

A Proposal for a New Seanad Éireann – An Seanad Nua

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A submission to the Seanad Reform Working Group, seanadreformwmg@taoiseach.gov.ie

This document is a proposal for a new Seanad Éireann - one that truly represents general societal interests, and that derives its powers directly from the people. This is achieved through new legislation and within the current constitutional framework. No constitutional referendum is required.

The Irish Constitution & Seanad Éireann

The Irish constitution (see Appendix 1: Extracts from the Irish Constitution) specifies that the Oireachtas, the Irish National Parliament, shall consist of the President and two Houses, viz.: a House of Representatives to be called Dáil Éireann and a Seanad to be called Seanad Éireann.

The Irish constitution specifies, to quite a level of detail, the manner in which the Seanad is appointed and constituted, but is quite vague on the rationale for the Seanad and on its role in the Oireachtas.

However, it is clear that from the context that the Dáil is the primary house in the Oireachtas and that the Seanad is the secondary house, and that the role of the Seanad is to provide a second chamber that can initiate primary legislation (except for finance bills) for consideration by the Dáil, and that debates and reviews legislation initiated by the Dáil. It is also clear from the approach taken in the Constitution to the election of the members of the Seanad, that the intention is that the Seanad will represent general societal interests, rather than relatively small geographical constituencies as for Dáil Éireann, and that the Seanad will provide an alternative and distinctively different perspective to the preparation, review, debating and passing of legislation from that of the members of the Dáil.

The Irish Constitution is quite specific that all powers derive from the people. Article 6 states: "All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good."

In the case of the Dáil, the Constitution specifies that the people's right to designate the rulers of the state shall be exercised by direct elections, by the citizens, of the members of the Dáil who represent geographical constituencies (with no more than 30,000 people per elected member) determined by legislation. The members are elected on the system of proportional representation by means of the single transferable vote.

In the case of the Seanad, the Constitution indicates that the people's right to designate the rulers of the state shall be exercised indirectly. Eleven (11) members of the Seanad are nominated by the Taoiseach of the day. The remaining 49 members are elected: the universities elect 6 members, and 43 members are elected from 5 panels of candidates.

The Constitution specifies that the University members and the Panel members be nominated and elected in a manner that is determined by legislation.

The Constitution specifies that every election of the elected members of the Seanad shall be held on the system of proportional representation by means of the single transferable vote, and by secret postal ballot.

Article 18 the Constitution specifies that not more than eleven and not less than five

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members of the Seanad shall be elected from any one of the specified panels. However, in Article 19, the Constitution also allows that laws may be passed for the direct election by any functional or vocational group or association or council of so many members of the Seanad as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under Article 18 of the Constitution.

There is therefore considerable constitutional flexibility in the manner by which the majority of the members of the Seanad can be elected, since these are matters entirely to be determined by law.

The constitution also specifies the requirement for a “secret postal ballot”, but “postal” is not defined and is open to further specification by legislation.

The Reality of the Current Seanad Elections and the Resulting Seanad

Whatever the intent of the Constitution may be, the reality is that the current legislation that determines the manner by which the University and Panel members are elected to the Seanad has resulted in a gross distortion of the constitutional imperative that it is the people's right to designate the rulers of the State.

Currently the University Seanad members are nominated and elected only by the graduates of the universities (actually, at this time, only the graduates of two of the universities, The National University of Ireland, and the University of Dublin), who represent but a small fraction of the general public, and without regard as to whether or not the graduates are Irish citizens. The university electoral registers are poorly maintained, and the voter authentication is weak. Turnout is very low.

In practice, the Seanad Panel members are currently nominated by the existing national and local politicians, and are elected by the same politicians, largely along party political lines, and without any serious attempt to ensure that the interests and services specified in the Constitution for each panel are truly and independently represented in the Oireachtas. The result is that nearly all of the senators are party political individuals, and many of them are party stalwarts that have failed get elected to Dáil Éireann, or new aspiring Dáil Éireann politicians favoured by the political parties. To add insult to injury, each member of the electorate (the elected politicians) has five votes, one vote for each of the Panels, (or 6 if they are also university graduates), while the ordinary citizen has no vote. The system has been thoroughly distorted by and for the political insiders. (For confirmation of this, one has only to look at the seating arrangements in the Seanad where the members elected from the Panels arrange themselves by political party rather than by Panel interests and services).

It is not surprising, therefore, that the reputation of Seanad Éireann with the general public is very poor, and that there is substantial public resentment that the Seanad as the second chamber of the Oireachtas has been hijacked to serve the interests of the established politicians and political parties, and, worse, that there are no directly elected seats in the chamber.

However, when a constitutional referendum was held to abolish the Seanad, the general public rejected the proposal. One may speculate about the reasons for that rejection, but at the very least one can say that the public wanted to ensure that the Seanad continues as the second debating chamber of the Oireachtas. In addition there have been very wide calls for political reform of the Oireachtas in general, and of the Seanad, in particular.

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The role of An Seanad Nua

The role of the Seanad should remain largely unchanged, but it should be constituted and the members elected so as to ensure that the Seanad not only reviews primary legislation developed by Dáil Éireann, but also has time to initiate its own legislative proposals, and time to examine and review other longer-term issues of relevance to the development of the country. To the maximum extent possible, a majority of the members of the Seanad should be independent of party political affiliations, and have experience and expertise relevant to delivering on its constitutional role to represent general societal interests and to provide an alternative and distinctively different perspective to the preparation, review, debating and passing of legislation from that of the members of the Dáil. The Seanad should also be tasked with a particular responsibility for the timely review of anticipated European legislative proposals, whether from the EU Council, the EU Commission or the EU Parliament.

The Composition of An Seanad Nua

The composition of the Seanad should be changed, and the Seanad constituencies should be:

Proposed Constituencies		No. of Senators
The Universities Constituency		6
Irish Regional Constituencies	Greater Dublin	4
	Northern Ireland	3
	Connacht plus Donegal	3
	Munster	3
	Leinster plus Cavan and Monaghan (excluding Greater Dublin)	3
	Irish citizens abroad	3
Panel Based Constituencies	Civil Society, including Cyber Society	4
	Irish Cultural Organisations	4
	Agriculture	4
	Labour	4
	Industry & Commerce, including e-commerce	4
	Public Administration and Social Services	4
Total		49

The Taoiseach of the day must continue to nominate 11 Senators, since this matter is fixed in the Constitution. To provide certainty and avoid political gaming, the Taoiseach's nominations should be made on or before the date when nominations for the various panel elections close.

The University Senators should be elected by direct election by the general public, under revised legislation, as described below.

The remaining elected Senators should also be elected by direct election by the general public, as described below.

The last five of the Panel Constituencies listed in the table above correspond to the existing Panels listed in the Constitution, so that that element of the Constitution is preserved. However, these are new Panels are to be constituted under Article 19 of the

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Constitution, so that the number of members elected from each Panel can be reduced below the 5 specified under Article 18.

The Nomination of Candidates for Election to An Seanad Nua

Nominations: The Universities Constituency: All Irish citizen graduates (except serving politicians, see below) of all the recognised universities in Ireland should be eligible to be nominated as a candidate for election in the Universities constituency.

Nominations: The Irish Regional Constituencies: All Irish citizens normally resident in each of the regions specified (except serving politicians, see below) should be deemed by law to be an association under Article 19 of the Constitution, and all citizens who are over the statutory voting age, should be eligible to be nominated as a candidate for election. For this electoral purpose, a citizen may be classed as resident in only one of the regional constituencies. In the case of the Irish Citizens Abroad Constituency, all Irish citizens who have been resident abroad (outside the island of Ireland) for at least the previous year should be eligible to be nominated as a candidate for election.

Nominations: The Panel Constituencies: Civil Society, including Cyber Society; Irish Cultural Organisations: Agriculture; Labour; Industry & Commerce, including e-commerce; Public Administration and Social Services: In the case of each of these Panels, Irish citizens that have been actively engaged for at least the previous three years in the activities, interests and/or services associated with each Panel (except serving politicians, see below) shall be deemed by law to be an association under Article 19 of the Constitution. For this purpose, a citizen who is active in more that one Panel area of interest must choose one specific Panel. Citizens associated with each Panel, who are over the statutory voting age, are eligible to be nominated as a candidate for election in that Panel. The credentials of the nominated candidates shall be subject to verification by an expert panel of citizens (except serving politicians, see below), and verified candidates shall be eligible for election. The expert verification panels shall be established by legislation, and the members shall represent activities, interests and/or services of the Panels. Members of the expert verification panels shall not themselves be eligible to be nominated for election to the Seanad.

Restrictions on Serving Politicians

To prevent the distortions in favour of the politicians and political parties that have taken place under the existing electoral arrangements for the Seanad, and to ensure that the members of Seanad Éireann do truly fulfil the constitutional role to represent general societal interests and to provide an alternative and distinctively different perspective to the preparation, review, debating and passing of legislation from that of the members of the Dáil, a number of restrictions on serving politicians are required.

Individuals that have served as county councillors or as members of Dáil Éireann or of any other Parliament¹ within the previous three years shall not be eligible for nomination to any of the Seanad constituencies, or to serve on the expert verification panels.

To further ensure the separation of the Dáil from the Seanad, no member of Seanad Éireann may be eligible to stand for election to Dáil Éireann until at least three years have passed since they last served in the Seanad.

These restrictions will need to be kept under review, because there is no doubt that the political system will attempt, and may in time succeed, to distort any system in favour of the politicians and political party interests.

¹ For example, Irish citizens that that have served as county councillors in Northern Ireland or as members of the Northern Ireland Assembly or in the UK Parliament or in the UK House of Lords.

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The Election of Candidates to An Seanad Nua

As stipulated by the Irish Constitution, every election of the elected members of Seanad Éireann shall be held on the system of proportional representation by means of the single transferable vote, and by secret postal ballot. Legislation needs to be developed to define the “postal ballot”, but the definition should include the use of ballot papers and envelopes that can be securely sealed and are tamper proof, that can be transmitted to the relevant counting centres within a defined period of days by the generally available public (or private) postal services anywhere in the world, plus the use of postal boxes in polling booth equivalent to the current ballot boxes. (The voter should pay any postal charges arising from the use of the postal services).

Elections: The Universities Constituency: All Irish citizens (whether resident in Ireland (the Republic), Northern Ireland, or abroad (outside the island of Ireland)) who are over the statutory voting age shall be eligible to vote in the election of the Senators representing the Universities.

Elections: The Irish Regions Constituency and the Irish Citizens Abroad

Constituency: All Irish citizens resident in each of the regions specified (and deemed by law to be an association under Article 19 of the Constitution), and who are over the statutory voting age, shall be eligible to vote in the election of the Senators representing their region.

Elections: The six Panel based Constituencies: Civil Society, including Cyber Society; Irish Cultural Organisations; Agriculture; Labour; Industry & Commerce, including e-commerce; and Public Administration and Social Services: All Irish citizens (whether resident in Ireland (the Republic), Northern Ireland, or abroad (outside the island of Ireland)) shall be deemed by law to be an association under Article 19 of the Constitution, and those that are over the statutory voting age shall be eligible to vote in the election of the Senators representing these Panels.

Number of Votes: For clarity and the avoidance of doubt, the above means that Irish citizens shall have a total of 8 votes (one for each of the 8 ballot papers that they are eligible to receive).

Postal Votes: All citizens shall have the option, under legislation to be developed, to be authenticated during the postal voting period (see below) so that they may cast each and any of their votes by postal vote, as defined by legislation.

Timing of the Election to An Seanad Nua

To prevent Dáil candidates who fail to get elected to Dáil Éireann then immediately attempting then to stand for election to Seanad Éireann, the elections of members to Seanad Éireann should be held on the same day as the elections to Dáil Éireann². Special agreements and arrangements with the Northern Ireland Assembly and with authorities in Northern Ireland will be required to support voting in the Northern Ireland constituency. Nominations should close a number of weeks before the polling date, and ballot papers should be distributed to each of the regions, and globally to reach voter authentication centres (e.g. the Irish Embassies), by the polling date. A short period (e.g. 2 weeks) after the polling date should be allowed for postal voting and for the receipt of postal votes from across the globe (although it may be practical to expedite this process

² The Constitution specifies that: “A general election for Seanad Éireann shall take place not later than ninety days after a dissolution of Dáil Éireann”. In fact, there is no real need to tie the terms of Seanad members to the elections of the members of Dáil Éireann. Having fixed terms (e.g. 3 year terms) for Senators and holding the elections on a fixed date (e.g. 30 June) would assist in ensuring the clear separation of the members of Dáil Éireann from the members of Seanad Éireann. However, this matter is specified in the Constitution, and a change would require a Referendum.

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by designating Irish Embassies as the postal reception points, and using secure courier services to bring the postal ballots safely back to counting centres in Ireland).

Terms, Salaries, Attendance, Rules, Programme of Work, Allowances, Staff, & Conduct of the Members of An Seanad Nua

All regulations, rules, and day-to-day operational aspects of the new Seanad should be examined with care.

Some examples:

- An individual Senator should be eligible to serve a maximum of 3 terms in Seanad Éireann.
- The job of Senator should be full time, with Senators available for at least 40 hours per week throughout the year, and the salary should be equivalent to that of a member of Dáil Éireann.
- Attendance in the Seanad by Senators should be compulsory, as should participation of members nominated to Seanad committees, or to joint committees of the Oireachtas.
- The Taoiseach and the Cabinet Ministers should be obliged to attend the Seanad on request of the majority of the Seanad. Irish MEPs should be obliged to attend the Seanad on request of the majority of the Seanad.
- The Seanad should determine its own rules. There should be no whip system. Seating arrangements in the Seanad should reinforce the Seanad constituency arrangements, with members from each Seanad constituency seated together in the Seanad chamber.
- The Seanad should be free to set its own programme of work, as managed by the elected leader of the Seanad, consistent with the requirement to attend to legislation referred to it by Dáil Éireann in a timely manner.
- Allowances to Senators should be reviewed, and the most egregious eliminated. (For example, according to the Seanad web site, there is a totally unjustified allowance for the leader of the Fianna Fáil political party in the Seanad).
- Sufficient dedicated Oireachtas staff should be appointed to support the Seanad, including legal draftsmen independent of the Department of Justice.
- The Seanad and its members should conduct themselves in a decorous and civil manner at all times.

The operational rules should reinforce both the appearance and the substance of Seanad Éireann as a body delivering on its constitutional role to represent general societal interests and to provide an alternative and distinctively different perspective to the preparation, review, debating and passing of legislation from that of the members of the Dáil Éireann.

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APPENDIX 1

Extracts from The Irish Constitution

ARTICLE 6

- 1 All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.

ARTICLE 15

- 3 1° The Oireachtas may provide for the establishment or recognition of functional or vocational councils representing branches of the social and economic life of the people.

2° A law establishing or recognising any such council shall determine its rights, powers and duties, and its relation to the Oireachtas and to the Government.

- 9 1° Each House of the Oireachtas shall elect from its members its own Chairman and Deputy Chairman, and shall prescribe their powers and duties.

2° The remuneration of the Chairman and Deputy Chairman of each House shall be determined by law.

- 10 Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

- 11 1° All questions in each House shall, save as otherwise provided by this Constitution, be determined by a majority of the votes of the members present and voting other than the Chairman or presiding member.

2° The Chairman or presiding member shall have and exercise a casting vote in the case of an equality of votes.

3° The number of members necessary to constitute a meeting of either House for the exercise of its powers shall be determined by its standing orders.

SEANAD ÉIREANN

ARTICLE 18

- 1 Seanad Éireann shall be composed of sixty members, of whom eleven shall be nominated members and forty-nine shall be elected members.
- 2 A person to be eligible for membership of Seanad Éireann must be eligible to

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become a member of Dáil Éireann³.

- 3 The nominated members of Seanad Éireann shall be nominated, with their prior consent, by the Taoiseach who is appointed next after the reassembly of Dáil Éireann following the dissolution thereof which occasions the nomination of the said members.

- 4 1° The elected members of Seanad Éireann shall be elected as follows:—

- i Three shall be elected by the National University of Ireland.
- ii Three shall be elected by the University of Dublin.
- iii Forty-three shall be elected from panels of candidates constituted as hereinafter provided.

2° Provision may be made by law for the election, on a franchise and in the manner to be provided by law, by one or more of the following institutions, namely:

- i the universities mentioned in subsection 1° of this section,
- ii any other institutions of higher education in the State,

of so many members of Seanad Éireann as may be fixed by law in substitution for an equal number of the members to be elected pursuant to paragraphs i and ii of the said subsection 1°. A member or members of Seanad Éireann may be elected under this subsection by institutions grouped together or by a single institution.

3° Nothing in this Article shall be invoked to prohibit the dissolution by law of a university mentioned in subsection 1° of this section.

- 5 Every election of the elected members of Seanad Éireann shall be held on the system of proportional representation by means of the single transferable vote, and by secret postal ballot.
- 6 The members of Seanad Éireann to be elected by the Universities shall be elected on a franchise and in the manner to be provided by law.
- 7 1° Before each general election of the members of Seanad Éireann to be elected from panels of candidates, five panels of candidates shall be formed in the manner provided by law containing respectively the names of persons having knowledge and practical experience of the following interests and services, namely:—
- i National Language and Culture, Literature, Art, Education and such professional interests as may be defined by law for the purpose of this panel;

³ ARTICLE 16

- 1 1° Every citizen without distinction of sex who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for membership of Dáil Éireann.

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- ii Agriculture and allied interests, and Fisheries;
- iii Labour, whether organised or unorganised;
- iv Industry and Commerce, including banking, finance, accountancy, engineering and architecture;
- v Public Administration and social services, including voluntary social activities.

2° Not more than eleven and, subject to the provisions of Article 19 hereof, not less than five members of Seanad Éireann shall be elected from any one panel.

- 8 A general election for Seanad Éireann shall take place not later than ninety days after a dissolution of Dáil Éireann, and the first meeting of Seanad Éireann after the general election shall take place on a day to be fixed by the President on the advice of the Taoiseach.
- 9 Every member of Seanad Éireann shall, unless he previously dies, resigns, or becomes disqualified, continue to hold office until the day before the polling day of the general election for Seanad Éireann next held after his election or nomination.
- 10 1° Subject to the foregoing provisions of this Article elections of the elected members of Seanad Éireann shall be regulated by law.
- 2° Casual vacancies in the number of the nominated members of Seanad Éireann shall be filled by nomination by the Taoiseach with the prior consent of persons so nominated.
- 3° Casual vacancies in the number of the elected members of Seanad Éireann shall be filled in the manner provided by law.

ARTICLE 19

Provision may be made by law for the direct election by any functional or vocational group or association or council of so many members of Seanad Éireann as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under Article 18 of this Constitution.

LEGISLATION

ARTICLE 20

- 1 Every Bill initiated in and passed by Dáil Éireann shall be sent to Seanad Éireann and may, unless it be a Money Bill, be amended in Seanad Éireann and Dáil Éireann shall consider any such amendment.
- 2 1° A Bill other than a Money Bill may be initiated in Seanad Éireann, and if passed by Seanad Éireann, shall be introduced in Dáil Éireann.
- 2° A Bill initiated in Seanad Éireann if amended in Dáil Éireann shall be considered as a Bill initiated in Dáil Éireann.

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3 A Bill passed by either House and accepted by the other House shall be deemed to have been passed by both Houses.

THE GOVERNMENT

ARTICLE 20

4 1° The Government shall be responsible to Dáil Éireann.