015). A perception that any government’s objectives are party-political can present further obstacles to the advancement of electoral reform.

In summary, the key rationales identified for the establishment of an Electoral Commission are:

- to drive forward reforms that will address the various issues identified with electoral administration and policy; and
- to bring cohesion and co-ordination to the piecemeal approach to policy and operational matters thereby improving the administration of elections for users (the electorate).
2) FUNCTIONS OF AN ELECTORAL COMMISSION

The evidence presented to the Committee largely suggests that the following functions should be transferred without delay to an Electoral Commission:

- The Register of political parties;
- The operational and policy role of the Franchise Section of the Department of the Environment, Community and Local Government, understanding that the Department would continue to play a role in supporting the Minister and in developing legislation; the Electoral Commission’s policy role would expand and deepen the policy advice available to the Government on electoral issues;
- The regulation of political funding and election expenditure currently carried out by Standards in Public Office Commission (“SIPO”) at the national level and by local authorities at a local level; and
- The functions of the Referendum Commission.

A) REGISTRAR OF POLITICAL PARTIES

The functions associated with the Register of Political Parties are currently performed by the Clerk of the Dáil. While not all submissions or witnesses addressed this function directly, no one consulted by the Committee suggested that this function should remain the responsibility of the Clerk of the Dáil in the context of the establishment of an Electoral Commission.
Most submissions and witnesses suggested that the policy and operational role of the Franchise Section of the Department of the Environment, Community and Local Government be moved to the Electoral Commission. In addition, most felt that the policy development role should be broadened and strengthened to address gaps identified in electoral policy planning and development. To broaden the policy development role, witnesses and submissions proposed that the Electoral Commission could be assigned a statutory duty:

- To conduct independent research on electoral policy which will inform Government and Parliament in their consideration of reform to electoral law and which will inform the public;
- To develop and implement policy on voter facilitation measures (including removing obstacles to registration);
- To develop and implement innovative ways to enhance voter education and engagement; and
- To collate and publish real time results of elections.

To strengthen the input of expert policy analysis into the development of electoral policy, the legislation could assign to the Electoral Commission:

- The right to be consulted by Government on all proposals concerning electoral law and the right to make recommendations in response;
- The duty to report annually on proposals to reform electoral law;
- The power to trial proposed reforms (within constitutional and legislative limits); and
- Other powers of oversight and reform with regards to the Electoral register and organising elections (see below).

It was pointed out by some witnesses that the Department would need to maintain a role in the development of legislation and provision of advice to the Minister.
C) REGULATION OF POLITICAL FUNDING AND ELECTION EXPENDITURE

The regulation of political funding and election expenditure is currently carried out by SIPO at the national level (Electoral Act 1997, as amended) and the local authorities at a local level (Local Elections (Disclosure of Donations and Expenditure) Act 1999 (as amended by the Local Government Reform Act 2014). Most witnesses and submissions suggested that these roles be moved to the Electoral Commission, with the latter role possibly performed in partnership with local authorities.

Under the proposed legislation to establish a new Office of the Public Sector Standards Commissioner (set out in the General Scheme of the Standards in Public Office Bill) SIPO’s supervisory functions under the Ethics Acts would be moved to the Public Sector Standards Commissioner. Moving the regulation of political funding and election expenditure to the Electoral Commission would mean that SIPO would no longer exist in its current format.

In this context, it is desirable that:

- any legislation proposing to subsume SIPO’s functions under the Electoral Act 1997 (as amended) is drafted and implemented simultaneously, and with reference to the proposed legislation to establish a new Office of the Public Sector Standards Commissioner;
- measures are in place to ensure the ongoing supervision of standards under the Electoral Acts throughout the transition process; and
- sharing arrangements between the two new bodies be examined.

Adequate resources and statutory powers are key to the successful oversight of political finance legislation at national and local level. Witnesses noted the additional powers proposed for a new Office of the Public Sector Standards Commissioner, and it was suggested that an Electoral Commission be given sufficient power and resources to carry out supervision of political finance at national and local levels.
D) THE REFERENDUM COMMISSION

Most witnesses agreed that the functions of the Referendum Commission under the s.3 of the Referendum Act 1998 be moved to the Electoral Commission.

In order to ensure the independence of an Electoral Commission, and to develop its expertise in performing the functions currently carried out by the Referendum Commission, the Government could consider the following suggestions by witnesses when drafting the legislation:

- That the Referendum Commission constitute a separate section within the Electoral Commission;
- That a designated person – perhaps the Chairman of the Electoral Commission - act as its spokesperson for referendum campaigns;
- The provision be made to ensure that expertise developed by staff in the Ombudsman’s Office in providing the Secretariat to the Referendum Commission is shared with the Electoral Commission.
E) THE FUNCTIONS OF CONSTITUENCY COMMISSION AND LOCAL BOUNDARY COMMITTEES

The evidence broadly supports the transfer of the functions of the Constituency Commission, which must be established under the Electoral Act 1997 (S.5), and any Local Area Boundary Committee established under the Local Government Act 1991, to an Electoral Commission. However, some witnesses advocated a cautious approach to change in this area of electoral policy suggesting that the legislation:

- Set out that the Electoral Commission provide the secretariat (including policy advice) to the Constituency Commission and the Local Electoral Area Boundary Committees;

- Give the Electoral Commission a statutory remit to examine and come up with recommendations for the Government and the Houses of the Oireachtas on how to address shortcomings identified with current practice (see Section 2.4). For example, the Commission would make recommendations on how to comply with Articles 16.2.2 and 16.2.3 of the Constitution\(^2\) while minimising changes to constituency boundaries, and how to better align local electoral areas and general election constituency boundaries; and

- Set out that of the Constituency Commission (as set out in the Electoral Acts, 1997 (Part II) (as amended) should, with the Electoral Commission acting as secretariat and policy adviser, continue to make the final recommendations on boundary changes at the constituency level, and that this practice would continue at least until the Electoral Commission has completed its report as set out in the preceding point. It may be appropriate that the Local Boundary Committees should continue to make recommendations on local area boundaries.

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\(^2\) Article 16.4.2 stipulates that the ‘total number of members of Dáil Éireann shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population. Article 16.4.3 states that ‘the ratio between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall, so far as it is practicable, be the same throughout the country.’ In O’Donovan v Attorney General [1961] IR 114, Budd J suggested that deviations of greater than 5% from the constituency average would probably be unconstitutional.
Problems with the accuracy and completeness of the electoral register, including how they affect the integrity of the electoral process, are summarised in Section 2.11 of this report (Box 3).

There was some agreement over the course of the Committee’s consultation about the broad parameters of a solution to problems. The central elements of the solution identified are:

- A rolling register to replace the annual canvas and supplementary register;
- Individual rather than household registration;
- A central electronic register to replace the 31 separate registers - although there was no agreement as to whether an entirely new register should be compiled or existing registers combined and ‘cleaned up’;
- The use of PPSN (PPS Numbers) to address the problems of inaccuracy and incompleteness (see Section 2.11 for discussion) in a manner compliant with the Data Protection Acts 1998-2003;
- That online registration be investigated as part of the reform package and aspired to when there is satisfaction that it is secure.

Three possible ways, the merits of which are discussed in Section 2.6, were identified to bring forward these urgently-needed reforms:

1. To assign the task of compiling the Electoral Register to the Electoral Commission, requiring it to investigate and make recommendations on precisely how the electoral register will be compiled in a way that addresses the shortcomings of the current system (including making recommendations on legislative change). This approach was also recommended by the Joint Committees in their 2008 and 2010 reports.³

2. To assign the oversight and reform of the electoral register to an Electoral Commission, requiring it to investigate and make recommendations on how practice can be improved (including legislative change), while leaving the operational aspects to local authorities in the medium and (perhaps) the long-term;

3. To leave responsibility for the electoral register with local authorities and to draft and enact legislation that will enable local authorities to implement the reforms to the electoral register.

Arguments in favour of adopting the first approach included: that the rationale (rate collectors) for assigning the compilation of the register to local authorities was no longer relevant; that there was no uniformity in practice across different registration authorities; and that if data-matching methodologies are adopted instead of an annual canvas, it would be unsuitable to have 31 different registration authorities. Arguments presented in favour of retaining the present arrangement were that if legislation were passed to allow for a rolling register based on individual rather than household registration, local authorities could implement the necessary reforms.

Over the course of the Committee’s deliberations, there was a sense that the second approach may be optimal as it combines the operational strengths of the present system, including the knowledge and experience of the current registration authorities, with the expertise, co-ordinating skills and the authority of a body specifically charged with reforming the electoral register. The Committee considered that while tackling the register is the urgent priority, the decision of who should be responsible for implementing the reforms should be made when the approach to fixing it has been agreed. While recommending that the compilation of the register be ultimately assigned to an Electoral Commission, the Geary report (2008)\(^4\) suggested that until we know whether the register is to be compiled by way of an annual canvas, a rolling register (which uses various data-matching arrangements to update the register), or a combination of both, it is not sensible to assign responsibility solely to one actor.

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\(^4\) Commissioned by the Department of the Environment, Community and Local Government.  
In accordance with this viewpoint, the legislation setting up an Electoral Commission could assign the following statutory duties to the Electoral Commission in respect of the electoral register while retaining a role for local authorities:

- Oversight of local authorities in compiling the electoral register, including the power to issue binding guidelines on best practice and to allocate central resources to local authorities in most need of reform;

- Responsibility for devising a solution to the fundamental problems with the completeness and accuracy of the electoral register (outlined in section 2.11). The possibility that the Electoral Commission take over the compilation of the register would not be ruled out when devising this solution. In carrying this function, the legislation could stipulate that:
  - A report on this matter is published within a set time from establishment day (e.g. 6 to 9 months);
  - That this report include an identified solution and an implementation plan; the implementation plan;
  - That data protection, and compliance with the Data Protection Acts is put at the centre, rather than the periphery, when devising the solution to the electoral register through, perhaps, regular consultation with the Data Protection Commissioner;
  - An Electoral Commission establish an advisory group, including stakeholders such as local authorities and their representative groups, to assist and advise it in completing this task;

- Following approval by government and the Houses of the Oireachtas, the Electoral Commission would become responsible for overseeing the implementation of this solution, including providing regular update reports.
G) THE ORGANISATION OF ELECTIONS AND REFERENDUMS

There is some difference in opinion about the extent of an Electoral Commission’s role in the organisation of elections and referendums. However, the majority of witnesses and submissions propose that operational responsibility for organising General and European elections remain with Returning Officers as outlined under the Electoral Acts, with the Electoral Commission being assigned a central oversight, performance management, coordinating and a support role (including providing resources and funding).

It was pointed out that Returning Officers are largely independent of the public sector and enjoy relatively high levels of trust, while their performance would be enhanced by greater co ordination, guidance and resources. In accordance with this viewpoint, the legislation setting up an Electoral Commission could:

- Give an Electoral Commission a statutory remit to oversee and monitor the performance of Returning Officers and local authorities in carrying out their functions, including the right to issue guidelines and performance indicators;

- Assign to the Electoral Commission a statutory duty to address shortcomings identified in the organisation of elections, in particular the method of counting surplus votes, the need for early and co ordinated publication of results and poor communication with the electorate and to report to the Houses of the Oireachtas on progress in this respect.

It was suggested by the Department of Finance\(^5\) that an Electoral Commission should take on responsibility from the Department of Finance for monitoring financial expenditure incurred by Returning Officers. If this viewpoint is supported, the legislation would:

- Set out that Returning Officers are responsible to the Electoral Commission for financial expenditure matters.

It was also proposed by some that an Electoral Commission provide a secretariat for Returning Officers.

\(^5\) This recommendation was supported by the Department of Public Expenditure and Reform in correspondence with the Committee.
3) INDEPENDENCE, MEMBERSHIP, ACCOUNTABILITY

A) INDEPENDENCE

The evidence reviewed by the Committee suggests that in order to ensure that it can effectively drive reform, free from perception of partisan motivations, the legislation should:

- Specifically provide that it perform its statutory duties independently from Government;
- Set out a process of appointment to the Electoral Commission which maximises the independence of its members (see below).

B) MEMBERSHIP

Impartiality and expertise in the area of electoral management were the criteria for membership most frequently identified by witnesses.

Two broad models of appointment can be discerned from the evidence presented:

- Model A - that *ex-officio* members are appointed by virtue of their current posts.
- Model B - that members are appointed on the basis of expertise and experience, with these criteria clearly set out in the legislation, and with at least one member appointed primarily for his/her impartiality (e.g., a Judge).

There are further sub-models based on whether or not the appointed members perform an executive (full time) role or an advisory and supervisory (part time) role, or whether there is a mix of executive and non-executive members of the Commission. The table below summarises these models:
## Table: Summary of choices membership of Electoral Commission (Models)

<table>
<thead>
<tr>
<th>Model</th>
<th>Criteria for appointing members</th>
<th>Executive or non-executive members</th>
<th>Advantages/Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Model A</strong></td>
<td><em>Ex-Officio</em> Members</td>
<td>By virtue of being <em>ex-officio</em>, members are non-executive. A Director would be appointed who would report to the ex-officio board</td>
<td>Impartiality and legitimacy is ensured; Lacking expertise.</td>
</tr>
<tr>
<td><strong>Model A1</strong></td>
<td><em>Ex-Officio</em> Members</td>
<td>In addition to non-executive <em>ex-officio</em> members, 2 full-time Commissioners are members</td>
<td>Impartiality and legitimacy is ensured; Expertise and full-time status of executive members may ensure effective reform programme.</td>
</tr>
<tr>
<td><strong>Model B</strong></td>
<td>Appointed on basis of criteria set out in the legislation (based on expertise and impartiality).</td>
<td>Non-executive members. A director is appointed who would report to the board of members.</td>
<td>Can bring legitimacy <em>and</em> expertise to the board if the legislation clearly sets out criteria and provides for a carefully-designed appointment process (discussed below); Appointment process must be perceived as legitimate.</td>
</tr>
<tr>
<td><strong>Model B1</strong></td>
<td>Appointed on basis of criteria set out in the legislation (based on expertise and impartiality).</td>
<td>Mix of executive and non-executive members. The executive members (Chief and Deputy Electoral Officers) are members of the board along with a number of non-executive members.</td>
<td>Can bring legitimacy <em>and</em> expertise to the board if the legislation clearly sets out criteria and provides for a carefully-designed appointment process (discussed below); Appointment process must be perceived as legitimate; Expertise and full-time status of executive members may ensure effective reform programme.</td>
</tr>
</tbody>
</table>
The advantage of *ex-officio* membership is the degree of impartiality and legitimacy it ensures. On the other hand, if members with expertise are appointed to lead an Electoral Commission along the lines of model B, they may be more likely to drive an effective reform agenda; this may be even more the case if at least some members with expertise are appointed as full-time Commissioners (model B1).

A combination of the above models was also suggested whereby there would be a mix of ex-officio and expert members and a mix of full- and part-time members of an electoral Commission. To reflect this suggestion, the legislation might provide for:

- A Chief Electoral Officer (with provision for a Deputy Chief Electoral Officer) with expertise and experience in electoral management in Ireland and/or internationally. His/her appointment could be on a full time basis for a set term and renewable once (similar to the proposal for the new Office of the Public Standards Commissioner);
- The Chief and Deputy Electoral Officers are executive members. Other members are non-executive and are appointed as follows:
  - Are *ex-officio* e.g.:
    - a Judge or former Judge of a Superior Court,
    - the Clerk of the Dáil,
    - The Clerk of the Seanad,
    - the Ombudsman,
    - the Comptroller and Auditor General;
  - or
  - Are appointed on the basis of criteria set out in the legislation which value impartiality and expertise / experience in electoral management in Ireland/abroad. Such a board could include a Judge or former Judge of a Superior Court as Chairman. Farrell et al. recommend that in addition to expertise in electoral management, one member have expertise in communications techniques (e.g. of managing a nation-wide communications campaign).

\[6\] These are the current ex-officio members of SIPO and the Referendum Commission. The Constituency Commission has the same ex-officio members with the exception of the Comptroller and Auditor General (it has the Secretary General of the Department of the Environment, Community and Local Government instead).
C) ACCOUNTABILITY MECHANISMS

A number of instruments are proposed by witnesses and in the submissions which would promote an Electoral Commission’s independence, yet still achieve its accountability to the Oireachtas and to the public for the performance of its statutory duties.

It is advisable that most of these mechanisms are specifically written into the legislation, perhaps making up a section of the legislation. The accountability mechanisms proposed by witnesses and in submissions include:

- An annual Report to the Houses of the Oireachtas and to the Minister for the Environment, Community and Local Government;
- An annual meeting with the relevant Oireachtas Committee;
- That the Head of the Electoral Commission is required to come before an Oireachtas Committee on request to discuss its performance of its statutory duties;
- That the legislation should clearly outline the functions of an Electoral Commission as accountability mechanisms are enhanced where an agency has clearly defined functions;
- The legislation should include a five-year post-legislative scrutiny or sunset clause and be drafted in accordance with the Department of Public Expenditure and Reform’s (2014) report on the implementation of the Agency Rationalisation Programme;\(^7\)
- The legislation should require that performance indicators linked to higher-level objectives of the organisation against which the performance of the agency can be assessed are devised (e.g. Green Party, NYCI, Farrell et al., Whelan, Weeks, McCarthaigh);
- That there be an annual presentation at a public meeting of general population and media as to how the Electoral Commission is carrying out its remit (Green Party and the National Youth Council of Ireland (NYCI));

That the legislation should set out that the Commission’s Accounting Officer\(^8\) is accountable to the Comptroller and Auditor General and the Dáil Public Accounts Committee.

I) FINANCIAL ACCOUNTABILITY

As per Table 8, Section 5, electoral administration is funded by both non-voted and voted expenditure, with expenditure on organising electoral events charged to the Central Fund, a practice which no witness or submissions recommended changing.

As such, an Electoral Commission is likely to be funded by both non-voted for certain functions but by voted expenditure. There are different accountability mechanisms available to the Oireachtas depending on whether expenditure is voted or non-voted.

(1) NON-VOTED EXPENDITURE

The Department of Finance and DPER suggest that the Head of an Electoral Commission, rather than the Accounting Officer of the Department of Finance (as is currently the case), should be the ‘Accounting Officer’ for this expenditure of the Central Fund.

The Accounting Officer would supply the Department of Finance with the information for the publication of the Central Fund accounts and accountability for expenditure would continue as per the Comptroller and Auditor General (amendment) Act 1993 (through ex-post financial scrutiny by the Public Accounts Committee);\(^9\)

While there is no opportunity to examine performance information through the annual Estimates process for non-voted expenditure, the legislation could require that performance information and targets regarding expenditure under the Central Fund are set out in the annual report or strategic plans which can be discussed by Oireachtas Committees.

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\(^8\) Assuming that the Electoral Commission has its own Vote in the Estimates for Public Services. For non-civil service State agencies the functions of the Accounting Officer are performed by an Accountable person or an Accountable Officer specified in legislation.

\(^9\) This arrangement would be similar to the relationship between the Accounting Officer for the Houses of the Oireachtas Commission or the Irish Fiscal Advisory Council (which is funded by the Central Fund) and the Department of Finance.
(2) VOTED EXPENDITURE

Voted expenditure is scrutinised through:

(a) Parliamentary scrutiny of the Estimates and related performance information during the year in question.

(b) The audit mechanism of the Comptroller and Auditor General and the related oversight of the Public Accounts Committee.

Many witnesses and submissions highlighted performance indicators as key to ensure that the Electoral Commission is held accountable for carrying out its statutory functions.

It is desirable that the information provided on performance indicators by an Electoral Commission is superior to the currently available information and is designed according to best practice outlined in detail in Section 3.3 below.

In summary:

- Performance indicators and targets should cover the range of the work and tasks of the Commission and focus on its clients;
- The performance targets chosen should cover an appropriate range of dimensions such as quality, quantity and timeliness;
- The key types of performance targets the Electoral Commission could set include:
  - Targets in the processing of the electoral register;
  - Other processing targets in the administrative work the Electoral Commission would undertake;
  - Targets associated with customer satisfaction;
  - Targets on the cost effectiveness of certain tasks overseen by the Commission but undertaken by others.
4) **ESTABLISHMENT PROCESS**

There are a number of issues surrounding the establishment process for the Electoral Commission that arose during the Committees hearings.

These include:

- That the duplication of roles and functions should be avoided and there should be fewer, rather than more, appointments to boards as a result of the Electoral Commission’s establishment.

- That a “Big Bang” approach should be avoided. Such an approach could put at risk trust in the integrity of the electoral process.

Thus, to maintain political momentum behind reform of electoral administration, most witnesses recommend a phased approach to establishment.

Some suggested that the main regulatory functions,\(^\text{10}\) as well as assigning the Electoral Commission an expanded policy role, be transferred immediately, with other functions (if any) transferred in later phases. Alternatively, it was suggested that the functions of the Franchise Section be transferred initially and that all other functions (to be transferred) be added incrementally over five years.

The approaches are not mutually exclusive. There is most support for including the transfer of the policy and operational roles of the Franchise Section and SIPO’s functions under the *Electoral Act 1997* (as amended) in phase 1, with some suggesting that the Referendum Commission’s functions also be included in phase 1.

Regardless of approach, most suggest that a timetable for the full transition be agreed, and perhaps be set out in legislation, and that the transition process not be extended.

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\(^{10}\) The Registrar of Political Parties, the policy and operational role of the Franchise Section of the Department of the Environment, Community and Local Government, the regulation of political funding and election expenditure currently carried out by SIPO and the functions of the Referendum Commission.
5) COSTS OF AN ELECTORAL COMMISSION

International evidence suggests that Electoral Commissions can be a cost-effective way to manage and administer elections. However, cost savings cannot be assumed, especially in the short term, and where it is envisaged that an Electoral Commission perform additional functions including a substantial reform programme (e.g. reform of the electoral register).

Few witnesses or submissions discussed the cost implications of introducing an Electoral Commission. Table 8 in Section 5 of this report breaks down the costs for 12 different tasks in electoral administration and is based on information provided in the Consultation Paper and additional information provided by the Department of Finance.

In order to facilitate the scrutiny of the proposed Bill to establish an Electoral Commission, it could be useful if the Government simultaneously published an estimate of the effect of the Bill, if enacted, on the cost of electoral administration per task.
1. POLICY RATIONALE FOR AN ELECTORAL COMMISSION

1.1. CORE POLICY RATIONALE

This section overviews the policy rationale for the establishment of an Electoral Commission. It concludes that there are two core policy rationales to the establishment of an Electoral Commission in Ireland:

- First, to bring cohesion and co-ordination to the piecemeal approach to policy and operational matters thereby improving the administration of elections for users (the electorate).
- Second, to drive forward reforms, including recommendations for legislative change, that will address the problems identified with electoral administration and policy.

Electoral Commissions are generally established to guarantee that elections are managed independently, free from political interference. Yet most submissions and witnesses to the Committee recognise that public trust in the electoral process is relatively high (Farrell et al., Fianna Fáil, Whelan, NYCI), Whelan writing that Ireland’s record in the administration of elections has been ‘beyond reproach’ since independence, Farrell et al. that ‘the electoral process works reasonably well and citizens have a high degree of trust in it’.

At the same time, all submissions and witnesses highlight aspects of the electoral process that require urgent attention lest that trust and reputation be suddenly eroded (Whelan, Farrell et al., Dublin City Council, O’Dowd, NYCI), with some witnesses arguing that trust in the electoral registration process is not, in fact, high (TCD Students Union, NYCI, 7 July 2015). Reidy, in her presentation to the Committee (16 June 2015) drew on evidence presented by Elklit and Reynolds (2005) which demonstrates how one episode of malpractice or electoral fraud can cause a dramatic drop in trust in the democratic process; trust, once lost, is difficult to re-gain.

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11 Farrell et al. cite the Electoral Integrity Project which conducted an audit on the management of the 2011 general election in Ireland and found that electoral processes are ‘fair and equitable and administered impartially.’ The Electoral Integrity Project is led by Pippa Norris (Harvard University and University of Sydney. CCMA and LGMA citing an OECD report which has found a high level of trust.
1.2. AREAS IDENTIFIED AS IN URGENT NEED OF ATTENTION

Areas identified as in urgent need of attention by the majority of submissions/witnesses are:

- Reform of the electoral registration process;
- Voter education, turnout and the minimal efforts made to encourage people to register and to vote in elections and referendums (in spite of work of Referendum Commissions);
- The unavailability of centralised, comprehensive election results and data, essential for public confidence in electoral management and a resource for research into voter behaviour and attitudes (Farrell et al., Whelan, Elections.org, O’Mahony, NYCI, Fianna Fáil, Green Party, Referendum Commission);
- Political finance, primarily the lack of transparency in the accounts of political parties and tight resources which present obstacles to the enforcement of the rules around donations and spending regulations (Farrell et al., O’Dowd, SIPO);
- There was also much discussion by the Committee and witnesses about sub-optimal outcomes for Members and the electorate to constituency boundary reviews and the disadvantages of establishing Referendum Commissions on a one-off basis.

It is notable that many of these problematic areas relate to the interaction between the actors responsible for electoral administration (outlined in Table 2, Section 2) and the electorate.

Similar issues with the management and administration of elections were raised by a series of reports between 2008 and 2010, all of which were based on extensive consultation with political scientists and other experts and actors in electoral policy. Four key policy rationales for an Electoral Commission’s establishment were identified from these reports (L&RS).\(^\text{12}\)

Box 1: Four key policy rationales for the establishment of an Electoral Commission (earlier reports)

1. To address ongoing problems identified with the electoral register so as to bring about a comprehensive, accountable and up-to-date electoral register. This task of managing the process of modernising the electoral register is mentioned by all advocates of an Electoral Commission;

2. To administer referendum campaigns and address the shortcomings of having one-off Referendum Commissions perform this role;

3. To draw up constituency boundaries in line with the Constitution and legislation and to address the shortcomings of having one-off Commissions performing this role;

4. To proactively examine, advise and take action on policy issues in electoral administration including (but not exclusively):
   - How to increase the political engagement of young and indeed all voters;
   - How to design and implement voter-education programmes;
   - How to ensure ease of access to voting on polling day;
   - How best to implement postal voting and other advance methods of voting;
   - How to improve ballot-paper design;
   - How to resolve the issue of how surplus votes are counted;
   - The electoral system and its effects on representation;
   - The development of safe and secure ways to use technology in voting;
   - The effect of gender quotas on representation.
1.3. IS IT NECESSARY TO ESTABLISH AN ELECTORAL COMMISSION TO ADDRESS THESE ISSUES?

Central to the Committee’s deliberations was the question of whether it is necessary to establish an agency - an Electoral Commission - to address these issues or whether they can be addressed by existing actors.

As demonstrated in Table 2 (Section 2) the management and administration of elections involves many actors, including three Government Departments, a number of statutory agencies – both permanent and ad hoc, local government performing many different roles, and Returning Officers who are employed by the Courts Service, itself an agency of the Department of Justice and Equality.

The earlier reports take the view that the issues are unlikely to be adequately tackled under the present system of managing and administering elections administration: the central rationale for the establishment of an Electoral Commission found in these reports is so that it can address, as a priority, the series of policy problems with the management and administration of elections (as set out in Box 2).\(^\text{13}\)

The vast majority of submissions and witnesses to the Committee take a similar view and, in fact, all bar one advocate that an Electoral Commission is needed.

There is a sense from submissions and from the Committee’s hearings with experts, stakeholders and representative groups, that the existing, piecemeal approach to electoral administration is sub-optimal for two reasons and, in fact, creates many of the problems identified:

1. It is confusing for voters.
2. No one actor is responsible.

\(^{13}\) See L&RS Paper (March 2015) *Electoral Commission: overview of policy rationale.*
1.3.1. CONFUSING FOR VOTERS?

First, it is confusing for voters and may, as such, be partly responsible for lower-than-desirable levels of voting and voter education, more pronounced amongst some sections of the population. A number of submissions (Elections.org, O’Mahony, NYCI, two citizens representatives (one from Young Fine Gael) and witnesses (McGlackan-Byrne, TCD, 7 July 2015, Sean Donnelly, 14 July 2015) attest to the confusion for voters, and even for candidates, created by the piecemeal approach to electoral management. According to McGlackan-Byrne (7 July 2015) the available information for prospective voters is ‘confusing and contradictory ... and it deters non-traditional voters.’

Donnelly describes the system, from registration to voting to the publication of results, as ‘outmoded and unworkable’ and as ‘neither consistent nor transparent nor efficient’ for prospective voters. Whelan says that the system ‘is full of gaps in every sense of the world’ and that an Electoral Commission would have the most capacity to bring added value (i.e. close these gaps) (30 June 2015).

The Returning Officers’ Association (16 June 2015) notes the attraction of creating an Electoral Commission as an umbrella body given the ‘diverse number of bodies currently responsible for managing elections.’
1.3.2. NO ONE ACTOR RESPONSIBLE?

Second, there is no one actor responsible for devising and pioneering a reform agenda. Reidy (16 June 2015) says that the piecemeal approach has led ‘to a moribund system of electoral administration which has not moved into the 21st century’ (16 June 2015), Marsh that if an independent (i.e. non-partisan) body is specifically given a remit to bring about electoral reform, proposals for reform run less risk of being ignored (16 June 2015). Kavanagh (14 July 2015) argues that a perception that government’s objectives are party-political can present obstacles to the advancement of electoral reform and that the last few years have borne this out. Whelan argues that ‘the organic and, at times, ad hoc manner in which the electoral matters are regulated and administered’ has intensified in recent times.

Marsh has argued that while the purpose of an Electoral Commission is generally to guarantee that electoral administration is carried out in an independent manner (free from political interference):

“... a further, even greater, advantage in the Irish context is that an Electoral Commission would be proactive in addressing existing problems with electoral administration and, unlike any actor currently involved with electoral administration, electoral administration would be its priority.”

Only the Association of Irish Local Government questions the rationale establishing an Electoral Commission. While accepting that there are deficiencies in the management of elections, it argues that deficiencies stem largely from the lack of urgently-needed legislative change rather than the piecemeal approach to electoral management. It argues further that the establishment of a Commission contravenes the Government’s policy to devolve to local government rather than to centralise (IALG). While the Local Government Management Agency (LGMA) and the County and City Management Association (CCMA) agree with this analysis, they perceive a role for an Electoral Commission on policy, oversight and audit (see Section 2).

2. FUNCTIONS OF AN ELECTORAL COMMISSION

This section considers what functions, both existing and new, should be assigned to an Electoral Commission and which functions should remain with existing actors in line with questions posed in the Consultation Paper.

Table 2 below breaks down Ireland’s system of electoral administration into sixteen distinct tasks and indicates who is responsible for performing each task.

Most submissions propose that an Electoral Commission be broadly responsible for ‘the management of the democratic process surrounding elections (Farrell et al) and that either all functions (Farrell et al., Ombudsman, Green Party), most functions (O’Dowd, Whelan, NYCI, Fianna Fáil, Sinn Féin) or some functions (LGMA and CCMA, Dublin City Council, Returning Officers) in the management of elections be transferred to an Electoral Commission. LGMA and CCMA perceive a role for an Electoral Commission on policy issues, oversight and audit.

The submissions and witnesses show some difference in opinion about whether an Electoral Commission:

a) should be directly responsible for all aspects of the process,

b) should be directly responsible for some and act as an oversight body in partnership with existing actors for other functions or

c) should act largely as an oversight body.

These differences are most evident where the management of the electoral register and of the mechanics of running elections are concerned (2.11 and 2.12 below).

We summarise the views expressed in submissions and meetings with the Committee for each of the possible functions of an Electoral Commission in points 2.1 – 2.12 below.
Table 2: Actors responsible for electoral administration and policy by task

<table>
<thead>
<tr>
<th>Task</th>
<th>Actor</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Policy support for the Government (and other actors) on electoral issues</td>
<td>Franchise Section, DECLG</td>
</tr>
<tr>
<td>2. Operational: preparing for elections/polls&lt;sup&gt;15&lt;/sup&gt;</td>
<td>Franchise Section, DECLG</td>
</tr>
<tr>
<td>3. Set constituency boundaries for Dáil and European parliament elections in line with legislation and the Constitutional requirements (Electoral Act, 1997, Part V)</td>
<td>Independent Constituency Commissions. Secretariat provided by the Franchise Section, DECLG</td>
</tr>
<tr>
<td>4. Set the boundaries for local electoral areas for local elections in line with the Local Government Act 1991 s.28, 32,33</td>
<td>Local Electoral Area Boundary Committees. The secretariat for the most recent report was provided by the Franchise Section, DECLG</td>
</tr>
<tr>
<td>5. Maintaining register of electors&lt;sup&gt;16&lt;/sup&gt;</td>
<td>Local registration authorities (31)</td>
</tr>
<tr>
<td>6. Divide local authority area into polling districts for Dáil elections at least every ten years (as per s28 1992 Act)</td>
<td>Local registration authority</td>
</tr>
<tr>
<td>7. The regulation of political funding and election expenditure</td>
<td>Standards in Public Office Commission (Secretariat is in the Office of the Ombudsman).</td>
</tr>
<tr>
<td>8. Registering political parties&lt;sup&gt;17&lt;/sup&gt;</td>
<td>Registrar of Political Parties&lt;sup&gt;18&lt;/sup&gt; (Clerk of the Dáil)</td>
</tr>
</tbody>
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<sup>15</sup> Tasks include producing guidance notes for returning officers; liaising with Office of Public Works to procure equipment; advising Office of Government Procurement on quantities of ballot papers and polling information cards required; arranging for advertising/media reminders about voter registration and voters with special needs; compiling results after all elections and storing results in the case of some elections.

<sup>16</sup> Tasks are to conduct the annual canvas; prepare draft register each year; make draft register available in November each year; publish final register in Feb and deal with ongoing queries in relation to the register and implement any guidelines regarding the upkeep of the register issued by the Department.

<sup>17</sup> To ensure parties fulfil criteria on membership, organisation & structure set out under S.25(4) of the 1992 Act).

<sup>18</sup> A decision of the Registrar may be appealed to an appeal board which shall consist of a Judge of the High Court, who shall be chairman, the Chairman of the Dáil and the Chairman of the Seanad, S25B of the Electoral Act 1992 as amended.
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<tr>
<td><strong>9.</strong> Local elections: planning and running local elections including regulating spending and donation limits</td>
<td>Each local authority (with support from Franchise Section, DECLG)</td>
</tr>
<tr>
<td><strong>10.</strong> Providing information to voters about the subject of a referendum, promoting public awareness and encouraging voter participation at referendums.</td>
<td>Referendum Commission</td>
</tr>
<tr>
<td><strong>11a</strong> Administering elections &amp; referendums: ongoing</td>
<td>Returning Officers (all)\textsuperscript{19} Ongoing annual costs (DPER)</td>
</tr>
<tr>
<td><strong>11b</strong> Administering elections &amp; referendums\textsuperscript{20}</td>
<td>Returning Officers (DPER)</td>
</tr>
<tr>
<td><strong>12.</strong> Material costs of running elections and referendums</td>
<td>Various (e.g. Office of Public Works, An Post)</td>
</tr>
<tr>
<td><strong>13.</strong> Issuing writs to returning officers, receiving completed writs after elections, holding marked lists and ballot papers for six months after an election pending an appeal to the courts.</td>
<td>Clerk of the Dáil</td>
</tr>
<tr>
<td><strong>14.</strong> Seanad: Maintenance of Register of Nominating Bodies for Seanad Panels (43 seats), maintenance of electoral roll for Seanad panels, administering Seanad elections.</td>
<td>Clerk of the Seanad (Seanad Returning Officer)</td>
</tr>
<tr>
<td><strong>15.</strong> Seanad: Maintenance of electoral register for the National University of Ireland (3 seats)</td>
<td>National University of Ireland</td>
</tr>
<tr>
<td><strong>16.</strong> Seanad: Maintenance of electoral register for Dublin University (Trinity College Dublin) (3 seats)</td>
<td>Dublin University, Trinity College Dublin</td>
</tr>
<tr>
<td><strong>17.</strong> Appeal process following an election or referendum</td>
<td>The Courts\textsuperscript{21}</td>
</tr>
</tbody>
</table>

\textsuperscript{19} Under S.30 Electoral Act 1992 Returning Officers are Statutory Officers of the Courts Service (County Register or a City/County Sherriff); Dáil Returning Officers are responsible for taking the poll and counting votes in Presidential elections and referendums in their Dáil constituency. The result is reported to a Central Returning Officer (appointed by the Minister). For European Parliament elections, the Minister appoints a Returning Officer from all Dáil Returning Officers in the European Parliament constituency. For local elections, an official of the local authority is the Returning Officer.

\textsuperscript{20} Specific tasks which are undertaken for each election: accepting nominations, requisitioning buildings; recruiting staff to take poll and count votes; oversee counting; declare results, ensure ballot papers are printed in accordance with the law.

\textsuperscript{21} Referendums as well as Dáil, Seanad, Presidential and European Parliament Elections may be questioned by petition to the High Court. Local elections may be questioned by petition to the Circuit Court. The relevant legislation for each petition is as follows:
2.1. REGISTRATION OF POLITICAL PARTIES

While not all submissions or witnesses addressed this function directly, no one consulted by the Committee suggested that this function should remain the responsibility of the Registrar of Political Parties (Clerk of the Dáil) in the context of the establishment of an Electoral Commission.

2.2. POLICY AND OPERATIONAL ROLE OF FRANCHISE SECTION IN THE DEPARTMENT

The submissions largely call for the transfer of the functions from the Department of the Environment, Community and Local Government’s Franchise Section – both policy and operational – to an Electoral Commission (Green Party, Farrell et al., Weeks, Fianna Fáil, Whelan, Second Republic, O’Dowd, LGMA, NYCI, Dublin City Council, SIPO), the Fine Gael party suggesting that an Electoral Commission would advise Ministers on non-delegated matters. The Sinn Féin Party suggests that it would provide policy advice, informing the Oireachtas and the Government prior to the framing of any necessary legislation or before a proposal is put to referendum.

AILG argues that even with the transfer of this function to an Electoral Commission, the Department would need some personnel devoted to electoral law and that there may be duplication. Deputy Fleming said that the overall legislative functions and policy matters should remain with a Department.

Further, most submissions call for a significant broadening of this policy function under an Electoral Commission. It is argued that under a Commission specifically appointed to manage the electoral process in an ‘ongoing’ manner (Second Republic), a proactive rather than a reactive approach to electoral policy and administration, would be possible (O’Dowd, 16 June), one which would improve the administration of Irish elections and ‘equip the electoral process for the challenges presented by the greater diversification in political competition and the rapidly changing media and technological environment’ (Whelan).

Referendums: Part IV of the Referendum Act 1994 (as amended); Dáil Elections: Section 132 of the Electoral Act 1992 (as amended); Seanad Elections: Section 26 of the Seanad Electoral (University Members) Act 1937 (as amended) and Section 54 of the Seanad Electoral (Panel Members) Act 1947 (as amended); Presidential Elections: Part V of the Presidential Elections Act 1993 (as amended); European Parliament Elections: Section 21 of the European Parliament Elections Act 1997 (as amended); Local Elections: Local Elections (Petitions and Disqualifications) Act 1974 (as amended).
It is suggested that an Electoral Commission’s powers in this respect could include:

- Statutory power to promote the proactive improvement and modernisation of the system of electoral administration while ensuring its integrity (Whelan, 30 June 2015);
- Power to investigate reforms to the electoral process (Green Party, Farrell et al.);
- The right to be consulted by Government on proposals concerning electoral law (Fianna Fáil, Green Party, Farrell et al., Kavanagh, 14 July 2015) or the 'right to be taken seriously' by Government (Second Republic) and to make recommendations on legislative and constitutional change to the Oireachtas (Second Republic);
- The duty to include in its annual reports and its reports on specific elections/referendums proposals concerning reform to electoral law (Fianna Fáil, SIPO);
- The power to trial reforms (within constitutional and legislative limits), (Green Party. Farrell et al.). Examples of such trials elsewhere include experiments with postal voting and online voting (Reidy, 16 June 2015, 18) and with different wordings on the ballot paper for referendums (Farrell, 16 June 2015), the fixing of polling dates (Fine Gael);
- The right to set binding regulations in its area of function (Farrell et al.).

Many submissions suggest that an Electoral Commission be assigned and given express statutory duty for additional policy functions for which no actor is completely responsible at present. Some of these functions were identified as desirable in previous reports by Joint Oireachtas Committees (see Box 1, Section 1, L&RS document).  

Additional policy functions identified are outlined below.

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2.3. DEVELOP AND IMPLEMENT POLICY ON VOTER FACILITATION MEASURES

Registration and voting should be straightforward for electors (see L&RS Policy Background Paper, 2015). Ease of registration and voting, such as the right to vote in any polling station, greater access to postal voting, identification of other barriers to voting such as days and times of polling, is tightly connected to voter mobilisation and a role for an Electoral Commission in voter facilitation is identified in many submissions and hearings including by Farrell et al., Weeks, NYCI, TCD Students’ Union, Immigrant Council of Ireland (7 July 2015).

Whelan suggests that a Commission proactively encourage registration and voting in all elections and referendums, Second Republic that a Commission should ensure that the State actively engages citizens and residents. McCarthy, on behalf of the Referendum Commission, stated that there is a ‘clear, urgent need for an ongoing campaign to promote registration and voting.’ AILG identify enhancing voter turnout and the provision of information to voters as ‘the one area’ where a more continuous body could help.

Both Kavanagh (14 July 2015) and Donnelly (2015) identify the development of a website which serves as a portal for the public on all aspects of electoral administration as an important and early task for an Electoral Commission. An Electoral Commission would provide a ‘One-Stop Shop’ for eligible voters on the electoral process from registration, to accessing information, to voting, to accessing results (Took, Young Fine Gael).
2.4. VOTER EDUCATION AND ENGAGEMENT

While there is clearly cross over between ‘voter mobilisation and facilitation’ and ‘voter education and engagement,’ many submissions and witnesses identify a specific role for a Commission in educating and reaching out to the electorate beyond providing information in one central location and beyond removing obstacles to registration and campaigns to encourage registration (e.g. a user-friendly website).

Submissions highlight the development of programmes to educate the entire electorate about the electoral process and, for example, the workings of the PR STV system, as a key role for an Electoral Commission (Farrell et al., Weeks, Whelan, Green Party, Second Republic, NYCI, Department of Children, TCD Student’s Union). Farrell et al. point to civic education programmes in Germany and the Nordic countries as best practice. The Fine Gael Party suggests that an Electoral Commission would directly communicate with schools; the Sinn Féin Party that it oversee voter education for schools and within the broader community.

NYCI and O’Donnell, the latter who has responsibility for implementing the National Strategy on Children, pointed to research which highlights the importance of engaging with, rather than simply providing information to, younger people: experimental learning is much more effective than anything else (Power, NYCI, O’Donnell, Department of Children, 7 July 2015). O’Donnell also points to research which found that enabling children to have a voice in decision-making supports their active citizenship from an early age (O’Donnell, 7 July 2015). Power (NYCI, 7 July 2015) cited Eurostat data which shows that young people generally do not feel that politicians engage with them and their issues; however, when engaged with, young people return the engagement. O’Donnell recommends that an Electoral Commission play a role in implementing the aspects of the National Strategy on Children which seek to engage children in civic society (7 July 2015).

Killoran (Immigrant Council of Ireland, 7 July 2015) also stresses the importance of engagement and information. He argues that while information is one thing, reaching out to communities to explain things to them face to face, offering translation services and assisting people in filling out forms, are the crucial extra steps to political participation. Killoran argued that ‘the failure to inform and franchise migrant community as to their voting rights will have a greater cost, in societal and financial terms.’
NYCI recommends that an Electoral Commission should have the capacity and resources to directly and indirectly support campaigns in support of voter engagement and participation. In discussion with the Committee, Ian Power (NYCI, 7 July 2015) suggests that an Electoral Commission would set up funds for such engagement programmes which would be run by organisations who work with marginalised or target groups, especially young people and those from migrant communities. Kavanagh (14 July 2015) also suggests an Electoral Commission be assigned voter education programmes especially focused on low turnout groups while he does not comment on how they should be run (centrally or by funding other organisations to do so).

An emerging theme was how political parties and candidates educate and reach out to the electorate. McGlackan-Byrne (7 July 2015) suggests that a basic step would be the provision of information on websites of parties’ stances on particular issues; he also mentions that an impartial resource could be provided listing political beliefs and the parties that match them. O’Mahony points to the fact that in other jurisdictions civil society organisations survey parties on their stances on particular issues and publish this information on interactive websites (e.g. http://eng.votematch.eu). On the same issue, Deputy Fleming, former Chairman of the Joint Committee on Environment 30th Dáil (30 June 2015), proposed an initiative that would replace the current practice whereby parties and candidates post individual election material in each constituency to each house. Candidates would instead submit background and promotional information to a central organisation which would prepare and publish one promotional leaflet per constituency (30 June 2015). While proposed as a cost-saving measure, it might serve to change how parties and candidates educate and reach out the electorate along the lines proposed by other witnesses.

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23 Note that Section 78 of the Electoral Amendment Act 1992, which changes the free postage allowance to every household rather than every elector on the register, was commenced in 2014 for European Elections and is to be commenced for the 2016 General Election. This means that each candidate is entitled to ‘free’ postage for one of electoral material to each household, rather than to each voter on the register. Deputy Fleming’s proposal is to reduce free postage to one item per household for all candidates.
2.5. TIMELY (REAL TIME) PUBLICATION OF RESULTS OF ELECTIONS

Many submission and witnesses recommend that an Electoral Commission be responsible for the provision of independent, accurate and timely information for the public on the results of elections and referendums (Whelan, Weeks, Elections.org, Farrell et, O’Mahony, Donnelly). Donnelly is particularly critical of the failure of those responsible for electoral administration to provide “real-time” results and suggests that an Electoral Commission could transform this element of the electoral process.

Donnelly suggests that an Electoral Commission adopt the practice of the Central Statistics Office with the census by publishing draft results followed by final results. That timely and comprehensive election results are unavailable (except from RTÉ or elections.org) is further discussed in Section 2.12.
2.6. INDEPENDENT RESEARCH ON ELECTORAL POLICY

Most witnesses argued that an Electoral Commission should conduct independent research on electoral issues (Farrell et al., Weeks, Whelan, NYCI, Kavanagh), including providing impartial and independent information on election matters (LGMA and CCMA), and including exit polling (O’Mahony, NYCI) and surveys which aim to understand why people don’t vote. There are advantages to having an independent agency, rather than government, conduct research on electoral matters as the perception that a government’s objectives are party-political can present obstacles to the advancement of reform (Kavanagh, 14 July 2015).

Both Marsh and Farrell say in discussion with the Committee that an Electoral Commission could generate ideas and research topical issues related to the franchise, such as the possible implications of reducing the voting age, of extending voting rights to migrants, or the issues and practicalities of extending the franchise to a defined group of Irish citizens living abroad – diaspora voting (Kavanagh, 14 July 2015). The design of ballot papers, for all elections and referendums, was also highlighted in a number of submissions as an area on which the Electoral Commission should conduct research and make recommendations.

Marsh points to the good policy advice given to those introducing electronic voting in Scotland and New Zealand – ballot papers are filled out by hand, scanned and then counted electronically (June 16 2015). A number of witnesses argued that had an Electoral Commission existed prior to the piloting of e-voting the outcome might have been different (Donnelly, 14 July 2015; Marsh, 16 June 2015).

In its submission, SIPO notes the many recommendations for reform to electoral law it has made in its reports since 2003 and suggests that these would provide a reform agenda for an Electoral Commission.
2.7 OTHER POSSIBLE FUNCTIONS

Other possible functions mentioned in some submissions were:

- Reviewing broadcasting regulations covering elections and referendums, developing clear policy guidelines related to the meaning of proportionality and balance in the coverage of elections and referendums (Farrell et al., Green Party, Weeks);
- The Commission provide mechanisms for citizen-initiated referendums, including local plebiscites (Green Party, Second Republic), and that it provide a means for local communities to conduct local plebiscites and elections including devising ways to verify signatures for such initiatives (Green Party);
- That it play a role in advancing proposals made by the Convention on the Constitution (Second Republic, Green Party, Sinn Féin).

Marsh, in his submission to the Committee, demonstrates how these additional functions are the norm for Electoral Commissions in other countries (Table 3 below). He noted that they are not performed by any of the actors in Ireland’s current system of electoral administration.
Table 3: Common functions of Electoral Commissions internationally

<table>
<thead>
<tr>
<th>Function</th>
<th>AUS</th>
<th>UK</th>
<th>NZ</th>
<th>CAN</th>
<th>Presently in Ireland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manage electoral register</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>31 Local authorities</td>
</tr>
<tr>
<td>Conduct public elections and referendums</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Returning Officers and local government</td>
</tr>
<tr>
<td>Administer rules, including funding</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>SIPO</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Local authorities (for spending at local elections)</td>
</tr>
<tr>
<td>Determine electoral boundaries</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Ad Hoc Commissions</td>
</tr>
<tr>
<td>Educate public (about registration, voting, civic engagement)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Nobody for elections (ad hoc Referendum Commissions)</td>
</tr>
<tr>
<td>Educate government and parliament (i.e. research &amp; policy advice)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Department plays a role</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nobody proactively has this role</td>
</tr>
</tbody>
</table>

AUS = Australia  
UK = United Kingdom  
NZ = New Zealand  
CAN = Canada

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24 Professor Michael Marsh, Trinity College Dublin, Witness to the Joint Committee, 16 June 2015.
2.8. FUNCTIONS OF THE REFERENDUM COMMISSION

The majority of submissions and witnesses, who express an opinion on this function, including the Referendum Commission itself, have recommended that the functions of Referendum Commission be subsumed into an Electoral Commission.

Successive reports by Referendum Commissions have called for the establishment of a permanent body to overcome barriers to carrying out its designated functions (Marsh, 16 June 2016). In evidence to the Committee, the Comptroller and Auditor General, Seamus McCarthy, on behalf of the Referendum Commission (23 June 2015), said that Referendum Commissions ‘have not had the time or the resources to undertake an ongoing or even a pre-planned programme to promote voter registration or voter turnout or a detailed analysis of factors that influence them.’

Farrell et al suggest that the Referendum Commission constitute a distinct section in the Electoral Commission, while the Ombudsman, which provides the secretariat for Referendum Commissions, says that measures must be taken to ensure that the knowledge and experience of his staff must be passed on to the Electoral Commission.

Only the Green Party suggests that the Referendum Commission should remain separate arguing that ‘matters arising in referendums are profound and unique in nature.’ However, it suggests that the knowledge and expertise of the Electoral Commission be shared with each Referendum Commission by way of the two sharing the same institutional structure. Fianna Fáil recommends that the practice of appointing a senior legal person to oversee and speak on questions of public interest at referendums should continue for each referendum.
2.9. CONSTITUENCY AND LOCAL BOUNDARY COMMISSIONS

The majority of submissions and witnesses propose that the functions of the Constituency Commissions established under the Electoral Act 1997 (Part V) and the Local Government Act, 1991 be transferred to an Electoral Commission (e.g. Farrell et al., Weeks, O’Keefe, Sinn Féin, Fine Gael, Donnelly, O’Dowd). This is consistent with the Geary Study commissioned by the Department (2008). The Green Party stresses that the legislation must ensure the Electoral Commission’s independence of the Houses of the Oireachtas in carrying out this role.

Some, including Farrell et al., Weeks and Second Republic suggest that the Commission be given a statutory remit to examine the best way to comply with Article 16.2.4 of the Constitution on the ratio of Member to the population with a view to addressing the criticisms of current practice (Box 2 below).

Box 2: Problematic issues identified with the setting of constituency boundaries

The negative consequences for representation of changing constituency boundaries in order to comply with the Constitution were raised by the Committee during its meeting with the Minister (10 March 2015), have been documented in other reports (see L&RS, March 2015) and were discussed during Committee meetings (23 June, 30 June and 14 July 2015). They include:

- The breaching of county boundaries to create unfamiliar constituencies;
- Geographically extensive constituencies;
- Unstable constituencies (lack of certainty) and
- The non-alignment of general election constituencies with new municipal authorities.

The question of who is accountable for the decisions made by the Constituency Commission was also raised by the Committee.

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Possible solutions were raised during the meetings, including the adoption of a system recommended by Professor John Coakley (UCD) and set out in L&RS research paper (2015) whereby boundaries are constant and the number of seats change to reflect changes in population (O'Dowd, 16 June 2015; Kavanagh, 14 July 2015). This solution was recommended in the Geary Study (2008).

Some witnesses suggested that if boundary setting were assigned to an Electoral Commission, it should engage in better consultation with those who are affected by the changes by, for example, holding hearings with the public and/or publishing a draft report on which submissions can be received (O’Keefe, 30 June 2015, Kavanagh, 14 July 2015).

Two submissions recommend that the Boundary Commission remain outside of an Electoral Commission, and in one case only partially outside of an Electoral Commission.

Deputy Fleming, former Chairman of the Joint Committee on the Environment, suggests that leaving the Boundary Commission as a separate, ad hoc body would avoid the scenario whereby an Electoral Commission sets boundaries to suit its own administrative purposes as the organiser of all elections (assuming that it is assigned this role). Whelan argues that setting constituency boundaries is one of the most controversial powers in any electoral system. He recommends leaving in place the ad hoc Commissions with the ex-officio membership to undertake boundary reviews but that the Electoral Commission, rather than the Department, should provide the secretariat.

A possible way to combine the first approach, which advocates transferring boundary duties to an Electoral Commission, with the more cautious approach recommended by Fleming and Whelan would be to:

- Set out that the Electoral Commission provide the secretariat to the Constituency Commission and the Local Electoral Area Boundary Committees;
- Set out that the Constituency Commission (as set out in the Electoral Act, 1997 (Part II) (as amended) would continue to make the recommendations to the Chairman of the Dáil on boundary changes at the constituency level. These members provide this service as part of their current roles and are not compensated financially.
2.10. POLITICAL FINANCE – SIPO AND LOCAL AUTHORITIES

The supervision of parties and candidates’ compliance with the disclosure requirements, donation limits and with expenditure limits at election time set out in the Electoral Acts, as well as compiling and maintaining a register of corporate donors, is one of SIPO’s core functions. Supervision of expenditure limits at a local level is a function of local government (Table 2 above).

The majority of submissions and witnesses, including those of the Ombudsman and of SIPO itself, suggest that SIPO’s functions under the Electoral Acts be subsumed into an Electoral Commission (Green Party, Fianna Fáil, Farrell et al., Weeks, Whelan, O’Dowd, Sinn Féin, O’Keefe, Fine Gael). In fact, many submissions identify the transfer of SIPO as part of phase 1 of the establishment process (see Section 3 below). Regarding supervision of electoral expenses at local elections, a number of submissions questioned the extent to which local authorities have the capacity to enforce the rules about spending and finance around local elections (e.g. Weeks).

In its own submission, SIPO says that, given the wide range of functions proposed for an Electoral Commission (management of a national register, oversight and administration of elections and referendums, registration of parties, disclosure of donations and expenditure for local elections, constituency boundaries), ‘it would make sense that the electoral functions of SIPO be transferred in total to the new Commission.’

The Ombudsman favours this distinction between SIPO’s role in electoral matters and its role in supervising ‘matters pertaining to ongoing political activity under the Ethics Act, 1995 (and the Regulation of Lobbying Act, 2015), suggesting that this inform the decision as to which functions should be undertaken by the part subsumed into an Electoral Commission. Further, the Ombudsman said that the staff from the Ombudsman’s Office providing the secretariat to SIPO, would need to be transferred to an Electoral Commission.

Witnesses highlighted the broader political context in which the question of SIPO’s functions under the Electoral Acts sits: that of the proposed establishment of a new agency – Office of the Public Sector Standards Commissioner - which would subsume SIPO’s functions under the Ethics and Lobbying legislation.26

26 The general scheme of the Public Sector Standards Bill 2015, published by the Department of Public Expenditure and Reform in June 2015, proposes to repeal the Ethics in Public Office Act, 1995, establish a new Office of the Public Sector Standards Commissioner with two full-time Commissioners and a broadened role in the supervision of public sector standards, including greater powers of enforcement.
SIPO, the Ombudsman (23 June 2015) and O’Keefe (30 June 2015) urge that an Electoral Commission’s role, functions and composition be looked at in tandem with this proposal.

In this context, SIPO (23 June 2015) raised the question of which body should supervise compliance with the Parliamentary Activities Allowance (PAA) (formerly the Party Leaders’ Allowance) which, unlike exchequer funding to parties, is not provided for under the Electoral Acts.

Some concern was expressed about how adequately SIPO has been resourced to fully carry out its functions, O’Dowd arguing that while SIPO itself is considered to perform well in its supervision of the Electoral Acts, it is not adequately resourced to enforce the legislation under its remit. Farrell et al. identify political finance – and the perception that rules, in particular transparency in the accounts of political parties, are not properly enforced – as a cause for urgent concern, and argues that under a better-resourced Electoral Commission this would be addressed. SIPO’s Paddy Walsh noted that the difficulty associated with enforcing expenditure limits during election campaigns has repeatedly been raised by SIPO in its annual reports. In this context, the model of supervision and powers of enforcement proposed in the General Scheme for the Office of the Public Sector Standards Commissioner might be considered when drafting legislation and allocating resources to an Electoral Commission.
2.11. ELECTORAL REGISTER – ALTERNATIVE APPROACHES

All submissions and witnesses identify the Electoral Register as in urgent need of reform, including those actors currently responsible for compiling and maintaining it - Dublin City Council and representatives of local government – both management and elected representatives. The Association of Returning Officers, who regularly liaise with responsible local authority officials about registration matters, and who play a role in the process of certifying amendments to the register, described the process of compiling the register as labour intensive and as needing dedicated resources (23 June 2015). NYCI, which runs campaigns to encourage and facilitate young people to register, describes the process of electoral registration as ‘not fit for purpose as it is under-resourced, inconsistent and inaccurate’ (7 July 2015).

The problems with the Register, which are outlined in detail elsewhere including in the L&RS background paper (2015), are summarised in Box 3 below. Many of the issues were raised by the Committee and witnesses over the course of its meetings.

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27 The two representatives from the Association of Returning Officers in conversation with the Library and Research Service following the meeting with the Joint Committee on 23 June 2015.
Box 3: Summary of problems with the Electoral Register

Inaccuracies

1. Duplicate/multiple entries: people registered many times either in the same constituency (but different polling districts) or in two or more constituencies and being issued with several polling cards;
2. Deceased people still appearing on the electoral register and being issued with polling cards;
3. People who have emigrated still appearing on the electoral register (sometimes in more than one constituency) and being issued with polling cards.

Incompleteness

1. Large groups of people not registered to vote at all especially younger voters, voters from the migrant community / new Irish citizens, other highly-mobile groups and those from lower socio-economic backgrounds;
2. The mistaken removal of valid voters from the register because of errors made in the canvas and compilation of the supplementary and final register.

Some of the consequences:

1. Increased opportunities for electoral fraud (e.g. by voting more than once, impersonation);
2. Over-representation of the voting-age population on the register in some constituencies (where the number of voters on the register is higher than census estimated of voting-age adults living there) and under-representation of the voting-age population on the register in other constituencies;
3. Under-representation of certain sections of the population on the register;
4. Poor estimates of real turnout presenting obstacles to devising policy to increase turnout; and
5. Inaccuracies and incompleteness can be large enough to affect the results of elections especially in the Irish electoral system where a small number of votes may decide who wins a seat.
A central theme in the submissions and hearings is that these problems with the register have been exacerbated by changes to society since the *Electoral Act, 1992* was enacted, namely the vast increase in the size of the mobile, transient section of the population (e.g. students, young people, new Irish citizens and/or non-Irish citizens, renters).

NYCI elaborates on the extent of these problems in its submission, arguing that by virtue of being more mobile, younger voters are disproportionately affected by the cumbersome registration process: according to its survey research 14% of 18-25 year olds were not registered to vote in 1999 and in 2014 30% were not registered to vote. TCD Student’s Union (McGlackan-Byrne, 7 July 2015) notes that the Union of Students in Ireland assisted the registration 27,000 people to vote in 2015 but most of those 27,000 will have moved house before the next election. While renting is clearly prevalent amongst students, it is not exclusive to students: Housing tenure has changed in Ireland with almost 1/3 of the adult population renting rather than owning their house in 2015. Members of the Committee (16 June 2015) and the Immigrant Council of Ireland (7 July 2015) highlighted the difficulties in accessing the electoral register faced by new Irish citizens and residents who are not Irish citizens (in the latter case for local elections).  

There is some agreement amongst the submissions and witnesses on the broad parameters of a solution to the problems with the register, most advocating a version of what is advocated in the Reports of Oireachtas Committees (2008, 2010) and the recommendations in the Geary Report (2008). They are:

- Rolling register to replace the annual canvas and supplementary register;
- National, central electronic register to replace 31 registers;
- Individual rather than household registration;
- Use of unique identifiers (such as PPSN) and data sharing arrangements to tackle the problems of duplicate entries on the register and to enhance completeness of the register;
- Further, many suggested online registration be part of the overall reform package or, at least, be investigated or aspired too when there is satisfaction that it is secure (Whelan, 30 June 2015).

28 Note that the *Electoral Amendment No.2 Bill 2015*, enacted as the Electoral (Amendment) Act 2015 on 29 December 2015, will allow a person who becomes an Irish citizen after the date the electoral register comes into force and before a General election to be added to the Supplementary Register.
A few submissions recommend automatic voter registration as a solution to the incompleteness of the register, the Fine Gael Party advocating that an Electoral Commission examine a policy of automatic voter registration whereby PPSN are used to automatically add all eligible voters to the register when they reach 18 years of age and including an option for individuals to de-register. Representatives from AILG (14 July 2015) made a similar recommendation. Second Republic suggests that automatic voter registration be considered in the context of voter facilitation and McGlackan-Byrne that ‘if nothing else, registration as an opt-out makes infinite sense.’

On the slightly different topic of compulsory registration as a solution to both inaccuracies and incomplete registers, Reidy (16 July 2015) considered that there would be little appetite for compulsory registration; instead the purpose of any structure should be to facilitate voters, make it as easy as possible to be placed on the register and ensure thereafter that the register is robust.

Many argued that the over-arching problem with reforming the voter registration system is that it is no one body’s responsibility (McGlackan-Byrne, 7 July 2015, Marsh, 16 June 2015).

Where the submissions and witnesses differ is on the role of a proposed Electoral Commission and of the current registration authorities – local authorities – in driving the reform of the electoral register.

Three broad approaches can be identified in the submissions:

- Responsibility for the electoral register should lie solely with a new Electoral Commission.

- Assign oversight and reform of the electoral registration system to an Electoral Commission while leaving operational matters to the local authorities for the immediate future.

- The focus of an Electoral Commission should be electoral policy, oversight and audit and that the electoral register should remain the responsibility of local authorities.

These approaches are outlined below.
2.11.1. COMMISSION RESPONSIBLE FOR THE ELECTORAL REGISTER

One approach is that responsibility for the electoral register should lie solely with a new Electoral Commission.

Farrell et al., the Green Party, the Fine Gael Party and Sean Donnelly, for example, take this view, Farrell et al. suggesting that the Electoral Commission immediately on its establishment undertake comparative research, a short consultation and initiate an improved and more voter focused process of voter registration. Second Republic says an independent Electoral Commission could conduct the urgent task of modernising our register, increasing ease of voting for all citizens from providing voter information to automatically registering citizens and residents as voters. NYCI says that reform of the voter registration system ‘should be addressed first as the Electoral Commission’s key, urgent, primary role,’ Marsh says that the will at the centre is most important in ensuring the register is reformed; if there is an agency dedicated to providing us with a good electoral register, we are more likely to have one (16 June 2015). Former Deputy O’Keefe and Deputy Fleming, former Chairs/Deputy Chairs of Joint Oireachtas Committees which examined the electoral register (2010 and 2008 respectively), also argued that the Electoral Commission must be given responsibility for reforming the system of electoral registration (30 June 2015).

Those advocating this approach tend to point out that the rationale for assigning the electoral register to local government - its intelligence system which was derived mostly from rate collectors - no longer exists (Committee hearings, 10 March, 16 June, 23 June 2015) and, that coupled with this, the rise in the numbers of gated communities and the increased mobility of the population, makes the current local authority-led system of compiling the register outdated and non-responsive. It was also noted that there is no uniformity in approach to compiling the register: while some local authorities still employ officials to conduct on-going house-to-house calls to maintain the register, others do not (23 June 2015).
2.11.2. COMMISSION RESPONSIBLE FOR OVERSIGHT AND REFORM OF THE ELECTORAL REGISTRATION SYSTEM

A second approach advocated is to assign oversight and reform of the electoral registration system to an Electoral Commission while leaving operational matters to the local authorities for the immediate future. This approach does not rule out eventually transferring full responsibility for the register to an Electoral Commission. The approach is reflective of comments made during the Committee meeting (16 June 2015) that while tackling the register is the urgent priority, the decision of who should be responsible for implementing the reforms should be made when the approach to fixing it has been agreed.

John O’Dowd recommends that an Electoral Commission be established on a phased basis and that it initially have oversight rather than direct responsibility in relation to electoral registration. In this role, he suggests that an Electoral Commission could improve the performance of local authorities through establishing performance norms and supervisory mechanisms, while a more fundamental reform of electoral registration is planned and prepared for. The Fianna Fáil Party takes a similar approach suggesting that the Commission set guidelines for, and monitor, the compilation of the Register of Electors which needs to be standardised across constituencies.

Whelan similarly suggests that in the interim stage an Electoral Commission should oversee the registration of voters as currently conducted by local authorities but that it should be tasked with designing the best and most effective means of moving to a national level system of voter registration on an individual as opposed to a household basis.

A number of witnesses and submissions have suggestions for who might be best placed to compile and maintain the register, regardless of what body has ultimate responsibility.

Whelan alludes to the New Zealand system whereby the postal service is tasked with maintaining the register as having much to recommend it. The possibility of contracting the work to An Post and that the new Eircodes (provided under legislation passed in 2015) could assist in the compilation of the register was discussed by the Committee during hearings (16 June, 30 June 2015).
On the other hand, Donnelly argued that for two reasons an Electoral Commission should work with the CSO to compile the register. One, as it regularly undertakes a nation-wide canvas and has experience and knowledge about how to do so; two, as this would ensure that the same units are used to generate the census, to undertake constituency boundary reviews and to compile the electoral register: he recommends that the practice of compiling the electorate by polling district be abandoned and replaced with the 3,440 electoral divisions used in the census. However, under the Data Protection Acts 1990-2003 the use of data collected for the Census to compile or enhance the accuracy of the electoral register would only be possible with the consent of individual being interviewed.
**Table 4 Units used to compile the Census, Constituency/Local Electoral Area Reports and Register of Electors**

<table>
<thead>
<tr>
<th>Responsible actor</th>
<th>Census</th>
<th>Local Electoral Area Boundary Reports (Constituencies)</th>
<th>Report on Dáil and European Parliament Constituencies</th>
<th>Register of Electors</th>
</tr>
</thead>
<tbody>
<tr>
<td>CSO</td>
<td>Local Electoral Area Boundary Committee</td>
<td>Constituency Commission</td>
<td>31 local authorities</td>
<td></td>
</tr>
<tr>
<td>Population</td>
<td>Population divided into Electoral Areas</td>
<td>Population divided into Dáil Constituencies and European Parliament Constituencies</td>
<td>Registered electors</td>
<td></td>
</tr>
<tr>
<td>Building Blocks (sub-units for which figures are collected)</td>
<td>Population per electoral division (ED)</td>
<td>Population per electoral division (ED)</td>
<td>Registered electors by street/townland, electoral division, polling district.</td>
<td></td>
</tr>
</tbody>
</table>

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29 Developed from Sean Donnelly, submission to the Committee, 14 July 2015 incorporating some comments from the Franchise Section, Department of the Environment, Community and Local Government (November 2015)

30 Polling districts are made up of electoral divisions (or parts of electoral divisions). See Regulation 3 (c) of Polling Scheme Regulations (SI 108/2005). Information provided by the Franchise Section, Department of the Environment, Community and Local Government, November 2015.
While the first and second approach differ over which actor has responsibility, at least in the short-term, for compiling and maintaining the register, both are in agreement that the Electoral Commission should be charged with coming up with policy recommendations on how to reform it.

Many submissions and witnesses, regardless of whether they recommend the first or second approaches described above, advocate that an Electoral Commission work with and consult stakeholders and potential partners – such as the local authorities, LGMA or CCMA, the Department of Social Protection, Office of the Data Protection Commissioner, An Post, the CSO - when devising reforms to the electoral register. Whelan suggests (30 June 2015) that if an Electoral Commission were tasked with devising policy to reform the system of electoral registration:

It might initially bring together the 31 local authorities to compare databases, to look at issues preventing them from joining up databases and to compare the databases to those held by the Revenue Commissioners and Department of Social Protection (30 June 2015).’

This might be established as a ‘stakeholder group’ or an ‘advisory forum’ (Kavanagh, 14 July 2015) an instrument which Muiris McCarthaigh noted has been relatively successful for other newly-established agencies (16 June 2015) and an instrument used by SIPO in its implementation of the Regulation of Lobbying Act, 2015. Kavanagh suggested that former Oireachtas Members be part of such an advisory group (this is returned to in Section 3 of this report).

Seamus McCarthy, Comptroller and Auditor General, noted that moving oversight of the electoral register to an Electoral Commission would be a big project requiring substantial IT support (23 June 2015). NYCI argues that this should not prevent the project from being tackled (7 July 2015).
Of note is the recent and ongoing reform of the electoral register in the UK which falls somewhere between the second and third approach (outlined immediately below) identified during the Committee’s consultation. The reform process, which was instigated on foot of repeated calls for reform from the Electoral Commission, was led by the Cabinet Office which sought and incorporated recommendations from the UK Electoral Commission and many other stakeholders (Data Protection Commissioner, House of Commons Library). The local registration authorities (EROs) are implementing the changes on foot of the *Electoral Registration and Administration Act 2013*, with the Electoral Commission providing guidance.

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31 *House of Commons Library, February 2015, Standard Note: Individual Electoral Registration*. The Note provides background to the introduction of individual electoral registration which was provided for in the *Electoral Registration and Administration Act 2013*. 
2.11.3. COMMISSION RESPONSIBLE FOR ELECTORAL POLICY, OVERSIGHT AND AUDIT

A third approach is advocated by LGMA, CCMA and Dublin City Council (submission by the local authority returning officer). They argue that the focus of an Electoral Commission should be electoral policy, oversight and audit and that the electoral register should remain the responsibility of local authorities. The basis for their argument is that the problems with the electoral register are not caused by the lack of an Electoral Commission but by the absence of the legislative framework necessary for local authorities to reform it. LGMA and CCMA’s proposals for reform contain some of the recommendations made by Oireachtas Committees in 2008 and 2010 (see L&RS Policy Rationale Paper, 2015) and those recommended by other witnesses (see above).

They include:

- A single national register of electors database;
- Single national register using PPSN as unique identifiers. In discussion with the Committee representatives of Dublin City Council made a plea for the use of unique identifiers as the only way to remove duplication (23 June 2015);
- Further, AILG proposes data sharing arrangements with Revenue and the Department of Social Protection to address problems with the register.
- A rolling register removing deadline requirements, the annual canvass and the supplementary register;
- Online services allowing electors to manage personal electoral information;
- Online process to streamline and simplify the current application procedures and forms and to provide opportunities to deliver contact details to electors for polling stations and perhaps transmission of polling cards electronically;
- The delivery of a range of services for others authorised to access the register (e.g. portal for returning officer to facilitate the printing of polling station books, a portal for political parties to access local register data, Courts Service for jury service requirements).
LGMA, CCMA and Dublin City Council argue that there is no current legislative basis for implementing these reforms; there is no legislative basis for conducting a rolling register, for incorporating a national identifier and there is ‘an open question’ relating to the data protection possibilities of sharing electoral data by separate registration authorities. AILG notes that it has called for a system that allows the automatic registration of eligible voters at 18 in the past (14 July 2015). It was pointed out by Tim Duggan (Department of Social Protection) that, under the Social Welfare Consolidation Act, 2005 local authorities have the legislative power to collect and use PPSN, as do Revenue and any other Department listed in Schedule 5 to the Act. This is discussed below.

LGMA and CCMA believe that once legislative changes are in place, the Local Authority sector should drive through register reform. To implement this, LGMA and CCMA recommend that a lead local authority be appointed who, in partnership with the 30 other local authorities, would put in place this system. One of the advantages of this approach, it says, is that it retains the local government sector’s ‘local knowledge.’

Dublin City Council’s representative (23 June 2015) said there is no lack of willingness or expertise in respect to addressing the register issue. In its submission, Dublin City Council say that it is working in partnership with Dun Laoghaire-Rathdown County Council to develop an on-line registration system which would allow people to register online, which could be in place within a short timescale, but that amendments to legislation are required to allow on-line registration, to provide for a rolling register and to allow for the use of PPSN. The Ombudsman, Peter Tyndall, said that local authorities are extremely willing to take on new technology and use it (23 June 2015); in this respect, local authorities may be part of implementing a solution to the problems with the register.

LGMA and CCMA also say that ‘with the enactment of necessary legislation in respect of the compilation of the electoral register, the local authority sector believes significant efficiencies can be delivered because approximately 90% of the costs borne by local authorities in compiling the register are staff related.’ An online rolling register, online portal for elector registration, PPSN as unique identifiers and removal of data protection concerns – would all save this staff time.
In sum, there are differences in opinion as to who should have responsibility for reforming the electoral register and three approaches to the issue can be found in the submissions: the first proposes that responsibility for the reform and the compilation and maintenance of the register be transferred to an Electoral Commission which may or may not work in partnership with existing registration authorities; the second that an Electoral Commission initially be made responsible for overseeing the electoral registration process which would be operated by local authorities and tasked with coming up with solutions to the register problem within a short timeframe. In either case, the Electoral Commission would be expected to make recommendations for legislative change as required to implement its proposed solution to the register. This is closest to the approach taken to reform of the electoral register in the UK. A third approach suggests that the Government bring legislative reforms to the Oireachtas to allow existing registration authorities, with one authority appointed as lead, to implement the reforms to the registration process outlined above.

Regardless of the approach advocated, most submissions argue that successful reform of the register will need to be adequately resourced. This is briefly discussed in Section 5.
2.11.4. PPSN AND THE ELECTORAL REGISTER

As outlined above, the problems with the register are numerous and relate largely to its inaccuracy (duplications, listing of deceased people and emigrants), its incompleteness (many people are not on it at all) and the opportunities for fraud which these weaknesses create. All witnesses and submissions see the use of individual identifiers, most suggesting PPSN, as part of the solution to the inaccuracy and incompleteness of the Electoral Register (outlined above). This is in line with earlier reports analysed by L&RS (2015).

There are data protection issues with using PPSN, which were discussed with a number of witnesses including the Data Protection Commissioner (14 July 2015) and Paul Lambert (30 June 2015), author on data protection legislation in Ireland.
2.11.5. DATA PROTECTION ISSUES

It is currently the case in Ireland that data protected by the *Data Protection Acts, 1998-2003* cannot be used for any purpose other than that for which they were collected. Whether it is an Electoral Commission or the local authorities, any agency seeking to use PPSN for the purposes of reforming the electoral register would need to comply with data protection legislation. According to the previous Data Protection Commissioner (2008), primary legislation to over-rule the right to privacy in the interest of the common good would be required to permit registration authorities to use PPSN or other data held by state agencies to identify electors unless the voluntary consent of electors was sought to use PPSN for the purposes of compiling the register.\(^{32}\)

On the other hand, Tim Duggan (Department of Social Protection) stated that local authorities are listed as a ‘specified body’ in Schedule 5 to the *Social Welfare Consolidation Act, 2005* which allows them to request PPSN for the purposes of transactions (*S. 262*).

The Data Protection Commissioner (2015), in her submission to the Committee, advised that an Electoral Commission, when established, could take the following three-staged approach with a view to complying with Data Protection legislation and ensuring that the use of PPSN is a ‘justifiable solution’ which does not constitute a disproportionate encroachment on the individual’s fundamental right to privacy.

- In the first instance, an Electoral Commission would clearly identify what issues it seeks to resolve in relation to the register.

- Once it has completed this analysis, it would look at a range of solutions (e.g. data sharing with other agencies, use of eircodes, automatic registration at 18, use of PPSN) that would best address the problems identified.

- Then it would come to a view as to whether the PPSN posited a suitable solution to some or all of the issues (14 July 2015).

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\(^{32}\) See L&RS, *Policy rationale for the establishment of an electoral commission (March 2015).*
Expert on data protection law, Paul Lambert, recommended a similar approach in his submission to the Committee. He advised that when addressing the problems with the register, each problem is listed separately and for each problem the following solutions be considered: comprehensive use of PPSN (e.g. to compile a new register); partial use of PPSN (e.g. to achieve a particular purpose and then erase them); no PPSN but other methods such as data sharing instead.

It was noted that use of PPSN, whether to compile a register or as a verification tool to deal with current inaccuracies, would not resolve all of the problematic issues with compiling and cleaning up the register of electors. For example, it is notable that one of the problems – people regularly moving house and failing to notify the local registration authority – would require a different solution (e.g. data sharing with other agencies) unless a legislative population register, which exists in other countries, were created (Duggan, Department of Social Protection, 14 July 2015). The General Scheme of a Data Sharing and Governance Bill 2015,33 published by the Minister of Public Expenditure and Reform, proposes to extend data sharing between public bodies where there is a ‘substantial public interest.’ These measures could, if enacted, enable a registration authority to tackle these inaccuracies through data sharing arrangements.

In her presentation to the Committee, the Data Protection Commissioner advised a cautious or conservative approach to the use of PPSN.

Firstly, she noted that there would be a considerable difference between storing the PPSN and using it as an ongoing unique identifier for individuals on the register versus using the PPSN on a one-off basis to validate an individual’s registration details; the former which she thought it would be difficult to justify.

The retention of the PPSN on an electoral register database increases the risk of third party transfer or dissemination of sensitive personal data linked to the PPSN and increases the risk that data is unlawfully used. She notes that the creation of a centralised, national database, compiled using PPSN, could increase these risks.

Thirdly, she mentioned the possible ‘chilling effect’ of requiring PPSN for electoral registration, a possibility which was also raised by Members during the Committee’s hearings.

33 For an overview of the Government’s proposals in this area see McKernan Michael (December 2014) ‘Extending Data Sharing’ Eolas Magazine
2.12. THE ORGANISATION OF ELECTIONS AND REFERENDUMS

Returning Officers\textsuperscript{34} - County Registrars employed by the Court Services and the City and County Sheriffs in Dublin and Cork - are responsible for receiving nominations, taking the poll and counting the votes at Dáil and European elections and for taking the poll and counting the votes at referendums and presidential elections. They are supported by the Office of Government Procurement and the Office of Public Works in relation to supplies and equipment and local authorities in relation to the electoral register and assignment of polling places. They receive policy advice and general operational support from the Department (Franchise Section). Local authorities are responsible for local elections, and each Chief Executive appoints a returning officer for that purpose who receives nominations and counts the votes.

As local elections have for some years been held on the same day as European elections, Dáil Returning Officers (constituency level) take the poll local elections as they are held simultaneously to European Parliament elections (Association of Returning Officers, 23 June 2015). Returning Officers engage staff for running elections, arrange the logistics to ensure polling locations and equipment are in place; oversee and manage the secure collection and delivery of ballot boxes before and after voting takes place and organise count centres and staff and ensure the proper operation of the electoral system.

As County Registrars, most returning officers also have a role in relation to claims for corrections to the draft register of electors.\textsuperscript{35} The ongoing annual expenditure incurred by Returning Officers and costs incurred when organising a specific election are met by the Central Fund. Returning Officers are accountable to the Department of Public Expenditure and Reform (DPER) for ongoing expenditure and to the Department of Finance which accounts for all expenditure from the Central Fund (see Section 3 of this report).

\textsuperscript{34} Under section 30 of Electoral Act 1992.

\textsuperscript{35} Rules 8 and 9 of the Second Schedule to the Electoral Act 1992.
There is some difference of opinion in the submissions, and over the course of the hearings, as to the extent to which an Electoral Commission should play a role in the mechanisms of voting, although most recommend retaining a role for the current actors with an oversight role, and a support role in terms of resources, for the Electoral Commission. It is on the extent of this oversight role that there are differences.

On the one hand, it is proposed that an Electoral Commission be responsible for ‘policy development, implementation and service delivery in relation to ballot papers, polling stations, counting, tabulation of votes and that this would be extended to voter facilitation’ measures (Farrell et al.). Donnelly takes the view that an Electoral Commission should have responsibility for organising and running all elections and referendums, the Green Party too that responsibility for running (operational) all elections and referendums should be transferred to the Electoral Commission including responsibility for the organising of ballot papers, polling stations, postal votes, count centre and candidate registration.

However, the Green Party proposes maintaining a local structure within the Commission (Green Party) and Farrell et al. that these functions should be overseen by an Electoral Commission and provided in partnership with staff from local authorities.

On the other hand, LGMA and CCMA argue that the operational aspects of the election process should remain vested in the local authority system ‘as direct and frequent contact with local people provides confidence in the electoral system and is consistent with Government policy.’ O’Dowd, co-author of the Geary Institute Study commissioned by the Department (2008), said the research found a high level of satisfaction with the conduct of elections themselves - the Returning Officers (nomination of candidates, production of ballot papers, polling and counting of votes) - and that an Electoral Commission should have oversight only of, and not operational responsibility for, these functions.
The Association of Returning Officers in discussion with the Library and Research and in its submission to the Committee (23 June 2013) explain how each Returning Officer recruits and employs his/her own staff locally to run elections. Reidy (16 June 2015) notes the importance of this resource or ‘ad hoc service’ reporting that in Australia and Canada the Electoral Commission has had difficulties hiring staff. To replace this ad hoc service and the network of Returning Officers may be expensive (Returning Officers, 23 June 2015). Spillane (Young FG) similarly recommends that while overall responsibility for elections should lie with an Electoral Commission which should be a ‘one-stop-shop’ for all electoral issues, it should work with local authorities regarding use of venues for counts, polling stations and storage of ballot boxes. Kavanagh (14 July 2015) argued that an Electoral Commission should not re-invent the wheel and should work with what is there already.

The advantages of assigning the running of elections to Returning Officers are that they are largely independent of the public sector and are specifically drafted in for this function (O’Dowd, 16 June 2015). The Fianna Fáil Party says that ‘recent experience of nationalising services which are provided at local level confirms that there should be no effort to take over the direct running of elections within constituencies’ and that instead, the use of local authorities to directly administer elections should continue but with standardised rules. NYCI also suggests that ‘if it’s not broke don’t fix it’ recommending that Returning Officers who organise the polling places and conduct of election counts should continue to do so and that an Electoral Commission should provide an oversight and support function that would ensure consistency and reduce the number of agencies and bodies with a role in the electoral process. Former Vice-Chair of the Joint Committee on the Constitution, O’Keefe recommended that an Electoral Commission supervise Returning Officers and local authorities (30 June 2015). It might issue performance indicators or guidelines for Returning Officers along the lines of those issued by the UK Electoral Commission for Returning Officers.36

While the decentralised system of operating elections is generally approved in the submissions, there is some criticism of how elections and referendums are organised and run and a suggestion that this would be enhanced by a standardised approach and better communication with the public. The Editor of elections.org says the administration of the actual voting and counting is usually of a very high quality but that once the result is declared there is little interest in making the information available. Whelan, Weeks, Farrell et al., Sean Donnelly and Kavanagh also criticise the lack of data on election results (covered in point 2.2 above), Farrell complaining that if you want election results you go to RTÉ. This may be because Returning Officers are under-resourced and, perhaps, because the provision of results beyond polling day is not part of their role but that of the Department of the Environment, Community and Local Government.

Other, more specific, weaknesses raised were the way in which surplus votes are counted in Ireland (Weeks, 30 June 2015, Joint Committee on the Constitution, 2010) and the location of polling stations (e.g. why so much use of schools).

It was suggested that solutions to these issues, such as a re-examination of all ballot papers on each occasion (and not just after the first count) that surplus votes are to be redistributed, may require more resources than are currently at the disposal of Returning Officers. In fact, the Department of Finance in its discussion with the Committee (30 June 2015) noted that Returning Officers are independent entities and, while they have an association through which they work together, no body performs a secretariat role for them. An Electoral Commission might provide such a secretariat and examine these issues, enable a greater level of co-ordination among returning officers, allowing them to resolve common issues and deal with logistical matters on a collective basis (Department of Finance, 30 June 2015).

In fact, the Department of Finance recommend that an Electoral Commission, rather than the Department of Finance, should be fully accountable for all expenditure in relation to elections and that its establishment would enable a more streamlined, coordinated approach to the logistics involved in running elections. The Department of Public Expenditure and Reform in correspondence with the Committee, indicated that it agreed with the approach advocated by the Department of Finance. The Commission could be responsible for checking the accounts (or organising them centrally) of the Returning

37 It was suggested that the best practice method (the Gregory method) (used in Scotland and Northern Ireland) should be adopted. In order to transfer a candidate’s (who has just been deemed elected) surplus vote, all of the candidate’s votes are counted and this total is used to calculate the way in which the surplus votes are allocated. Presently, the number of votes the candidate exceeds the quota by (surplus) are lifted from the most recent pile of votes received.
Officers and making payments taking over this role from the Department of Finance. This point is returned to in Section 3.3 of this report.

In sum, most submissions recommend that an Electoral Commission be given an oversight role in the mechanics of elections but that Returning Officers and local authorities continue to perform the operational functions. However, there are differences of opinion about where overall responsibility for performance would lie. Those who suggest transferring responsibility for the running of elections and referendums to an Electoral Commission suggest that this function be performed in partnership with the existing actors – Returning Officers and local authorities. Whelan proposes a phased approach to this issue saying that Returning Officers should organise the next Dáil and local elections as is currently the case and that, after a period, perhaps 3 years, the Electoral Commission should revert with proposals on whether it should directly run individual elections and counts in Dáil and local elections.

The Department of Finance suggests that Returning Officers should be responsible to an Electoral Commission, rather than the Department of Finance, for financial expenditure matters and that an Electoral Commission might provide a secretariat for Returning Officers and address some of the weaknesses identified in the present system of organising and running elections/referendums. The Association of Returning Officers (23 June 2015) says that an Electoral Commission would be a great resource to returning officers.
3. INDEPENDENCE, MEMBERSHIP AND ACCOUNTABILITY

This section considers the issues raised in the Government’s Consultation Paper regarding the institutional or agency form that an Electoral Commission should take.

State agencies in Ireland take many different forms. Experts tend to use three key variables to categorise state agencies:

a) distance/level of independence from the parent Department;
b) how its members are appointed; and
c) mechanisms for accountability written into legislation.

Using these variables, McCarthaigh identifies three broad agency forms in Ireland (Figure 1, next page).

These three variables are central to the questions raised in the Government’s consultation paper which include:

- How can the legislation establishing an Electoral Commission promote the independence such an agency would need to perform its functions?

This is, to a large extent affected by the next question, that of:

- How and on what basis should the members of an Electoral Commission be appointed?

Further, an Electoral Commission would be an agency established to perform specific functions and using public money which gives rise to the question:

- How would an Electoral Commission’s independence be promoted along with its accountability to the Houses of the Oireachtas and/or the Government for carrying out its statutory functions efficiently and effectively?
- What mechanisms would be used to ensure this accountability?

The issue of independence is first considered, followed by the issue of membership and accountability mechanisms, including financial accountability.
### Figure 1: Types of State Agencies identified in Ireland

<table>
<thead>
<tr>
<th>Agency Type A</th>
<th>Agency Type B</th>
<th>Agency Type C</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Accountable to a Department from which its functions are delegated</td>
<td>• Executive Agency</td>
<td>• Government Office</td>
</tr>
<tr>
<td>• Operates at arm’s length from Department</td>
<td>• Distinctive unit within a Department</td>
<td>• Independent from Government Department</td>
</tr>
<tr>
<td>• Board of Directors normally formally appointed by the Minister (or ex-officio membership is possible)</td>
<td>• Less autonomy than Type A</td>
<td>• Akin to non-ministerial departments found in Whitehall-based bureaucracies</td>
</tr>
<tr>
<td></td>
<td>• No board</td>
<td>• Most are accountable to Ministers through parliament</td>
</tr>
<tr>
<td></td>
<td>• Directly accountable to the Minister</td>
<td>• Generally derive powers from statute</td>
</tr>
<tr>
<td>• Road Safety Authority;</td>
<td>• Probation Service;</td>
<td>• Staffed by civil servants of the State</td>
</tr>
<tr>
<td>• Adoption Authority;</td>
<td>• Office for Internet Safety;</td>
<td>• Have own estimate (money voted directly by parliament) and/or separate resource accounts</td>
</tr>
<tr>
<td>• National Oversight and Audit Commission (Local Government).</td>
<td>• Culture Ireland.</td>
<td>• Appointment: varies but legislation tends to guide this and generally stipulates that some individuals have expertise / experience and may include representatives of stakeholders</td>
</tr>
</tbody>
</table>

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38 Figure from McCarthaigh p. 137 in McCarthaigh and O’Malley Governing Ireland (Dublin, IPA, 2012) with additional information in particular on Agency Type C from the Institute for Governance (UK) (c2011); Civil Servants of the State are absolutely independent of the Government (for example the staff of the Houses of the Oireachtas Service), McLaughlin v Minister for Social Welfare, Supreme Court [IR1] 1958.
3.1. INDEPENDENCE

Most submissions and witnesses suggest that an Electoral Commission should be a Type C Agency and that it have the maximum level of independence from government, that its functions be set out in legislation and that it should be accountable to the Houses of the Oireachtas and the relevant Oireachtas Committee and not directly to a Minister (e.g. Farrell et al., Green Party, Fianna Fáil, NYCI, Whelan, Flanagan, O’Keefe (30 June 2015), NYCI, Sinn Féin, Fine Gael). Some also suggest that the legislation should require an Electoral Commission to engage in regular public consultation to drive its policy agenda and to inform itself of elector attitudes towards specific issues under its remit (e.g. Green party, Second Republic).

The recommendation that the legislation should ensure the independence of an Electoral Commission is in line with analyses of agency establishment in the literature. The rationale for establishing the agency will determine the extent of its independence from government. One of the most frequent reasons for the establishment of a new agency is to demonstrate political commitment to a cause or a policy, a motivation which is apparent in the proposal to establish an Electoral Commission. Where demonstrating political commitment to an issue is the prime motivating cause, politicians will tend to maximise agency autonomy in law in order to insulate the agency from future political changes and interference (McCarthaigh, 2012).

A further, unique rationale for ensuring the independence of an Electoral Commission is the removal of electoral management and administration from potential, direct political interference, a process which began with the establishment of Independent Constituency Commissions towards the end of the 1970s (Marsh, 16 June 2015).

A second, frequent rationale for establishing agencies is to respond to changing public expectations and demands (McCarthaigh, 2012, 132), a motivation also apparent in the proposal to establish an Electoral Commission in particular with regards to the registration of electors and the promotion of voter participation in general. Agencies are frequently created to secure enhanced responsiveness, effectiveness and efficiency in the performance of specific functions. Agencies can focus on a policy matter in a way that may not be possible within the context of departmental structures (MacCarthaigh, 2012, 132), or, as is the case with electoral administration, within the context of multiple actors each with responsibility for a small aspect of electoral management. Further, an independent agency can drive reform free from the accusation that the proposed reform is partisan (Kavanagh, 14 July 2015).
3.2. MEMBERSHIP

The independence of an agency is determined not only by setting out its independence from the executive in legislation but also by how, and on what basis, its members are appointed. The submissions and witnesses highlight a number of decisions that must be made about how to constitute the membership of an Electoral Commission.

3.2.1. WHO SHOULD APPOINT MEMBERS?

In a review of 249 Irish agencies, modes of appointment varied considerably from ministerial nomination to ex-officio and elected positions (McCarthaigh, 2012). As per Figure 1, Members may be formally appointed by the Minister, the Houses of the Oireachtas or the President. The formal appointment of members by the President, following the approval of the Houses of the Oireachtas, is a relatively new practice and is seen as promoting the independence of the agency from the Government.
3.2.2. ON WHAT BASIS SHOULD MEMBERS OF A COMMISSION BE APPOINTED?

In many ways, the more important question is the basis on which appointments are made.

Two models can be discerned from the submissions and witnesses:

1. That ex-officio members are appointed.
2. That members (or commissioners) are appointed for their expertise but with at least one member appointed primarily for his/her impartiality.

3.2.2.1. EX-OFFICIO MEMBERS

Fianna Fáil and the Green Party suggest, as was proposed in the Study by the Geary Institute, that the Commission be constituted in like manner to SIPO (i.e. that the legislation name ex-officio membership):

- A judge or a former judge of a Superior Court;
- Ex-officio members:
  - Clerk of Dáil,
  - Clerk of the Seanad,
  - Ombudsman,
  - Comptroller and Auditor General
- and a Government nominee (approved by both Houses) who is a former Member of the Houses of the Oireachtas. 39

The bodies which the proposed Electoral Commission would replace are predominantly composed of ex-officio membership (Constituency Commission, Referendum Commission, SIPO). The argument in favour of ex-officio members is that it ensures a degree of impartiality and legitimacy. An argument against is that the appointment of full-time leaders with expertise in the policy area may be more likely to drive an efficient reform agenda. One of the co-authors of the Study by the Geary Institute – O’Dowd – in evidence to the Committee (16 June 2015) considered that there ‘is a persuasive case, on the grounds of effectiveness and accountability, for a smaller body with specifically designated, rather than ex-officio, members.

In fact, there may be a case for combining ex-officio members with members appointed for their professional expertise.

39 Standards in Public Office Act, 2001
3.2.2.2. APPOINT MEMBERS ON BASIS OF EXPERIENCE/EXPERTISE (SET OUT IN LEGISLATION)

Whelan, Second Republic and the NYCI suggest that the Human Rights and Equality Commission be used as a model for the Electoral Commission. According to Whelan: “While the Electoral Commission should be chaired by a Supreme or High Court Judge, the other membership should be selected for their specific skills and experience which would be useful to the Electoral Commission’s work rather than because they hold any particular office. Any concerns about the independence of the membership of the new electoral commission can be adequately addressed by the fact that it is chaired by a judicial figure and by putting in place a process of selecting the other members which is independent and impartial.”

Farrell et al. similarly suggest that impartiality and expertise should guide the appointment of members, the majority of which would not be *ex-officio*, as well as suggesting that the appointment process should reflect the Government’s commitment to gender balance on state boards. They suggest that an Electoral Commission be led by a Chief Electoral Officer accountable to a Board, the composition of which would be set out in legislation and would include:

- A High Court Judge;
- A Clerk from one House of the Oireachtas;
- A political scientist with expertise in electoral studies;
- A retired newspaper editor or senior broadcaster;
- A communications specialist;
- Two voter representatives.

Kavanagh (14 July 2015) suggested that a Head Commissioner, or Chief Electoral Officer, be appointed for his/her expertise and understanding of how elections operate. A number of other submissions and witnesses suggested that at least one member of the Commission should have extensive knowledge and experience of the electoral process (Took of Elections.org, Sean Donnelly (14 July 2015), Kavanagh arguing that its leadership should be drawn from outside the political and administrative sector (14 July 2015).
3.2.3. FULL-TIME OR NON-EXECUTIVE?

A further issue is whether members of the Commission, or Commissioners, are full-time or non-executive board members. An analysis of appointments to other government agencies shows variety on this question. For example, both the Fiscal Advisory Council and the Human Rights and Equality Commission have non-executive boards to which the Director (whose position and functions are clearly outlined in the legislation) is responsible (Table 5 below). COMREG, on the other hand, has three full-time Commissioners. The General Scheme of the Standards in Public Office Bill 2015 proposes that the new Office of Public Standards Commissioner (to take over SIPO’s role in overseeing ethics in public life legislation) would have two full-time commissioners (A Public Sector Standards Commissioner and Deputy Commissioner Part 3, Heads 17-20; 26-37). A non-executive board is not mentioned in the General Scheme.

The NYCI suggest that consideration be given to a model along the lines of COMREG in which there are three full-time commissioners.

The model proposed for an Electoral Commission by Farrell et al. (see above) includes a mix of executive and non-executive members: a full-time Chief Electoral Officer who is accountable to a board which is appointed on the basis of impartiality and expertise.
3.2.4. PROCESS OF SELECTION

A process of selecting and appointing members is also required (where they are not ex-officio members). The Public Appointments Service (PAS) is increasingly involved in the selection process for members of State agencies, rather than, as has been the case in the past, allowing a Minister to select members in accordance with the criteria set out in the legislation.

Whelan in his submission to the Committee suggests that:

“a selection process run perhaps through the Public Service Appointment Commission assisted by a selection panel appointed by a Dáil committee (or in a manner similar to how the Human Rights and Equality Commission were recruited or how the proposed Policing Authority is likely to be recruited) would be the appropriate approach.”

McCarthaigh pointed out that the appointment process for an Electoral Commission would be subject to the Department of Public Expenditure and Reform’s new Guidelines on appointments to state boards (2014), the purpose of which is to open up access to state boards, improve the calibre and quality of appointees and to ensure transparency. As such, vacancies for non-executive board members would be publicly advertised on stateboards.ie which is run by PAS and the appointment of full-time commissioners would be subject to ordinary recruitment procedures for the public service (a recruitment process run by PAS or Top Level Appointments Committee (TLAC).\(^{40}\)

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\(^{40}\) TLAC has a key role to play in identifying and selecting candidates for the most senior positions throughout the Civil Service. TLAC is responsible for selecting the successful candidate at final interview stage from a shortlist of candidates put forward by the PAS for consideration following a competitive preliminary process. The senior positions filled from the TLAC process include Secretaries General and Assistant Secretaries, and other equivalent posts in Government Departments and Offices such as Programme Director, Chief Veterinary Officer and Chief State Solicitor.
Box 4: Human Rights and Equality Commission (Appointment Process)

The main features are:

Members are appointed by the President for a period of 5 years (renewable once);

President appoints members on the advice of Government which itself is advised by a resolution of both Houses of the Oireachtas;

Where a vacancy arises, the Government invites the Public Appointments Service to create a selection panel from individuals who, the Service believes have relevant experience of, and expertise in relation to, matters connected with:

(a) human rights matters or law;
(b) equality matters or law;
(c) public sector administration and reform;
(d) board management and corporate governance.

The vacancy is publicly advertised and the appointment made on the advice of the Selection Panel.

The Act ensures a degree of gender equality (at least 6 men and 6 women on a board of between 12 and 15 members).

In sum, while opinion differs over the precise detail of a process of appointment to an Electoral Commission, there was a broad consensus that it is necessary to have both impartiality and expertise amongst members. Given the need, and given the substantial reform programme that may be assigned to an Electoral Commission, the legislation might best provide for a combination of the ex-officio and the alternative model identified and include provision for the appointment of at least one, and perhaps two, full-time Electoral Commissioners in addition to a non-executive board.
3.2.5. MEMBERSHIP AND INVOLVEMENT OF STAKEHOLDER GROUPS?

A study by McGauran et al. (2005) found that the largest cohorts of board members on national non-commercial agencies in Ireland were representatives of the stakeholder groups that individual agencies engage with, as well as persons with relevant experience. The same study found, however, that the existing board appointment mechanisms did not ensure that the board had the necessary expertise (McCarthaigh, 2012, 146). McCarthaigh in his statement to the Committee (16 June 2015) noted an international trend away from ‘stakeholder’ boards towards more professional, competency-based boards in public organisations arising from increased corporate governance requirements.

The question of involving stakeholders is particularly relevant given the number of actors currently involved in the electoral process and the extent of knowledge they hold. LGMA and CCMA suggest that a representative of the local authority sector be nominated to an Electoral Commission; the Association of Returning Officers that Returning Officers be represented on an Electoral Commission. The question of whether former Members of the Houses of the Oireachtas, as key users of the electoral system, should be eligible for appointment to an Electoral Commission, which was raised in the Government’s consultation paper, was also discussed during Committee meetings.

Regarding the latter, Whelan argues that with ‘a robustly independent selection process’ (such as the one he advocates above) in place there is no reason why former parliamentarians should be excluded from the membership of the Electoral Commission provided they met the other relevant criteria. Other witnesses said it was vital that former public representatives are represented on it (e.g. Kavanagh, Donnelly, 14 July 2014, O’Keefe, 30 June 2014).

The idea of establishing a stakeholder advisory group was raised by a number of witnesses (e.g. McCarthaigh, 16 June 2015, Kavanagh, Donnelly, 14 July 2015). A stakeholder group would assist an Electoral Commission in carrying out its functions, without having stakeholders as members of the Commission. Such a stakeholder group has recently been established by the new Lobbying Regulator to assist SIPO (which has responsibility for the regulation of lobbying) in implementing the new regulations. Such an advisory group is also used by the Road Safely Authority (McCarthaigh, 16 June 2015).
Table 5 below compares the membership, staffing, accountability mechanisms and funding of four key agencies in Ireland, two of which were recently established and one of which is self-financed. The fourth is (SIPO), whose responsibilities under the Electoral Acts are proposed to be assigned to an Electoral Commission. It provides useful context for the above and the following discussion about accountability mechanisms.
### Table 5: Process of appointment and accountability mechanisms in state agencies

<table>
<thead>
<tr>
<th>Membership</th>
<th>Secretariat / Staff</th>
<th>Accountability mechanisms in the Act</th>
<th>Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Advisory Council</td>
<td>Council, with consent of Minister and Minister for Finance, recruits staff and sets out recruitment specification. Competitions run by PAS. Secretariat is based in the ESRI and office space and support services in the areas of Accounts, IT, and Corporate Services, are provided by the ESRI.</td>
<td>Annual report Chair is accounting officer and sends report to Comptroller and Auditor General Chair, as accounting officer, must appear before the Dáil Committee of Public Accounts Freedom of Information Act applies</td>
<td>Funding for Council is from the Central Fund with a ceiling of €800,000 (adjustable for inflation) stipulated in the Act.</td>
</tr>
</tbody>
</table>

**Fiscal Responsibility Act, 2012**

- 5 Members (4-year terms)
- One member designated as Chair
- Appointed by Minister (subject to code of conduct on appointment to state boards)
- Expertise required
- Act refers to ‘competence and experience in domestic or international macro-economic or fiscal matters’ as ‘desirable’
### Table 5 (continued)

**COMREG (Commission for Communications Regulation)**

**Communications Regulation Act, 2002**

<table>
<thead>
<tr>
<th>1-3 full-time Commissioners</th>
<th>Commissioners, with the consent of the Minister and the Minister for Finance, determine the number, grading, remuneration and other conditions of service of staff to be appointed to the Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointed by Minister, following an open competition run by PAS</td>
<td>Staff were transferred from the Directorate of Telecommunications Regulation (which was disbanded with the creation of COMREG)</td>
</tr>
<tr>
<td>Full-time position for between 3 and 6 years</td>
<td></td>
</tr>
<tr>
<td>One Commissioner is the Chair</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Strategy statement reflecting its functions within 6 months of establishment and then every two years (s31)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Public consultation to inform strategy statement</td>
</tr>
<tr>
<td></td>
<td>Accounts submitted to Comptroller and Auditor General and Chair must appear before the Dáil Committee of Public Accounts</td>
</tr>
<tr>
<td></td>
<td>Annual report to comment on performance, work programme and compliance with financial management code</td>
</tr>
<tr>
<td></td>
<td>Largely self-funding from levies on entities regulated.</td>
</tr>
</tbody>
</table>
### Table 5 (continued)

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Between 12 and 15 members, one appointed as Chief Commissioner</strong></td>
<td><strong>Act provides for a full-time Director of the IHREC and describes the functions of the office (s20-21)</strong></td>
</tr>
<tr>
<td>Appointed by President on advice of government and a resolution of the Oireachtas</td>
<td>The first Director may be designated by the Commission. Commission may, with approval of Minister and Minister for Public Expenditure and Reform, appoint staff.</td>
</tr>
<tr>
<td>Act outlines Members must have knowledge of, or experience in, matters connected with human rights or matters connected with persons or classes of persons who are disadvantaged.</td>
<td>Director is accountable to other Oireachtas Committees (s.22)</td>
</tr>
<tr>
<td>Act outlines that PAS establish a selection panel made up of those with expertise and experience in human rights and equality matters</td>
<td>Three-year Strategy statement including key objectives and related strategies (s.25)</td>
</tr>
<tr>
<td>Accounts submitted to CAG</td>
<td>Annual Report laid before Houses within 6 months of end of financial year (s.28)</td>
</tr>
<tr>
<td>Commission has its own Oireachtas Vote (in 2015) in the Estimates (Vote 25) and is accountable through its Director – the Accounting Officer, to the Public Accounts Committee. Budget (in Estimates) is €6.3 million (2015)</td>
<td></td>
</tr>
</tbody>
</table>
### Standards in Public Office Commission

#### Standards in Public Office Act 2001

<table>
<thead>
<tr>
<th>Standards in Public Office Commission</th>
<th>The Office of the Ombudsman provides services to SIPO in order to allow it to carry out its functions.</th>
<th>Annual report to be prepared for the Minister and published within 6 months of end of the financial year (Section 27 <em>Ethnics in Public Office Act</em>)</th>
<th>The expenditure is provided for in Subhead B of Vote 18 [Office of the Ombudsman].</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Members all ex-officio</td>
<td>Act determines the membership:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Chairperson who is a judge / former judge of</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>the Supreme or High Court</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Comptroller and Auditor General</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Ombudsman</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Clerk of the Dáil</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Clerk of the Seanad</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• A former member of Houses of the Oireachtas,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>appointed by the Government following a</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>resolution of both Houses (may not be an MEP)</td>
<td></td>
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<td></td>
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<td></td>
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</tr>
</tbody>
</table>
3.3. ACCOUNTABILITY MECHANISMS (INCLUDING PERFORMANCE INDICATORS)

McCarthaigh\(^\text{41}\) highlights some of the pitfalls of devolving governance to agencies in particular for the accountability of government to parliament and to the electorate.

He notes that attempts to improve service delivery by depoliticising road and health services through the use of agencies has resulted in criticism of Ministers who refuse to answer parliamentary questions concerning vital public services on the grounds that they concern operational matters. Some agencies have been accused of failures in service delivery and of lacking any accountability to parliament for these failures (McCarthaigh, 2012, 148).

Another potential pitfall is the failure to anticipate the costs associated with establishment which can turn a cost-saving policy into a costly one, at least in the short-term (see Section 5 of this report).

As such, when considering accountability mechanism for an Electoral Commission, the question arises as to who ultimately holds an Electoral Commission to account if there is poor service delivery? Or if there is alleged incidence of electoral malpractice or fraud, what would be the responsibility of the Electoral Commission, in particular in the event of an election petition? This is why mechanisms that ensure the accountability of an Electoral Commission to government or parliament are crucially important.

A number of instruments are proposed by witnesses and in the submissions which would promote an Electoral Commission’s independence, yet still achieve its accountability to the Oireachtas and to the public for the performance of its statutory duties. It is advisable that these mechanisms are specifically written into the legislation, perhaps making up a section of the legislation (e.g. as it does in the Human Rights and Equality Commission Act). The instruments proposed include:

- Annual Report to the Houses of the Oireachtas and the Minister (all submissions), The legislation might require that the report is within 6 months of the end of the financial year (as per Human Rights and Equality Commission, for example);
- Annual meeting with the relevant Oireachtas Committee to discuss annual report and the Agency’s undertaking of its duties as outlined in legislation and in line with performance indicators designed to illustrate it is achieving its objectives; the legislation can provide that a specified leader of an Electoral Commission is required to come before a Committee on request (as per Human Rights and Equality Commission and the Irish Fiscal Advisory Council);
- The legislation should clearly outline the functions of an Electoral Commission as accountability mechanisms are enhanced where an agency has clearly defined functions; a strict policy agenda for an Electoral Commission should be set out to ensure against its establishment for a single purpose (e.g. the electoral register) with a lack of clarity as to its other functions (McCarthaigh);
- The legislation should include a post-legislative scrutiny or sunset clause. McCarthaigh, in his submission, drew the Committee’s attention to the Department of Public Expenditure and Reform’s (2014) recent report on the implementation of the Agency Rationalisation Programme which suggested that all state bodies will be subject to Periodic Critical Review to assess the ongoing business case and to secure improvements in accountability, efficiency and effectiveness’ (Department of Public Expenditure and Reform, 2014, 12-13). Reviews are frequently after five years.

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42 For example, the Regulation of Lobbying Act, 2015 (Part 1, s.2) is subject to a mandatory review every three years, organised by the Minister who reports to the Oireachtas.
The legislation should require that performance indicators linked to higher-level objectives of the organisation are devised against which the performance of the agency can be assessed (e.g. Green Party, NYCI, Farrell et al., Whelan, Weeks, McCarthaigh). In particular, McCarthaigh in his statement to the Committee described the new, more regulated agency environment brought in by the present government including the use of performance frameworks and service-level agreements between agencies and funding/sponsoring departments;

- Annual presentation at a public meeting of general population and media as to how the Electoral Commission is carrying out its remit (Green Party and NYCI).
- Regarding financial accountability, the legislation should set out that the Commission’s Accounting Officer is accountable to the Comptroller and Auditor General and the Dáil Public Accounts Committee;
- For voted expenditure, the Dáil process of scrutinising the estimates is a further accountability mechanism (see below).

A further accountability mechanism not mentioned above but evident in legislation outlining accountability for other agencies are three-year strategy statements reflecting the functions of the organisation.
3.3.1. FINANCIAL ACCOUNTABILITY

As per Table 8, Section 5, electoral management and administration is funded from a combination of voted expenditure (the Estimates) (primarily, but not exclusively, of Department of the Environment) and the Central Fund (non-voted expenditure). At present the latter covers spending on organising and running elections and referendums. The greatest part of the spending (80%-90% in most years) in related to electoral events, i.e. elections or referendums.

The Department of Finance, in its submission to the Committee, recommends that the present arrangement whereby the cost of elections and referendums are charged to the Central Fund, rather than to an Oireachtas vote, should remain as it helps to ensure the independence of the electoral process. No witness or submission suggested any change to this arrangement. As such, the expenditure of an Electoral Commission is likely to be funded by both non-voted and voted expenditure. Whether expenditure is non-voted or voted affects the oversight mechanisms available to the Oireachtas.
3.3.2. NON-VOTED EXPENDITURE AND ACCOUNTABILITY

The Department of Finance recommends that financial responsibility in relation to the running of elections be assigned under the legislation to an Electoral Commission and that it should set out that the person in charge of an Electoral Commission, rather than the Accounting Officer of the Department of Finance (as is currently the case), should be the 'Accounting Officer' for this expenditure of the Central Fund.

The Accounting Officer, whether he/she is the head of the Electoral Commission (as advocated by the Department of Finance) or is the Secretary General of the Department of Finance, would supply the Department of Finance with the information in time for the publication of the Central Fund accounts and accountability for expenditure would continue through ex-post financial scrutiny by the Public Accounts Committee.

As non-voted expenditure does not appear in the Revised Estimates for Public Services there is no opportunity for the Oireachtas to engage on performance issues through the Estimates process. However, the legislation could require that performance information and targets regarding expenditure under the central fund are set out in the annual report and strategic plan of the organisation and, as such, there may be opportunities to discuss them during meetings of the agency with an Oireachtas Committee.

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43 Under s.4 of the Comptroller and Auditor General (Amendment) Act 1993 the Department of Finance publishes detailed accounts of the Central Fund each year, known as the Finance Accounts. They must contain detailed analysis and classification of receipts and issues of the Central Fund as well as details of the National Debt. They are laid before the Dáil and examined by PAC. Generally, the Accounting Officer of organisations which are funded (in full or in part) from the Central Fund must appear before PAC on request.
3.3.3. VOTED EXPENDITURE AND ACCOUNTABILITY

Financial scrutiny of an Electoral Commission for activities funded through voted expenditure should be via the audit mechanism of the Comptroller and Auditor General and the related oversight of the Public Accounts Committee (Farrell et al., McCarthy, 23 June 2015).

Parliamentary scrutiny of the estimates is a further accountability mechanism. The Dáil, through the (Revised) Estimates for Public Services, allocates monies to agencies and departmental programmes.44 An agency, such as an Electoral Commission, may have its own Vote, like, for example, the Human Rights and Equality Commission or the Office of the Ombudsman (including SIPO). In this case, the ‘Accounting Officer’ for expenditure of Voted expenditure would be the head of the Electoral Commission, rather than the Secretary General of the Department. Alternatively, funding is allocated as a Programme area of the Department. The former arrangement is considered to give an agency more independence from the Department. In another variation of funding arrangements, McCarthaigh suggests that an Electoral Commission could be funded via an agreed annual budget or a three-year envelope budget (McCarthaigh, 16 June 2015).

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44 Some agencies such as the Houses of the Oireachtas Commission, the Irish Fiscal Advisory Council are directly funded by the Exchequer and are funded under specific legislation rather than the annual Estimates process.
3.3.4. PERFORMANCE INFORMATION

Regardless of whether an agency has a separate Vote or is a programme area of the Department, if an organisation or function is funded through Voted expenditure, performance information is provided with the Revised Estimates for Public Services and can be discussed with the Estimates by the relevant Committee. This allows the Oireachtas to examine how efficiently and effectively the monies allocated are spent.

It is acknowledged that to date the performance information that accompanies the Revised Estimates is not of great quality. For example, the performance information presented in the Revised Estimates associated with the tasks that will potentially make up the Electoral Commission is minimal and is confined to the information provided for SIPO under the Office of the Ombudsman’s Programme B (Table 6). No further performance information is available as local authorities are not directly centrally funded, there are few performance indicators associated with local authorities in the Revised Estimates and there are no outputs associated with the franchise area in the Local Government Programme of the Department of the Environment, Community and Local Government despite having a high level goal "[i]n the Franchise area, to develop policy, legislation and systems as key elements of electoral reform."

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### Table 6: Output targets of the Standards in Public Office Commission

<table>
<thead>
<tr>
<th>Output Targets</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Give ongoing advice and guidance in relation to implementation of Political Party Accounts Guidelines</td>
<td>Target</td>
<td>Target</td>
</tr>
<tr>
<td>Complete one investigation; commence investigations where required.</td>
<td>Target</td>
<td>N/a</td>
</tr>
<tr>
<td>Complete investigations. which are complaint driven where required.</td>
<td>N/a</td>
<td>Target</td>
</tr>
<tr>
<td>Ongoing management of annual returns process under Electoral Act and PLA Act.</td>
<td>Target</td>
<td>Target</td>
</tr>
<tr>
<td>Implement the provisions of the Registration of Lobbying Bill when enacted</td>
<td>N/a</td>
<td>Target</td>
</tr>
<tr>
<td>Provide secretarial services to any Referendum Commissions that may be established in order to deliver on the Commission’s priorities</td>
<td>N/a</td>
<td>Target</td>
</tr>
</tbody>
</table>

Source: Revised Estimates for Public Services 2015

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46 Parliamentary Leader’s Allowance which has recently been changed to Parliamentary Activities Allowance. This funding - the party leaders' allowance - was introduced by the Ministerial and Parliamentary Offices Act, 1938 and has been amended a number of times since then, most recently by the Oireachtas (Ministerial and Parliamentary Offices)(Amendment) Act, 2014. The 2014 Act changes the name of the allowance from 'Party Leaders Allowance' to 'Parliamentary Activities Allowance.' The provisions relating to the allowance came into effect on 1 July 2014.
3.3.5. POSSIBLE PERFORMANCE INDICATORS FOR AN ELECTORAL COMMISSION

It is the Government’s policy to enhance the capacity of the Oireachtas to perform financial scrutiny primarily. Further, many witnesses and submissions highlighted performance indicators as a key mechanism for ensuring that the Electoral Commission is held accountable for carrying out its statutory functions. As such, it is desirable that the good information be provided on performance indicators by an Electoral Commission and that it is designed according to best practice.

Performance indicators are designed to measure the extent to which an agency achieves its goals, including high-level goals, and thereby serve to make it accountable. While the precise functions of an Electoral Commission, and its high-level goals, would need to be clear before performance indicators are set, an examination of the type of performance indicators used by other Electoral Commissions may inform those setting performance indicators for an Electoral Commission in Ireland.

Indicators are either output or impact focused. Output and performance indicators are designed to measure how efficiently and successfully the agency is implementing its agreed activities or outputs. Examples might include satisfaction by participants with a voter education programme (measured by survey), the accuracy of the electoral register (measured by spot-checks) or the amount of time and number of contacts it takes for an elector to put his/her name on the electoral register.

Impact indicators tend to be longer-term and measure the result of the activity and output of an organisation or policy (i.e. is implementation of these outputs helping the agency to achieve its higher-level goals?). For example, an indicator designed to measure the overall high-level impact of the New Zealand Electoral Commission, which has a remit to educate the public about the electoral system, is the “% of voters who consider the Mixed Member Proportional voting system is easy to understand.” This % could be measured over time bearing in mind that improvement in understanding may not be fully attributable to an Electoral Commission. In Ireland, the revised estimates allow for both types of indicators - “context and impact indicators” and output targets.

The L&RS has identified five categories of performance indicators from the indicators used by the Australian and New Zealand Commissions, which are presented in detail in section 5.7 (pp. 59 to 63) of the Government's consultation paper: process, quality, client satisfaction, quantity, activity-based. A further type of indicator, not found but potentially useful is an indicator of cost effectiveness. The indicators, description and targets are described in Table 7 below.
Best practice suggests that data on most of the targets chosen should be relatively easily obtained through internal systems. If targets are framed around client satisfaction there will be a need for surveys of the clients. Such surveys should be taken annually, where appropriate, and the questions asked should not vary substantially year on year or, where appropriate, from election to election or referendum to referendum. Performance information and targets should be updated every few years to reflect new priorities.
Table 7: Output indicators, description and targets useful for an Electoral Commission

<table>
<thead>
<tr>
<th>Output Indicator</th>
<th>Description and targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Process indicator</td>
<td>Useful where the agency administers a process (e.g. applications, registrations, complaints). The target is set as a <strong>share of the applications processed in a specific period of time.</strong> E.g. that “99% of enrolment transactions (are) processed within three business days.” Different targets are set for different processes e.g. new applications, change of address, corrections to the register. Such process indicators can also be used to assess performance in other administrative work such as registering political parties, SIPO’s processing of annual returns on political finance, processing complaints etc.</td>
</tr>
<tr>
<td>Quality indicators</td>
<td>Completing a process within a set period may not always be the best measure of performance. There is a need for quality indicators. Quality indicators would not relate, for example, to how quickly and efficiently a new elector is registered but would measure the accuracy of the electoral register or the accuracy of the transactions processed. An example from Australia is “the percentage of enrolment transactions processed correctly: Target 99.5% (Australian example). To measure performance on this quality indicator, independent sampling could be used to track the accuracy of the registrar at a given point in time or the number/share of corrections needed after initial processing be counted.</td>
</tr>
</tbody>
</table>
**Client satisfaction indicators**

These indicators measure the satisfaction of clients (be it the general public or a selected client group), generally by survey, and the average result should be above a certain target or a certain share of clients should be satisfied. In the Australian and New Zealand examples the clients include the general public, local government officials, political party officials and election candidates.

**Quantity indicators**

These indicators set a quantity target for an output over which the agency has control, rather than a service provided on a demand basis. The performance of the Australian Electoral Commission in undertaking its function to provide education on the electoral system is assessed by quantity indicators e.g. the number of participants on courses. There are alternative ways to frame such targets i.e. a target to increase or decrease the quantity of the output by a specific amount rather than a specific quantity target. For example “a 5% reduction in the number of complaints received” or “a 10% increase in the number of participants on a course” etc. The quality of the education programme, on the other hand, would be assessed using client satisfaction indicators.

**Activity-based targets**

In the Australian example, the Electoral Commission has a number of other targets which are activity based. An example is “communication strategies and services developed, implemented and reviewed as appropriate”. While targets like these have merit internally within an organisation, in a performance reporting context especially in accountability to Parliament, their merit is less obvious. Such activity will (if successful) have an effect on other output performance measures (customer satisfaction, accurately of register, etc.). In a performance context it should probably be seen as the ‘activity undertaken to improve performance’ rather than as a performance measure or target itself.

**Cost-effectiveness indicators**

There are no cost effectiveness indictors in the Australian or New Zealand examples. Cost effectiveness indicators measure how much it costs on average to complete a given output. There may be a role for cost-effectiveness indicators and associated targets in the case of an Electoral Commission especially if some of the tasks for which the Commission is responsible are outsourced to local authorities or returning officers. Having a large number of external bodies/actors undertaking the same tasks means the cost of the task can be compared. If measures of cost associated with different tasks can be created then targets based on the best performers can be introduced to improve performance. It should be noted that certain circumstances beyond the control of the body (e.g. population density) may affect the cost and should be accounted for when setting targets.
4. ESTABLISHMENT

The Committee and witnesses alike stressed that the establishment of a new agency be approached with caution.

Farrell (16 June 2015) argued that the introduction of an Electoral Commission would, in fact, reduce the number of public bodies or ad hoc bodies with ex-officio members which are involved in the administration of elections with the Boundary, Commission, the Referendum Commission, SIPO replaced with one body and with one, rather than several, judges. Marsh stressed that the point of an Electoral Commission is to combine and overtake functions, many of which are already being undertaken by different actors, so that they can be better carried out (16 June 2015).

In the context of the proposed establishment of an Office of the Public Sector Standards Commissioner to supervise new ethics legislation in place of SIPO, Jim O’Keefe (30 June 2015) notes that the two bodies would absorb, subsume or bring to an end the current Standards Commission (SIPO), the Referendum Commission and, he advocates, the Boundary Commissions.

However, AILG warns that the establishment of an Electoral Commission could lead to duplication, arguing that many of the actors performing functions which could be transferred to an Electoral Commission, such as local authorities and Country Registrars (Returning Officers) would continue to exist and the Department would need an office concerned with franchise issues, in particular for legislative matters.

Members and witnesses alike argue that this risk of duplication needs to be addressed in the legislation and that there should be fewer, rather than more, appointments to boards as a result of the Electoral Commission’s establishment.
4.1.PHASED APPROACH

Most submissions and witnesses at the Committee hearings, especially that of 23 June 2015, are of the view that a ‘big bang’ approach could endanger the relatively high levels of trust in the integrity of elections and referendums (e.g. Association of Returning Officers, Seamus McCarthy, 23 June 2015, NYCI (submission), Whelan (submission), LGMA and CCMA, submission). At the same time, most of those consulted by the Committee, including experts, stakeholders and representative groups recommend that an Electoral Commission is established without delay.

To avoid a big bang approach, yet at the same time to maintain political momentum behind reform of electoral administration, a phased approach to the establishment of an Electoral Commission is recommended by those consulted, this broadly in keeping with the recommendations of the Geary Report (2008).

There are some differences in approach which can be partly explained by differences in opinion on what functions should be assigned to a Commission.

One approach recommends the early transfer of all regulatory functions to a newly-established electoral commission along with giving it a remit to give policy advice after a set time period on the areas in urgent need of reform (e.g. electoral register, creation of a central website with information for all electors and stakeholders). Farrell et al., as well as Marsh, recommend that one of the first policy tasks assigned to such a Commission would be to investigate, and make recommendations on the best way to reform the electoral register (16 June 2015).

Another approach recommends a more limited transfer of functions initially.

Regardless of which approach one takes, many suggest that a clear timetable should be in place for the transfer of all functions that the Electoral Commission is to undertake. McCarthy recommends that there is a clear model for the transfer of functions set down and a phased gearing up of an Electoral Commission. The NYCI recommend a phased approach with a clear timetable for implementation and suggest that examining state bodies that undertake functions previously carried out by a range of other public bodies such as the Charities Regulatory Authority, Property Services Regulatory Authority, may assist in preparing for the transfer of functions. Muiris McCarthaigh recommends building into the legislation mechanisms to ensure progress in the establishment process such as mandatory reviews. For example, mandatory reviews are outlined in the general scheme of the Public Services Reform Bill 2015.
On the first approach, Seamus McCarthy, Comptroller and Auditor General and ex-officio member of the Referendum Commission suggests that a distinction be made between heavy spend areas and regulatory-type functions and that the latter should be transferred first. He says that transferring functions, such as those of the Referendum Commission, may be less problematic than moving a programme like central oversight of the electoral register (23 June 2015. The Association of Returning Officers concur that the transfer of regulatory functions would constitute an easier transfer than some of the other matters (23 June 2015).

The Ombudsman also suggests that regulatory functions should be transferred early (23 June 2015) but that once a process of transition/transfer of functions begins it should be timetabled and not dragged out.

Farrell et al. recommend that:

“as a first step the Electoral Commission should be established via legislation as a statutory agency which subsumes SIPO (its functions under the Electoral Acts), the functions of Registrar of political parties, all election policy and management functions of the Department and that a permanent Referendum Commission should be established within it.”

On the second, more cautious approach, Whelan recommends that an Interim Electoral Commission be established immediately by legislation, be given the oversight functions for the administration of elections held currently by the Department, and that its functions be added to over a five year period. Fianna Fáil and O’Dowd recommend that in the first instance the Commission should take over the oversight and administration roles of SIPO (under the Electoral Acts) and the Franchise Section in the Department.

LGMA and CCMA similarly recommend that an Electoral Commission be established through a series of small developments within the framework of an agreed programme of transformation. They see its role at this stage as primarily to advise on policy and legislative reform. They suggest that the first phase of the establishment would be to develop, gain agreement for, and oversee the rollout of a reform programme in which legislative change would be an early priority. By this, LGMA and CCMA are referring to the amendment of the Electoral Acts to allow for the complete reform to the process or registering electors. Fianna Fáil recommends that as part of the electoral reform programme, the Electoral Acts (including Referendum Acts) be consolidated into one Act.
The difference between these approaches primarily relates to timing and it is possible to identify commonalities between them. There is most consensus on the early transfer of the functions of the Franchise Section of the Department and SIPO’s functions under the Electoral Acts, with more recommending the early transfer of the Referendum Commission and the Register of political parties than not. Further, an early role for a Commission in addressing, via recommendations, areas in urgent need of reform is recommended by many.
4.2. INTERIM COMMISSION

The idea of establishing an interim Electoral Commission was raised throughout the discussions. For example, while recommending an early transfer of all regulatory functions in her submission (with Farrell et al.,) in her presentation to the Committee, Reidy advised further, that a 'skeletal body' be put in place before the next general election. This is similar to the Interim Commission proposed by Whelan, whose range of functions is expanded over five years.

This Interim Commission might consist of an interim Chief Electoral Officer who would coordinate and link together all the stakeholders (Kavanagh, 14 July 2015) and/or who could immediately set about the task of designing a one-stop shop website on elections (Donnelly, 14 July 2015).

The Department of Finance says that if an Electoral Commission is established on a phased basis, the Department would expect to be consulted when its powers and functions are under review (as the Department has considerable responsibility in relation to the spending on electoral events).

As alluded to in earlier sections of this Report, Muiris McCarthaigh (16 June 2015) discussed the potential role of an advisory stakeholder board over the course of the establishment of an Electoral Commission, and perhaps beyond establishment. He pointed to the Road Safety Authority’s stakeholder board as good practice. SIPO established an advisory group of stakeholders as part of its implementation of the Regulation of Lobbying Act 2015.47 LGMA and CCMA and AILG suggest in submissions that a representative of local government be appointed to an Electoral Commission; it may be that a Stakeholder Advisory Board would be an equally appropriate appointment for such a representative. Kavanagh discussed a similar idea when proposing an advisory panel of experts which could include former members of the Oireachtas (14 July 2015).

47 Sherry Perreault (June 2015) Presentation by Head of Lobbying, SIPO at Public Affairs Ireland Seminar on the ‘Regulation of Lobbying Act 2015’.
5. COSTS

The impetus behind the proposal to establish an Electoral Commission is not financial; rather it was to enhance the democratic process. However, a key consideration in the Government’s Consultation Paper on the establishment of an Electoral Commission is the possible cost of this policy; would it result in additional costs associated with establishing an agency or would it ultimately reduce costs by reducing the number of actors involved in the management and administration of elections?

Some international evidence suggests that electoral commissions are more cost-effective. However, as the Consultation Paper (2015, p.11) points out, cost savings cannot be assumed and especially not in the short term and where it is envisaged that an Electoral Commission perform additional functions including a substantial reform programme. The cost of an Electoral Commission would clearly depend, in part, on which tasks are assigned to it and the extent of reforms to be implemented. Table 848 displays the existing annual costs of electoral management task-by-task. There are 12 distinct tasks performed by over nine different actors.

The Table shows that ongoing expenditure on electoral administration is incurred by a number of different actors who are funded from voted expenditure under the DECLG, local governments’ budgets and non-voted expenditure from the Central Government Fund (in the case of the ongoing expenses of Returning Officers). It shows that episodic expenditure (i.e. specific costs associated with a particular election or referendum) is also incurred by a number of actors and is largely funded by non-voted expenditure from the Central Government Fund. According to the Department of Environment, Community and Local Government, in recent years 85% of expenditure is event related.49

While few witnesses or submissions discussed the cost implications of introducing an Electoral Commission in detail, a number of observations were made in relation to costs.

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48 Data is taken from the costs provided in the Government’s Consultation document (2015).
49 Information given by Department’s Franchise Section (November 2015).
Firstly concerning function 5, Table 8 the submission from LGMA and CCMA says that approximately 90% of the costs borne by local authorities in compiling the register are staff-related. They argue that with the enactment of necessary legislation in respect of the compilation of the electoral register, permitting an online rolling register, an online portal for elector registration and PPSN as unique identifiers, and the removal of data protection concerns, a considerable amount of this staff time would be saved.

Also regarding function 5, the NYCI highlights the low levels of resources allocated to the electoral register. It notes that New Zealand, which has a similar sized electorate to Ireland, spends approximately €12.5 million (20.5 NZ $) a year maintaining the electoral register. NYCI compares this to the €4.8 million in 2014 allocated to the 31 authorities for maintaining the electoral register in Ireland. They omit from the comparison the additional €2.6 million cost of services provided to the local authorities’ franchise units by the central administration of local authorities in 2014 which is mostly related to the register and which brought expenditure on the register closer to €7 million. This omission may have been deliberate. This combined figure for the funding allocated to the electoral register is high in 2014 as it was an election year (for example, the sum of the additional monies allocated to the electoral register across the 31 authorities in 2013 was €760,000 in 2013).

In relation to function 12 - the material costs of running elections and referendums - Deputy Fleming pointed out the single biggest expense in the running of any election is the cost of sending literature from each party/candidate to every voter on the register of electors. He suggests that one document (rather than several) be created which includes all candidates running in the election (per constituency for general elections) and sent to each household. For example, this cost €11.6 million in the General Election (2011). This, he argued, would cut down substantially on both postage and production costs. In this regard it is noted that the distribution arrangements were amended for the 2014 European elections and candidates at that election were entitled to send an item free of charge of postage to each household in the constituency instead of to each registered voter. This resulted in savings of some €2.5 million.
### Table 8: Estimated annual cost of electoral management by Task

<table>
<thead>
<tr>
<th>Task</th>
<th>Actor</th>
<th>Voted/non voted expenditure</th>
<th>Expenditure (Annual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Policy support for the Government (and other actors) on electoral issues</td>
<td>Franchise Section, DECLG</td>
<td>Voted expenditure Local Government Programme Vote DECLG</td>
<td>2011: €873,395</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2012: €946,848</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2013: €854,821</td>
</tr>
<tr>
<td>2. Operational: preparing for elections/polls⁵⁰</td>
<td>Franchise Section, DECLG</td>
<td>Voted expenditure (as above)</td>
<td></td>
</tr>
<tr>
<td>3. Recommend constituency boundaries for Dáil and European parliament elections in line with legislation and the Constitutional requirements</td>
<td>Independent Constituency Commissions. Secretariat is Franchise Section, DECLG.</td>
<td>Voted expenditure. Costs incurred by Commission are incurred by Franchise Section (DECLG).</td>
<td>2011 / 2012: €45,668</td>
</tr>
</tbody>
</table>

Policy support and operational costs are not broken down; the total figures also incorporate costs incurred by the Constituency Commission & Local Electoral Area Boundary Committees (see below).

This cost does not reflect cost of support from staff in Franchise Section which is reflected in Task 1.

⁵⁰ Tasks include producing guidance notes for returning officers; liaising with Office of Public Works to procure equipment; advising Office of Government Procurement on quantities of ballot papers and polling information cards required; arranging for advertising/media reminders about voter registration and voters with special needs; compiling results after all elections and storing ballot papers and election documentation for European and presidential elections and referendums.
4. Recommend the boundaries for local electoral areas for local elections in line with legislation (Local Government Act, 1994)  

<table>
<thead>
<tr>
<th>Local Electoral Area Boundary Committees. Secretariat is Franchise Division DECLG</th>
<th>Voted expenditure. As above</th>
<th>This cost does not reflect cost of support from staff in Franchise Section which is reflected in Task 1.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2012 / 2013 €56,274</td>
</tr>
</tbody>
</table>

5. Maintaining register of electors\(^{51}\)  

<table>
<thead>
<tr>
<th>Local registration authorities (31)</th>
<th>Costs are met by the 31 local authorities</th>
<th>2013 €760,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2014 *€4,846,821 + **€2,575,792 = €7,422,613</td>
</tr>
<tr>
<td>*Costs allocated specifically to support the local authorities' role as registration authorities. **An estimate of the cost of resources spent on registration duties but funded by central budget of the local authority.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Higher in an election year.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. Divide local authority area into polling districts for Dáil elections at least every ten years (as per s28 1992 Act)  

<table>
<thead>
<tr>
<th>Local registration authority</th>
<th>Voted expenditure (DECLG’s Local Government Fund)</th>
<th>Reflected in expenses of Local Registration Authorities (Task 5).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

7. The regulation of political funding and election expenditure (but not for local elections or local authority members – see s.9 below)  

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2011 €861,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2012 €870,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2013 €1,173,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2014 * €1,317,000</td>
</tr>
</tbody>
</table>

\(^{51}\)Tasks are to conduct the annual canvas; prepare draft register each year; make draft register available in November each year; publish final register in February; deal with ongoing queries in relation to the register including applications for inclusion in the register and in the postal and special voters lists and in the supplements to those; provision of the register (including supplement) to returning officers and others on the occasion of an election or referendum and to county registrars every year; and implement any guidelines regarding the upkeep of the register issued by the Department.
8. Registering political parties

<table>
<thead>
<tr>
<th>Registrar of Political Parties (Clerk of the Dáil)</th>
<th>Non-voted expenditure</th>
<th>Not available</th>
</tr>
</thead>
</table>

9. Local elections: planning and running local elections including regulating spending and donation limits.

<table>
<thead>
<tr>
<th>Each local authority (with support from Franchise section, DECLG)</th>
<th>Local government budget</th>
<th>Combined budgets of 31 Local Authorities for spending on “local elections”</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>€</td>
<td></td>
</tr>
<tr>
<td>2014</td>
<td>€2,678,317</td>
<td></td>
</tr>
</tbody>
</table>

10. Referendums – provision of information to voters and encouraging participation.

<table>
<thead>
<tr>
<th>Referendum Commission</th>
<th>Voted expenditure. (of sponsoring Department)</th>
<th>This cost does not reflect support from staff in the Office of the Ombudsman.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|                                           | € million |
|                                           |           |
| 2012 (May)                               | 2.053     |
| 2012 (Nov)                               | 1.076     |
| 2013 (two referendums)                   | 2.386     |
| 2015 (two referendums)                   | 2.215     |

---

52 To ensure parties fulfil the criteria on membership, organisation and structure set out under S25(4) of the 1992 Act.
<table>
<thead>
<tr>
<th>11a Administering elections &amp; referendums: ongoing costs of Returning Officers</th>
<th>Returning Officers (all)(^{53})</th>
<th>Non-voted expenditure. Expenses met from the Central Fund of the Exchequer.(^{54})</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing annual costs (DPER)</td>
<td></td>
<td></td>
<td>2011</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2012</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2013</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>11b Administering elections &amp; referendums: specific – costs per event(^{55})</th>
<th>Returning Officers (DPER)</th>
<th>Non-voted Expenses are met from the Central Fund of the Exchequer.</th>
<th>Direct Returning Officers’ costs arising from elections</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Election</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Dáil (2011)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Presidential with two referendums and a bye-election (2011)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Referendum (2013)(^{56})</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>+ 57,959(^{57})</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Local &amp; European 2009</td>
</tr>
</tbody>
</table>

---

\(^{53}\) Under S.30 Electoral Act, 1992 Returning Officers are Statutory Officers of the Courts Service (County Register or a City/County Sheriff); Dáil Returning Officers are responsible for taking the poll and counting the votes in Dáil and Presidential elections and referendums in their Dáil constituency. For Presidential elections and referendums, constituency result a re reported to a Central/National Returning Officer (who is appointed by the Minister. It is usually a senior civil servant). For European elections, the Minister appoints a Returning Officer from all Dáil Returning Officers in the constituency (3 were appointed in 2014) who is responsible for nominations and ballot papers and for counting the votes in the European constituency. For local elections, an official of the local authority appointed as Returning Officer is responsible for all matters relating to the election in the local authority area except for the taking of the poll which is done by the Dáil returning officer (local elections have for many years been run on the same date as European elections).

\(^{54}\) The Minister for Public Expenditure and Reform, by way of a charging order, sets the rate of payment for electoral and ongoing expenses of Returning Officers. Some expenses need to be co-approved by the Minister for the Environment.

\(^{55}\) Specific tasks which must be undertaken for each election include receiving nominations, requisitioning buildings; recruiting personnel to take the poll and count votes; overseeing counting; declaring results, ensuring ballot papers are printed in accordance with the law.

\(^{56}\) Seanad Abolition and Court of Appeal Referendums (October 2013) is given as an example. Cost of the previous referendum - Children Referendum (2012) was €9,236,856.

\(^{57}\) The €57,959 is the cost of the National count centre and Referendum Returning Officer.
12. Material costs of running elections and referendums

Various actors (e.g. Office of Public Works, An Post)

<table>
<thead>
<tr>
<th></th>
<th>Non-voted expenditure Central Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Material costs at Election time A

<table>
<thead>
<tr>
<th></th>
<th>Printing</th>
<th>Delivery (polling cards + postal ballots)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dáil 2011</td>
<td>€593,768</td>
<td>€1,751,229</td>
</tr>
<tr>
<td>Presidential + two referendums + a bye election 2011</td>
<td>€945,749</td>
<td>€1,794,849</td>
</tr>
<tr>
<td>Local &amp; European 2009</td>
<td>€508,748</td>
<td>€1,795,566</td>
</tr>
<tr>
<td>Referendum 2013</td>
<td>€378,168</td>
<td>€1,447,984</td>
</tr>
</tbody>
</table>

### Material costs at Election time B

<table>
<thead>
<tr>
<th></th>
<th>Postage costs for delivery of candidate election literature</th>
<th>Reimbursement of candidate expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dáil 2011</td>
<td>€11,606,616</td>
<td>€2,842,806</td>
</tr>
<tr>
<td>Presidential 2011</td>
<td>€10,245,459</td>
<td>€600,000</td>
</tr>
<tr>
<td>Local &amp; European 2009</td>
<td>€11,521,187</td>
<td></td>
</tr>
</tbody>
</table>
Additional information pertaining to items 11a and 11b and 12 in Table 8 above (i.e. expenditure on electoral administration charged to the Central Fund) was provided by the Department of Finance to the Committee. It updates some of the figure provided in Table 8 and includes some additional information, for example, on the Fiscal Stability Treaty Referendum and on four bye-elections. It is included in the three Tables below.

**Table 9: European Parliament and Local Elections 2014**

<table>
<thead>
<tr>
<th>Expenses</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking the poll for the local and European elections and the two bye elections and counting the votes at the European elections - Returning Officers</td>
<td>12,123,040.15</td>
</tr>
<tr>
<td>Printing - Office of Public Works (OPW)</td>
<td>345,826.19</td>
</tr>
<tr>
<td>An Post – delivery of polling cards, postal ballots, candidate literature</td>
<td>10,714,869.31</td>
</tr>
<tr>
<td>Data Ireland - (Subsidiary of An Post)</td>
<td>55,350.00</td>
</tr>
<tr>
<td>Dublin West Bye Election - nomination process, count - Returning Officer</td>
<td>105,322.50</td>
</tr>
<tr>
<td>Longford Westmeath Bye Election - nomination process, count - Returning Officer</td>
<td>145,369.65</td>
</tr>
<tr>
<td>Reimbursement of Candidate Election Expenses – European election and two bye elections (not applicable for local elections)</td>
<td>974,124.07</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>24,463,901.87</strong></td>
</tr>
</tbody>
</table>

Source: Department of Finance submission.
Table 10: Cost of running the Referendum on the Fiscal Stability Treaty – May 2012

<table>
<thead>
<tr>
<th>Expenses</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking the poll and counting the votes - Returning Officers</td>
<td>10,976,469.42</td>
</tr>
<tr>
<td>National count centre - Referendum Returning Officer</td>
<td>52,877.74</td>
</tr>
<tr>
<td>Printing and equipment - Office of Public Works (OPW)</td>
<td>183,228.10</td>
</tr>
<tr>
<td>Delivery of postal ballots and of polling cards incorporating the Statement for the Information of Voters - An Post</td>
<td>1,517,833.74</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12,730,409.00</strong></td>
</tr>
</tbody>
</table>

Source: Department of Finance submission.
Table 11: Cost of running bye elections 2013/2014

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Taking the poll and counting the votes - Returning Officers</td>
<td>€512,368.56</td>
<td>€250,692.15</td>
<td>€4,439.19</td>
<td>€187,601.10</td>
</tr>
<tr>
<td>Printing - Office of Public Works (OPW)</td>
<td>€15,151.39</td>
<td>€13,112.79</td>
<td>€64.00</td>
<td>€5,673.58</td>
</tr>
<tr>
<td>Delivery of polling cards and postal ballots - An Post</td>
<td>€472,205.19</td>
<td>€300,337.52</td>
<td>€2,676.00</td>
<td>€246,183.84</td>
</tr>
<tr>
<td>Delivery of election communications on behalf of candidates and parties - An Post</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data Ireland - (Subsidiary of An Post)</td>
<td>€9,225.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reimbursement of candidate election expenses</td>
<td>€69,600.00</td>
<td>€136,002.83</td>
<td>Not applicable</td>
<td>€33,415.29</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,078,550.14</strong></td>
<td><strong>700,145.29</strong></td>
<td><strong>7,179.19</strong></td>
<td><strong>472,873.81</strong></td>
</tr>
</tbody>
</table>

Source: Department of Finance submission.
6. COMMITTEE’S CONCLUSIONS

6.1. RATIONALE FOR ELECTORAL COMMISSION

The Joint Committee broadly supports and welcomes the proposed establishment of an Electoral Commission in Ireland.

The committee feels that it is a necessary step to improve cohesion and co-ordination in the administration of elections, and as a vehicle to drive forward reforms and deliver and implement the improvements needed in electoral administration and policy that were identified in the course of our consultation.

The commission should be established without delay by legislation as an independent statutory body accountable to the Houses of the Oireachtas.

6.2. FUNCTIONS

The general consensus amongst Committee Members is that the following functions should be transferred or assigned without delay to an Electoral Commission:

- The Register of Political Parties;
- The operational role of the Franchise Section of the Department of the Environment, Community and Local Government;
- A policy development and advisory role which is deeper and broader than the policy role currently undertaken by the Franchise Section of the Department of the Environment, Community and Local Government.
- The regulation of political funding and election expenditure currently carried out by Standards in Public Office Commission (“SIPO”) at the national level;
- A support and advisory role to local authorities in their regulation of political funding and election expenditure at a local level;
- The functions of Referendum Commissions (with the independence of the referendum information campaign a key consideration in the assignment of functions as discussed in Section 2 of this report);
- The functions of the Department of the Environment, Community and Local Government in providing the secretariat to the Constituency Commission and the Local Electoral Area Boundary Committees.
The Committee feels that the Electoral Commission should take on a broader policy development role to address gaps in electoral policy planning and development. As such, it could be assigned the following statutory duties:

- To conduct independent research on electoral policy which will inform Government and Parliament in their consideration of reform to electoral law and which will inform the public;
- To develop and implement policy on voter facilitation measures (including removing obstacles to registration) and to make recommendations on any legislative change needed for this purpose;
- To develop and implement innovative ways to enhance voter education; and engagement;
- To collate and publish timely results of elections.

To strengthen the input of expert policy analysis into the development of electoral policy, the legislation could assign to the Electoral Commission:

- The right to be consulted by Government on all proposals concerning electoral law and the right to make recommendations in response;
- The duty to report annually on proposals for reform of electoral law;
- The power to trial proposed reforms (within constitutional and legislative limits and without risking any compromise of the election or referendum process); and
- Other powers of oversight and reform with regards to the Electoral register and organising elections (outlined below).

Functions not to be transferred:

- Certain aspects of policy – legislative development and support for the Minister – would remain with the Department (see section 2.2);
- The Constituency Commission would continue to make the recommendations to the Chairman of the Dáil on boundary changes at the constituency level (see section 2.9).
6.3. RESPONSIBILITY FOR ELECTORAL REGISTER

Many submissions and witnesses identified the electoral register as in urgent need of reform in order to overcome the problems associated with inaccuracies and incompleteness.

The Committee is of the view that oversight and responsibility for reform of the electoral register should be assigned to an Electoral Commission, requiring it to investigate and make recommendations on how best practice can be adopted universally and improvements implemented (including legislative change), whilst leaving the operational aspects to local authorities in the medium term and (perhaps) the long term. It is felt that this approach may be optimal in combining the operational strengths of the present system, including the knowledge and experience of the current registration authorities, with the expertise, co-ordinating skills and authority of a body specifically charged with reforming the electoral register.
In accordance with this viewpoint, the legislation setting up an Electoral Commission could assign the following statutory duties to the Electoral Commission in respect of the electoral register while retaining a role for local authorities:

- Oversight of local authorities in compiling the electoral register, including the power to issue binding guidelines on best practice and the allocation of central resources to the local authority areas in most need;

- Responsibility for devising a solution to the fundamental problems with the completeness and accuracy of the electoral register that were identified in the committee hearings and written submissions (outlined in section 2.11). The possibility that the Electoral Commission take over the compilation of the register would not be ruled out when devising this solution. In carrying this function, the legislation could stipulate that:
  
  o A report on this matter is published within a set time from establishment day (e.g. 6 to 9 months);
  
  o That this report include an identified solution and an implementation plan;
  
  o That data protection, and compliance with the Data Protection Acts is put at the centre, rather than the periphery, when devising the solution to the electoral register through, perhaps, regular consultation with the Data Protection Commissioner; and that
  
  o An Electoral Commission establish an advisory group, including stakeholders such as local authorities and their representative groups, to assist and advise it in completing this task.

- Subject to approval by the Government and the Houses of the Oireachtas, the Electoral Commission would become responsible for overseeing the implementation of this solution, including providing regular update reports to the Houses of the Oireachtas and the Minister.

The possibility of a complete transfer of responsibility for the electoral register to the Electoral Commission eventually should not be ruled out; this can be revisited in the future as the Commission becomes established.
6.4. SOLUTIONS TO PROBLEMS WITH ELECTORAL REGISTER

A number of solutions to the shortcomings identified with the electoral register were canvassed by witnesses and in submissions. There is broad agreement amongst Committee Members that the following elements should form part of an initiative to address the problems of inaccuracy and incompleteness:

- A rolling register to replace the annual canvas and supplementary register\(^{58}\);
- Individual rather than household registration;
- A central electronic register to replace the 31 separate registers - although there was no agreement as to whether an entirely new register should be compiled or existing registers combined and 'cleaned up';
- The use of a unique identifier such as PPSN to address the problems of inaccuracy and incompleteness, in a manner compliant with the Data Protection Acts 1998-2003 and alongside enhanced data sharing between public bodies;
- That online registration be investigated as part of the reform package and aspired to when there is satisfaction that it is secure.

In terms of the Seanad, an Electoral Commission should be assigned the task of working with third-level institutions to compile the electoral register in the context of the expansion of the electorate for the Seanad university seats. In the context of any more extensive reform to the Seanad electoral process that might be decided upon, an Electoral Commission should be responsible for deciding how to compile the register and investigating ways to expand the register (for example, if the vote were extended to Irish citizens resident outside the State).

\(^{58}\) For more discussion on this see L&RS (March 2015) *Policy Rationale for the Establishment of an Electoral Commission.*
6.5. ORGANISING ELECTIONS

It was pointed out that Returning Officers are largely independent of the public sector and enjoy relatively high levels of trust, but that their performance would be enhanced by greater co-ordination, guidance and resources.

The Committee therefore believes that operational responsibility for organising elections and referendums should remain with Returning Officers as provided for in the Electoral and Referendum Acts, with the Electoral Commission being assigned a central oversight, performance management and co-ordinating role (including providing resources and funding).

In accordance with this viewpoint, the legislation setting up an Electoral Commission could:

- Give an Electoral Commission a statutory remit to oversee and monitor the performance of Returning Officers and local authorities in carrying out their functions, including the power to issue guidelines and performance indicators;

- Assign to the Electoral Commission a statutory duty to address shortcomings identified in the organisation of elections, for example, the method of counting surplus votes; and a duty to address the need for early and co-ordinated publication of results and effective communication with the electorate, and to report to the Houses of the Oireachtas on progress in this respect.
6.6. INDEPENDENCE

The evidence reviewed by the Committee suggests that in order to ensure that it can effectively drive reform free from perception of partisan motivations, the legislation should:

- Specifically provide that it perform its statutory duties independently from Government; and

- Set out a process of appointment to the Electoral Commission which maximises the independence of its members (see below).

In common with employees of the Houses of the Oireachtas Service, and certain other offices of the State, it would be appropriate for staff of the Electoral Commission to be prescribed as civil servants of the State\(^59\), underlining the requirement that they be absolutely independent of the Government, in addition to the normal political independence expected in the civil service.

\(^{59}\) Civil Servants of the State are absolutely independent of the Government. See *McLaughlin v Minister for Social Welfare*, Supreme Court, [IR1], 1958.
6.7. MEMBERSHIP

Impartiality and expertise in the area of electoral management should be the two essential criteria governing the making of appointments to the Electoral Commission. While the appointment process must ensure that members are impartial and legitimate, members appointed on the basis of expertise would be best placed to lead an effective reform agenda.

To reflect this, the legislation might provide for:

- A Chief Electoral Officer (with provision for a Deputy) with management experience at an appropriate level and with expertise and experience in electoral management in Ireland and/or internationally desirable. His/her appointment could be on a full-time basis for a set term and renewable once (similar to the proposal for the new Office of the Public Sector Standards Commissioner); the Chief and Deputy Chief Electoral Officers would be executive members.

- Non-executive members: other members would be non-executive and would be appointed in one of the following ways:
  
  o **Ex-officio** (e.g.:
    
    ▪ a Judge or former Judge of a Superior Court;
    ▪ the Clerk of the Dáil;
    ▪ the Clerk of the Seanad;
    ▪ the Ombudsman;
    ▪ the Comptroller and Auditor General.
  
  or

  o On the basis of **criteria set out in the legislation** which value impartiality and expertise / experience in electoral management in Ireland/abroad. Such a board could include a Judge or former Judge of a Superior Court as Chairman.
6.8. APPOINTMENT PROCESS

As an alternative to the ex-officio selection process, and to ensure an impartial appointment process, the legislation could set out the following method:

- **Persons recommended for executive appointments (Chief and Deputy Chief Electoral Officer):**
  - selected by the Public Appointments Service (PAS) or the Top Level Appointments Committee (TLAC) as appropriate;
  - PAS/TLAC makes a recommendation for appointment to the Government which puts it to a vote of parliament;
  - If this is agreed, the Chief and Deputy Chief Electoral Officer are appointed by the President.

- **Persons recommended for non-executive appointments:**
  - Selected by PAS;
  - Could be appointed by the President (in a manner similar to the process outlined in the Irish Human Rights and Equality Commission Act 2014) and in line with new Guidelines on Appointments to State Boards;
  - With a robust recruitment and appointment process, (such as that advocated above) former Members of the Oireachtas should be eligible for appointment to the board of an Electoral Commission.

- **Stakeholder advisory board**
  - A stakeholder advisory board should be established to assist an Electoral Commission in carrying out its functions.
6.9. ACCOUNTABILITY MECHANISMS

A number of instruments were proposed by witnesses and in the submissions which would promote an Electoral Commission’s independence, yet still achieve its accountability to the Oireachtas and to the public for the performance of its statutory duties. It is advisable that most of these mechanisms are specifically written into the legislation. Accountability mechanisms that could be adopted include:

- An annual Report to the Houses of the Oireachtas and the Minister;
- An annual meeting with the relevant Oireachtas Committee;
- That the head of the Electoral Commission is required to come before an Oireachtas Committee on request to discuss its performance of its statutory duties;
- That the legislation should clearly outline the functions of an Electoral Commission as accountability mechanisms are enhanced where an agency has clearly defined functions;
- The legislation should include a post-legislative scrutiny or sunset clause and be drafted in accordance with the Department of Public Expenditure and Reform’s 2014 report on the implementation of the Agency Rationalisation Programme;
- The legislation should require that performance indicators linked to higher-level objectives of the organisation against which the performance of the agency can be assessed are devised;
- That there be an annual presentation at a public meeting of the general population and the media on how the Electoral Commission is carrying out its remit; and
- That the legislation should set out that the Commission’s Accounting Officer is accountable to the Comptroller and Auditor General and the Dáil Public Accounts Committee.
6.9.1. FINANCIAL ACCOUNTABILITY

An Electoral Commission is likely to be funded by both non-voted and voted expenditure in respect of different functions. There are different accountability mechanisms available to the Oireachtas depending on whether expenditure is voted or non-voted.

6.9.2. NON-VOTED EXPENDITURE (CENTRAL FUND)

The Department of Finance and DPER suggest that the Head of an Electoral Commission, rather than the Accounting Officer of the Department of Finance (as is currently the case), should be the ‘Accounting Officer’ for this expenditure from the Central Fund.

The Accounting Officer would supply the Department of Finance with the information for the publication of the Central Fund accounts and accountability for expenditure would continue as per the Comptroller and Auditor General (Amendment) Act 1993 (through ex-post financial scrutiny by the Public Accounts Committee);

While there is no opportunity to examine performance information through the annual Estimates process for non-voted expenditure, the legislation could require that performance information and targets regarding expenditure under the Central Fund are set out in the annual report or strategic plans which can be discussed by Oireachtas Committees.
6.9.3. VOTED EXPENDITURE

Voted expenditure is scrutinised through:

(a) the audit mechanism of the Comptroller and Auditor General and the related oversight of the Public Accounts Committee and

(b) parliamentary scrutiny of the Estimates and related performance information.

Many witnesses and submissions highlighted performance indicators as key to ensure that the Electoral Commission is held accountable for carrying out its statutory functions; it is desirable that the information provided on performance indicators by an Electoral Commission is superior to the currently available information and is designed according to best practice.

In summary:

- Performance indicators and targets should cover the range of the work and tasks of the Commission and focus on its clients;
- The performance targets chosen should cover an appropriate range of dimensions such as quality, quantity and timeliness;
- The key types of performance targets the Electoral Commission could set include:
  - Targets in the processing of the electoral register;
  - Other processing targets in the administrative work the Electoral Commission would undertake;
  - Targets associated with customer satisfaction; and
  - Targets on the cost effectiveness of certain tasks overseen by the Commission but undertaken by others.
6.10. ESTABLISHMENT PROCESS

A number of issues surrounding the establishment process for the Electoral Commission that arose during the Committee’s hearings. These include:

- That the duplication of roles and functions should be avoided and there should be fewer, rather than more, appointments to boards/commissions as a result of the Electoral Commission’s establishment; and

- That a ‘Big Bang’ approach should be avoided. Such an approach could put at risk trust in the integrity of the electoral process.

Thus, to maintain political momentum behind reform of electoral administration, most witnesses recommend a phased approach to establishment. There was most support for including the transfer relevant policy and operational roles of the Franchise Section (see section 2.2) and SIPO’s functions under the Electoral Act 1997 (as amended) in phase 1, with some suggesting that the Referendum Commission’s functions also be included in phase 1.

Regardless of approach, the Committee believes that a timetable for the full transition should be agreed, and perhaps be set out in legislation, and the transition process should not be extended.
6.11. COSTS OF AN ELECTORAL COMMISSION

International evidence suggests that Electoral Commissions can be a cost-effective way to manage and administer elections. However, cost savings cannot be assumed, especially in the short term, and where it is envisaged that an Electoral Commission perform additional functions including a substantial programme of research and reform (e.g. reform of the electoral register).

Few witnesses or submissions discussed the cost implications of introducing an Electoral Commission. Table 8 in Section 5 of this report breaks down the costs for 12 different tasks in electoral administration and is based on information provided in the Consultation Paper and additional information provided by the Department of Finance.

In order to facilitate the scrutiny of the proposed Bill to establish an Electoral Commission, it could be useful if the Government simultaneously published an estimate of the effect of the Bill, if enacted, on the cost of electoral administration per task.
**APPENDIX 1 – SUBMISSIONS AND OPENING STATEMENTS**

**Submissions and Opening Statements.**
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/environmentcultureandthegaeltacht/electoralcommission/

<table>
<thead>
<tr>
<th>Submission</th>
<th>Background</th>
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<tbody>
<tr>
<td>Association of Returning Officers</td>
<td>Represents all Returning Officers for Dáil constituencies</td>
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<tr>
<td>Association of Irish Local</td>
<td>Represents elected members of local authorities</td>
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<tr>
<td>Government (AILG)</td>
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<tr>
<td>Liam Kenny, Director</td>
<td></td>
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<tr>
<td>(LGMA &amp; CCMA), Local Government</td>
<td>Also County and City Managers Association (CCMA) the Body representative of</td>
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<tr>
<td>Management Agency</td>
<td>Chief Executives of Local Government (Management)</td>
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<tr>
<td>Chief Executive, Joseph Nugent</td>
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<td>Fianna Fáil, General Secretary,</td>
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<tr>
<td>Séan Dorgan</td>
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<td>The Green Party, Mr. Oliver Moran</td>
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<td>The Sinn Féin Party</td>
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<td>The Fine Gael Party</td>
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<tr>
<td>Farrell et al.</td>
<td>Academics specialising in electoral administration and governance</td>
</tr>
<tr>
<td>Dr. Fiona Buckley (UCC)</td>
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<tr>
<td>Prof. David Farrell (UCD)</td>
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<td>Dr. Theresa Reidy (UCC)</td>
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<td>Dr. Jane Suiter (DCU)</td>
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</tr>
<tr>
<td>Name</td>
<td>Role/Title</td>
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<tr>
<td>Noel Whelan</td>
<td>Barrister, political commentator and author, former Fianna Fáil candidate (1997)</td>
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<tr>
<td>Christopher Took</td>
<td>Editor Elections Ireland.org</td>
</tr>
<tr>
<td>Dr. Liam Weeks</td>
<td>Academic specialising in electoral administration and governance</td>
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<tr>
<td>The Second Republic</td>
<td>Non-partisan campaign group for political reform (since 2010)</td>
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<tr>
<td>Department of Finance, Mr. Jimmy McMeel (Principal)</td>
<td>Citizen representative (Cork)</td>
</tr>
<tr>
<td>Dermot Lynch</td>
<td>Columnist on politics and current affairs (Sunday Business Post) &amp; former Progressive Democrat activist &amp; candidate</td>
</tr>
<tr>
<td>Jason O'Mahony</td>
<td>Columnist on politics and current affairs (Sunday Business Post) &amp; former Progressive Democrat activist &amp; candidate</td>
</tr>
<tr>
<td>Stephen Spillane</td>
<td>Citizens representative and young Fine Gael</td>
</tr>
<tr>
<td>Dublin City Council (Registration Authority), Vincent J Norton</td>
<td>(Local Returning Officer and responsible for electoral register)</td>
</tr>
<tr>
<td>Data Commissioner's Office</td>
<td>Senior Compliance Officer</td>
</tr>
<tr>
<td>Nicola Coogan</td>
<td></td>
</tr>
<tr>
<td>National Youth Council of Ireland</td>
<td>Representative body for 48 voluntary youth organisations in Ireland</td>
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<tr>
<td>James Doorley (Deputy Director)</td>
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<tr>
<td>Ombudsman, Mr Peter Tyndall</td>
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<tr>
<td>SIPO, Paddy Walsh, Commission Secretary</td>
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<tr>
<td>Referendum Commission (s), Paddy Walsh, Commission Secretary</td>
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<tr>
<td>Name</td>
<td>Role</td>
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<tr>
<td>John O’Dowd</td>
<td>Legal academic, UCD, and co-author of Geary Study commissioned by the Department (2008)</td>
</tr>
<tr>
<td>Muiris McCartaigh, Queen’s University Belfast</td>
<td>Academic, formally with the IPA, and expert on public bodies and agencies. Author of Parliament Accountability in Ireland (2005) and The Houses of the Oireachtas (2010).</td>
</tr>
<tr>
<td>Professor Michael Marsh, Trinity College Dublin</td>
<td>Expert in the study of elections, electoral systems.</td>
</tr>
<tr>
<td>Paul Lambert</td>
<td>Lecturer and author of <em>Data Protection Law in Ireland</em></td>
</tr>
<tr>
<td>Ms Helen Dixon</td>
<td>Data Protection Commissioner</td>
</tr>
<tr>
<td>Mr Tim Duggan</td>
<td>Assistant Secretary General, Department of Social Protection</td>
</tr>
</tbody>
</table>
APPENDIX 2 – MEETINGS AND WITNESSES ATTENDING

List of Meetings held and witnesses attending.
See also the Committee’s Web page for the full text and video recordings of the meetings.
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/environmentcultureandthegaeltacht/electoralcommission/

<table>
<thead>
<tr>
<th>Date of Committee Meeting</th>
<th>Witnesses presenting</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 March 2015 Meeting No. 1</td>
<td>The Committee met the Minister for the Environment, Community and Local Government, Mr. Alan Kelly, T.D.</td>
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<tr>
<td><strong>Consultation period (April – 8 June 2015)</strong></td>
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</tbody>
</table>
| 16 June 2015 Meeting No.2 | • Professor Michael Marsh, Department of Political Science, Trinity College Dublin;  
                           • Professor David Farrell, School of Politics and International Relations, University College Dublin;  
                           • Dr Theresa Reidy, lecturer in the School of Government, University College Cork;  
                           • Dr Muiris MacCarthaigh, lecturer in Politics and Public Administration, Queens University Belfast;  
                           • Mr John O’Dowd, lecturer in the School of Law, University College Dublin. |
<table>
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<tr>
<th>23 June 2015</th>
<th>30 June 2015</th>
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<tbody>
<tr>
<td>Meeting No.3</td>
<td>Meeting No.4</td>
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<td>30 June 2015</td>
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<tr>
<td><strong>Witnesses Session A</strong></td>
<td><strong>Witnesses Session B</strong></td>
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<tr>
<td></td>
<td>15.30 - 16.45</td>
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<tr>
<td></td>
<td>Mr Jimmy McMeel (principal, Department of Finance)</td>
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<td></td>
<td>Dr Liam Weeks (Department of Government, University College Cork)</td>
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<tr>
<td></td>
<td>Mr. Paul Lambert (lecturer and author of <em>Data Protection Law in Ireland: Sources and Issues</em>)</td>
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<tr>
<td><strong>Witneses Session B</strong></td>
<td><strong>Witneses Session B</strong></td>
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<td></td>
<td>15.30 - 16.45</td>
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<td></td>
<td>Mr. Sean Fleming TD</td>
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<td></td>
<td>Mr. Jim O’Keeffe (board member of SIPO, former TD)</td>
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<tr>
<td></td>
<td>Mr. Noel Whelan (barrister, political commentator and author)</td>
</tr>
</tbody>
</table>

- Seamus McCarthy, Comptroller and Auditor General (also Standards in Public Office Commission and Referendum Commission)
- Peter Tyndall, Ombudsman (also Standards in Public Office Commission and Referendum Commission)
- Paddy Walsh, Secretary, Standards in Public Office Commission and Referendum Commission
- Mairead Ahern, Returning Officer (also County Registrar for Louth, and Association of Dáil Returning Officers)
- Fintan Murphy, Returning Officer (also County Registrar for Mayo, and Association of Dáil Returning Officers)
- Joseph Nugent, Chief Executive, Local Government Management Agency (LGMA)
- Conn Murray, Chairman, County and City Managers Association (CCMA) (also Chief Executive of Limerick City and County Council)
- Vincent J. Norton, Executive Manager, Chief Executive’s Office & Corporate Services Department, Dublin City Council
7 July 2015
Meeting No.5

- Ms Anne O’Donnell, Head of Citizen Participation, Department of Children and Youth Affairs;
- Mr Domhnall McGlacken-Byrne, President, Trinity College Dublin Students’ Union;
- Mr Brian Killoran, Chief Executive Officer, Immigrant Council of Ireland;
- Mr Ian Power, President, National Youth Council Ireland;
- Mr James Doorley, Deputy Director, National Youth Council of Ireland.

14 July 2015
Meeting No.6

- Ms. Helen Dixon, Data Protection Commissioner;
- Mr. Tim Duggan, Assistant Secretary, and Ms. Michelle O’Donnell, Assistant Principal, Client Identity Services, Department of Social Protection;
- Dr. Adrian Kavanagh, Lecturer in Geography, NUI Maynooth;
- Mr. Sean Donnelly, Political Analyst;
- Mr. Liam Kenny, Director, Association of Irish Local Government (AILG), accompanied by:
  - Councillor Aidan Davitt from Westmeath County Council
  - Councillor Peter McVitty from Cavan County Council
  - Councillor Christy Hyland from Mayo County Council and west Mayo municipal district
  - Councillor Damien Geoghegan from Waterford County Council
APPENDIX 3 – SELECT BIBLIOGRAPHY OF REPORTS

The Future of the Electoral Register in Ireland and Related Matters, Joint Committee on the Environment (2008)

Preliminary Study on the Establishment of an Electoral Commission
Geary Institute, (Sinnott et al.) (2008)

Article 16 of the Constitution - Review of the Electoral System for the Election of Members to Dáil Éireann, Joint Committee on the Constitution (2010)


Report on the design and layout of ballot papers used in the Seanad Referendum 2013, Joint Committee on Public Service, Oversight and Petitions (2014)


Consultation Paper on the Establishment of an Electoral Commission in Ireland
Department of the Environment, Community and Local Government (2015)

Houses of the Oireachtas Library and Research Service (March 2015) Policy Rationale for the establishment of an Electoral Commission

Additional material is available on the Electoral Commission page on the committee’s Web site:
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/environmentcultureandthegaeltacht/electoralcommission/
APPENDIX 4 – GLOSSARY

Commission for Public Service Appointments (PAS)

The Commission for Public Service Appointments is responsible for regulating recruitment and appointment processes in the following organisations:

- The Civil Service (most positions)
- The Health Service Executive
- An Garda Síochána (up to Inspector level)
- The Health Information and Quality Authority

Appointments to professional and senior management positions in the local authorities and VECs are also within the remit of the Commission.

The Constituency Commission

This is an independent commission which advises on redrawing of constituency boundaries for election of members to Dáil Éireann (the lower house of the Oireachtas, the national parliament) and the European Parliament. Each commission comes into being after the census, submits a non-binding report to the Oireachtas, and is dissolved.

http://www.constituency-commission.ie/report.htm

Electoral areas (or Local electoral areas)

Under local government legislation, the Minister for the Environment, Community and Local Government is responsible for dividing each county and city into local electoral areas for the purposes of local elections. Generally, a number of electoral divisions are grouped to form an electoral area.

Electoral divisions

These are the smallest administrative areas for which population statistics are published. There are 3,440 electoral divisions in the State. Electoral divisions are referred to by their established statutory names. In some cases, these names differ from addresses and place names currently used.

Municipal District
Putting People First - Action Programme for Effective Local Government, launched on October 16th 2012, provides that municipal districts will form a new tier of local governance at sub-county level. Each county council is to comprise a number of municipal districts. Councillors will be elected simultaneously in local electoral areas to both a municipal district and county council. In the vast majority of cases the municipal district is to be based on the local electoral area.

**Local Electoral Area Boundary Committee**

This fulfils the same function as the Constituency Commission for Local Electoral Area boundaries.

[http://www.boundarycommittee.ie/](http://www.boundarycommittee.ie/)

**PPSN or PPS Number**

This is the Personal Public Service Number. It is a unique identifier for use in any transactions you may have with public bodies or persons authorised by those bodies to act on their behalf. Use of the number eliminates the possibility of confusing one person with another and makes it possible for public bodies to operate more efficiently and effectively with their customers.


**Top Level Appointments Committee (TLAC)**

TLAC has a key role to play in identifying and selecting candidates for the most senior positions throughout the Civil Service. TLAC is responsible for selecting the successful candidate at final interview stage from a shortlist of candidates put forward by the PAS for consideration following a competitive preliminary process. The senior positions filled from the TLAC process include Secretaries General and Assistant Secretaries, and other equivalent posts in Government Departments and Offices such as Programme Director, Chief Veterinary Officer and Chief State Solicitor.

APPENDIX 5 – ORDERS OF REFERENCE OF THE COMMITTEE

ESTABLISHMENT OF THE DÁIL SELECT COMMITTEE
[ORDER OF THE DÁIL 12 JUNE 2012]

With effect from Tuesday, 19th June, 2012 the following committee was established:
Select Committee on Environment, Culture and the Gaeltacht
Departments within the remit of the select committee
  • Department of the Environment, Community and Local Government
  • Department of Arts, Heritage and the Gaeltacht
Number of members of the select committee: 15

ESTABLISHMENT OF THE SEANAD SELECT COMMITTEE
[ORDER OF THE SEANAD 12 JUNE 2012]

With effect from Tuesday, 19th June, 2012 the following committee was established:
Select Committee on Environment, Culture and the Gaeltacht
Departments within the remit of the select committee
  • Department of the Environment, Community and Local Government
  • Department of Arts, Heritage and the Gaeltacht
Number of members of the select committee: 6

ESTABLISHMENT OF THE JOINT COMMITTEE
[FIRST MEETING 17 JULY 2012]

[Dáil] Select Committee on Environment, Culture and the Gaeltacht
[Seanad] Select Committee on Environment, Culture and the Gaeltacht

Chairman: Michael McCarthy T.D.
Vice Chairman: Noel Coonan T.D.
Number of members of the Joint Committee: 21
A. FUNCTIONS OF THE COMMITTEE – DERIVED FROM STANDING ORDERS [DSO 82A; SSO 70A]

(1) The Select Committee shall consider and report to the Dáil on—
   (a) such aspects of the expenditure, administration and policy of the relevant
       Government Department or Departments and associated public bodies as the
       Committee may select, and
   (b) European Union matters within the remit of the relevant Department or
       Departments.

(2) The Select Committee may be joined with a Select Committee appointed by Seanad
    Éireann to form a Joint Committee for the purposes of the functions set out below, other
    than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall
    consider, in respect of the relevant Department or Departments, such—
    (a) Bills,
    (b) proposals contained in any motion, including any motion within the meaning of
        Standing Order 164,
    (c) Estimates for Public Services, and
    (d) other matters as shall be referred to the Select Committee by the Dáil, and
    (e) Annual Output Statements, and
    (f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant
    Department or Departments and associated public bodies, and report thereon to both
    Houses of the Oireachtas—
    (a) matters of policy for which the Minister is officially responsible,
    (b) public affairs administered by the Department,
    (c) policy issues arising from Value for Money and Policy Reviews conducted or
        commissioned by the Department,
    (d) Government policy in respect of bodies under the aegis of the Department,
    (e) policy issues concerning bodies which are partly or wholly funded by the State or
        which are established or appointed by a member of the Government or the Oireachtas,
    (f) the general scheme or draft heads of any Bill published by the Minister,
(g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
(h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
(i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
(j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
(c) non-legislative documents published by any EU institution in relation to EU policy matters, and
(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees—
(a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
(b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.

(7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
(8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments—

(a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
(b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
(c) at the invitation of the Committee, other Members of the European Parliament.
B. SCOPE AND CONTEXT OF ACTIVITIES OF COMMITTEES (AS DERIVED FROM STANDING ORDERS [DSO 82; SSO 70]

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.

(2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

(4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.

(5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(a) a member of the Government or a Minister of State, or
(b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhainle / Cathaoirleach whose decision shall be final.
APPENDIX 6 – MEMBERS OF THE JOINT COMMITTEE

DEPUTIES

Mr James Bannon TD (Fine Gael)
Mr Noel Coonan TD (Fine Gael) Leas-Chathaoirleach (Vice Chairman)
Ms Ruth Coppinger TD (Socialist Party)
Mr Barry Cowen TD (Fianna Fáil)
Mr Robert Dowds TD (Labour)
Mr Eamon Maloney TD (Labour)
Mr Michael McCarthy TD (Labour) Cathaoirleach (Chairman)
Ms Helen McEntee TD (Fine Gael)
Mr Tony Mc Loughlin TD (Fine Gael)
Ms Michelle Mulherin TD (Fine Gael)
Ms Catherine Murphy TD (Independent)
Mr Fergus O’Dowd TD (Fine Gael)
An t-Uasal Seán Ó Fearghaíl TD (Fianna Fáil)
Mr Brian Stanley TD (Sinn Féin)
An t-Uasal Peadar Tóibín TD (Sinn Féin)

SENATORS

Senator Terry Brennan (Fine Gael)
Senator Cát Keane (Fine Gael)
Senator Denis Landy (Labour)
An Seanadóir Fiach Mac Conghail (Neamhspleách) (Independent)
An Seanadóir Labhrás Ó Murchú (Fianna Fáil)
Senator Ned O’Sullivan (Fianna Fáil)
APPENDIX 7 – LETTER FROM THE MINISTER FOR THE ENVIRONMENT, COMMUNITY AND LOCAL GOVERNMENT
27 January 2015

Dear Michael,

The Government has approved the publication of a Consultation Paper on the Establishment of an Electoral Commission in Ireland and agreed that the paper be forwarded to the Joint Oireachtas Committee on the Environment, Culture and the Gaeltacht with a view to commencing the pre-legislative stage for the preparation of legislation. A copy of the Consultation Paper is attached.

Request that the Committee consider the Consultation Paper

It is requested that the Committee examine the contents of the Consultation Paper and consider undertaking a focused and time-bound consultation process to inform the preparation of legislation to establish an electoral commission in Ireland. It is my intention, having considered the responses from the Joint Oireachtas Committee and any other observations arising, to develop the General Scheme of an Electoral Commission Bill.

The Consultation Paper identifies eleven specific questions that the Committee is being asked to address, having regard to any consultations or hearings that it may undertake. These are included on page 17 of the paper and are summarised below. A summary of the Consultation Paper’s contents is also set out below.
Rationale informing the approach
In examining various recommendations for an electoral commission in Ireland in section 4 of the Consultation Paper, it is clear that there is a widespread view that such a body should be established. However, there is a divergence in views on what its functions and form should be. In the main, policy proposals do not drill down into these issues.

Establishing an electoral commission would represent the most significant reform of electoral administration in the history of the State. Experience with major reforms affecting electoral matters in Ireland and in other countries highlights the value of consultation and the development of a common vision for change. The electoral system involves a large number of stakeholders and it is important that a wide range of opinion is heard. The needs of citizens and voters must be a central consideration in this process of change.

A key lesson from international experience (as described in section 5 of the Consultation Paper) is that significant changes in electoral governance ideally need to command broad political and public agreement.

In designing and putting in place a new electoral commission it is important that there is input from those actively involved in politics as well as the many academics, non-governmental organisations and individuals who maintain a strong interest in electoral reform. These important stakeholders have views on the roles, responsibilities and configuration of an electoral commission that can help in the design of this new body. I hope that the Committee can reflect this range of opinion in giving its responses to the Consultation Paper.

Issues addressed in the Consultation Paper
The paper is divided into six sections, as follows:

- In section 1 a series of issues for consideration is identified and summarised into eleven questions.
- In section 2 current electoral management arrangements in Ireland are described in detail. Costs are identified for the different elements. When planning for a new structure, account will need to be taken of these existing arrangements and their costs. In moving forward, it is necessary to have a full understanding of the present system and the implications of change.
- Section 3 considers good governance practices, institutional design and accountability arrangements in the creation of new agencies in general, and electoral management bodies in particular. There is a good deal of experience in Ireland and internationally in the creation of new public bodies. This is to be drawn upon in establishing an electoral commission in Ireland.
Section 4 reviews policy documents in which the establishment of an electoral commission in Ireland has been recommended. The common themes emerging from these proposals are identified and analysed.

Section 5 examines electoral management models in Australia, New Zealand, the United Kingdom and Canada. Each of these countries has a similar legal, political and administrative tradition to Ireland. Each has also experienced significant structural reforms in electoral governance in recent years. Potential lessons relevant to Ireland’s needs are identified.

Section 6 contains concluding comments and observations.

**Questions to be addressed**

Based on the issues identified in the Consultation Paper, there are a number of policy matters that need to be addressed further in progressing towards the establishment of an electoral commission. The Committee is invited to consider the following questions:

1. **Which functions should be assigned to an electoral commission?**
2. **What roles would / should those currently involved in electoral management continue to perform, specifically:**
   - What role would the current returning officers continue to perform, and who is to be responsible for the organisation of elections on the ground?
   - Who should be responsible for voter registration?
   - What responsibilities are to be transferred from Franchise Section of the Department of the Environment, Community and Local Government?
   - What policy functions or strategic capacity should remain within the DECLG?
   - Should responsibilities of the Constituency Commission and of the Referendum Commission be assigned to an electoral commission?
   - Should responsibilities of Local Electoral Area Boundary Committees be assigned to an electoral commission?
   - What should happen to the electoral functions of the Standards in Public Office Commission?
   - Should an electoral commission have an oversight role in respect of the responsibilities of local authorities in dealing with local election spending and donations?
3. **What would be the cost implications arising from the assignment of functions to an electoral commission?**
4. **What would be the cost implications for the bodies performing these functions at present?**
5. Who should be the members of an electoral commission?
6. How should the members be appointed?
7. What mechanisms will be put in place to provide for the accountability of an electoral commission?
8. What will be the respective roles of the Oireachtas, the Government and the public in the accountability arrangements?
9. What provisions will be made to assure the independence of an electoral commission?
10. Should a commission be set up on a phased basis, and if so, in how many phases?
11. What would be an achievable timescale to complete the task?

The Consultation Paper is intended to act as an information aid in addressing these questions.

Attendance at a meeting of the Committee
I consider the input of the Joint Oireachtas Committee on the Environment, Culture and the Gaeltacht to be very important in the development of an Electoral Commission Bill. I would be happy to attend at a meeting of the Committee to introduce the Consultation Paper and to address any questions that Members may have.

Yours sincerely,

Alan Kelly T.D.,
Minister for the Environment, Community and Local Government.
Re: Report of Joint Committee on the Proposed Establishment of an Electoral Commission in Ireland

Dear Alan,

Please find enclosed a copy of the Report of the Joint Committee on Environment, Culture and the Gaeltacht on the Proposed Establishment of an Electoral Commission.

Further to your letter of request 27 January 2016, the Committee established a consultation process in relation to the Government’s Consultation Paper on the Establishment of an Electoral Commission. It followed this up with a series of public hearings in June and July 2015, at which various stakeholders and experts were invited to address the Committee on this subject.

Our report is presented in five sections:

1. the rationale for an Electoral Commission;
2. the functions which should be assigned to an Electoral Commission;
3. independence, membership and accountability;
4. the establishment process;
5. and the associated cost.
We have made a number of conclusions and recommendations in each of these areas, and we hope that they can be taken on board when finalising policy proposals for an Electoral Commission.

This report welcomes the proposed establishment of an Electoral Commission in Ireland. We believe a Commission can bring cohesion and co-ordination to the administration of elections and address problems identified with electoral administration and policy.

The report will be officially launched in the A/V room of Leinster House at 11 am on Thursday 14 January, should you or any of your officials wish to attend.

Additional copies of the report will be made available at the official launch, and an electronic version will be published on the committee’s Web site shortly afterwards.

Yours sincerely,

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Michael McCarthy T.D.
Chairman,
Joint Committee on Environment, Culture and the Gaeltacht
APPENDIX 9 - ELECTORAL COMMISSION: OVERVIEW OF POLICY RATIONALE (L&RS BRIEFING PAPER FOR THE COMMITTEE)
Research Paper for the Joint Committee on Environment, Culture and the Gaeltacht

Electoral Commission: overview of policy rationale

The context to the drafting of this Research Paper

The Joint Committee on Environment, Culture and Gaeltacht in its consideration of the Government’s Consultation Paper on the establishment of an Electoral Commission (2015), commissioned the Oireachtas Library & Research Service to prepare this research paper outlining the rationale for the establishment of an Electoral Commission and describing some of the policy problems such a Commission might address. The paper aims to facilitate the Committee’s consideration of the above along with the Government’s Consultation Document. This document is intended to be impartial, it is based on research from secondary sources and is accurate as of the date of publication. This research has been provided subject to conditions of copyright and attribution set out in the L&RS Statement of Service 2012.

Legal Disclaimer

No liability is accepted to any person arising out of any reliance on the contents of this paper. Nothing herein constitutes professional advice of any kind. Please note as per the L&RS 2012 Statement of Service, the L&RS routinely reuses the research it has undertaken for individual Members in order to answer on-demand queries from other Members, or to provide research briefings for all Members.

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EXECUTIVE SUMMARY

The Department of the Environment, Community and Local Government’s Consultation Paper on the establishment of an Electoral Commission in Ireland (January 2015) concerns the policy and operational issues that would arise from the establishment of such a body. The Consultation Paper states that as there is a consensus behind the proposal to establish an electoral commission, the consultation focuses on what should be the precise functions and cost implications of an electoral commission and how to ensure its independence, while also ensuring its accountability to the Government and/or the Oireachtas.

This paper adds context to the Government’s Consultation Paper by considering the policy rationales for its establishment. By examining recent Oireachtas Committee reports, academic literature and other commentary, it identifies four key policy rationales for the establishment of an Electoral Commission in Ireland. These are:

5. To address ongoing problems identified with the electoral register so as to bring about a comprehensive, accountable and up-to-date electoral register. The task of managing the process of modernising the electoral register is mentioned by all advocates of an Electoral Commission.

6. To administer referendum campaigns and address the shortcomings of having one-off Referendum Commissions perform this role.

7. To draw up constituency boundaries in line with the Constitution and legislation and to address the shortcomings of having one-off Commissions performing this role.

8. To proactively examine, advise and take action on policy issues in electoral administration including (but not exclusively):
   - How to increase the political engagement of young and indeed all voters;
   - How to design and implement voter-education programmes;
   - How to ensure ease of access to voting on polling day;
   - How best to implement postal voting and other advance methods of voting;
   - How to improve ballot-paper design;
   - How to resolve the issue of how surplus votes are counted;
   - The electoral system and its effects on representation;
   - The development of safe and secure ways to use technology in voting;
   - The effect of gender quotas on representation.
1. INTRODUCTION

The Department of the Environment, Community and Local Government’s (2015) *Consultation Paper on the establishment of an Electoral Commission in Ireland* largely concentrates on operational issues that would arise from the establishment of such a body. The eleven questions which it poses (pages 10-17) can be summarised as:

- **Functions**: what existing functions in the conduct and management of elections and referendums would be transferred to such a Commission and what functions would remain with existing actors and why?

- **Cost**: what is the sum of the costs incurred by all actors involved in electoral (including referendum) management and how would and should the establishment of the Commission affect these costs?

- **Independence and accountability**: how would the Commission’s independence be promoted while at the same time ensuring that it is accountable to the Houses of the Oireachtas/Government for fulfilling the functions assigned to it? What mechanisms would be used to promote this accountability?

- **Membership**: Who should be a member and how should members of the Commission be appointed?

- **Establishment process**: should the establishment of the Commission be undertaken on a phased basis, as recommended by the report commissioned by the Department from the Geary Institute (2008, 42), or some other way? Should it exist alongside the Commission on Standards in Public Office (SIPO) or within it?

An understanding of the policy rationale for the establishment of an electoral commission is important when giving consideration to the questions raised by the Government in its *Consultation Paper*. While the purpose of an electoral commission is raised in Chapter Four, the policy problems which an electoral commission would be designed to address are not discussed succinctly in one place, rather the discussion is dispersed. This paper outlines the policy rationale and describes the policy problems which such a Commission would be intended to address. It is intended that it be read in conjunction with the *Consultation Paper*. 
The purpose of electoral commissions is generally to guarantee that electoral administration is carried out in an independent manner - free from political interference. Michael Marsh (Trinity College Dublin) has argued that a further, even greater, advantage in the Irish context is that an Electoral Commission would be proactive in addressing existing problems with electoral administration and, unlike any actor currently involved with electoral administration, electoral administration would be its priority.60

A series of reports (Box 1), all of which were based on extensive consultation with political scientists and other experts and actors in electoral policy, have highlighted problems with the management and administration of elections in Ireland.

Box 1: Reports which have recommended an Electoral Commission

- Joint Committee on the Constitution (2010), *Joint Committee on the Constitution of the 30th Dáil (fourth report, 2010)* - Electoral System;

All of the reports recommend establishing an electoral commission so that it can address, as a priority, this series of policy problems which are discussed more detail in Sections 3-7 below. The key policy issues identified are:

9. To address issues with the electoral register so as to bring about a comprehensive, accountable and up-to-date electoral register. The task of managing the process of modernising the electoral register is mentioned by all advocates of an Electoral Commission.61 In fact, calls for a centralised, independent body to manage elections emerged primarily in the context of the problems with the register;

10. To **administer referendum campaigns** and address the shortcomings of having one-off referendum commissions performing this role;

11. To address the shortcomings of having one-off Boundary Commissions and Local Area Committees, with restrictive terms of reference, responsible for **re-drawing constituency and local area boundaries** and to consider problems identified with the actual system of re-drawing boundaries to take account of population changes;

12. To examine, advise and take action on **policy issues in electoral administration** including (but not exclusively): how to increase the political engagement of young voters; how to develop voter education programmes; how to increase ease of access to voting on election day; how best to implement postal voting and other advance methods of voting; how to improve ballot-paper design and; to examine the issue of how surplus votes are counted.

Other issues which might be investigated by an Electoral Commission include the electoral system and its effects on representation, the challenge of developing safe and secure ways of using technology for voting, and the effect of gender quotas on representation.

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3. PROBLEMS WITH THE ELECTORAL REGISTER

The electoral register, and problematic issues identified with its compilation, was the key impetus behind calls for an Electoral Commission. Completeness, accuracy and security against fraud (Box 2) are the features of an effective system of registering electors, which is itself a prerequisite for the holding of democratic elections. \(^\text{62}\) Proposals to reform the system are best assessed against how they will affect these criteria.

**Box 2: Features of effective electoral registers**

- **Completeness:** An effective register is as inclusive of the adult voting population as possible. The ‘convenience of the system to electors’ impacts on the completeness of the register in a significant way (i.e. voters are more likely to register the fewer obstacles to registering).

- **Accuracy:** An effective register is updated regularly so as to capture population movement in and out of constituencies and the death of electors. The easier it is for responsible bodies to compile the register, to update it and check it for inaccuracies, the more accurate the register will be.

- **Security:** An inaccurate register includes deceased people, people no longer living in an area, people (e.g. students) who live there but vote in their area of origin. An inaccurate register is vulnerable to fraud. Security measures, such as compulsory photo ID checks and data-sharing with bodies which help to confirm voters’ addresses, can help to minimise, though not eliminate, the opportunities for electoral fraud.

Two key problems have been identified with the system of compiling the register of electors.

First, the register of electors has been found to consistently **over-estimate the size of the adult voting-age population**. \(^\text{63}\) This is in spite of some initiatives to address this prior to the 2007 and 2011 general elections. In other words, the number of names on the register tends to exceed the population that is eligible to vote. This can be explained by double counting (people are registered in more than one constituency), counting the deceased, and counting emigrants. \(^\text{64}\)

Second, there is a geographical trend in register inaccuracy. In fact, while overall the register over-estimates the size of the adult voting-age population, in some local authority areas the register **under-estimates the adult voter population**.

**Over-estimates the size of the adult voting-age population**

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\(^{64}\) O’Malley, 2001, opcit. 215-6
As it is highly unusual for everyone in the country to be registered to vote, experts generally expect the register to be lower than the adult voting-age population. In Western democracies it is expected that the register includes 80 to 85% of the adult voting population. ACE suggests a target of 90% for a complete register.

Table 1 highlights the extent to which the register exceeds the adult voting-age population in elections since 1981. It illustrates that the national register has consistently exceeded this norm (85%) by at least 20 percentage points. Note that this is the national register. Measures undertaken by some local authorities to clear up the register, in particular by removing deceased people from it, reduced inaccuracies in some areas in 2011. However, the national register remained at 105% of the estimated voting age population in 2011.

Under-estimates the population in some areas
Dr. Adrian Kavanagh, NUI Maynooth, found a geographical trend in register inaccuracy. While the register of electors for rural areas, and more settled urban areas, tends to over-estimate the valid adult population, in areas undergoing rapid population growth and change, such as inner city and

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68 Figure based on data from CSO.
70 Figure based on data from CSO and estimates for deaths and net immigration.
71 A figure of 3,002,500 was calculated by Odran Flynn, political analyst, in 2011 using 2006 Census data for Irish and UK citizens (as they can vote in general elections) 18 years old and over living in Ireland. L&RS subsequently used the full breakdown of 2011 Census data to calculate this figure for the Voting Age Population (VAP). It is the total population (18+) minus non-Irish nationals (18+) plus estimated UK citizens over 18. 3,439,565 MINUS (465,788 – 101,121)
suburban areas, registers tend to **under-estimate the adult population**.\(^{72}\) Writing in 2014, Kavanagh highlights persistent inaccuracies in the register.\(^{73}\)

**Implications for the register’s completeness, accuracy and security**

First, an **over-inflated register** opens up significant opportunity for **fraudulent use of ballots** and, therefore, the flouting of the one-man-one-vote principle. For example, taking 85% of the voting adult population as the normal size of a register, the number of polling cards issued that should not have been issued in 2007 may have been as many as 635,547.\(^{74}\)

Looking at 2011, Odhran Flynn, a political analyst who has written extensively about discrepancies in the register, estimated that there were 200,000 more people on the electoral register compared to those listed in the 2011 Census *who would be eligible to vote* in a general election.\(^{75}\) If we take into account that the share of the real electorate we expect to be registered is, in the best-case-scenario, 90%, the register in 2011 should have contained approximately 2,702,250 names. The national register exceeded this by 459,604 suggesting a high number of inaccurate polling cards.

Second, a register that **under-estimates the adult voter population**, which suggests that it has failed to keep up-to-date with population moves into an area, is incomplete and denies some people the opportunity to vote. While the responsibility to register must lie with the individual, international research has found that the more convenient the registration process, and the fewer obstacles presented to voting-age adults for registration, the more complete the register will be (see Appendix 1).

Thirdly, inconsistencies in register accuracy and completeness across local authority areas opens up the possibility that **some areas are under, and others are over, represented**.

**What aspects of the electoral registration system cause these problems?**

A number of features of the system of compiling the electoral register have been identified as causing the inaccuracies and incompleteness of the register:

- The use of a household as opposed to an individual registration system. This is said to encourage inaccuracy and make for a registration system devoid of unique individual identifiers;\(^{76}\)
- The absence of a systematic facility to check the validity of names on the register and with the capacity to cross-check records. This makes it easy for a person to be registered at a number of addresses;\(^{77}\)

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\(^{72}\) Kavanagh Adrian, *submission to Joint Oireachtas Committee on the Constitution (2010)* inquiry on the electoral system.

\(^{73}\) Kavanagh Adrian September 2014 ‘**Political Reform in Ireland**’ posted on Irish Elections, Geography, Facts and Analysis.

\(^{74}\) 85% of the estimated voter population (2,912,197) is 2,475,367 and this is the number of people one would expect to be registered to vote. The actual electoral register exceeds this by 635,547.

\(^{75}\) ‘**Concerns over inaccuracies in the Electoral Register**’ News Talk FM, journalist discussion with Odhran Flynn on 26 March 2013.

\(^{76}\) Flynn, 2007

\(^{77}\) O’Malley, 2001, 216, Flynn, 2005
• The absence of a centralised body to co-ordinate cross-checks between different registration authorities and to ensure consistently high standards on the part of local registration authorities;\(^78\)

• The lack of a systematic facility to remove people from the register\(^79\) with the exception of the facility for the removal of deceased people;

• The failure to adequately fund local authorities which continue to see registration duties as an additional, instead of as a core, function.\(^80\)

**What solutions have been proposed?**

In seeking to address the issues behind the inaccuracies and incompleteness of the register, reformers face three inter-connected decisions:

• Individual versus household registration;

• What method is used to compile the register? Is an annual canvas used or a continual process of updating using individual identifiers and data sharing used, or are both systems used?

• Is there a central or a local registration authority(s)?

The reports (cited above) have all recommended:

• A switch from household to individual registration;

• The use of personal identifiers, rather than or in addition to a canvas; and

• The transfer of functions of preparing and maintaining the register to a central office/body. The report of the Joint Oireachtas Committee on the Constitution (2010) suggested a continued role for local authorities alongside the new, central body.

The recommendations in each report in relation to register inaccuracies are set out below.

The Joint Oireachtas Committee on the Environment (30th Dáil) continued an examination which its predecessor in the 29th Dáil had commenced. The Committee (30th Dáil) published a report entitled *The Future of the Electoral Register in Ireland and other Related Matters* in April 2008. The Report advocated:

• That all people who are entitled to be registered should be registered;

• The establishment of a National Electoral Officer with a mandate to prepare and maintain the National Register of Electors and to oversee the operation of elections. It also stated that local authority functions for elections should be transferred to that office;

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\(^78\) Flynn, 2005, 2006

\(^79\) In 1997 a new method of removing people from the register was introduced. Having sent the initial forms to all households on the register, registration authorities could resend forms to non-respondents and if they did not respond a second time they could be removed from the register. The process took about 18 months but there was little indication to what extent this option was used by local authorities (O’Malley, 2001, 216, 221). The inflated register in 2006 suggested it was not widely used. Further procedures for removing names were contained in the April 2006 Guidelines which did not differ substantially from these procedures.

\(^80\) Kavanagh, 2014 opcit
That agreement be reached on using identifiers such as PPS numbers, dates of birth and signatures, so as to ensure the accuracy of the register and to eradicate problems with removing names from the register, duplicate and triplicate entries etc. It stated that privacy should be guaranteed by prohibiting the publication of PPS numbers on the register (i.e. they would only be used to check identity).

The Preliminary Study on the Establishment of an Electoral Commission commissioned by (then) Minister Gormley from the Geary Institute in UCD advocated a fundamental change to the system of registering electors along the lines of those proposed by the Joint Oireachtas Committee (2008). It recommended:

- That responsibility for managing the register be transferred from local authorities to a new body which could dedicate more time and resources to improving the quality of the register than many local authorities appear to be in the position to do;
- That such a body could supervise the compilation of the register more closely and be more proactive in intervening to shift resources to where they are most needed;
- That a shift be made from household to individual registration and from the annual canvas to the rolling continuous updating of the Register. For this it was recommended that personal identifiers such as PPS numbers be used along with the statutory provision of information from other public bodies (data sharing) with the Electoral Commission.

The Joint Committee on the Constitution of the 30th Dáil (fourth report, 2010) in its inquiry into the Electoral system recommended that:

- A new voter registration system be established and maintained under the authority of a newly-established Electoral Commission;
- The voter registration process in Northern Ireland be used as a model of best practice in designing and implementing the new voter registration system;
- That the new voter registration system be based upon the allocation of Personal Public Service (PPS) numbers. This possibility is discussed in more detail along with that of data-sharing between public bodies below;
- That the new voter registration system should allow input at local level to verify the accuracy, comprehensiveness and timeliness of voter registration information;
- That the Electoral Commission be established on a constitutional footing and tasked with improving electoral administration and, in particular, focusing on problematic areas identified by the Committee including the ‘implementation of an accurate and up-to-date register of electors.’

Since these reports, the website www.checktheregister.ie which allows voters to check the register continually and to download registration forms, was launched by the local authorities and the Local Government Management Agency.81 The research and architecture team of this agency maintains the electoral register on behalf of the local authorities.

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81 A State Agency of the Department of the Environment established in 2012 (as a merger between 3 other agencies/boards) to provide services to the local government sector.
Data protection issues and the register of electors in Ireland

In Ireland, it is currently the case that data protected by the Data Protection Acts 1998-2003 cannot be used for any purpose other than that for which they were collected. As such, primary legislation would be required to permit the use for the electoral register of data which were collected for a different purpose. In a discussion with the Joint Committee on the Environment in January 2008, the (then) Data Commissioner said that to overcome legal obstacles to using PPS numbers or other data held by State Agencies to identify electors, the Oireachtas could either:

- Seek voluntary consent of electors to use their PPS numbers, or other data from State Agencies, for the purposes of compiling the electoral register
- Legislate to over-rule the right to privacy in the interest of the common good (i.e. in the interests of enhancing the integrity of the Register of Electors).

Box 3: Data-Sharing between State Agencies in other states

Following an analysis of the registration process in Northern Ireland, Canada, New Zealand and Australia, the L&RS found that in all countries the compilation of the register is increasingly reliant on data sharing. This does not suggest that the canvass is always redundant but that to ensure accuracy while, at the same time not over-burdening the voting-age population with registration requirements, the canvas is supported by an on-going verification and data-matching process. The case of Northern Ireland is interesting in that the policy to run a canvas and a re-registration process annually in pursuit of accuracy was dropped in favour of continuous registration and enhanced data provision for the Chief Electoral Officer explicitly because of the consequences of the former policy for completeness.

A Labour Party, Private Member’s Bill Electoral Registration Commissioner Bill, 2005, which was debated in April 2006) proposed that local authorities be entitled to require certain listed bodies to give the authority information relating to the names, addresses, ages, nationalities and PPS numbers of persons resident within its area. Bodies listed included:

- Departments;
- The OPW;
- Local authorities;
- The Health Service Executive;
- Statutory bodies and agencies;
- State-owned companies and financial institutions;
- Private residential tenancies board and any landlord registered with it.

This information, according to the draft bill, could only be used in the performance of electoral registration duties. Further, while a local authority could share the personal PPS number of registered electors with the Electoral Commissioner, with other registration authorities, and with presiding officers at polling stations, local authorities could not publish a person’s PPS number or share that information with any other public body or person.
Referendum Commissions are temporary bodies; they are established for each referendum and cease to operate when its functions in respect of that referendum are completed. Each Commission is responsible under the *Referendum Acts* to explain the subject matter of the proposals, to promote public awareness and to encourage voting.

As highlighted in the Department’s Consultation Paper (2015, 26-7), most Referendum Commissions have recommended that a permanent independent body with a legal identity be established to undertake these duties. The *Report of the Referendum Commissions for the Seanad and the Court of Appeal Referendums* (November 2013, 21-2), highlighted some of the problems with the existing policy of establishing Referendum Commissions on a one-off basis. These include that:

- Referendum Commissions frequently have inadequate time to undertake their duties, including preparing statements on the subject matter and procuring services needed, as the time between establishment and the poll can be short.

- Their one-off status limits the possibility that a Commission can contribute to improving the referendum process in Ireland which is subject to criticism by political scientists, commentators and public representatives. The Referendum Commission itself (2013) recommended that the referendum process should be reviewed so that it conforms to accepted international best practice. Problematic issues frequently raised are how the McKenna and Coughlan judgements are applied to referendum campaigns and the application of campaign-finance rules to third party actors. The proposal that public funding be allocated to referendum campaigns by an independent, permanent body was raised back in 1997 by the *All-Party Oireachtas Committee on the Constitution* (1997,45, 132);

Their one-off status may also restrict what a Referendum Commission can do to encourage turnout, which is one of its core functions. As a temporary body, it is not in a position to develop long-term voter education programmes that many see as essential to enhancing voter turnout. In addition, some commentators, for example Professor David Farrell (UCD), have been critical of the quality of research into voter behaviour undertaken by Referendum Commissions and have argued that an independent Electoral Commission would be better placed to conduct this research.

Political scientist, Theresa Reidy, discusses the difficulties presented by their temporary status as follows:

“...The Referendum Commission has a vital role to play in informing and mobilising voters but our current model is not constituted in such a manner as to provide adequately for the needs of the electorate. In many jurisdictions, a permanent election commission has an ongoing role in maintaining electoral registers, running voter education programmes and managing referendums. The Irish Referendum Commission is established each time it is decided to hold a referendum. In some cases, the Commission has been given just weeks to prepare for a referendum. Furthermore, Referendum Commissions are populated by among others, High...”

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82 Dr. Theresa Reidy (2012) ‘Referendums: How many more can we take?’ politicalreform.ie
83 Farrell David (30 October 2013) ‘Shortcomings in the Referendum Commission’s research into the last two referendums’ posted on Politicalreform.ie
Court judges and the Clerks of the Dáil and the Seanad, none of whom are required to communicate daily with the public or have any specific expertise designing and managing a political campaign. The composition and functions of the Commission need urgent attention.  

5. CONSTITUENCY AND LOCAL AREA BOUNDARIES

The drawing of constituency boundaries was depoliticised in 1997, when the Electoral Act placed constituency boundary commissions on a statutory basis. The role of the Minister was reduced to establishing a Constituency Commission on publication of the census results (or draft census results). It has a pre-determined membership and clear terms of reference. Since then, criticism of the process has centred on two issues:

- Constituency boundaries are often unfamiliar, cutting across county boundaries notwithstanding the guideline in the 1997 Act that discourages this. Kavanagh concludes that they tend to violate local sense of community and possibly alienate a proportion of the electorate.  

- Further, the boundaries are unstable – in other words, there is no guarantee that boundary changes will remain from review to review and, as a consequence, Dáil deputies may be inclined to pay less attention to isolated fragments of other counties tacked onto their communities.

These problems are not considered to be caused exclusively by the Constituency Commission’s temporary status. Rather, Constituency Commissions are, according to political scientist John Coakley, constrained by the terms of reference set out in the Electoral Act (Box 3) and the overriding condition of Article 16.2.3 of the Constitution which requires it to observe a uniform deputy-population ratio from constituency to constituency. Coakley is critical of the tension between, on the one hand, the requirements that each constituency has 3, 4 or 5 members and the narrow interpretation of the Constitution’s requirement for equality of representation and, on the other, the requirement that Commissions avoid breaching county boundaries and endeavour to maintain continuity in relation to the arrangement of communities. In spite of the endeavour to maintain continuity, there have been widespread boundary changes in 1997, 2003, 2007 and 2011. In some revisions almost half of all constituencies have changed in some way.

Box 4: Terms of Reference for Constituency Commissions (S.6 (2) of Electoral Act, 1997, as amended).

- The total number of members of the Dáil, subject to Article 16.2.2 of the Constitution, shall be not less than 153 and not more than 160;
- Each constituency shall return 3, 4 or 5 members;

84 Dr. Theresa Reidy (2012) ‘Referendums: How many more can we take?’ politicalreform.ie
86 Geary Institute, (2008) Institute’s Preliminary Study on the Establishment of an Electoral Commission in which the work of Adrian Kavanagh and J. Coakley (a co-author of the study) is cited.
It is considered by many commentators that an independent, permanent electoral commission, tasked with advising the Government and conducting evidence-based research, would advance progress in tackling these problematic issues.

**What solutions are proposed?**

In some countries with proportional representation electoral systems, constituencies are fixed; the constituency boundaries do not change. Instead fair representation (which is required by Article 16.2.3 of the Constitution) is maintained by altering the number of seats in response to population change. A two-stage process is followed. Firstly, constituency boundaries are defined (typically, for the long term) on the basis of existing administrative divisions; secondly, periodic allocation of seats takes place on the basis of an automatic formula. This periodic allocation occurs every 10 years in Belgium (following the decennial population census), but every four years in Sweden (following the electoral cycle, and using electorate rather than population). The Geary Institute’s Study describes this alternative method of ensuring equal representation as follows:

“The design of constituencies and the allocation of seats between them is a simple, automatic process. In the simplest case, the basic administrative units become constituencies: in Switzerland, the cantons; in Spain, the provinces; in Belgium, the provinces, except for Brabant (which is divided into three constituencies, Brussels, Louvain, and the Francophone district, using lower-level administrative units); in Luxembourg, four groups of cantons. In each case, seats are allocated between these strictly on the basis of population as measured by the most recent census. In Portugal, administrative districts are used, and in Finland groups of municipalities (which correspond substantially to provinces); but in these two cases the allocation of seats is based on the distribution of the citizen population rather than of the overall population.”

The Geary Institute’s Study (2008, 25) suggested that, were the method described above to be adopted, an Electoral Commission might supervise seat reapportionment and that this role might be extended to cover European and local elections.

Local Area Boundary Committees, which are established by the Minister under the *Local Government Acts*, use the same model as the Constituency Commission; they are one-off bodies with statutory terms of reference which charge them with re-drawing boundaries in line with population change. As such, the constituencies for local elections encounter similar problems to that for general elections – unstable and unfamiliar local electoral areas. The Local Area Boundary Committee set up in advance of the 2014 local elections had its terms of reference amended so that it no longer had to keep local area boundaries within general election constituencies. Dr. Adrian

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Kavanagh highlighted a number of weaknesses in the process. These included the level of work involved given the limited time available (especially the case in 2013 as Town Councils were being abolished and County and City Council seats rising from 883 to 949) and the limiting terms of reference. As a result, he argues, there are some ‘large and unusually shaped local areas’ and some controversial decisions.  

### 6. ADVISING AND TAKING ACTION ON POLICY ISSUES IN ELECTORAL ADMINISTRATION

Professor Michael Marsh (Trinity College Dublin), in his presentation to the Convention on the Constitution (2013) set out six core functions of an electoral commission based on the Australian model which he describes as ‘a common model.’

1. To manage the electoral register (i.e. the list of who is eligible to vote in elections);
2. To conduct public elections and referendums;
3. To educate and inform the community about electoral rights and responsibilities;
4. To provide research, advice and assistance on electoral matters to the Parliament, other government agencies and recognised bodies;
5. To administer election funding, financial disclosure and party registration requirements;
6. To support electoral redistributions (i.e. the size and shape of parliamentary constituencies).

Considering these functions within the Irish context, Marsh notes that the Commission on Standards in Public Office (SIPO) covers most aspects of (5), that ad hoc referendum commissions are established to handle aspects of (2) and ad hoc boundary commissions (and local area committees) to deal with (6). As discussed in the sections above, one of the rationales for establishing an electoral commission is to place these ad hoc bodies on a more permanent footing, and under one umbrella, to enable the tackling of problematic issues identified with constituency boundaries, the referendum process and voter turnout.

Continuing his observations, Marsh noted that tasks (1) and (2) - responsibility for registration and for running elections, remains largely at a local level in Ireland, while tasks (3) and (4) are generally absent (i.e. nobody undertakes them). With the exception of some policy support from the Franchise Section of the Department, there is a lack of applied research and evidence-driven policy advice for government on how best to address problematic issues with electoral administration. This is a policy rationale presented by advocates of an electoral commission. A further rationale is the need for well-planned, dynamic voter-education programmes which might serve to address low turnout among younger voters and voters from lower socio-economic backgrounds.

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90 Kavanagh Adrian (May 2013) ‘Some thoughts on Local Area Electoral Boundary Report, 2013’
For example, the Joint Committee on the Constitution (2010) highlighted the need to improve policy on how to increase the political engagement of young voters; how to develop voter education programmes; how to increase ease of access to voting on election day; how best to implement postal voting and other advance methods of voting; how to improve ballot-paper design and; to examine the issue of how surplus votes are counted. Following reported confusion by voters about the ballot paper for the Seanad abolition referendum, the Joint Oireachtas Committee on Public Service Oversight and Petitions (2014) examined the process and published a report in which it recommended that an electoral commission, with a mandate to conduct research and report to the Dáil, be established.

7. Commission on Standards in Public Office (SIPO) and an Electoral Commission

While most advocates of an electoral commission see its establishment in some way connected to SIPO - as either incorporating SIPO or being established as an office within SIPO - weaknesses in the oversight of political funding, electoral expenditure and ethics legislation tend not to be presented as key rationale for the establishment of an electoral commission. SIPO, which performs this role, is a permanent, independent statutory body, unlike the ad hoc statutory commissions charged with constituency and local area boundaries and referendums. While there have been calls for SIPO to be better resourced to enforce compliance, and a suggestion that if it were part of a newly-established independent electoral commission it may be better resourced to do so, there is little criticism of its performance of its current role.

Chapter 6 of the Geary Institute’s Preliminary Study on the Establishment of an Electoral Commission (2008, 30-42) discusses the possible relationship between SIPO and an electoral commission and concludes that the choice appeared to lie between:

(a) Conferring additional powers and functions on SIPO as currently constituted or
(b) Transferring its functions to a new electoral management body.

The Government’s Consultation Paper (2015, 45) makes a similar point in its review of proposals for the establishment of an electoral commission: ‘SIPO is seen variously as a potential starting point, with the electoral commission either being formed around it, or alternatively as having its functions subsumed into an electoral commission from the outset.’

APPENDIX 1: RESEARCH ON OBSTACLES TO REGISTRATION

International research has shown a positive relationship between the ease with which people can register as electors and the completeness of the electoral register and have linked this to turnout in elections. Summarising the results of a number of studies in the US, Ansolabehere and Konisky suggest that eliminating registration barriers altogether is estimated to raise voter participation rates by between 7 and 10% (2006, 83). Their own research, in which they introduce more control variables, suggests that the effect of introducing more stringent registration requirements on turnout is a more modest 3-5% decline (Ansolabehere and Konisky, 2006, 94).
In the USA, researchers have found that where the cost/obstacles associated with re-registering after moving house are high, those who have moved in the last two years are 17% less likely to vote than those who have not (Squire et al, 1987). On this basis they conclude that ‘mobility has a substantial and statistically significant impact on turnout’ due to registration requirements (1987: 52). In other words, people who have moved do not vote because the procedures for placing themselves on the register are onerous or difficult to follow and, therefore, the register is incomplete. In Canada, where individual voter registration costs are low for those who have recently moved, it was found that moving had a far less dramatic effect on turnout: those who moved in the last two years were only 3% less likely to vote than others (Brians, 1997, 219). In sum, while other factors, such as social dislocation associated with moving house, may also explain low turnout amongst the population that has recently moved house, it is almost certain that the procedures of the registration process explain a large extent of their failure to vote. Onerous or seemingly-complicated registration procedures reduce incentives to register and consequentially decrease participation in elections.

In Ireland, the inadvertent removal of legitimate names from the register in Ireland as part of efforts to address the inflated register in 2007 raised the obstacles to registration in 2007 (in particular for those mistakenly taken off the register) thereby depriving some eligible voters of the opportunity to vote. Further, the association between the section of the population who have recently moved house and the failure to register and to turnout found, to different extents, in Canada and the US, appears to be supported by anecdotal evidence of low levels of registration in new housing areas and gated apartment complexes that have appeared in Ireland since 2002. This raises the possibility that certain sections of the population are systematically discriminated against because of the registration process – i.e. people who may come from similar socio-economic backgrounds, be concerned with similar issues and, therefore, may be likely to vote in similar ways, may be most likely to be excluded from the register.

References for Appendix 1


APPENDIX 2: PRIVATE MEMBERS’ BILLS RELEVANT TO THE ESTABLISHMENT OF AN ELECTORAL COMMISSION

Electoral Commission Bill, 2012, PMB sponsored by Deputy Ciaran Lynch

Electoral Commission Bill, 2008 PMB sponsored by Deputy Ciaran Lynch

Electoral Registration Commissioner Bill, 2005 PMB sponsored by Deputy Eamon Gilmore