

Seanad Reform Implementation Group

Third Meeting - 5pm on 12th June 2018

Room 308 Department of the Taoiseach

In attendance:

Chair Senator Michael McDowell SC, Jack Chambers TD, Mary Butler TD, Senator Ned O'Sullivan, Thomas Byrne TD, Shane Cassells TD, Senator Ivana Bacik, Senator Alice Mary Higgins, Senator Fintan Warfield, Senator Niall O'Donngaile, Senator Gabrielle McFadden, Senator Jerry Buttimer, Senator Maria Byrne, Senator Paddy Burke

Secretariat, Department of the Taoiseach

Síle de Búrca, Amanda Reilly.

Apologies

Fiona O'Loughlin TD, Noel Grealish TD, Tommy Broughan TD, Senator Grace O'Sullivan, Minister Shane Ross, John Brady T.D.

Minutes of Meeting

1. **Minutes** from 2nd meeting agreed subject to names of nominees for Vice Chair being included. Agreed to publication on website.
2. **Clerk of Seanad**, Martin Groves, presented paper. (*Appendix 1*). The group thanked Mr. Groves for the detailed, informative paper. Ensuing discussion centred on
 - Need for Central Registrar/ Office for Seanad Elections in future
 - Reforms in Manning will not be able to happen overnight – implementing legislation must be modular with different rates of progress
 - Cost /effort involved cannot be used as reason to stymie reform – price of democracy
 - Some reforms can take place immediately e.g. special Panel debates
 - National Youth Council - timing of elections
3. Senator **Ivana Bacik** circulated a paper (*Appendix 2*) previously submitted to Manning Group and there was some discussion of matters raised. **Sinn Féin** offered to circulate a paper they also have on Seanad Reform (*Appendix 3*).
4. **Next meeting 26 June 2018 @ 1700.**
 - Revised list of topics to be will be discussed (**nominating bodies** to be added and list discussed by Chair and Vice Chair)
 - Future Experts: Franchise Section DHPLG / Dr. Manning, Mr. O'Toole to be invited to a future meeting.
 - Clerk of Seanad to be kept informed of proceedings.
 - Agenda for next meeting will be circulated on Friday 22 June 2018

Appendix

PRESENTATION TO SEANAD REFORM IMPLEMENTATION GROUP

12th JUNE 2018

Chairman and members,

Thank you for inviting me to contribute to the meeting.

I hope my experience in relation to the Seanad will allow me to give you some useful insights that might help with your deliberations. To set out my background briefly, I was appointed as Clerk of the Seanad in January, 2017. I served as Clerk Assistant from 2014 to 2017. I have worked in the Houses of the Oireachtas Service since 1992 and have taken part in the counting of votes for all Seanad general elections since 1993.

The Report of the Working Group put forward a very ambitious set of proposals in response to the public desire for reform that was evident during the debate on the 2013 referendum. The proposals clearly have the potential to transform the way the Seanad is elected and the way it operates.

I propose to put before you some observations on the recommendations contained in the Report of the Working Group. I do not intend to comment on the merits of the proposals as that would go beyond my remit as an administrator. However, I hope what I have to say will make a positive contribution to your efforts to find workable ways and means of implementing the Working Group's recommendations.

I have some thoughts also as to how progress might be made on some aspects of reform that do not require legislative change. I will come to these later.

Composition and electoral process

The Working Group proposed some quite radical changes to the electoral system for and composition of the Seanad. A radical revision of the administrative arrangements for Seanad elections would, in my opinion, be necessary to ensure the successful implementation of the proposals.

Seanad Reform Implementation Group

One person, one vote

At the heart of the Working Group's proposals is the recommendation that the right to vote at Seanad elections be extended to all citizens on the principle of "one person, one vote".

At present, 49 Senators are elected through three separate electoral processes: almost no administrative interaction is necessary between the three systems. The NUI and the University of Dublin run separate elections, as do I as Returning Officer for the 43 vocational panel seats.

The Working Group's proposal would increase the complexity of the administration of Seanad elections. It would give rise to at least eleven separate electoral processes – five vocational elections for the broader electorate, five for the 13 panel seats, and one university constituency. This number would, of course, rise if it was ultimately decided that there should be more than one constituency for the universities and institutes of higher education. In order to maintain the principle of "one person, one vote", the proposals require those who would qualify to vote in more than one of these elections to choose the election in which they want to participate. The practical application of this principle would require centralised co-ordination and cross-referencing of the registers for each of the eleven elections.

A co-ordinated administrative process would also be required to ensure that voters with qualifications from more than one institution are registered to vote only once and that only those voters who meet the citizenship criteria, wherever that line may be drawn, are registered. The scale of the task is significant when one considers that the Government has estimated the electorate for the University seats to be about 800,000. (*Source: General scheme of the Seanad Electoral (University Members)(Amendment) Bill 2014*). Likewise, the potential overall electorate for the vocational panels would presumably be much higher than the 3.37 million (*Source: www.referendum.ie*) who were eligible to vote in the recent referendum on the 36th amendment of the Constitution. By comparison, at the last Dáil general election, the poll did not exceed 80,000 in any constituency.

The proposal that Senators, TDs and councillors would be required to opt for voting rights on only one of the five panels - instead of all five as is the case now - for the purpose of the 13 indirect panel seats adds a new element to that process, with an associated administrative overhead. It is not clear to me if a public representative entitled to vote for these seats would also be entitled to a vote as a citizen or a university graduate. If not, a further level of interaction –

Seanad Reform Implementation Group

although smaller in scale - between electoral registers would be required to ensure public representatives are not registered twice.

Timeline

Article 18.8 of the Constitution will continue to require a general election for the Seanad to take place not later than 90 days after a dissolution of the Dáil. As things stand, this is a challenging timeline because of the complexity of the process and despite the small number of voters involved in the panel elections. The scale of the system proposed by the Working Group would make this a very significant administrative challenge within the 90 day limit.

Counting the votes

The counting of votes at a Seanad general election would be a significant administrative undertaking. If, for instance, 50 per cent of the estimated 800,000 electorate for the proposed university constituency were to vote, 400,000 votes would fall to be counted, transferred etc. in that process alone. It would not be unreasonable to assume similar numbers for each of the five vocational panels on the popular franchise. On the assumption that the PRSTV process would apply, the counting of votes would have to be done centrally. The process would be more complicated and more drawn out than a Presidential election, since more than one candidate would be elected in each case.

The scale of the undertaking can be illustrated by reference to the longest ballot paper at the last general election. 28 candidates were nominated by nominating bodies to compete on the Industrial and Commercial Panel and it took 35 counts to elect nine candidates. The Working Group has proposed that there should be six seats on this panel. 30 to 40 counts beginning with, possibly, half a million ballot papers, is a major undertaking.

It might be of assistance to the Implementation Group to explore aspects of scale with the national Returning Officer for referendums and Presidential elections and to get a flavour of the issues involved in a partly extra-territorial electorate from the Returning Officers for the university seats.

Bye-elections

Some thought might be given to the way in which casual vacancies might be filled under the new system. It would not seem practical, given their numbers, to involve the entire electorate. At present, bye-elections do not give rise to administrative difficulty given the relatively small size of the electorate.

Who would manage Seanad elections?

The size of the electorates, the number of individual elections involved and the requirement to co-ordinate and cross-reference the registers suggest that responsibility for all of the processes involved in elections to the Seanad should rest with a single entity. It would make sense for that entity to be in place on a permanent basis. Apart from the ongoing work in maintaining registers and ensuring an ongoing state of readiness for elections, such an entity would need to be capable of upscaling rapidly following a dissolution of the Dáil, given that elections would have to be completed within the relatively tight constitutional time limit of 90 days.

Knowledge and practical experience

The Working Group's Report refers to the constitutional requirement for candidates for election to the vocational panels to have "knowledge and practical experience" of the interests and services related to the panel for which they are nominated.

The present situation is that it is a matter for the Returning Officer to form an opinion as to whether or not a candidate is qualified. If the Returning Officer is in doubt about a candidate's qualifications he may raise questions with the judicial referee who is nominated by the President of the High Court to attend the proceedings known as the Completion of the Panels. The Returning Officer must have due regard to a decision of the judicial referee before deciding on the validity of a nomination.

There are no guidelines to assist the Returning Officer in forming his opinion. The judgement given in the one case in which the issue was litigated is of assistance, as is precedent. In the 1969 case of *Ormonde and Dolan -v- MacGabhann*, Mr. Justice Pringle observed that the Constitution did not require a candidate to have "special knowledge and practical experience, nor [did] it indicate that he must have acquired this knowledge and experience in any particular manner or over any particular period". He set a test of reasonableness in relation to knowledge and practical experience which has informed the subsequent decisions of judicial referees and returning officers.

In practice, candidates are required to stand up their qualifications to the satisfaction of the Returning Officer and the Returning Officer does refer questions to the judicial referee where appropriate.

However, legislative guidelines would be of assistance to the returning officer and, I am sure, to candidates also. I should make it clear that it is not for me to say whether the qualification standard for panel elections is, at present, set too high or too low: the issue is that the standards, whatever they should be, are not defined in law at all.

Nominating bodies

The Working Group expressed the view that there was a need to “develop and strengthen the vocational nature of the Seanad”. The requirement for candidates to have a certain level of knowledge and practical experience is one way in which the vocational nature of the panels is maintained.

The accreditation of nominating bodies is the other main feature of the vocational system. As Returning Officer, I am required by legislation to review the Register of Nominating Bodies every year. Bodies which are not already registered may apply to be registered. Bodies which ask to be taken off the Register or which no longer meet the criteria may be removed. In contrast to the process for qualification of candidates, criteria for the registration of nominating bodies are set out in law in some detail and are of assistance in deciding upon applications.

Role and powers of the Seanad

In its report the Working Group recorded that it was “strongly of the view that there is space for the Seanad to carve out a more meaningful and substantive role in the political system”. It emphasised that “there [was] a clear needfor members to better exploit what powers are already at their disposal.”. I will refer briefly to a few areas which may offer potential for change.

Committees

The Working Group has endorsed proposals contained in earlier reports which call for a strengthening of the arrangements for scrutiny of reports from committees dealing with EU matters. It seems to me that there is potential for the Seanad to strengthen its level of engagement with the committees system in this regard and, perhaps, in relation to their other work too.

Seanad Reform Implementation Group

The Seanad and its members have increasingly made their mark within the committees system in recent years. Early in the last Seanad, the Public Consultation Committee was established and has made an impact with a number of reports on specific areas of policy, most recently the Report on Children's Mental Health Services. A special committee dealing with Brexit brought together all of the strands of that issue under the chairmanship of Senator Richmond. Joint Committees dealing with other sensitive topics such as Water Services and the Eighth Amendment of the Constitution were chaired by Senators Ó Céidigh and Noone. The Committee on the Future of Mental Healthcare is chaired by a Senator, Joan Freeman.

There might also be value in reviewing the way in which reports of committees are dealt with by the Seanad. A starting point might be to ensure that debates on reports are opened and closed by a Senator who is chair or rapporteur or a member of the relevant committee nominated for the purpose. Regular scheduling of committee reports could improve the level of attention given to this work. Debates on progress on implementation of committee recommendations could take place after a suitable period has elapsed.

As a general principle, I would suggest that it would be more beneficial for the Seanad to seek ways of complementing the work of the committees and avoid the risk of competing with them.

The European Union

The Working Group referred to a right of audience in the Seanad for MEPs. Standing Orders provide for MEPs elected to constituencies within the State to attend and be heard in the Seanad. Links with the European Parliament could be built upon by using this provision more often. MEPs elected in Northern Ireland could be invited to attend also.

Vocational panel debates

In its report, the Working Group adopted as a principled objective the need to develop and strengthen the vocational nature of the Seanad. It also suggested that the Seanad should be in a position to take a "broader and more panoramic view" of national politics.

Three quarters of Senators are elected on the vocational panel system and the Senators so elected bring to the proceedings of the Seanad considerable knowledge and experience of their vocational areas. However, the vocational

Seanad Reform Implementation Group

panels themselves are not evident in the way debates are structured in the House.

Greater prominence could be given to the panels by periodically scheduling special debates on broad themes related to them. Speaking arrangements could prioritise Senators elected to the relevant panel. The debate could be preceded by an address by an appropriate distinguished visitor or a person in civic and public life, as currently permitted by Standing Orders.

A similar approach could be taken in respect of the University constituencies.

Association of European Senates

The Working Group referred to the global growth in bicameralism over the last 50 years or so and drew comparisons between the Seanad and some other second chambers. Later this week, the Cathaoirleach will travel to Bucharest where the Seanad will be accepted as a member of the Association of European Senates. This gives the Seanad an opportunity to strengthen links with and learn from the experience of other second chambers many of which are also dealing with issues such as the need for a distinct role, popular legitimacy and so on.

Seanad Office resourcing

Since I was appointed Clerk of the Seanad, I have been seeking to improve the staffing capacity of the Seanad Office so that we are better equipped to meet the present needs of the House and in a better position to support the transformation that will come from the reform agenda. I have made some progress but there is more to do.

I can assure you, Chairman, and the members of the Implementation Group, that I and my staff in the Seanad Office are committed to playing our part in delivering the final implementation plan and that we will do so with energy and enthusiasm.

Finally, I will remain available to the Implementation Group and will be happy to attend future meetings or co-operate in any other way you consider appropriate.

***Martin Groves,
Clerk of the Seanad***

