



**AN BILLE UM AN SEANAD (UIMH. 2), 2013
SEANAD (NO. 2) BILL 2013**

EXPLANATORY MEMORANDUM

Background

The Constitution provides that the Oireachtas shall be the National Parliament and shall consist of the President and two Houses, viz: a House of Representatives to be called Dáil Éireann and a Senate to be called Seanad Éireann

Seanad Éireann's role under the Constitution includes important safeguards for the citizens and the State and important checks and balances in relation to the performance of the executive, legislative and judicial powers of government in the State and in relation to the European Union

To the extent that the Seanad may be said to be unrepresentative and of limited effectiveness, we contend specifically that reforms which are proposed under this legislation would transform Seanad Éireann and enable it to fulfil the role envisaged by the designers of the Constitution.

The publication of this Bill was preceded in September 2012 by a consultation paper entitled "Radical Seanad Reform Through Legislative Change". This Bill derives from proposals which were contained in that paper and also takes into consideration submissions received during the course of the consultation process.

Purpose of the Bill

The Bill opens up the Seanad to a wide electorate including every person who is eligible to vote in any other parliamentary election in the State as well as to Irish people abroad and eligible persons in Northern Ireland and also to graduates of other universities.

The Bill also provides for a more open and inclusive Seanad whose elected membership could have an equal number of males and females.

The process of nominating persons to be candidates is opened up to so as to allow candidates to be nominated by popular support.

The Bill also confers a range of additional powers on the Seanad in areas such as the scrutiny of legislation, the examination of public appointments as well as the holding of inquiries.

The Bill repeals the Seanad Electoral (Panel Members) Act 1947 and also the Seanad Electoral (University Members) Act 1937.

The Bill contains 68 sections, is divided into eight Parts and contains seven Schedules.

Provisions of the Bill

Part 1 of the Bill contains *sections 1 to 5* which are principally a series of standard provisions and notably, section 5 provides for the repeal of the Seanad Electoral (Panel Members) Act 1947 and also the Seanad Electoral (University Members) Act 1937.

Part 2 of the Bill contains three sections. Section 6 sets out in very plain terms what the composition of the Seanad shall be:

- cultural and educational constituency having 8 members;
- agricultural constituency having 9 members;
- labour constituency having 10 members;
- industrial and commercial constituency having 8 members;
- administrative constituency having 8 members.

Section 6 of the Bill also provides for a six-seat constituency for the universities and other institutions of higher education in the State. Section 6 also reiterates the Taoiseach's right to nominate 11 members.

Section 7 of the Bill provides for the election of an equal number of males and females to the Seanad. In order to give effect to this, each constituency shall consist of a gender sub panel made up of an equal number of males and females.

Section 8 provides for a reduction in the salaries payable to Senators such that Senators will receive 50% of a TD's salary. It also provides that Senators will no longer be entitled to receive a lump-sum upon resignation or upon loss of their seat.

Part 3 of the Bill contains twenty sections and deals with the role and function of the Seanad. Section 9 seeks to set out in broad terms what the role of the Seanad should be, as intended by the Constitution.

Sections 10 to 19 set out in very clear terms the various functions of the Seanad which have been expressly conferred on it by the Constitution. The proposal to abolish the Seanad will result in all of these powers being wiped away so as to confer the Dáil with exclusive control on the discharge of these and other functions. Section 20 clarifies that the terms of sections 10 to 19 do not seek to delimit the role of the Seanad as envisaged by the Constitution.

Sections 21 to 29 propose to confer new and enhanced functions on the Seanad. In some instances the creation of new Seanad committees is envisaged, each to be chaired by a non-government member of the Seanad. This approach seeks to ensure the independence of such committees and is an approach which works well for the Public Accounts Committee of the Dáil.

Section 21 seeks to confer upon the Seanad a new role in the scrutiny of draft legislation which emanates from the institutions of the European Union. The current Government Chief Whip, Minister of State Paul Kehoe is on record as having conceded that "the scrutiny of EU legislation is not adequate, there is only one Committee charged with examining what is a large volume of proposals, and that in itself is a failing". 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.

Section 22 seeks to confer upon the Seanad a new role in the scrutiny of statutory instruments. Last year 592 statutory instruments were made, and in 2011 741 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. This is also an area in which members of the current Government are on record as having conceded that the current arrangements for scrutiny are totally inadequate.

Section 23 seeks to confer on the Seanad the right to scrutinise Ministerial appointments to public bodies. At present such appointments are not subjected to any systematic process of scrutiny by the Dáil or the Seanad. This proposed power would provide much needed transparency and accountability in relation to senior appointments to public bodies.

Section 24 seeks to confer on the Seanad the power to hold public interest inquiries. This provision is based on a provision which is contained in the Government's own draft Bill — Houses of the Oireachtas (Inquiries, Privileges and Procedures) Bill 2012.

Section 25 seeks to empower the Seanad to conduct an inquiry as to the legislative functions of the House as well as an inquiry into whether a particular piece of legislation is required. This provision is also based on a provision which is contained in the Government's draft Houses of the Oireachtas (Inquiries, Privileges and Procedures) Bill 2012.

Section 26 requires the Seanad Public Consultation Committee to hold a debate on an issue of national importance when requested to do so by a petition signed by 1,000 people.

Section 27 provides for the establishment of a Seanad Business of the House Committee which will have the power to determine the business of the House.

Section 28 of the Bill provides that the nomination of the Chairman and Vice-Chairman of the Seanad will be by means of a secret ballot.

Section 29 is in recognition of the Constitutional requirement that the Houses of the Oireachtas are empowered to make the rules concerning the business of the Houses.

Part 4 of the Bill contains thirteen sections and principally deals with the election of persons to the Seanad. In a departure from the current elitist approach, section 30 enunciates the principle that every person shall have one vote in a Seanad election. Section 31 provides that four categories of persons will be eligible to vote at a Seanad election:

- (a) people who are eligible to vote in a Dáil election, an election of members to the European Parliament or a local authority election;
- (b) people who live in Northern Ireland and who qualify for Irish citizenship;
- (c) people who hold an Irish passport but who live abroad; and
- (d) graduates of universities and other institutions of higher education.

Section 32 provides for the establishment and maintenance of a register of electors by the Seanad returning officer. In order to reflect the different bases of eligibility to vote, the register will contain four Divisions.

Section 33 envisages that each university and institution of higher education will retain responsibility for maintaining a register of electors in respect of that institution which will then be shared with the Seanad returning officer.

Section 34 details the rules which will apply to persons who are seeking to be registered in Division 1 of the electoral register.

Section 35 details the rules which will apply to persons who wish to be registered in Division 2.

Section 36 sets out the rules which apply to persons who wish to be registered in Division 3 and *section 37* sets out the rules applicable to those who wish to be registered in Division 4 of the electoral register.

Section 38 provides for the continued use of the existing electoral register for university graduates.

Section 39 seeks to give effect to the Seventh Amendment of the Constitution Act 1979 under which the participation in Seanad elections was to be extended to include graduates of other universities. Accordingly, section 39 seeks to broaden considerably the pool of graduates who are eligible to vote on the universities constituency.

Section 40 requires persons who are applying for inclusion in the Seanad electoral register to provide information which is required by the Seanad returning officer.

Section 41 sets out the procedures which apply to the consideration of applications for registration.

Section 42 provides for the annual revision of the electoral register. The rules contained in Schedule 1 apply to the revision of the register.

Part 5 contains seven sections and deals with the nomination of candidates. Section 43 indicates that a person may be nominated to participate in a Seanad election in one of three ways, namely:

- (a) by a nominating body,
- (b) by a local authority, or
- (c) by popular nomination.

Section 44 and *Schedule 2* set out the rules applicable to nominations by nominating bodies.

Section 45 and *Schedule 3* set out the rules applicable to nominations by local authorities.

Section 46 and *Schedule 4* set out the rules applicable to popular nominations.

Section 47 sets out the qualifications and experience requirements for persons seeking to be candidates in a vocational constituency.

Section 48 addresses the eligibility of candidates.

Section 49 and *Schedule 5* provide for the completion of electoral constituencies.

Part 6 contains 12 sections and addresses the electoral process. Section 50 provides for the making of a Seanad general election order.

Section 51 provides for the appointment of a Seanad returning officer.

Section 52 introduces, for the first time, spending limits on candidates at a Seanad general election. Such limits already exist for candidates at Dáil elections.

Section 53 provides for the publication of the constituency details in preparation for a Seanad election.

Section 54 sets out the requirements which will apply in respect of ballot papers to be used at a Seanad election.

Section 55 describes the way in which votes are to be marked on a ballot paper.

Section 56 sets out the requirements applicable to the sending of ballot papers to the electorate.

Section 57 and *Schedule 6* provides for the issuing of ballot papers.

Section 58 prescribes the method of voting at a Seanad election. Pursuant to Article 18.5 of the Constitution, there is a requirement that Seanad elections must be conducted by way of a postal ballot. This Bill seeks to adhere to that requirement of the Constitution.

Section 59 provides for the casting of votes outside the State which are then returnable to the relevant Embassy or Consulate where they will be counted.

Section 60 along with *Schedule 6* and *Schedule 7* provide for the manner in which votes are to be counted and the results of the election to be ascertained.

Section 61 allows for the trial of election petitions in the same way as such petitions are permissible in respect of Dáil elections.

Part 7 contains three sections and provides for the filling of casual vacancies. *Section 62* sets out the steps to be followed where a vacancy arises.

Section 63 provides that instead of holding a bye-election, casual vacancies shall be filled by reference to the results of the most recent Seanad election.

Section 64 deals with the publication of the details concerning the filling of the casual vacancy.

Part 8 contains four sections and addresses various miscellaneous matters. *Section 65* provides for the resignation of membership of the Seanad.

Section 66 provides for the secrecy of the ballot.

Section 67 seeks to clarify the impact which non-compliance with the various requirements of this Bill will have on the election results.

Section 68 provides for the application of various provisions of the Electoral Act 1992 (relating to electoral offences) to a Seanad general election.

Deputies Shane Ross, Finian McGrath, Mattie McGrath, Noel Grealish and Stephen S. Donnelly,
Bealtaine, 2013.