

Seanad Éireann Reform Proposal

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Overview

Seanad Éireann was established pursuant to Article 15.1 of the Constitution of Ireland, which came into operation in December 1937. Under Article 15.1.1, the Oireachtas consists of the Presidency, “a House of Representatives to be called Dáil Éireann and a Senate to be called Seanad Éireann”. As a “Free State Senate” existed during the currency of the Irish Free State from 1922 until its abolition in 1936, the Seanad we know today is sometimes referred to as the “Second Seanad”.

The new system of Vocational Panels used to nominate candidates for the Seanad was inspired by Roman Catholic social teaching of the 1930s, and in particular the 1931 papal encyclical *Quadragesimo Anno*. In this document Pope Pius XI argued that the Marxist concept of class conflict should be replaced with a vision of social order based on the cooperation and interdependence of society’s various vocational groups. Under Article 15.9.1 the Seanad elects a Chairman (often known by the Irish title, Cathaoirleach). The Seanad establishes its own standing-committees and select committees. Senators also participate, along with TDs (members of the Dáil), in joint committees of the Oireachtas. The Taoiseach may appoint a maximum of two senators as Ministers. In this way, it is possible for the Taoiseach to appoint two persons from outside politics to the Seanad, and following this, to appoint them to serve as Government Ministers. For example, James Dooge was appointed to the Seanad by Taoiseach Garret FitzGerald and subsequently served as Minister for Foreign Affairs (1981-82).

Seanad Éireann consists of sixty senators:

- Eleven appointed by the Taoiseach (Prime Minister).
- Six elected by the graduates of certain Irish universities:
 - » Three by graduates of the University of Dublin.
 - » Three by graduates of the federal National University of Ireland.
- 43 elected from five special panels of nominees (known as Vocational Panels) by an electorate consisting of TDs, Senators and local councillors (elected members of local authorities).

Nomination to the panel seats is restricted, with only Oireachtas members and designated ‘nominating bodies’ entitled to nominate candidates. Each of the five panels consists of, in theory, individuals possessing special knowledge or experience in, one of five specific fields. The Seanad election must take place within 90 days of the dissolution of Dáil Éireann for the preceding General Election. In this way, the Seanad is often seen as a “second chance” for those aspiring TDs who did not get elected in the preceding election to the Dáil.

The five vocational panels of Seanad Éireann are:

- Administrative Panel: Public administration and social services (including the voluntary sector).
- Agricultural Panel: Agriculture and the fisheries.
- Cultural and Educational Panel: Education, the arts, the Irish language and Irish culture and literature.
- Industrial and Commercial Panel: Industry and commerce (including engineering and architecture).
- Labour Panel: Labour (organised or otherwise).

Under the Constitution the general election for the Seanad must occur not later than 90 days after the dissolution of Dáil Éireann for the preceding General Election. The election is held under the system of proportional representation by means of the single transferable vote (however in the panel constituencies each vote counts as 1000 meaning fractions of votes can be transferred). Membership is open to all Irish citizens over 21, but a senator cannot simultaneously be a member of Dáil Éireann. However, as stated above, nomination to vocational panel seats is restricted to those with bona fide connections with the panel under which they are seeking a nomination; while nomination in the University constituencies requires the signatures of 10 graduates of the relevant university (i.e. NUI or the University of Dublin).

In the case of a vacancy in the Vocational Panels, by death, resignation or election to the European Parliament, a Seanad by-election takes place. Seanad by-elections involve Oireachtas members only, ensuring that the government of the day decides the successful candidate. University vacancies, however, are filled under different rules, wherein the university in question holds a specific by-election.

The powers of Seanad Éireann are modelled loosely on those of the British House of Lords. It was intended to play an advisory and revising role rather than being an equal of the popularly elected Dáil. While notionally every Act of the Oireachtas must receive the Seanad's assent, it can only delay rather than veto decisions of the Dáil. In practice, however, the Seanad is almost guaranteed an in-built government majority due to the Taoiseach's nominees. The Constitution imposes the following specific limitations on the powers of the Seanad:

- In the event that a bill approved by Dáil Éireann has not received the assent of the Seanad within 90 days, the Dáil may, within a further 180 days, pass a resolution to the effect that the Bill is deemed passed by both Houses and can be sent to the President for signature.
- A Money Bill, such as the Budget, may be deemed to have been approved by the Seanad after 21 days. While the Seanad has a maximum 21 days to consider a Money Bill and to send recommendations and proposed alterations back to the Dáil for consideration there, the Seanad has no substantive power regarding the passage of Money Bills into law.
- In the case of an urgent bill, the time that must have expired before it can be deemed to have been approved by the Seanad may be abridged by the Government (cabinet) with the concurrence of the President (this does not apply to bills to amend the constitution).
- The fact that the Taoiseach appoints 11 senators usually ensures that the Government, which must have the support of the Dáil, also enjoys a majority in the Seanad.
- The Seanad has no role in foreign affairs, with this area of State policy being exclusively within the jurisdiction of the Executive (the Government).

The constitution does, however, grant to the Seanad certain means by which it may defend its prerogatives against an overly zealous Dáil:

- The Seanad may, by a resolution, ask the President to appoint a Committee of Privileges to adjudicate as to whether or not a particular bill is a Money Bill. The President may, however, refuse this request.
- If a majority of senators and at least one-third of the members of the Dáil present a petition to the President stating that a bill is of great "national importance" the President can decline to sign the bill until it has been 'referred to the people'. This means that he or she can refuse to sign it until it has been approved either in an ordinary referendum or by the Dáil after it has reassembled after a general election.[1]

Current Problems

Much of the current problems with the Seanad revolve around the perceived democratic deficit in the election of its members. As noted above only County/City Councillors, members of the Oireachtas and graduates of 5 Universities (namely: TCD, UCD, UCC, NUI Galway, and NUI Maynooth) may elect members to the Seanad. This has led to the Upper House being labelled as elitist and unrepresentative. Furthermore, the fact that the Taoiseach is empowered under Article 18.3 to appoint eleven members at his own discretion poses two problems for the legitimacy of the Seanad in the eyes of the public: Firstly, the appointment of 11 members of one House of Parliament by a single member of the other House of Parliament, at his absolute discretion, is inherently dubious in terms of the functioning of a representative democracy. Secondly, as the Seanad in practice is often seen as a “second chance” for failed Dáil candidates in the preceding General Election, it is quite common for the electorate to explicitly reject a candidate for one House of Parliament (the Dáil) in the General Election, only for that same candidate to be appointed by the Taoiseach to the other House of Parliament (the Seanad) within a matter of weeks. It also directly contributes to the virtual guarantee the Government has of attaining a majority in the Upper House. There is no doubt that this process must be considered a factor in the public’s disillusionment with the political process, when, in their eyes, their democratic decision to reject a candidate for Parliament is ignored and overruled by the Taoiseach.

Because of these issues, most citizens have little interest in affairs of the Seanad and merely see it as a “rubber stamp” for the Government to force through legislation through its necessary majority in the Dáil and its almost guaranteed majority in the Seanad. Membership has therefore has the public perception of “jobs for the boys”, a breeding ground for up and coming politicians or a retirement/consolation for defeated TD after General Elections. Given the general public’s distrust of the body politic and the current fiscal problems facing the country, the call for outright abolition of the Seanad is garnering support. It’s widely accepted that the Vocational Panels have not performed as intended with candidates seldom having any particular experience relevant to the panel from which they are elected and that the election of most senators is an overtly political process dominated by party affiliation.

The University Panels have a tradition of electing independent senators but even these panels are not without criticism. Many feel that the fact that voting rights are restricted to the five universities listed above is elitist. In 1979, the Fianna Fáil government introduced a constitutional referendum to extend voting rights to all graduates of third-level institutes, which was passed by 92.4% and as such became the Seventh Amendment to Bunreacht na hÉireann.[2] Despite this, successive Governments from across the political spectrum have failed to enact the necessary legislation to extend the voting rights to graduates of other institutions of higher education.

A related argument exists in that the entire proposition that the election of certain Senators should be within the remit of those who have chosen to engage in third-level education is inherently undesirable and offensive to the traditional concept of representative democracy. It should be noted that one of the earlier justification for the University seats in the First Seanad (1922-1936) was to ensure representation among the non-Nationalist and Protestant communities in the Irish Free State. In light of the guarantees on religious freedom under the 1937 Constitution, the removal of the “special

position of the Catholic Church” from the Constitution by way of the Fifth Amendment in 1973 and the development of Irish society in terms of personal rights and pluralism since Independence, it must be doubted as to whether there is a genuine need for University seats. However there is a case for retention of a Universities or “Higher Education” Panel which will be discussed in the next section.

Finally, another major flaw with our Upper House is that its powers are quite limited and as such, it cannot realistically challenge legislation placed before it by Dáil Éireann, mainly “Money Bills” (as outlined in Article 23 of Bunreacht na hÉireann). As mentioned above, due to the makeup of the Seanad virtually guaranteeing a Government majority, the Seanad rarely makes amendments to Bills it receives from the Dáil compared to the First Seanad. In that time, with a largely independent membership, the Seanad recommended 1,831 amendments to Bills of which the Government accepted 1,719, some 93.9%.[3] This serves as example of what a politically neutral chamber with expertise representing a large section of the Irish population can achieve if given the power to do so.

It should be noted however that the argument of the public monies that would be saved in abolishing Seanad Éireann does not hold weight when examined. Although this is highlighted as the key justification for the abolition of a House with few powers in a time of austerity, is in fact relatively inexpensive to run Seanad Éireann. Mr. Kieran Coughlan, Accounting Officer for the Oireachtas Commission – the body charged with managing the administrative affairs of the Oireachtas – testified at the Oireachtas Public Accounts Committee (PAC) in January 2012 that the actually running costs, including pay and expenses, of the Seanad stood at an estimated €9.2 million per annum, a drop in the ocean in terms of national debt.[4] In addition, this figure is gross of the considerable taxes that would be taken straight back by the State, which can be conservatively estimated at 30% or €2.75 million, leaving the actual economic cost of running the Upper House at an estimated €6.44 million per year.

Proposed Reforms

Ireland is facing a crisis of leadership. Institutions in which the public held confidence for generations no longer hold sway – banks, politicians, the Catholic Church, the legal profession, civil servants. While reform of the Seanad will not solve this crisis of leadership, it offers us a real and substantive way to contribute towards a new Parliament which is transparent and relevant to the people and which has a real input into the legislative process. Additionally, while the First and Second Seanad were aimed at protecting the voices of minorities at home, a “Third Seanad” can act as a focus point for engaging with the Global Irish, our Diaspora, as well as performing the standard role of scrutinising and initiating legislation and acting as a check on the power of both the Dáil and the Government.

For the public to have confidence in our political system, that system must be transparent, democratic and representative. The current method of electing Senators is set out in the Seanad Electoral (Panel Members) Act of 1947, Seanad Electoral (University Members) Act of 1937 and Electoral Act of 1992. In order to make the Seanad relevant and a Chamber which the people can utilise and feel ownership of, it is clear that some serious reforms are required. These reforms fall broadly into two categories: (i) Election of Senators, and; (ii) Powers of the Seanad. The majority of the proposed changes to be discussed can be brought about through ordinary legislation. However, there would need to be some alterations to the Constitution, which necessitates a referendum. These changes are discussed in the next section of this document.

(i) Election of Senators

As stated above, the people need to feel that they have ownership of the Upper House in order for them to feel it has a worthwhile place in the governance of the country. In order to achieve that, the majority of the sixty seats should be elected by means of a vote subject to the same eligibility that exists for Dáil elections. Firstly, the Taoiseach’s 11 nominees should be scrapped, with these seats allocated between the existing panels and new seats to be discussed later.

A reformed Seanad can retain the current Vocational Panels, lessening the need for constitutional change, with legislation allowing for the wider population to be electors, rather than a politician voting for politicians, as is the case at the moment. Under the Constitution these panels are as follows:

- **Administrative Panel:** Public administration and social services (including the voluntary sector).
- **Agricultural Panel:** Agriculture and the fisheries.
- **Cultural and Educational Panel:** Education, the arts, the Irish language and Irish culture and literature.
- **Industrial and Commercial Panel:** Industry and commerce (including engineering and architecture).
- **Labour Panel:** Labour (organised or otherwise).

Under the Seanad Electoral (Panel members) Act, certain bodies are given the power nominate candidates to the above panels. This system could be retained as a measure to ensure that people with particular expert knowledge relevant to the panel in question receive nominations. Every person who was a member, employed by a member, entitled

to be a member, or employed by a person entitled to be a member, of a nominating body, could register to vote, for that panel, of which the nominating body was a member. A retired or unemployed, person could vote for the panel, which they would have voted when last employed and third and fourth-level students in full time education and over 18 may also vote in the Cultural and Educational Panel. All other people not covered by the above would qualify for the Labour Panel. Those eligible to vote in multiple panels would be able to select which single panel to vote in.[5] A register of electors for the Seanad could then be constructed using PPS numbers, as was recommended by the Joint Oireachtas Committee on the Environment in 2008.[6] The total number of seats afforded to these panels should be increased from 43 to 49 with the total number per panel being divided proportionately with respect to the number of electors registered in each panel.

The Universities Panel should mirror that which the public voted for in 1979 and could be enacted with legislation to extend the franchise to graduates of any institution of higher education. This would promote the value of further education in a country in which 30% of adults have a third level qualification[7], a figure that jumps to 48% when you look at 25 to 34 year olds[8], and is rising all the time. In fact, Ireland currently tops the OECD list of countries with regard to the proportion of our school leavers going on to higher education, a fact that should be celebrated and championed by our political system. Retention of this panel allows us a panel which has elected, almost exclusively during its history, independent senators free of party politics and allows an avenue for academics to be elected who might otherwise be lost in the myriad of other candidates and nominating bodies on the other panels. This panel would retain its current 6 senators with no division being placed between graduates of different institutions.

Finally, this would leave 5 seats to be filled which could be used to give direct representation to Northern Ireland and the Diaspora at a ratio of 2 to 3. Many countries allow their citizens living abroad vote in General Elections including France and the USA. France in fact has a specific MP for their Diaspora living in various regions of the World with French Diaspora in Ireland voting with their compatriots in the UK and Scandinavia to elect one MP. The Irish Diaspora could be allowed to register their intention to vote via the Irish embassies or consulates in their country of residence or online with the Department of Foreign Affairs using their Irish passport number, birth certificate and/or other supporting documents as may be set out in legislation. Polling of this constituency could be conducted through a combination of postal voting, voting in person at an embassy or consulate and, in time, online voting. Nominating bodies in this constituency could be made up of various cultural, citizens and minority representational bodies. Similarly, the election of 2 senators for Northern Ireland could be managed in a similar fashion, albeit via postal vote, and would give Northern Irish people a direct say into an Oireachtas which has over the past three decades has seen relations North and South improve drastically with cross-border initiatives proving lucrative for all communities.

The election of Senators should remain linked to the election of the members of Dáil Éireann, but with a wider, non-partisan electorate. The practice of defeated Dáil candidates being elected senators as a “second chance” should be drastically reduced. A more independent Seanad, whose membership would bring a large range of skills and experience in a variety of sectors, would greatly enhance political debate in Ireland and also enable the Upper House to engage with the people, given the change of focus of the political dialogue away from party political matters.

(ii) Powers of the Seanad

The main focus of the Seanad should still be to review and recommend changes to Bills it receives from the Dáil as well as to initiate legislation, however, its role in scrutinising European legislation could be greatly enhanced and in doing so, this could lead to a greater comprehension among Irish people as to the roles of the various European institutions and their effect on their lives. A predominately independent Seanad would also provide much needed oversight on Government and the legislation it produces which is currently lacking. The Seanad should also be given the statutory powers to cross-examine and approve/reject Government appointees to both State Boards and the Judiciary.

Panel	Current Seanad	Proposed Seanad
Industrial & Commercial	9	5 - 13*
Administrative	7	5 - 13*
Education & Culture	5	5 - 13*
Labour	11	5 - 13*
Agricultural		5 - 13*
Universities	6	6
Taoiseach's Nominees	11	0
Diaspora/N.Ireland	0	5
Total	60	60

* The total for these 5 panels is not to exceed 49

Fig 1: Comparison of current Seanad makeup versus proposed makeup.

Constitutional Reforms

In order to abolish the Seanad completely there would need to be some 30 different amendments to Bunreacht na hÉireann in order to remove all references to it in the Constitution. There would also have to be massive legislative change such that many different Acts would have to be radically amended or abolished in order to accommodate the new reality. However, in order to get a more effective and democratic Seanad, the following six changes to Bunreacht na hÉireann, would be all that is required.

Deletions:

The following passages would have to be deleted in order to remove the provision of the Taoiseach's nominees:

Article 18.3

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

Article 18.10 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 the persons so nominated."

Amendments:

In order to achieve an electoral system that is open, fair and representative as outlined in the previous section, there would also be a legal requirement to alter some sections of Bunreacht na hÉireann as it currently stands. These are as follows:

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"

Should be changed to:

"Seanad Éireann shall be composed of sixty members, the election of which shall be determined by law".

Article 18.7 2°

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

Should be changed to:

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

Article 18.9

"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."

Should be changed to:

"Every member of Seanad Éireann shall, unless he or she 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 or her election."

Insertion

To provide for the election of Senators to represent Northern Ireland and the Diaspora the insertion of one section to Article 18 should be made to cover all eventualities including a possible reunification of Northern Ireland with the Republic of Ireland. The addition therefore should read:

“Five members of Seanad Éireann shall be elected, in a manner provided by law, by citizens of the State whose permanent residence at the time of the general election of Seanad Éireann lies outside the State.”

Conclusion

The Constitution espouses a separation of the powers of Government among three distinct branches, namely: the Judiciary; the Executive, and the Legislature. With the line between the Executive and Legislative branches becoming ever more “fused” or some would argue, non-existent, a further reduction in checks and balances would add to the problem of power being concentrated among a small number of politicians in Ireland, which is widely recognised as one of the most centralised States in Europe. The fiscal argument for the abolition of the Seanad does not stack up. However, it is almost universally accepted that Seanad Éireann cannot continue under its current form. In order for a public to have confidence and ownership in any Parliament they must have some say in how that Parliament’s members are elected. In an age in which people are becoming more sceptical about politics in general, a view of a chamber focused on the finer points of legislation and made up of experts from many different fields would be a welcome break from party political arguments, as seen regularly in the Lower House. The measures as laid out in this document would achieve this goal without allowing for the “parish pump” politics that many people see as institutional in geographically based politics. The proposals herein would require a constitutional referendum in order to achieve the six necessary changes to allow these changes be legislated for.

In closing, for a Chamber to be allowed govern the people, it must be directly elected by and be representative of the people.

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