

Seanad 100

The Origins and purpose of Seanad Éireann

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Bicameral parliaments comprise two houses – a lower popularly-elected chamber and an upper chamber. What is the purpose of bicameral parliaments in unitary states?

Why was bicameralism adopted in Ireland in 1922 and again in 1937? What was the envisaged purpose of Seanad Éireann? And against what objectives should we assess its achievements over the last century?

Why create an Upper House in a unitary state?

Bicameral parliaments are common in federal states like Germany and the USA and their purpose – to ensure representation for each State at a federal level – is well understood. While bicameralism is not unusual in unitary states (twelve of twenty-seven EU States have bicameral parliaments) its purpose is less well understood.

Three core functions for bicameral parliament in unitary states are identified by political scientists:

- To grant representation to minorities to ensure a peaceful transition to a democratic state
- To preserve stability and to act as a check on executive power
- To provide peace and time to ensure considered, better-quality legislation.

Firstly, bicameral parliaments are often originally designed to facilitate a ***peaceful transition to a democratic society by granting representation to minorities***. The creation of two Houses can be a compromise between progressive and conservative forces; one popularly-elected House increasingly representative of all society, the other to ensure representation for former privileged elites (nobility and sometimes the clergy or landed elites) who feared losing influence and position



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through democratisation.¹ Upper houses are created to manage a fear on the part of minority populations, that majority rule would lead to a move towards radicalism or would result in tyranny over minorities.

While upper houses are generally weaker (in terms of formal powers) than lower houses, they were typically given sufficient power to ensure that the relevant minorities could influence the legislative and policy process. Upper Houses still frequently exist to serve this purpose in stable democracies, long after a transition has taken place, to ensure that legislators will at least hear the views of the minority and think twice before putting new legislation into law which may disproportionately negatively affect them.

Secondly, bicameral parliaments have been established with a view to **preserving stability and providing an additional check on executive power**. Barrington argued in 1952 that a second chamber was especially important in an era when democracies were unstable; a Second Chamber is used to delay the passing of controversial legislation in the hope that delay may give time for further discussion and this, in turn, may lead to moderation. It is, he wrote, a cooling-off chamber; one that guards against instability.²

In established democratic states, a second chamber can play a role in providing stability. When Hungary's unicameral legislature passed the *Magyarország Alaptörvénye* in 2011- which provoked international criticism for the limits it places on basic civil liberties – one analyst wondered whether an upper house designed to preserve stability could have moderated this proposal which was made by an executive which dominated the lower house.³ Article 27 of the Irish Constitution is designed to ensure stability; it empowers a majority of the Seanad (along with 1/3 of the Dáil) to petition the President to call a referendum [or prompt a general election] if a government proposal is of 'such national importance that the people should be consulted.' (see Table 1 below on Powers of the Seanad).

Thirdly, creators of bicameral parliaments aim to promote **better quality and more considered legislation debated in a less partisan atmosphere than that which tends to prevail in the lower house**. The upper chamber is seen as a *chambre de reflexion* where Members can examine proposed legislation, and its implications – intended or un-intended - ideally under less partisan pressure than is evident in the lower house. Second chambers may therefore help parliament to produce better, more considered, legislation. Second chambers sometimes focus on scrutinising a particular type of legislation e.g. on secondary or delegated legislation; pre-legislative scrutiny; or on a particular aspect of legislation e.g. the mechanisms of its implementation and how to avoid unintended consequences.

Creation of a bicameral parliament in Ireland

Ireland's long history of bicameral parliaments (see Box 1) undoubtedly played a role in the establishment of Seanad Éireann in 1922. However, modern constitution-building and specific ideas about the function an upper house do, to a large extent, explain the decision to create a

bicameral parliament.⁴ In fact, all three rationales identified by political scientists for bicameral parliaments help to explain why Seanad Éireann was established.

Box 1: History of bicameralism in Ireland

Early parliaments were forums where the key social groups into which medieval society was legally divided came together: the clergy (graded into different categories), the nobility (also finely graded, from princes through intermediate ranks, to gentry, titled or untitled), and other social groups, such as the bourgeoisie and other urban classes, and, perhaps, certain categories of free peasants (Coakley, 2014). Often the forums met in separate chambers; there were four in Sweden (and Finland), three in Britain and four in France (Bijleveld and Versteegen, 2019, Introduction).

This practice influenced the parliamentary democracy which developed in Britain during the middle ages and early modern era. The Irish parliament of the middle ages was tricameral, the third chamber representing clerical proctors (abolished in 1536). Until the Act of Union in 1800, Ireland had a bicameral parliament. After 1800, 170 Irish representatives were elected to the UK House of Commons and Ireland was represented in the House of Lords by four clerical and 28 secular peers. (MacCarthaigh and Martin, 2019, 240).

All three Home Rule Bills initiated in the UK House of Commons from 1886 to 1912 proposed a bicameral parliament (Oireachtas L&RS, 2012, 5). Bicameral parliaments, North and South, were proposed in the Government of Ireland Act 1920.

Origins of the Free State Seanad - 1922

Representation, and easing the transition to a new State, explain the creation of a Seanad in 1922. The Upper House was primarily designed to ensure representation for a protestant minority in the new, overwhelmingly-catholic state.⁵ By ensuring minority representation the transition to the new state would be facilitated. Under Article 82 of the Free State Constitution, the Senate would represent groups and parties not then adequately represented in the Dáil.⁶

David Fitzpatrick⁷ explained that by 1921 the goal of southern unionists had diverged from their northern counterparts and had shifted to one that sought accommodation and survival in the new Free State. Three of representatives of southern unionism - Midleton, Bernard and Jameson – travelled to London during the negotiations on the Anglo-Irish Treaty in 1921 and extracted a **promise from Arthur Griffith that he would advocate for the establishment of a Senate and would consult southern unionists on its constitution**. Subsequently, a meeting of the provisional government and the representatives of southern unionism drew up a Heads of an Agreement on a Senate which was largely reproduced in the Constitution.

While the purpose of the Seanad was primarily representative, the Constitution did not set out any institutional formula – such as reserved seats – to ensure the representation of the protestant minority. Rather it set out procedures and rules to ensure that the Seanad had a different composition to the Dáil and to encourage representation of the protestant minority:

- One, there was a rolling-electoral system meaning that the Seanad's membership was constantly changing: one-quarter of the Senate (15 Senators) was to be elected by popular vote every three years in a rolling election (see [Table 2](#) below)

- Two, elections were therefore not held at the same time as Dáil elections (and at a different political moment)
- Three, Senators were to be elected from a national, single constituency by PR STV which required that candidates have national, rather than local, appeal, this providing different incentives than the electoral system for the lower house⁸
- Four, under Article 30 of the Constitution candidates for election to the Seanad were required to have certain qualifications and experience and to be 35 years of age or older (see Box 2) and Table 2.
- Five, candidates standing for Seanad election (whether elected by the Dáil in 1922 or elected by the people thereafter) were nominated by existing Senators and TDs (Table 2); it was intended that this nomination procedure would have an important filter effect, ensuring that candidates of an appropriate 'quality' were put forward.⁹

Transitional arrangements adopted for the establishment of the first Seanad (1922) further ensured

Box 2 – minority representation

Under Article 30 of the Free State Constitution citizens could be proposed for the Senate if they were at least 35 years of age and *'on the grounds that they have done honour to the Nation by reason of useful public service or that because of special qualifications or attainments, they represent important aspects of this Nation's life'*

the representation of southern unionists. To avoid having a direct election for 60 senators in a single constituency at the outset, it was agreed that 30 Senators would be appointed by the President of the Executive Council (15 for 6 years and 15 for 9 years) to represent groups and parties not adequately represented in the Dáil; the remaining 30 Senators were to be elected by the Dáil from a list of candidates nominated by the Dáil (and in accordance with the criteria in Article 30 (Box 2)).¹⁰

The protestant minority was, as a result, well represented in the first Senate ([see here](#)); it included over thirty Catholics, twenty Protestants, three Quakers and one Jewish member. In fact, it was referred to by anti-treaty republicans as England's faithful garrison in Ireland,¹¹ and Cosgrave's thirty nominees derided as 'twenty-four confirmed imperialists and Dublin Castle hacks, eighteen Freemasons and twenty-five bitterly opposed to the idea of a Gaelic civilisation.'¹²

The Free State Seanad was in existence for only fourteen years. It is uncertain whether the (then) Constitution would have guaranteed representation of this minority in the long-term. On the one hand, in the only popular election for the Free State Seanad (1925) a number of southern unionists lost seats.¹³ On the other hand, given its different electorate (citizens over 30 years old), specific qualification criteria for nomination as a candidate (see Box 2), and that its elections were held at different times to the Dáil using a different electoral system, the prospect of the Seanad having a different composition to the Dáil was significant. This broadened representation provided a check on a dominant executive.

In fact, the Free State Seanad was abolished in 1936 following serious clashes with the Dáil and (then) President of the Executive Eamon De Valera over its use of its power to delay legislation. Why then did De Valera support making provision for an upper house in the 1937 Constitution?

Bicameralism in 1937 and the origins of vocationalism

If representation, and easing the transition to a new State, were the purposes of the Free State Senate, what was the origin and purpose of the 1937 Seanad?

As part of the constitutional drafting process, De Valera appointed a Commission to examine the possibility of creating a Seanad. It appears that **De Valera saw benefits in an upper chamber's legislative revisionary work**, provided it did not frustrate the will of the executive and could be shown to be of practical value.¹⁴ Garvin also suggests that De Valera was motivated by "support from influential places for the establishment of a Seanad."¹⁵

De Valera's key criteria for accepting a Seanad in the 1937 Constitution was that it would make some contribution but would not challenge the work of government. In sum, he favoured a Seanad with weak powers and with a composition quite similar to the Dáil; a Seanad that would improve legislation through its scrutiny work but would have neither the power, nor the desire (by virtue of its composition) to prevent the government and the popularly-elected House from carrying out the business of government.¹⁶

Its establishment was also motivated by a desire to **preserve political stability**; for example, the intention behind Article 27 was to deter against a radical attempt by a majority in the Dáil to legislate on "a matter of such national importance" without holding a referendum. And the Seanad was given a role alongside the Dáil in the impeachment of the President or removal of judges (see [Table 1](#)).

It was clear that the formal powers of the new chamber would be weaker than those of its predecessor (see Table 1). A key question for the Commission was the basis of its representation. And the concept of vocational representation was central to discussions (Box 3).

Vocational representation

The Commission proposed a number of possibilities, including vocational representation, a recommendation which was adopted. Article 18 of the 1937 Constitution sets out that 43 of 60 Senators are elected from five vocational panels (Administrative, Agriculture, Cultural and Educational, Industrial and Commercial and Labour) and 6 are elected from university panels and that the details of the electoral process are set out in law. However, a number of factors provided for in the Constitution and in subsequent legislation deliberately ensure that the Seanad does not

act as a vocational chamber and that its composition does not diverge dramatically from that of the Dáil.¹⁷

Box 3: Concept of vocationalism

The concept of vocational representation had previously been raised by the Committee which drafted the 1922 Constitution. Acting Chairman of the Committee, Darrell Figgis, was an advocate whose conception of vocationalism appears to have been inspired by ancient Ireland, where functional councils played a major role in governance. In 1917 Figgis wrote:

“In the old Irish State the elected monarch convened great councils charged with special functions and duties. There was a council of brehons, a council of administrative rulers, a council of historians, or public recorders, and a council of poets – all of them public officials, with their parts to play in their various stateships.” (quoted in Callihane Laura, 2016).

Another member of the Committee in 1922, Alfred O’Rahilly, also advocated a form of functional representation and, although it was not pursued, Art 45 of the Free State Constitution is an expression of these ideas and allow for the development of functional representation:

“The Oireachtas may provide for the establishment of Functional or Vocational Councils representing branches of the social and economic life of the Nation. A law establishing any such Council shall determine its powers, rights and duties, and its relation to the government of the Irish Free State (Saorstát Éireann).”

Article 19 of the 1937 Constitution, which has not been utilised, provides for a similar possibility.

Firstly, under Article 18 of the Constitution, 11 Senators are nominated by the newly-elected Taoiseach (just elected following a General Election). This, to a considerable degree, guarantees that the parties which make up the executive control the Seanad.

Secondly, under [Seanad Electoral \(Panel Members\) Act 1954](#) the electorate for the Seanad is all local councillors and outgoing members of the Dáil; the electorate is therefore political i.e. candidates from the vocational panels are elected by national and local politicians who primarily vote on party, and not on vocational, lines. The nominating bodies referred to in Article 18.7 of the Constitution nominate but do not elect candidates. See [infographic below](#).

Thirdly, not only are politicians involved in electing Senators, but they also play a role in nominating candidates for election. Under the Electoral Act, each of the five vocational panels from which candidates are elected to the Seanad is divided into two sub panels – one for nominees of nominating bodies and one for nominees of elected politicians (see [Table 2](#)).

As Coakley and Sutton¹⁸ before him argued, the system for nominating and electing Senators provided for in law, and the 11

senators appointed by the Taoiseach under the Constitution, limits the potential for the Seanad to represent vocations. Sutton, a Senior Counsel and a member of the Seanad Electoral Law Commission in 1959 argued that while legislation gives a set of nominating bodies the right to nominate candidates for election to vocational panels, “the whole system is undermined” by allowing incoming TDs and outgoing Senators the right to also nominate candidates to these panels *and* the division of the panel into two subpanels.” On top of this, he continued “the electorate is composed of politicians.” Sutton concluded that it was, therefore, no surprise that parties dominated the Seanad electoral process; the interests of vocational panels are smothered. Nominating bodies are incentivised to nominate party people because the electorate is controlled

by the parties; this was noted by Sutton in 1959 and by Coakley fifty years later in his analysis of the 2011 election to the Seanad (Coakley, 2011). As noted above, this is not an accident but appears to have been a deliberate attempt to ensure that vocational interests were secondary to party so that the Upper House was a revisionary chamber and not a chamber that holds up and frustrates the will of the executive.

Whatever one's perspective on how the Seanad is composed, and whether electoral law should be amended so that it performs a more vocational role, Laver and Coakley (2002) describe its composition as unique; the type of vocational representation is not found at national level in any other country, the university representation is unusual and the system of Taoiseach's nominations is 'without parallel.'¹⁹ Proposals to reform the Seanad can be divided into those that (a) seek to remove impediments and thereby enable or at least strengthen vocational representation and (b) those who wish to remove vocational representation altogether from the Seanad. There is little political will to date to implement any of the proposed reforms to the way in which the Seanad is elected and appointed.

Conclusion – how is the role of Seanad Éireann assessed?

Empirical studies on the impact of bicameralism find distinctive benefits of bicameralism in terms of representation, oversight of the executive, the process of legislative bargaining and the quality of legislation. It is also found that **whether these benefits materialise depend on the extent to which the second chamber's composition is sufficiently different from that of the first and the extent of powers allocated to the second chamber.**²⁰ There seems to be some consensus that the first – the distinctive composition – is the more important in unitary states.

While the Free State Seanad was subservient to the Dáil, it had more extensive powers than the current Seanad and a significantly different composition to the Dáil. Its powers and composition were seen as frustrating the will of government (and the lower house) sufficiently enough for De Valera to propose and win approval for its abolition.

A frequently-cited observation made by constitutional architect Abbé Sieyès²¹, who highlights the dilemmas inherent in bicameralism, is '**if a second chamber dissents from the first, it is mischievous, if it agrees with it, it is superfluous.**' The newly-established Seanad (1937) had weaker powers than its predecessor; it was very clear from the beginning that it was subservient to the Dáil (Table 1). Did this make it superfluous?

Subservience, and a paucity of formal powers, does not consign an upper house to impotence or insignificant achievements. While we should not expect the Seanad to behave as a vocational chamber (except perhaps occasionally), its composition is different to that of the Dáil, a factor which allows it to bring a distinctive perspective to policy and legislation. Garvin, who studied the earlier years of the 1937 Seanad, suggests that its distinctive contribution is a result of (i) the complicated system of electing Senators (see Appendix), (ii) the influence, however limited, of the vocational panels, (iii) the performance of the university senators and a number of independently-minded Taoiseach's nominees, and (iv) its procedures and its place in the constitutional

framework.²² Party Senators represent party interests in the Seanad; and strong party Senators also bring viewpoints expressed in the Seanad to their party. That the electorate for Senators is primarily made up of local councillors, who are elected at a different time than the Dáil and Seanad, can also result in different party strengths in the lower and upper chambers which gives the Seanad a distinct composition to the Dáil.

The Seanad's composition, rather than its formal powers, have been the key focus of the vast majority of efforts to reform it. *L&RS Seanad 100 Note 2* will compare these reform efforts. Tables 1 and 2 below compare the powers and composition of the Free State and the 1937 Seanad respectively.

In *Seanad 100 L&RS Note 3* we consider some of the Seanad's achievements as a representative forum; on executive oversight and stability and on legislative scrutiny – the three key rationales identified for creating second chambers in unitary states.

Table 1: Formal powers of the Free State Senate and the 1937 Seanad

	Powers of Free State Senate (as set out in 1922 Constitution) ¹	Powers of the 1937 Seanad
Legislative	<p>All bills had to be considered by the Seanad; Seanad could suspend the passage of a non-money bill by 270 days or 9 months (increased to 18 months in 1928)</p> <p>Senate could make a recommendation on a money bill (but could not amend it) and return it within 21 days;</p> <p>Had the right to initiate non-money bills and Senators may introduce Private Members' Bills</p>	<p>All bills must be considered by the Seanad</p> <p>Seanad can delay the passage of a bill passed by the Dáil for 90 days</p> <p>Seanad can make a recommendation on a money bill (not an amendment) and can delay its passage by 21 days</p> <p>Non-money bills may be initiated in the Seanad Éireann provided they do not propose to amend the Constitution. Senators may introduce Private Members' Bills.</p>
Executive		<p>Cabinet membership</p> <p>Up to two Senators may be members of the cabinet (not Minister for Finance)²</p>
Check on the executive – preserver of stability	<p>Under Article 47 of Free State Constitution, a resolution of three-fifths of the Senate (alone) could have a Bill submitted to referendum.</p> <p>Ongoing checks on executive were via motions</p>	<p>Under Article 27, a referendum can be initiated where a majority of the Seanad, combined with one-third of the Dáil, petitions the President that a 'bill contains a proposal of such national importance that the will of the people thereon ought to be ascertained.' On being petitioned, the President may decline to sign the bill into law until a referendum is held or until the bill is passed by resolution of a new Dáil (i.e. after a general election).</p> <p>Ongoing checks on executive are via motions</p>
Separation of powers	A resolution of the Senate (and of the Dáil) was required for the removal of a High or	Under Articles 33.5 and 35.5 of Constitution, a majority of the Seanad and the Dáil by resolution is required to

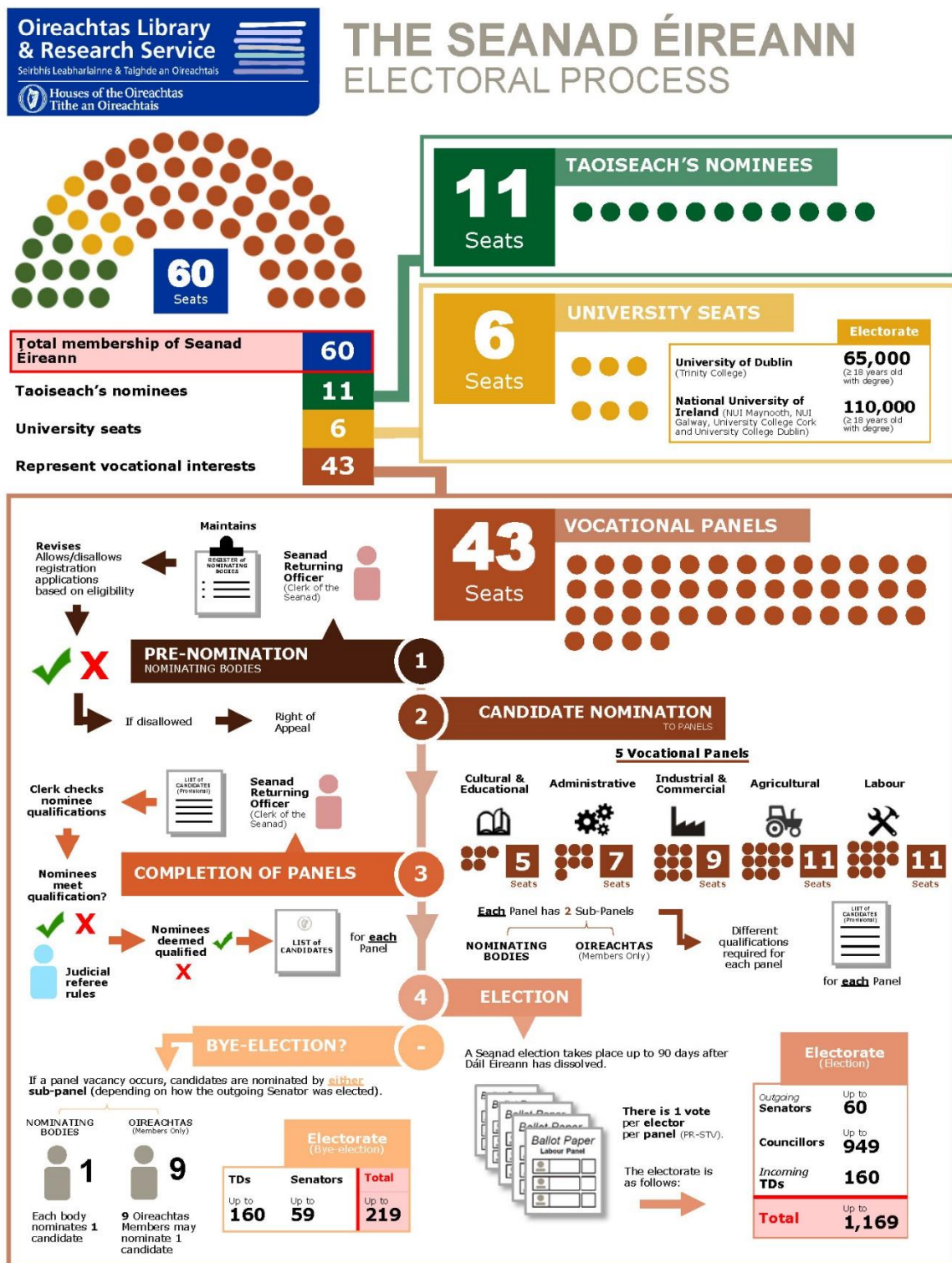
¹ Gallagher J M (2017)'Echoes from Empire: the Free State Seanad 1922-1936 and the battle for Seanad Éireann's Future *UCD Law Review* 17. P.79.

² Sean Moylan was appointed Minister for Agriculture in 1954 and Janes Dooce as Minister for Foreign Affairs in 1981.

	Supreme Court Judge for stated misbehaviour or incapacity (Article 68).	remove the Comptroller and Auditor General or a Supreme or High Court Judge from office “for stated misbehaviour or incapacity.”
		Impeachment of President (Article 12.10) For a process of impeachment to proceed, a charge supported by 2/3 of one House must be investigated and supported by 2/3 of the other House.

Table 2: Composition of (and method of electing) Free State and 1937 Seanad

Free State Seanad (1922-1936)	1937 Seanad
<p>60 Members</p> <p>Elections not aligned with Dáil elections;</p> <p>Candidates 35 years of age or older and “citizens who shall be proposed on the grounds that they have done honour to the Nation by reason of useful public service or that, because of special qualifications or attainments, they represent important aspects of the Nation’s life.”(Article 30)</p> <p>Senators serve for 12 years; ¼ of House elected by PR STV in one national constituency every three years by all citizens of 30 years and older. Elected from a Panel (2/3 nominated for election by the Dáil and 1/3 by the Seanad (method of proposing and selecting nominees was set out in legislation).</p> <p>In 1922, to avoid having a direct election for 60 senators in a single constituency, there was a special arrangement for first Senate: 30 were appointed by President of the Executive Council in line with the above criteria (15 for 6 years and 15 for 9 years). 30 were elected from a list of candidates by the Dáil. The first and only nation-wide election for 19 (as there were four casual vacancies) was held in 1925.</p> <p>After 1928 the Constitution was amended, and the electorate was changed to Senators and TDs but the rolling basis (15 every three years) continued.</p>	<p>60 Members</p> <p>Elections aligned with Dáil election (must take place within 90 days of dissolution of the Dáil).</p> <p>43 Senators are elected from 5 vocational panels onto which candidates are nominated by (a) nominating bodies (which must qualify to be such according to conditions set out in legislation or (b) four existing members of the Oireachtas. Two sub-panels are created and at least 1 must be elected from each. The electorate for the 43 Senators from these panels is local government councillors, incoming members of the Dáil and outgoing Senator. The subject of the vocational panel is set out in the Constitution.</p> <p>6 Senators are elected by university graduates, 3 by graduates of Dublin University and 3 by graduates of NUI.</p> <p>11 are appointed by the Taoiseach.</p>



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- ¹¹ Dorney John 'The Irish Senate, 1920-1936' in Bijleveld et al (2019) cited above.
- ¹² Foster (2015) quoted in Dorney (2019).
- ¹³ Coakley, 2005 cited above. This electoral system was abandoned in 1928.
- ¹⁴ Hogan Gerard (2012) *The Origins of the Irish Constitution* Dublin, Royal Irish Academy p.198
- ¹⁵ Garvin Thomas (1969), *The Irish Senate* Dublin: Institute of Public Administration (pp.11-14). For example commercial interests (the President of the Association of the Chambers of Commerce), ex-unionists, Fine Gael, sections of the Catholic Church and, in general, conservative groups.
- ¹⁶ Gleaned from Garvin (1969) pp11-24 and Downey Colm (2000) 'Theory and practice of Seanad Reform today' IPA Thesis.
- ¹⁷ De Valera supported the notion of vocationalism as a way to nominate candidates and garner expertise in diverse areas of public life; he did not see it as representative. Garvin (1969, 14) gleaned from Dáil Debates.
- ¹⁸ Coakley (2013) *Reforming political institutions: Ireland in comparative perspective* Dublin: IPA and Sutton Ralph G (1958) 'The Problem of the Seanad' *Studies : an Irish Quarterly Review* 1958. Sutton sat on the Commission examining reform of the Seanad electoral system in 1959.
- ¹⁹ [Oireachtas Library and Research Service – Spotlight: Bicameralism: Seanad Éireann and OECD countries p.8](#)
- ²⁰ See more detailed analysis and references in Oireachtas L&RS, 2012 pp.10-12)
- ²¹ Abbé Sieyès was involved in discussing the creation of France's democratic institutions in the years following the French revolution. Cited in Coakley, (2013, 96 and in Garvin, (1969).
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