

Submission of Senator Feargal Quinn to the Working Group on Seanad Reform

20 January 2015

Introduction

On 4 October 2013, 634,437 people voted to retain the Seanad. That was a significant day for a number of reasons, not least because it was the day on which many people were given their very first opportunity to cast any kind of vote relating to the Seanad. But it was also the day on which the people mandated the Government to devise and implement significant and meaningful Seanad reform.

There is now an opportunity to deliver real Seanad reforms; getting on with the task of delivering historic reforms of the upper house would signal a genuine shift to the 'new politics' which has been promised.

Whilst consensus amongst politicians might be a laudable nirvana to aspire to, all-party consensus cannot and must not be allowed to be used as a false impediment to the delivery of meaningful Seanad reforms. As it does with ease in so many other areas, the Government must govern and must do so with some vigour in the area of delivery of Seanad reform – consensus or no consensus.

In this context, aiming for consensus or even widespread agreement on reform proposals, is a hollow and misguided objective. In the absence of real reform, the Seanad will remain elitist, undemocratic and unrepresentative. The package of Seanad reforms which are now needed must have a significantly disruptive effect on the status quo.

Working Group

When the Taoiseach visited the Seanad in the aftermath of the referendum defeat, I was one of several people who called upon the Taoiseach to establish a Seanad Reform Taskforce. I welcome the establishment of the Working Group on Seanad Reform as being a first, and vital step on the road to the delivery of real and dramatic reforms of the Seanad.

I note that the principal focus of the working group will be on possible reforms of the Seanad Electoral system within the existing constitutional parameters.

I also note that the Working Group will examine reform options in respect of the role of the Seanad, as well as its powers.

Seanad Bill 2013

In May 2013, Senator Zappone and I published a Bill to reform the Seanad. The Bill, which contains many radical and far-reaching reforms, has passed Second Stage in the Seanad.

All of the reforms advanced in that Bill, including the proposal to give every citizen a vote, have been scrutinised by a number of senior lawyers each of whom have affirmed the Constitutionality of each of the Bill's provisions.

Problems with Seanad Éireann

Before beginning to look at possible solutions and reforms which can fix and reinvigorate the Seanad, it seems worthwhile to briefly pinpoint the main problems which the current arrangements for the Seanad present.

The Seanad is unrepresentative of society and this occurs principally because the Seanad electorate almost exclusively comprises politicians.

Forty-nine members of the Seanad are elected by a cohort of county councillors and eleven are nominated by the Taoiseach. Of the sixty members of this House only six seats, the university seats, are elected by a significant number of people from around the country, from Northern Ireland as well as around the world.

It is this factor more than any other which lends validity to the assertion that the Seanad is elitist and unrepresentative.

By any measure, the Seanad is not a democratically representative chamber.

This must change.

Not only is the right to vote in Seanad elections largely the preserve of politicians, they invariably enjoy multiple votes. A politician who is a graduate of TCD or the NUI can have 6 or even 7 votes in elections to the Seanad whereas the vast majority of citizens have no vote.

This is unjustifiable in a modern parliamentary democracy.

In Ireland, where the Constitution expressly states (in Article 6) that it is the right of the People to “designate their rulers”, the vast majority of citizens can vote for the President, and for the members of Dáil Éireann, but they cannot vote for the members of the Seanad.

There is now an opportunity to open up the franchise to Irish people who truly don't have a voice – those in Northern Ireland as well as those who have had to emigrate.

Whilst implementation of the 1979 referendum must proceed, the mere implementation of the people's will in 1979 should not be mistaken for real Seanad reform. If Seanad electoral reform only means extending the franchise for the 6 university seats to other third level graduates - 90% of the 60 seat Seanad would be left un-reformed. The extension of the Seanad franchise to more graduates can only ever be a small first step towards reform. It is not of itself real reform.

On its own, the implementation of the referendum decision will only serve to swell the ranks of the privileged that hold university qualifications which entitle them to vote in Seanad elections. In stark contrast, those without an academic qualification would continue to be without a voice in Seanad elections.

At the heart of the Seanad's impotence is the fact that it has been viewed by successive Governments as its plaything. That the Seanad be considered as a home for fading and emerging politicians is a mere symptom of this. The Seanad ought not to 'belong' to the

Government of the day, reforms must make it clear that the Seanad belongs to the people.

Anyone who has spent any time following the proceedings of the Seanad will have got a sense of how dysfunctional the House truly is. It is imperative therefore that the business and workings of the Seanad be reformed.

But not only that, the Seanad needs a distinct and more clearly defined role – a role which reflects its Constitutional mandate as a House of the legislature, not a mini Dáil.

It is against this backdrop that I now advance a series of proposed reforms of Seanad Éireann.

Reform Proposals

Reform 1 – Universal suffrage buttressed by the principle of “one person, one vote”

Meaningful Seanad reform must be aimed at tackling elitism and by making the Seanad more representative. The principles of 'universal suffrage', is the essence of democracy. In a modern democracy every citizen should be entitled to vote for those who govern them. If there is to be “a real shift in power from the State to the citizen” then addressing the democratic deficit which exists in the Seanad has got to be the starting point.

Every person who is eligible to vote in a Dáil election should equally be eligible to vote in a Seanad election.

Allied to this is the principle of “one person, one vote” so that we eliminate situations where a certain few have more than one vote, and even multiple votes. The introduction of universal citizen suffrage does not in any way detract from the need to ensure that all voters are treated equally by having just one vote. It is totally unacceptable that only politicians may cast votes for 43 of the Seanad seats, and even more unpalatable is the fact that some of those voting in a Seanad election have up to seven votes.

Seanad electoral reform is fundamental. It is the point from which meaningful Seanad reform must begin.

Universal Suffrage and the Constitution

If meaningful reform of the Seanad is to be achieved, the Working Group must not be enslaved to conservative and puritanical interpretations of those constitutional parameters.

So what does the Constitution actually say on this point?

The main principles which underpin a Seanad election are set down in Article 18 of the Constitution, and Article 18.10 specifically provides that “elections of the elected members of Seanad Éireann shall be regulated by law” – in other words, the means by which Senators are elected may be determined by legislation.

The Constitution does not in any way stand as an impediment to the introduction of universal suffrage or indeed the one person, one vote principle.

Articles 18 and 19, clearly do not exclude universal citizen suffrage in Seanad elections. The Constitution simply provides that general elections to the Seanad shall be held on the system of proportional representation by means of single transferable vote and by secret postal ballot (Article 18.5) and that those elections shall be regulated by law (Article 18.10.1^o).

The Constitution merely prescribes the system of panels of candidates for election to 43 seats, requiring them to be formed in a manner to be provided by law, of persons having knowledge and practical experience in five specified areas of national life.

The Constitution gives the Oireachtas wide legislative discretion in deciding the number of seats ascribed to each panel (not less than 5 or more than 11 each).

The Constitution refers to the election of the elected Senators as a "general election", and states that *"subject to the foregoing provisions ... elections of the elected members of Seanad Éireann shall be regulated by law."*

How then can a Constitution which gives the Oireachtas a wide discretion to legislate to organise the franchise for Seanad elections be construed as impliedly excluding universal citizen suffrage?

The answer is simple. It can't.

The "spirit and letter" of Bunreacht na h-Éireann, as clearly stated in Article 6, is that the legislative power derives from the People *"whose right it is to designate the rulers of the State"*.

Giving citizens that right to choose their legislators in "general elections" in each House of the Oireachtas is completely compatible with the Constitution. There is simply no legal or logical basis for a claim that either the spirit or the letter of the Constitution excludes enfranchising citizens in general elections for Seanad Éireann.

Universal Suffrage and Rivalling the Dáil

It has been suggested in the past that election of the 43 Seanad Panel seats by citizen franchise would transform the Seanad into a rival of the Dáil, or that somehow the make-up of the Seanad will simply mirror that of the Dáil. It has also been suggested that a differently elected Seanad could give rise to bi-cameral deadlock as often happens in the US.

These concerns are plainly misconceived for the reasons which are now set out.

Seanad Éireann has many very important constitutional and legislative functions and powers. But the Seanad was specifically designed in a manner that it could not rival the Dáil or consistently obstruct the will of the people expressed through the Dáil. The Seanad has no constitutional part in electing the Government, holding it accountable on a day to day basis, or removing the Government. Dáil Éireann has complete supremacy in budgetary matters and Money Bills. Government and Ministers are not directly accountable to the Seanad, and

Senators may not table parliamentary questions to them. The power of the Seanad to delay legislation is limited to 90 days and even that period can be further reduced in the procedure laid down in Article 24.

It is highly likely that a considerable number of Senators who are Government supporters will always be elected by the citizens. In addition, the Taoiseach has the right to appoint 11 members of the Seanad and the Taoiseach also has the right to nominate two members of the Seanad to be members of the Government.

The Seanad will always have to have a substantial working relationship with the Dáil if it is to function and if Joint Oireachtas Committees are to work well.

The Seanad simply cannot make the State ungovernable. Experience with the university Senators suggests that Senators directly elected on broad franchises are responsible and constructive parliamentarians.

The limitations on the Seanad's powers under the Constitution, and the constitutional mechanisms for the Dáil to over-rule the will of the Seanad in the area of legislation, subject to the power of the President to refer such measures to the People, under Article 27 demonstrate that the Seanad was never intended as a chamber that had to be under day to day Government control in the way that the Dáil majority is.

The risk of the Seanad simply mirroring the composition of the Dáil can be averted by breaking the monopoly which the political parties hold over the candidate nomination process. That is why I advocate the introduction of a popular nomination process whereby a person could become a candidate in a Seanad election if they can secure the support of 500 electors.

Reform 2 - Extend the right to vote in Seanad elections to people in Northern Ireland

The Good Friday Agreement recognises the right of people in Northern Ireland to enjoy Irish or British citizenship. The Seanad has traditionally been used to bring Northern voices such as Seamus Mallon, Gordon Wilson, John Robb and Brid Rogers into the National Parliament. Graduates of TCD and NUI (whether or not they are citizens) living in Northern Ireland already have a Seanad vote. But Irish citizens in the North have no vote.

By allowing persons in Northern Ireland who are entitled to be recognised as Irish citizens to apply to be registered to vote on one of the five panels in the same way as Irish citizens living in the State would be able to do as part of the reform, Ireland would give substance to the status of citizenship for its citizens residing in Northern Ireland.

A reformed Seanad would also give a voice to residents of Northern Ireland from all backgrounds, nationalist, unionist and other.

As part of a series of reforms, people who reside in Northern Ireland and who qualify for Irish citizenship should become entitled to apply for a vote in the Seanad.

Crucially, that means that those who apply for vote for the Seanad would not have to apply

for citizenship, thereby allowing those from a unionist background a voice.

Since the Constitution requires that Seanad General Elections are conducted by postal vote, this proposal presents no major new administrative difficulties. University graduates in Northern Ireland already vote by post in the same way as graduates living in the State.

Reform 3 - Extend the right to vote to Irish citizens abroad so that Irish people who had to emigrate can have a voice at Seanad elections.

Unlike almost other European countries Ireland does not allow its' migrant or emigrant citizens to vote in any elections/referendums. Only three other Council of Europe members (out of 33) do not allow emigrants a vote.

In recent years, we have seen emigration of the 1980s return to Ireland. Unable to find work, many graduates and skilled workers have left these shores. For most, it's a decision that they wished they did not have to take; most leave in the hope of returning one day. Yet, whilst they are away, they find that they have no say whatsoever in the making of decisions which will affect their prospects of returning home. They have no voice.

Since the economic collapse, there has been much naval gazing about how Ireland can best harness the breadth of the diaspora scattered throughout the world. But one of the best things we can do to achieve this is to open up the Seanad elections to citizens around the world.

Opening up the electoral process to citizens at home and abroad as well as to people in Northern Ireland will enrich the political dynamic of the Seanad.

To identify eligible citizen voters in the Irish diaspora, it is suggested that they should be Irish passport holders. Any such passport holding voters would be required to apply to be registered (through their local Embassy or Consulate) to vote in one of the panel elections or, at their option, if qualified, to vote in the Universities panel.

Provision can be made for postal voting by Irish citizens to be counted at certain Irish Embassies so as to avoid problems arising in delays in surface postage.

Reform 4 – Establish an advisory panel for the Taoiseach's nominees

The power of the Taoiseach of the day to nominate eleven persons to become members of the Seanad is a significant power. When used correctly, this power can enrich the membership and debates of the Seanad. However, all too often in the past the Seanad was seen as a home for fading and emerging politicians and the calibre of Taoiseach's nominees often reflected this.

In order to avert the possibility of nominees being appointed for reasons other than their skills and experience, an advisory panel should be formed specifically for the purpose of identifying suitable candidates to be considered for nomination by the Taoiseach. The Taoiseach of the day would be expected to take into consideration the recommendations of the advisory panel, however, the eventual selection of nominees would remain at his or her discretion.

Reform 5 – Allow citizens to nominate a person to become a candidate in a Seanad election

The process of nominating persons to be candidates in a Seanad election should be opened up so as to allow candidates to be nominated by popular support.

This proposal could operate along the following lines: at a Seanad general election, a person who has secured the verified support of 500 registered voters would be deemed to be nominated to the relevant constituency. In practice, the candidate would be required to lodge the original version of each of the 500 nomination papers.

Reform 6 – Assign the Seanad a new and specific role in the scrutiny of EU legislation

It is imperative that any package of Seanad reforms must result in the Seanad being given a new mandate.

Since the introduction of the Barosso Initiative in 2006, the European Commission has been circulating legislative proposals and discussion documents to national parliaments of member states. National parliaments now have the opportunity to play a meaningful role in the development of policy and legislative proposals at EU level. The ratification of the Lisbon Treaty means that the task of scrutinising EU legislation is of even greater importance than was previously the case. The Lisbon Treaty represents an opportunity to enhance the role of national parliaments in the EU political process.

For example, under Article 5 of the Treaty, national parliaments have been given the express power to ensure that the EU institutions comply with the principle of subsidiarity and only act in areas where the objectives of the proposed action cannot be sufficiently achieved at national or local level. Article 12 of the Treaty envisages that national parliaments can receive and consider draft legislation directly from the EU institutions.

Whilst recognition must be given to improvements made over recent years, the Houses have also failed to embrace the new role for National Parliaments in EU Member States in the post-Lisbon EU legislation process; the Houses of the Oireachtas have failed to undertake their role in scrutinising EU legislative proposals.

The Seanad is well placed to take a leading role in these areas in the Irish parliamentary system.

Reform 7 – Assign the Seanad a new and specific role in the scrutiny of statutory instruments

The scrutiny of domestic secondary legislation is also a neglected area in the Irish parliamentary system.

There is a need to confer upon the Seanad a new role in the scrutiny of statutory instruments.

Last year 621 statutory instruments were made, and in 2013, 586 were made. Statutory instruments receive virtually no degree of parliamentary scrutiny, this is in spite of the fact that many transpose our EU obligations into Irish law and many also amend Acts which have been passed by the Houses of the Oireachtas.

Reform 8 – Empower the Seanad to scrutinise public appointments

As demonstrated by the recent controversies, the appointment of people to State boards for reasons other than their skills, qualities and expertise can give rise to serious political controversy and has depleted voters trust of the political system. Whilst candidates are now required to formally apply for such positions, there is no public scrutiny of the holders of high office.

The Seanad should be empowered to conduct hearings into any proposed appointments and should have the ability to invite prospective candidates to appear before a Committee of the House so as to answer questions pertaining to their experience or expertise relating to the role.

Reform 9 – Establish a Seanad Business of the House Committee

The Seanad should be empowered to establish a Business of the House Committee which would have the power to determine the business of the House and for that purpose would facilitate dialogue between the Seanad and the Government Chief Whip and also Dáil Éireann.

Practical Implementation of Reform Proposals

All of the proposals contained in this paper can be implemented through legislative changes, amendments to the Standing Orders of the Houses, as well as administrative changes. (For greater insight as to how the proposals can be implemented in practice, see the Seanad Bill 2013.) The drafting of a Reform Bill, accompanying statutory instruments as well as revisions to the Standing Orders of the Seanad should be expedited.

In advancing a package of real Seanad reforms, the Working Group should put forward a series of concrete, time-referenced actions which are necessary to deliver the reforms. Each action should be assigned to office holder who will be accountable for delivery within the specified timeframe.

A deadline should be set for the delivery of the entire package of reforms. Overall responsibility for the implementation of the reforms should, for the duration of implementation, be conferred on a member of the Cabinet who will drive the process.

In parallel with the drafting process, the administrative issues and requirements associated with the reforms should be addressed.

In Conclusion

In the immediate aftermath of the referendum there was widespread acceptance of the fact that the No vote was not a vote to retain the status quo but a vote for retention and reform.

If the Seanad is reformed in the manner outlined in this submission, we could, in time, have a Seanad which would bring a totally new freshness and breadth of vision to the Oireachtas, our national parliament, as part of democratic renewal and reform. The Seanad would be a democratically elected chamber in which the aspirations of the 1937 Constitution would be met; a Seanad chosen by citizens to give a real voice to aspects of our national life that find it difficult to be heard in the present system.

While using the Panel system that is in the Constitution, we could have parliamentarians elected by the people specifically to be real voices for social services, business and enterprise, the arts, the Irish language movement, the diaspora, the framing community and so on. Such a Seanad could continue the valuable work done by the existing Seanad and do so much more to make Leinster House the true centre of a rich vibrant and inclusive democracy.

We also now have the opportunity to ascribe to the Seanad a clear and distinct role as an effective House of the legislature.

There is a widespread misconception among many politicians, commentators, and some of the public, that meaningful reform of the Seanad needs constitutional change. It doesn't. The Constitution does not require the present elitist and undemocratic system for electing the Seanad.

None of the reforms proposed here need a referendum.

All of them can be effected by a single Seanad Reform Bill.

Tasked with devising a series of Seanad reforms, the Working Group has a responsibility to deliver a series of real reforms, reforms which give the people a real say in the Seanad, reforms which do not always give rise to a consensus, reforms which are significantly disruptive of the status quo.