

29 January 2015

Dear Members of the Working Group,

I am a practising barrister and I was involved in the Lawyers for Seanad Reform group which campaigned against the abolition of the Seanad prior to the referendum in October 2013. I make this submission in my personal capacity however.

I believe Seanad reform should be guided by two principles. First, there should be a one person - one vote principle. The entitlement to vote in elections to the Seanad should be fair in the sense that there should be no arbitrary or invidious distinctions between who can and cannot vote. Secondly, whatever reforms are implemented should enhance the effectiveness of the Seanad as part of the system of checks and balances that make up Ireland's democratic government.

Fair elections

I have never encountered anyone, whether they were in favour of retaining the Seanad or not, who regarded the current method of electing senators as fair or logical. In particular, the fact that citizens who went to a select few of the State's many third level institutions get a vote while everybody else does not draws an invidious distinction between classes of citizen which runs contrary to the principles of a republic and serves no obvious purpose.

In general, I support the proposals made by Senators Zappone and Quinn in their Seanad Bill 2013 as to how the method of electing senators could be improved without amending the constitution. I wish to add the following comments.

First, as you know, it would be possible, without constitutional amendment to fill at least 49 of the 60 seats in the Seanad by way of an election with a franchise comprising all adult citizens. The Quinn/Zappone proposal involves giving citizens one vote in one of six constituencies - a consolidated six-seat constituency representing third level institutions (having implemented the 1979 7th Amendment to the Constitution), and five other constituencies representing the vocational panels.

The attractiveness of this suggestion is that the Seanad would not be elected on the same basis as the Dáil. People would vote in non-geographical constituencies

meaning there would be an increased incentive for candidates to campaign on the basis of national rather than local issues. It would also mean that voters could choose to vote for a panel whose candidates would have at least some vocational expertise relevant to those voters. This adds value to what the Dáil already provides because it increases the focus on national issues (without sacrificing any existing local representation) and increases the possibility that senators will come from a range of backgrounds that may be under-represented in the Dáil.

Article 18.8 of the Constitution requires that Seanad elections take place within 90 days of the dissolution of the Dáil so there is nothing to stop such elections being on the same day as the general election. It would be desirable that candidates for election to the Seanad are not able to also run for the Dáil as this tends to undermine the perception of the Seanad as a valuable institution in its own right, and also creates pressure to use the upper house for purposes of political patronage which serve no national interest.

One criticism that was made of the Quinn/Zappone proposals was that if people self-selected into different constituencies, the constituencies would be unevenly sized in terms of the number of voters in each relative to the number of seats. This would clearly be problematic in a Dáil election because Article 16.2.2° of the Constitution requires that the ratio of TDs to voters be between 1:20,000 and 1:30,000. No similar constitutional rule applies to the Seanad however. Furthermore, the Constitution clearly envisages a situation where uneven ratios exist between the number of voters and the number of senators. This is evident from the disparity caused by Trinity College Dublin electing three senators, the same number as all of the colleges of the National University of Ireland combined. There is an even greater disparity between the number of voters electing the six university seats and the much smaller number of elected politicians who currently elect the 43 members of the vocational panels. Thus the Quinn/Zappone proposal significantly improves the fairness in senator to voter ratios.

As regards the nomination of the Taoiseach's 11 nominees, there is nothing in the Constitution to prevent legislation being enacted setting criteria by which the Taoiseach must exercise this power. This could be used for example to cover a range of interests not represented by elected members, for example, representatives from Northern Ireland, members of the diaspora, the immigrant population, the Travelling community etc. Such legislation could, and I would argue, should also

prohibit the Taoiseach from nominating any person who contested the general election immediately preceding that Taoiseach's election by the Dáil.

Reforms to enhance effectiveness

The Seanad suffers from a perception that it is powerless and useless. This is regrettable because it tends to reinforce the cynicism of the general public who are disincentivised to participate in the democratic process or engage with the civic institutions of the State. Democracy, in Ireland as much as any other nation, is very fragile and is constantly degraded by (not necessarily malicious or sinister) efforts of those who currently hold political or economic power to extract short term and/or sectional gains.

The electorate has chosen to keep the Seanad and it follows that they believe it can and should be useful. I would suggest that a good test of any proposed political reform is to ask whether it inconveniences the current holders of power by redistributing some of their power elsewhere. If not (as was arguably the case with the proposal to abolish the Seanad itself), the suggested reform is a bad one.

Again I commend the suggested legislative reforms contained in Chapter 3 of the Seanad Bill 2013 to the Working Group. These proposals would enhance the usefulness of the Seanad as check and balance on the legislation-making power of both ministers and the European Union. Assuming senators are in future elected on a more diverse basis than at present, there would be a benefit in such individuals bringing their expertise to bear on the scrutiny of statutory instruments, public appointments and EU legislation.

No doubt any government will fear being defeated in the upper house if there is a high risk it will not hold a majority there. However, I believe this risk should not be seen as an impediment to effective law making. It is not suggested that the Seanad should have sweeping powers to block legislation so there is little risk of US-style gridlock. I think the main effect of a more assertive upper house would be to require governments to become better at advocating and explaining its policies and seeking consensus. While it may be attractive to think that if the Seanad is a mere rubber stamp there will be greater political stability, I believe the risk of instability is wildly overstated and in reality at present a form of rule-by-decree is achieved. This cannot

have been the reason a senate was originally included in the constitutional architecture or why citizens voted to keep it.

I think it is also worth highlighting the reform suggested in section 28 of the Seanad Bill whereby the Cathaoirleach and Leas Cathaoirleach would be elected by secret ballot. This measure would reinforce the independence of the house and would be more conducive to the orderly running of the house. That the senior constitutional offices of the Dáil and Seanad are seen as sinecures in the gift of the government inhibits those office holders from appearing as impartial chairs of debates and procedure-setting committees. It also results in decisions of national importance affecting the running of the Houses of the Oireachtas being made by governments for sectional party-political reasons and otherwise than in the national interest.

I wish the working group well in its work and hope its advices are acted upon with alacrity.

Yours sincerely,

Eoin Martin