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IRELAND

Constitution and Government



The President, Mrs. Mary Robinson, addressing a joint session of the houses of the Oireachtas.

Ireland is a parliamentary democracy. The National Parliament (in the Irish language, Oireachtas) consists of the President (an tUachtarán) and two Houses: a House of Representatives (Dáil Éireann) and a Senate (Seanad Éireann). The sole and exclusive power of making laws for the State is vested in Parliament. The functions and powers of the President, Dáil and Seanad derive from the Constitution of Ireland (Bunreacht na hÉireann) and law.

CONSTITUTION

The Constitution of Ireland is the basic law of the State. It was adopted by plebiscite in 1937. It is the successor of the Constitution of Dáil Éireann (1919) and the Constitution of the Irish Free State (1922). The Constitution states that all legislative, executive and judicial powers of Government derive from the people. It sets out the form of government and defines the powers of the President, the two

Houses of the Oireachtas and the Government. It also defines the structure and powers of the courts, sets out the fundamental rights of citizens and contains a number of directive principles of social policy for the general guidance of the Oireachtas. The Constitution may be amended only by referendum.

The Constitution outlines what are considered the fundamental rights of the citizen. The definition of rights in the

Constitution covers five broad headings: personal rights, the family, education, private property and religion.

Personal Rights: the Constitution declares that all citizens are equal before the law; it guarantees to defend and vindicate the personal rights of citizens in its laws: it provides that there will be no deprivation of personal liberty except in accordance with law; it provides for the right to 'habeas corpus'; it guarantees the inviolability of citizens' dwellings except in accordance with law; and it guarantees, subject to public order and morality, liberty to express freely one's convictions and opinions, the right to assemble peaceably and without arms, and the right to form associations and unions.

The Family: the State recognises the family as a moral institution possessing inalienable and imprescriptible rights, and guarantees to protect it and the institution of marriage.

Education: the State recognises the primacy of the family in the education of children and undertakes to provide for free primary education and to supplement and aid private educational initiative, with due regard to the rights of the parents.

Private Property: the right to own private property is guaranteed and its exercise is subject only to the exigencies of the common good.

Religion: the Constitution guarantees freedom of conscience and the free profession and practice of religion, subject only to public order and morality.

Unenumerated Rights: In addition to the foregoing personal rights specifically provided for in the words of the Constitution, the Courts have held in a series of cases that there are other personal rights whose existence "result(s) from the Christian and democratic nature of the State", and which are implicitly guaranteed by the Constitution.

The Courts have ruled that these unenumerated personal rights include:

the right to bodily integrity, the right not to have one's health endangered by the

State, the (qualified) right to work and to earn a livelihood, the right to marital privacy, the right of access to the courts, the right of the citizen to sue the State in court, the right to justice and fair procedures, the right to travel within and without the State, the right to marry, the rights of the unmarried mother in regard to her child.

This list is not exhaustive and it is also likely that the Courts will identify more, as yet unenumerated, personal rights in future.

Citizens, and in certain cases non-citizens, have the right to apply to the courts to protect from infringement their rights under the Constitution or to have a judgement pronounced as to whether legislation is compatible with the Constitution, provided the legislation affects, or is likely to affect, the person challenging it. Moreover, the President may before signing a Bill refer it to the Supreme Court for a decision on its compatibility with the Constitution. These procedures have been employed on a number of occasions.

THE PRESIDENT

The President is the Head of State. The current President is Mary Robinson. She acts on the advice and authority of the Government but performs a limited number of functions after consultation with an advisory Council of State. She receives and accredits Ambassadors. Every law made by Parliament is promulgated by her. Bills passed by both Houses of Parliament require her signature for their enactment into law. She may, before signing a Bill, seek a Supreme Court ruling on whether it is repugnant to the Constitution.

On the nomination of the Dáil the President appoints the Taoiseach (Prime Minister). On the advice of the Taoiseach and with prior approval of the Dáil, she appoints the other members of the Government. On the advice of the Taoiseach she accepts the resignation or terminates the appointment of members of Government and summons and dissolves the Dáil, but she has discretionary power to refuse to dissolve

the Dáil on the advice of a Taoiseach who has ceased to retain the support of the majority in the Dáil. This power, which has not so far been exercised, would force the Taoiseach to resign and give the Dáil the opportunity to nominate a successor.

The supreme command of the Defence Forces is vested in the President. She is not answerable to either House of Parliament or to any court for the exercise and performance of the powers and functions of her office. She may, however, be impeached for stated misbehaviour.

Any Irish citizen of 35 years of age may stand for the office of President. The President is elected by direct vote of the people every seven years. A President may not serve for more than two terms.

The following have held the office of President since it was established by the 1937 Constitution: Douglas Hyde (1938-45), Seán T. Ó Ceallaigh (1945-59), Éamon de Valera (1959-73), Erskine Childers (1973-74), Cearbhall Ó Dálaigh (1974-76), Patrick J Hillery (1976-1990) and Mary Robinson (1990-).

THE LEGISLATURE

Dáil Éireann

The Dáil nominates the Taoiseach and approves the nomination (by the Taoiseach) of the other members of the Government. The Government is responsible to the Dáil for the Departments of State administered by its members. Not more than two Ministers may be members of the Seanad. The Taoiseach, Tánaiste (Deputy Prime Minister) and Minister for Finance must be members of the Dáil as must all other Ministers who are not members of the Seanad.

The Government presents its proposals to the Oireachtas (either Dáil or Seanad) in the form of Bills or Motions which the Houses debate, amend if they so desire, and decide on, if necessary by a vote. These Bills go through five stages in the House in which they are initiated. Following its presentation or introduction (first stage), the general principles of the



Government Buildings, Merrion Street, Dublin

Bill are debated (second stage) and, if a second reading is agreed to, the Bill is then considered in committee, which is usually a committee of the whole House, though it may be a special or select committee. At this third stage the Bill is considered section by section and substantive amendments may be made. At the fourth or report stage the Bill, as reported from the committee, is considered in 'toto' and further amendment may be made. At the fifth and final stage a general debate is permissible but is confined strictly to what is contained in the Bill. It may then be passed by the House and sent to the other House. After a Bill has been passed by both Houses it is sent to the President for her signature and promulgation as law. Bills which become law are termed Acts.

Under the Constitution, the Dáil has exclusive responsibility for considering the estimates of receipts and expenditure of the State, for approving international agreements which involve charges upon

public funds and for assenting to a declaration of, or participation in, war.

Members of the Dáil have the right to address questions in Parliament to Ministers where these relate to public affairs connected with the work of the Ministers' Departments or with matters of administration for which they are officially responsible. Parliamentary questions cannot lead to a debate or a vote. However, a member who is dissatisfied with an answer may, with the consent of the Ceann Comhairle (Chairman) of the Dáil, initiate a discussion at the time of the adjournment of the House. Also with the consent of the Ceann Comhairle, a member may, if supported by at least twelve members, move a motion that the House adjourn to discuss a matter of urgent public importance.

The monies required by the Government for both current and capital expenditure are voted by the Dáil. A Money Bill may

only be initiated in the Dáil and certain restrictions apply to the extent to which the Seanad may amend such Bills. The Ceann Comhairle must certify that the Bill in question is a Money Bill.

A Bill passed by the Dáil which the Seanad rejects or which passed in the Seanad with amendments to which the Dáil does not agree, or a Bill which is neither rejected nor passed within ninety days by the Seanad, may subsequently be enacted into law by a resolution of the Dáil.

Membership of the Dáil

The Dáil has 166 members (known as Teachtaí Dála 'Deputies to the Representative Assembly' or TDs) returned by 41 constituencies, each of which elects three, four or five members, according to its population. The Constitution provides that the number of members of the Dáil must be such that there is not more than one member for every 20,000 people or less than one member for every 30,000 people.

Strength of the Parties in the Dáil after each General Election 1922–1992

Election	Total	Republican/ Fianna Fáil	Cumann na nGaedheal/ Fine Gael	Labour	Farmers Clann na Talmhan	Progressive Democrats	Other Parties*	Independents
1922	128	35	58	17	7	•	•	11
1923	153	44	63	14	15	•	•	17
1927(1)	153	44	47	22	11	•	13	16
1927(2)	153	57	62	13	6	•	2	13
1932	153	72	57	7	4	•	•	13
1933	153	77	48	8	•	•	11	9
1937	138	69	48	13	•	•	•	8
1938	138	77	45	9	•	•	•	7
1943	138	67	32	17	14	•	•	8
1944	138	76	30	8	11	•	4	9
1948	147	68	31	19	7	•	10	12
1951	147	69	40	16	6	•	2	14
1954	147	65	50	19	5	•	3	5
1957	147	78	40	13	3	•	5	8
1961	144	70	47	16	2	•	3	6
1965	144	72	47	22	•	•	•	3
1969	144	75	50	18	•	•	•	1
1973	144	69	54	19	•	•	•	2
1977	148	84	43	17	•	•	•	4
1981	166	78	65	15	•	•	5	3
1982(1)	166	81	63	15	•	•	3	4
1982(2)	166	75	70	16	•	•	2	3
1987	166	81	51	12	•	14	5	3
1989	166	77	55	15	•	6	9	4
1992	166	68	45	33	•	10	5	5

*Details of the strengths of other parties are as follows:

1927(1) National League 8; Sinn Féin 5

1927(2) National League 2

1933 Centre Party 11

1944 National Labour 4

1948 Clann na Poblachta 10

1951 Clann na Poblachta 2

1954 Clann na Poblachta 3

1957 Sinn Féin 4; Clann na Poblachta 1

1961 National Progressive Democrats 2;
Clann na Poblachta 1

1981 H-Block 2; Ind. FF 1; SLP 1

1982(1) Workers Party 3

1982(2) Workers Party 2

1987 Workers Party 4; Democratic Socialist Party 1

1989 Workers Party 7; Democratic Socialist Party 1;
Green Party 1

1992 Democratic Left 4; Green Party 1

The constituencies must be reviewed at least once every twelve years, with due regard to changes in the distribution of the population.

Parties in the Dáil

The following political parties were represented in the Dáil following the 1992 General Election: Fianna Fáil, Fine Gael, the Labour Party, Progressive Democrats, Democratic Left and the Green Party. The table on page 5 shows the strength of the various parties in the Dáil since 1922.

Seanad Éireann

Bills passed by the Dáil are sent to the Seanad, where they can be amended. These amendments are considered by the Dáil. The Seanad's duty in relation to finance is limited to giving consideration, within 21 days, to Money Bills. In general, the Seanad may delay for a maximum of ninety days a Bill passed by the Dáil or may suggest changes in the Bill, but cannot block it permanently.

Membership of the Seanad

The Seanad has sixty members:

1. Eleven are nominated by the Taoiseach.
2. Six are selected by graduates of the University of Dublin, the National University of Ireland and such other institutions of higher education as may be designated by law.
3. The remaining forty-three are elected from five panels made up of people representing different vocational and professional interests and services. Each panel is divided into two sub-panels: one composed of candidates nominated by at least four members of the Oireachtas and another composed of candidates nominated by registered groups in the spheres of culture and education, agriculture, labour, industry and commerce, and public administration and social services.

Sittings of the Houses

Attendance at debates in the Houses is not compulsory and no official record is kept of the members attending. The Dáil sits for about 100 days in the year and the Seanad for about 60. Both meet in Leinster House, Dublin.

Privileges of members

Each House makes its own rules and standing orders, with power to attach penalties for their infringement, and has the 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.

All official reports and publications of the Houses and utterances made in either House are privileged.

The members of each House are, except in the case of treason, felony or breach of the peace, privileged from arrest in going to and returning from, and while within the precincts of, either House, and are not, in respect of any utterance in either House, amenable to any court or any authority other than the House itself.

Each House elects its own Chairman (Ceann Comhairle of the Dáil and Cathaoirleach of the Seanad) and Deputy Chairman. They have charge of the conduct of proceedings and the administration of their Houses. The outgoing Ceann Comhairle is automatically deemed to have been re-elected to the Dáil after a general election, without having to go through the electoral process. Both Houses of Parliament are assisted by a secretariat of civil servants who work under the direction of the Clerks of the Dáil and Seanad.

THE GOVERNMENT

The executive power of the people is exercised by the Government or on its authority. Under the Constitution the Government must consist of not less than seven and not more than fifteen members, each of whom normally heads one or more Departments of State. It acts as a collective authority responsible to the Dáil.

There may be up to seventeen Ministers of State, who are not members of the Government but who assist specific Ministers in their work.

The practice is that, following a general

election, the prospective Taoiseach first secures the support of a majority in the new Dáil and then is formally appointed by the President. The Taoiseach must resign when the Government ceases to retain majority support in the Dáil. The office of Taoiseach (styled 'President of the Executive Council', 1922–37) has been held by the following: William T Cosgrave (1922–32), Éamon de Valera (1932–48, 1951–54, 1957–59), John A Costello (1948–51, 1954–57), Sean F Lemass (1959–66), Liam Cosgrave (1973–77), Jack M Lynch (1966–73, 1977–79), Charles J Haughey (1979–81, March 1982–November 1982, 1987–92), Garret FitzGerald (1981–February 1982, December 1982–1987), Albert Reynolds (February 1992–1994) and John Bruton (1994–).

Parliamentary Elections

The lifetime of a Dáil is not more than five years from the date of its first meeting. In practice, however, the Taoiseach normally exercises his power to recommend dissolution before the end of that period. A general election must take place within thirty days of a dissolution of the Dáil, and the newly elected Dáil must meet within thirty days of the polling date.

ELECTORAL SYSTEM

How the Dáil is elected

Irish citizens and British citizens who have reached the age of 18 years and who are ordinarily resident in a constituency are entitled to be registered as electors and to vote in general elections in the Dáil constituency in which they are normally resident.

No person may vote more than once. The ballot is secret. Members are elected on the system of proportional representation and by means of the single transferable vote in multi-member constituencies. The register of electors is compiled annually by the registration authorities. Postal voting is available to members of the police (Garda Síochána) and full-time members of the Defence Forces, civil servants (and their spouses) attached to Irish missions abroad. Electors with physical disabilities or illnesses which prevents them from going

to a polling station to vote may be registered as special voters and may vote at home by having a ballot paper delivered to them.

Every Irish citizen who has reached the age of 21 years, and who is not placed under disability or incapacity by the Constitution or by law, is eligible for membership of the Dáil and Seanad.

There is a register of political parties. A candidate's nomination paper may include the name of the registered political party which he or she represents or, in the case of a person who does not represent a registered party, the description 'non-party'. These particulars will appear on the ballot paper.

Polling takes place in schools and other suitable public buildings. Polling compartments are provided in which voters can mark their paper in secret. Voters must vote in person and not by proxy.

The voters mark their paper by placing the figure '1' opposite the name of the candidate of their first choice. They may then place the figure '2' opposite the name of their second choice and so on. Under the single transferable vote system the elector is in effect telling the returning officer: 'I wish to vote for A, but if A does not need my vote or has no chance of being elected, transfer my vote to B. If B in turn does not need my vote or has no chance of election, transfer my vote to C, and so on'.

Counting votes

The count commences at 9 am on the day after polling day. At the opening of the count the ballot papers are mixed together and sorted according to the first preferences recorded for the candidates. The total number of valid papers is then found, and from that figure the quota is calculated according to the formula:

$$\frac{\text{Total valid votes}}{\text{Number of seats plus 1}} \text{ Plus 1}$$

Thus, if there were 40,000 votes and 4 seats to be filled, the quota would be 8,001 and only four candidates could reach the quota. The quota, then, is the smallest number necessary to guarantee the election of a candidate.

If, on the first count, no candidate has reached the quota, the candidate who received the lowest number of votes is eliminated and his votes are transferred to the candidate for whom a second preference is recorded. If a candidate receives more than the quota required for election, the surplus votes are transferred to the remaining candidates in accordance with the subsequent preferences expressed by the electors.

When the number of remaining candidates neither elected nor eliminated equals the number of vacancies to be filled, those candidates are declared elected although they may not have reached the quota.

A bye-election is held to fill a vacancy created by the death, resignation or disqualification of a member of the Dáil. The voting procedure in a bye-election is the same as that for a general election.

How the Seanad is elected

An election for the Seanad must take place within ninety days of a dissolution of the Dáil. The date of the first meeting of the newly-elected Seanad is fixed by the President on the advice of the Taoiseach. There are separate systems for the election of university and panel members.

Panels

The numbers of members of the Seanad elected from each panel is divided as follows:

1. Five members from the cultural and educational panel (representing the national language and culture, literature, art, education, law and medicine — including surgery, dentistry, veterinary medicine and pharmaceutical chemistry), of whom two at least are elected from each sub-panel.
2. Eleven members from the agricultural panel (representing agriculture and allied interests and fisheries), of whom four at least are elected from each sub-panel.
3. Eleven members from the labour panel (representing labour, whether organised or unorganised), of whom four at least are elected from each sub-panel.
4. Nine members from the industrial and

commercial panel (representing industry and commerce and including banking, finance, accountancy, engineering and architecture), of whom three at least are elected from each sub-panel.

5. Seven members from the administrative panel (representing public administration and social services, including voluntary social activities), of whom three at least are elected from each sub-panel.

Formation of panels

The Clerk of the Seanad, acting as Seanad Returning Officer, is required to maintain a register of bodies entitled to nominate a number of people to the panels of candidates. At a Seanad election each nominating body registered for a panel may propose for nomination a fixed number of people. The final nominations comprise what is known as the nominating bodies sub-panel.

Any four members of either House may nominate one candidate for any panel, but each member may join in only one such nomination. The nominations made by members of both Houses to each panel are known as the Oireachtas sub-panel.

Candidates must have knowledge and practical experience related to the panel for which they are nominated.

The Electorate

The electorate for an election of panel members to the Seanad numbers almost 1,000 and consists of:

1. the members of the incoming Dáil,
 2. the members of the outgoing Seanad,
- and
3. the members of the Councils of Counties and the Corporations of County Boroughs.

Each elector has only one vote for each panel. Each panel is counted separately and the elections conducted in accordance with the principle of proportional representation, by means of the single transferable vote.