

SEANAD PUBLIC CONSULTATION COMMITTEE

CONSULTATION ON THE STATUS, TREATMENT AND USE OF THE NATIONAL ANTHEM

Public Consultation Paper

The purpose of this consultation is to invite submissions from interested parties or citizens to consider the most appropriate way the State should treat the National Anthem.

This consultation process is being considered in the context of the music and English and Irish lyrics of the National Anthem no longer being in copyright.

Legislative proposals have been made to address this issue. Seanad Éireann would like to consult with citizens on their views on this issue.

1. Committees Objectives

All or general opinions on this issue from the general public, organisations or any interested parties would be welcomed, although for the sake of clarity please consider addressing these indicative questions in all responses:

1. Should there be any change to the current status of the National Anthem, where it is in the public domain and free to use by all?
2. Should the Government issue guidelines on the use of the National Anthem?
 - a. If so, what matters should be covered or not covered?
 - b. Should this include reference to when it is appropriate to play the National Anthem, or restrictions around this?
3. Should there be legislation introduced in respect of the National Anthem? If so, what should this provide for?
4. Should the National Anthem be officially enshrined in legislation? If so, what versions of the music and words should be used, and in what languages?
5. Should the use of the National Anthem be legally restricted, through the process of copyright or otherwise?
6. What should be classed as misuse of the National Anthem? How should this be decided and who should enforce it?
7. Should the use of National Anthem for commercial purposes, such as for advertising, be restricted? Would charging money for a recording of the National Anthem by an artist be classed as using it for commercial purposes?
8. What penalties should be put in place if any proposed restrictions are breached and what form should these take?

2. Context

'A Soldier's Song'/'Amhrán na bhFiann' was informally adopted as the National Anthem of the Irish Free State in May 1924. Its official adoption as such took place in July 1926 by a decision of the Executive Council, although no formal notification was issued of this change in its status at this time.

Usage of the National Anthem saw a gradual increase in popularity over subsequent years. In 1929, an arrangement of the chorus by the director of the army band, Colonel Fritz Brasé, was authorised by the Executive Council and entered into common usage as the official National Anthem. Its adoption by Radió Éireann and the GAA contributing to its widespread use among the general public by the 1930s.

Legal proceedings were instigated in the early 1930s in order to claim royalties for the use of the National Anthem in this manner. Negotiations were undertaken by the State in order to purchase the copyright and stop any claims for the collection of royalties on the use of the anthem. Subsequently, a payment was made to Peadar Kearney (author of the English lyrics) and Patrick Heeney (composer of the music) totalling £980 to purchase the copyright on behalf of the State in 1933.

Changes to copyright law in 1959 meant that additional negotiations took place in the early 1960s, with an additional payment of £2,500 being made in order to continue the full copyright arrangement.

At the time, payment for these transactions to purchase the copyright to the National Anthem had to be sanctioned by the Department of Finance, and responsibility for official policy in relation to it has remained with the Minister for Finance until the present day. The traditional policy view has followed the original intention behind the purchase of the music and English language, which was designed to make the anthem freely available to all.

During the period that the copyright was under State control frequent requests were made to the Department of Finance, as the holders of the copyright, to publish the lyrics or music. The majority of these were acceded to in line with the policy of allowing free use of the Anthem, although several of a purely commercial nature, such as its use in advertisements, were refused permission.

Under the Copyright Act 1963, the State's copyright on the National Anthem was due to expire at the end of 1992. At this time research was undertaken into passing additional legislation to either extend the copyright or to provide additional legal protection to the Anthem, but it was decided not to do so.

Subsequent European Union legislation to harmonise copyright law extended the copyright on artistic or musical works from 50 years following the death of the author or last co-author of the work, to 70 years. This meant that the State's copyright over the Anthem was extended to 31 December 2012, 70 years following the death of Peadar Kearney in November 1942.

From 1 January 2013 the anthem entered the public domain. This means that no fees can be charged for its use in perpetuity, thereby fulfilling the original policy intention around purchasing the copyright.

Other symbols of the State, such as the harp and the national flag, are protected symbols. The Protocol Division of the Department of the Taoiseach has responsibility for the national flag, and has produced a guidelines document outlining the appropriate treatment of the flag, which is available here: [http://www.taoiseach.gov.ie/eng/Historical Information/The National Flag/The National Flag.pdf](http://www.taoiseach.gov.ie/eng/Historical%20Information/The%20National%20Flag/The%20National%20Flag.pdf)

A Private Members' Bill was introduced into Seanad Éireann by Senator Mark Daly on the issue of the copyright of the National Anthem earlier this year. This consultation is being undertaken in the context of debate and discussion on that issue.

International Context

Given the broad acceptance internationally of the tradition for each State to have a declared National Anthem, this is an issue that other countries across the world have debated in the past.

Many countries allow their National Anthems to reside in the public domain, as is currently the case with the Irish National Anthem. This can be due to the traditional nature of many anthems and the subsequent expiry of any copyright claim on them due to the passage of time, such as the US, France or the Netherlands.

Specific attempts have also been made in order to explicitly place National Anthems in the public domain. The Canadian National Anthem Act was passed in 1980. As well as defining the music and words of the Canadian National Anthem, it officially placed them in the public domain.

Legislation has been passed by several countries as a more direct approach to put explicit limits on the use of their National Anthem. These include Australia, Russia, India, Singapore, Bangladesh and the Philippines, and involve instructions on when and where it should be played, standing to attention while it is played, and the requirement to sing along with fervour.

General Debate on the Issue

The debate around this issue includes aspects of copyright law, cultural tolerance, respect for national symbols, public opinion, free speech and a range of other factors. All of these need to be considered as part of any discussion on the treatment of the National Anthem.

With regards to the copyright of the National Anthem, extending it beyond the formal date of expiry of 31 December 2012 is unlikely to be legally possible due to existing copyright legislation. However, other legislative avenues may be possible in order to restrict its use in certain circumstances, but these would need to be debated and explored in detail.

In terms of free speech, placing restrictions around the use of the National Anthem may contravene well-established rights within this area. Many other nations choose to explicitly place their National Anthems in the public domain and rely on public opinion to police what is appropriate usage of them. This allows for freedom of speech and expression, but with the caveat that this same freedom of speech will also ensure negative publicity and reaction from the general population for instances of inappropriate usage, in whatever forms this may take.

The usage of the National Anthem is particularly popular amongst sporting organisations. This has many positive implications and there is a consistent respect shown to National Anthems within this sphere on a regular basis. Were conditions as to when, where, and how the National Anthem could be used put forward, this area would need to be given particular consideration.

It has been proposed that the Government should pass legislation in relation to the National Anthem. Whether any proposed legislation should go as far as to enshrine specific conditions for the use of the National Anthem, or penalties for abuse of the same, into legislation remains a contentious issue.

An alternative viewpoint suggests that were legislation in relation to the National Anthem to be considered, it may be fitting to use it to officially designate the National Anthem as such and to put the official version of the music and words within a legislative framework. Specifically defining the National Anthem in this way would involve selecting an official version of the music and words in appropriate languages and with appropriate translations, or making provisions for such into the future.

As it stands, common or general criminal law may be used to prevent use of the National Anthem in such manner as may incite a breach of the peace. Any potential misuse or abuse of the National Anthem would also be subject to the court of public opinion, but the purpose of this consultation is to determine how the National Anthem should be treated, to include options such as passing legislation, issuing guidelines, or if no change is necessary to the current public accessibility.

3. The process

Interested organisations and individuals are invited to send written submissions to the Committee on this issue. The Committee will review all submissions which meet the requirements set out below and will invite a number of the contributors to participate in a meeting with the Committee. The meeting will be held in the Seanad Chamber at Leinster House.

The Committee is particularly interested in hearing and may seek the views and/or experiences of-

1. Both public bodies and private citizens
2. Experts in the area of copyright

3. Organisations who use the national anthem regularly
4. Second and Third-level institutions
5. Public Representatives

The Committee will draft and publish a report in which it will make findings and recommendations and draft a Bill or protocol for adoption. When its report has been published, the Committee will seek a debate with the Minister in the Seanad.

Submissions

Submissions should not exceed five pages and should contain the following information:

1. The name, postal address, e-mail address and telephone number of the organisation or person making the submission;
2. A brief introduction indicating any experience, expertise or background you may have in this area;
3. Factual information, observations or opinions that you believe will assist the Committee in drawing conclusions;
4. Changes that you believe need to be made to legislation or public policy.

Submissions will be circulated to all members of the Committee and may be published, in whole or in part, in the Committee's report and/or on the Committee's webpage. If you prefer not to have your submission published in the report or on the Committee's website, please indicate this clearly.

The Committee's Terms of Reference contain a number of conditions, set out below, which govern the content of submissions. Contributors are asked to bear these in mind:

"A submission is admissible unless it –

- (a) requests the Seanad to do anything other than the Seanad has power to do;*
- (b) does not comply with Standing Orders or is otherwise not in proper form;*

- (c) *contains any matter which is sub judice within the meaning of Standing Order 47;*
- (d) *comments on, criticises or makes charges against a person outside the House or an official, either by name or in such a way as to make him or her identifiable;*
- (e) *contains language which is offensive or defamatory;*
- (f) *is the same as, or in substantially similar terms to, a submission made by or on behalf of the same person or body during the lifetime of the Committee."*

Submissions must be received by the Clerk to the Committee not later than 4 pm on Thursday, 2nd November, 2017.

Receipt of submissions by e-mail, and in Microsoft Word format, is preferred. The e-mail address for submissions is: **seanadpublicconsult@oireachtas.ie**.

Submissions may also be sent by post to:
Bridget Doody,
Clerk to the Seanad Public Consultation Committee,
Seanad Office,
Leinster House,
Kildare Street,
Dublin 2.

The Clerk to the Committee may be contacted by telephone at 01 6183225.

Members of the Committee

Senator Paul Coghlan, Leas-Chathaoirleach of Seanad Éireann, is Chairman of the Seanad Public Consultation Committee.

The other members are Senators Catherine Ardagh, Jerry Buttimer, Maria Byrne, Martin Conway, Mark Daly, Máire Devine, Joan Freeman, Colette Kelleher, Denis Landy and Pádraig Ó Céidigh.

Senator Mark Daly has been appointed as Rapporteur for the purpose of the Report.