

# **Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law**

**Ireland**

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# 1 Civic space developments in 2021

<b>1.1 Restrictions on foreign funding by CSOs</b>	
Area	Financing landscape
Topic	Restrictions on funding; foreign funding
Impact	Major

A blanket ban on foreign funding has a severe impact in Ireland, where most independent funding of human rights work comes from trusts and foundations outside of Ireland.<sup>1</sup> At the root of the problem is the recent rigour with which the Standards in Public Office Commission (SIPOC) has been pursuing non-governmental organisations (NGOs) and community groups. The Electoral Act 1997, as amended in 2001,<sup>2</sup> imposes restrictions and reporting obligations on ‘third parties’ who accept donations over €100 for ‘political purposes’ and stipulates that all contributions from foreign sources and from any individual above €2,500 in a year are prohibited. The uncertainty on the definition of ‘political purposes’, and an equal uncertainty concerning the obligation of NGOs to register as ‘third parties’ under the Act, could prevent them from raising the money to undertake advocacy on public policy, even when those activities are unrelated to any electoral or referendum campaign, which is the purpose of the Act. Investigations undertaken by SIPOC are often triggered by complaints to that regulatory body, so enforcement can be selectively targeted. The restrictions would apply all the time, and not just at elections or referendums.<sup>3</sup>

The Standards in Public Office Commission (SIPO), responsible for overseeing the implementation of the Act, called for a comprehensive review of the Act.<sup>4</sup> A new Electoral Reform Bill was published in January 2021,<sup>5</sup> but does not address concerns over undue restrictions on civil society.<sup>6</sup>

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<sup>1</sup> Amnesty International, Irish Civil Liberties Union and Transparency International (2017), [Letter to the Department of Housing, Planning and Local Government \(and submission\)](#), Dublin, 21 July 2017.

<sup>2</sup> Houses of the Oireachtas, [Electoral \(Amendment\) Act, 2001](#) (Act 21 of 1998).

<sup>3</sup> The Irish Council for Civil Liberties (2021), [Submission on the General Scheme of the Electoral Reform Bill 2020](#), Dublin, May 2021, para. 6.

<sup>4</sup> Standards in Public Office Commission (2020), [Annual Report 2019](#), pp. 27-28.

<sup>5</sup> [General Scheme of the Electoral Reform Bill 2020](#) (approved 30 December 2019).

<sup>6</sup> Irish Human Rights and Equality Commission (2021), [Submission to the Committee on Housing, Local Government and Heritage on the General Scheme of the Electoral Reform Bill](#), Dublin, February 2021.

## **1.2 Charities Act 2009 revision does not include human rights organisations**

Area	Funding framework
Topic	Charitable status
Impact	Minor

Ireland has a vibrant and diverse civil society but funding restrictions on NGOs increase reliance on government funding for core activities in the area of human rights protections. Government had suggested it had plans to tackle these concerns in the context of the ongoing electoral reform. Those now do not appear to be materialising.

Under the provisions of the Charities Act 2009,<sup>7</sup> the advancement or promotion of human rights is not considered to be a charitable purpose. Political groups can legally apply for court orders to designate themselves as having a “charitable or philanthropic purpose” to raise funds. Human rights organisations cannot obtain such charitable status. As a result of lack of charitable status, human rights organisations are also excluded from applying for charitable tax exemption on funds received, despite the absence of profit motivation. Additionally, the inconsistencies in existing legislation is arguable. If human rights organisations could register as charities, they would be subject to the enhanced oversight and transparency requirements of the Charities Regulator.<sup>8</sup>

The Programme for Government includes a commitment to update legislative provisions with the Charities Regulator, to ensure it has the necessary powers to increase trust and confidence in the management and administration of charities”. However, the Charities (Amendment) Bill scheduled for legislation in the Autumn 2021 session of the Irish Parliament did not include any proposal to include human rights organisations within it.

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<sup>7</sup> Houses of the Oireachtas, [Charities Act, 2009](#) (Act 6 of 2009).

<sup>8</sup> O’Gorman, C. *et al.* (2021), ‘[Human rights groups and charitable status](#)’, *The Irish Times*, 13 December 2021; Free Legal Advice Centres (2016), [Civil Society Space in Ireland \(UPR Factsheet 2\)](#), 25th Session of the Universal Periodic Review Working Group – Review of Ireland, May 2016.

### **1.3 Legal aid restrictions to be reviewed**

Area	Access to Justice
Topic	Access to Legal Aid
Impact	Major

The State-funded civil aid scheme is administered by the Legal Aid Board under the Civil Legal Aid Act 1995. Legal representation and advice under this scheme is not free. Applicants are subject to a strict means test. Legal aid is not provided in cases before the tribunals for equality cases and social welfare appeals, nor for types of cases relevant to people in poverty and marginalized groups such as Travellers and Roma. An Action Plan by the Department of Justice in February 2021 committed to a review of the scheme, which will only be finalized by mid-2022.

Waiting times for civil legal aid is a significant issue. In January 2021, Legal Aid Board Law Centres reported waiting times of up to 44 weeks for an initial consultation with a lawyer.

Most of the advice and representation provided by the Legal Aid Board relates to family law. Civil legal aid is not available for disputes concerning rights and interests over land; eviction proceedings are subject to this exception and are excluded from the remit of the civil legal aid scheme. These factors, with strict application of the means test and a merits test, mean legal aid is often not available in cases of housing (including family home repossession) and debt.

Legal Aid is not provided in cases before the tribunals which deal with equality cases and social welfare appeals. Employers and businesses can often afford to pay for private legal representation in equality cases before the Workplace Relations Commission; however, persons making complaints often cannot. Where a person alleging discrimination does not have such financial means, this can give rise to an inequality of arms in practice.<sup>9</sup>

A review of the scheme announced to take place by September 2021 has been delayed until early 2022.<sup>10</sup>

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<sup>9</sup> Free Legal Advice Centres (2021), [Legal Aid \(Factsheet\)](#), Third cycle of the Universal Periodic Review Working Group – Review of Ireland, October 2021.

<sup>10</sup> Minister for Justice (2022), [Answer to Parliamentary Question 1268](#), 19 January 2022.

## 2 Examples of civil society contributions to the rule of law

### 2.1 Covid19 Emergency Powers legislation

Topic	Monitoring the legality and proportionality of laws
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Legislation on Covid emergency powers was passed and extended 3 times by the Irish parliament in 2021, effective to June 2022. Emergency provisions include limitations on assembly and travel.

The Irish Human Rights and Equality Commission (IHREC) raised concerns that scrutiny was side-lined in the legislation process. Regulations were introduced with little or no consultation, frequently not published at all before coming into force; official Government statements provided misleading accounts of legal requirements; and official Government statements blurred distinctions between legal regulations and public health advice, making the law unclear. The 'reasonable excuse' exception to restrictions on people's liberty rendered the laws unacceptably vague.<sup>11</sup>

Policing of protest has been shaped by the new legislation and government statements, including anti-lockdown protests, but also protests against racialised policing. Serious concerns are raised about increased and disproportionate use of spit hoods by An Garda Síochána.<sup>12</sup> Restrictions on assembly closed Civil Society Organisations' supports for many groups, especially in asylum seekers accommodation, as restrictions were enforced strictly in many cases without a legal basis.

The Irish Council for Civil Liberties (ICCL) concluded a need to roll back expanded Garda powers, ensure consultation with IHREC before legislating on human rights restrictions, and demonstrate restrictions are necessary and minimal. ICCL pointed to the lack of detailed review of the legislation's effectiveness and impact on rights, as well as lack of robust evidence on the impact on individuals' rights, particularly pointing to the need for greater scrutiny on restrictions on civil liberties and the discriminatory nature of mandatory hotel quarantine, calling for adherence to safeguards including a clear prohibition on discrimination, timely and effective appeals, fair procedures, a high standard of conditions and care.<sup>13</sup>

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<sup>11</sup> Casey, C. et al. (2021), [Ireland's Emergency Powers During the Covid-19 Pandemic](#), Dublin, Irish Human Rights and Equality Commission.

<sup>12</sup> Policing Authority (2021), [Policing Authority Annual Report 2020](#), 23 June 2021.

<sup>13</sup> Irish Council for Civil Liberties (2021), [Health \(Amendment\) Bill 2021, Briefing Note](#), 25 February 2021.

## 2.2 Hate crime and hate speech legislation

Topic

Supporting public authorities in countering discrimination, hate crime and hate speech

Ireland is currently without effective hate crime and hate speech legislation. The Prohibition of Incitement to Hatred Act 1989, under which very few prosecutions occurred, was 'under review' for 25 years according to state reports to international bodies.

Civil society action has been crucial to building support for the creation of new legislation in this area and facilitating widespread engagement in the consultation process through educational resources and dialogue. A significant civil society response is that of the Coalition Against Hate Crime, an alliance of civil society organisations representing a wide range of minority and marginalised groups including disabled people, LGBT people, ethnic minorities and migrants. The Coalition carried out a large number of public campaigns, established resources for the education of NGOs and activists as well as the public, and conducted research on the impact of legislative gaps.<sup>14</sup> These actions gained international support from UN CERD, ECRI and other bodies for new legislation.

In April 2021, the Department of Justice published the General Scheme of the Criminal Justice (Hate Crime) Bill 2021,<sup>15</sup> which creates new, aggravated forms of certain existing criminal offences, where those offences are motivated by prejudice against a protected characteristic. Part one of the Bill addresses Incitement to Hatred, and Part two addresses Hate Crime.

IHREC has urged the Hate Crime Bill 2021 be given "absolute priority" from Government in terms of enactment and full commencement.<sup>16</sup>

INAR and other members of the Coalition Against Hate Crime have been instrumental in supporting An Garda Síochána to develop hate crime reporting systems, improve recording and develop new training for all members of the police service.

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<sup>14</sup> Coalition Against Hate Crime Ireland (2021), [Submission to the Oireachtas Joint Committee on Justice on the General Scheme of the Criminal Justice \(Hate Crime\) Bill 2021](#), August 2021.

<sup>15</sup> [General Scheme of the Criminal Justice \(Hate Crime\) Bill 2021](#).

<sup>16</sup> Irish Human Rights and Equality Commission (2021), [Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee](#), Dublin, August 2021.

## **2.3 Safe access zones while protecting right to protest**

Topic	Contributing to law and policy making
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The Safe Access to Termination of Pregnancy Services Bill 2021<sup>17</sup> establishes for the first-time safe access zones around healthcare services. Access zones were not included in legislation permitting abortion in Ireland in 2018, following public referendum. Women’s groups and human rights organisations were concerned both with access to healthcare and preserving the right to protest, given their experiences during the referendum.

Protests at hospitals and General Practitioner surgeries increased between 2018 and 2021, requiring police intervention. Women’s groups reported a chill effect on use of medical services, distress, exacerbation of existing social stigmas and serious risk to a range of rights. ICCL undertook an in-depth investigation of the necessity of the legislation and its impact on rights to protest,<sup>18</sup> and called on Government to immediately establish safe zones around all medical centres that can provide abortion services.<sup>19</sup> The legislation sets out a clear list of the types of activities that would not be allowed within 100 metres of a designated premises. It also details several important safeguards and exceptions to preserve the right of protest.

The bill is currently before the upper house of parliament, Seanad Éireann, but has not yet been debated by the lower house, Dáil Éireann.

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<sup>17</sup> Houses of the Oireachtas, [Safe Access to Termination of Pregnancy Services Bill](#) (Bill 130 of 2021).

<sup>18</sup> Irish Council for Civil Liberties (2020), [A Rights Based Analysis of Safe Access Zones](#), Dublin, January 2020.

<sup>19</sup> Irish Council for Civil Liberties (2020), [ICCL sends abortion safe zone investigation to Harris](#), Press release, 8 January 2020.