

Seanad Éireann: 100 years of Ireland’s Upper House

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Introduction

A bicameral parliament has two chambers – a lower chamber, which is popularly elected, and an upper chamber, which may be elected or selected in a variety of different ways (frequently indirectly elected) (see Coakley, 2014). Seanad Éireann, Ireland’s upper chamber with sixty senators, was established under the Free State Constitution. It met for the first time on 11 December 2022, five days after the state was formally declared. While bicameralism was briefly abandoned in 1936, an Upper House was quickly established under the 1937 Constitution and Seanad Éireann has played a constant and important role in Ireland’s century of democratic government. When the prospect of abandoning bicameralism was once again considered, this time in a referendum held in October 2013, the electorate voted to retain it (albeit on a low turnout) (see MacCarthaigh & Martin, 2015).

The purpose of Seanad Éireann

One hundred years ago, during the Anglo–Irish negotiations preceding the establishment of the state, three representatives of southern unionism – Lord Midleton, John Bernard and Andrew Jameson – persuaded Arthur Griffith to advocate for the establishment of a bicameral parliament. Their motivation was to ensure

representation for the substantial Anglo–Irish protestant minority in the parliament of the newly independent state (Fitzpatrick, 1972; MacCarthaigh & Martin, 2015). Indeed, to ensure the representation of minorities with a view to facilitating the transition to a democratic state is one of the three purposes identified by political scientists for upper chambers in unitary states (Bijeveld & Verstagen, 2019). The other purposes – to serve as a chamber of reflection which enhances the quality of legislation, and to provide stability and an extra layer of oversight on the executive (see Lynch, 2022) – were also clearly envisaged in the functions assigned to the Seanad by the Free State Constitution in 1922 (set out in Appendix 1).

The first Seanad not only achieved strong representation for southern Unionists and other minorities, but was also quite powerful. While subservient to the Lower House (as is almost always the case for bicameral parliaments in unitary states), it had significant powers to delay legislation (by nine months, increasing to eighteen months in 1928) (see Appendix 1). It was, as it would turn out, too powerful and its powers and composition were seen as frustrating the will of the government sufficiently enough for Éamon de Valera to propose and win approval for its abolition in 1936. Under the 1937 Constitution, the Seanad's powers to delay government legislation were reduced and it was clear from the start that the chamber would be subservient to the Dáil (Appendix 1).

One of the curious difficulties of designing upper chambers in unitary states is that senates tend to be criticised for having too much power, and too little power, for being a carbon copy of the lower chamber, or for not being democratic enough (Russell & Sanford, 2002). Abbé Sieyès' often-cited observation helps to explain the fate of the Free State Seanad. On the dilemmas of bicameralism and of striking a balance between the chambers, the influential French political writer wrote:

If a second chamber dissents from the first, it is mischievous, if it agrees with it, it is superfluous. (cited in Coakley, 2013, p. 96)

This is important context to understanding the Seanad's role, and to evaluating its performance and evolution over the last century. This is our endeavour in this short article, which is published to mark the centenary of the first meeting of the Seanad on 11 December 1922. The article describes the Seanad's performance in respect of the three

core purposes for the Upper House in unitary states as discussed above. These are:

1. representing minorities;
2. ensuring scrutiny and reflection on legislation;
3. enhancing oversight and stability.

The Seanad's powers, composition and electoral system are set out in Appendix 1.

Representation: Bringing distinct and minority voices to parliamentary politics?

The Free State Constitution ensured minority representation in the Seanad through the rules of election, which are set out in full in Appendix 1. Candidates for a Seanad election had to be at least thirty-five years of age and '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, Free State Constitution), and voters had to be aged thirty or older. Candidates were proposed by the existing Dáil and Seanad members and, following a transitional period, would be elected from one single nationwide constituency on a rolling basis, with fifteen elected at each election (Coakley, 2005; Lynch, 2022, p. 3; MacCarthaigh & Martin, 2015).

The minority was well represented in the first Seanad,¹ which included twenty Protestant members, three Quaker members and one Jewish member – Ellen Odette Cuffe, Countess of Desart – alongside thirty-six Catholics. In fact, it was referred to by anti-Treaty Republicans as 'England's faithful garrison in Ireland' (Foster, quoted in Dorney, 2019, p. 159). Its Cathaoirleach, James Campbell, First Baron Glenavy, was a former Unionist MP for Dublin who had participated in the Ulster resistance to Home Rule (Dorney, 2019, p. 159). It also counted amongst its membership personalities like W. B. Yeats, Douglas Hyde and Horace Plunkett, and many senators with experience in government and law (as former representatives in the House of Commons or Lords) (Dorney, 2019, p. 161).

¹ To avoid the scenario whereby all sixty senators would be elected at the same time and during the civil war, thirty of the senators in the first Seanad were nominated by the President of the Executive Council and thirty were directly elected by the Dáil from a list of eighty-one candidates.

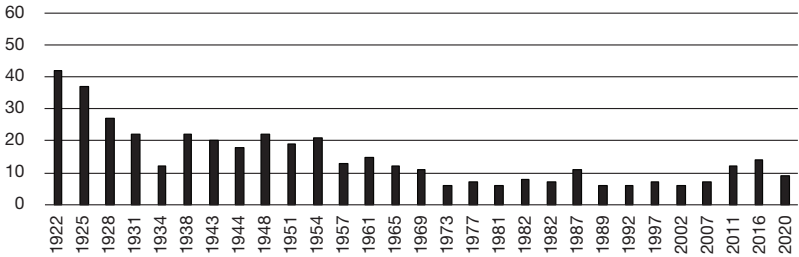
Not only was the minority over-represented, but the Seanad was dominated by independent senators in the early years, with party senators notably absent (Figure 1). This was in sharp contrast to the Lower House (Dáil), which was dominated by political parties.

The 1937 Constitution set out different rules and procedures for Seanad membership. While its purpose was not to ensure representation for the minority (southern Unionists), its rules on composition have resulted in a form of representation which is distinct to that of the Dáil (while less distinct than that of the early Free State Senate). This distinct representation was brought about by several factors, which were identified by Garvin in 1969 and which still hold today: (i) the unique system of electing senators and the influence, however limited, of the vocational panels; (ii) the performance of the university senators and of a number of independently minded Taoiseach's nominees; and (iii) the Seanad's place in the constitutional framework (Garvin, 1969). We look at each in turn.

Firstly, forty-three of sixty senators are elected from five vocational panels (Administrative, Agriculture, Cultural and Educational, Industrial and Commercial, Labour) but the Seanad is not a truly vocational chamber. The electorate is political (local councillors, incoming TDs and outgoing senators) and elected politicians nominate approximately one-third of the candidates for election (see Appendix 1).² That it does not act as a vocational chamber has been criticised over the years (Coakley, 2013), with Sutton (1958, p. 171) bemoaning that 'the interests of the vocational panels are smothered' by electoral law. But this is quite deliberate – the Seanad is a chamber of reflection and not intended as one that will frustrate the will of government.

However, in spite of the political nature of the election to the vocational panels, the Seanad is not a carbon copy of the Dáil. For one, it is indirectly elected primarily by local councillors and therefore reflects the support for parties at a different point in time than that of

² Each of the five panels is divided into two sub-panels – the nominating bodies and the Oireachtas sub-panels, and candidates are nominated to the sub-panel as follows. On the first, candidates are nominated to the sub-panel by nominating bodies: to be a nominating body, a body must apply to the Returning Officer (Clerk of the Seanad), who places bodies 'concerned with and representative of the interests and services of the panel' on the Register. Each nominating body can nominate a set number of candidates depending on the number of nominating bodies registered for that panel. On the second, candidates are nominated by four existing members of the Oireachtas electorate (outgoing senators and incoming TDs).

Figure 1: Number of independent members in Seanad Éireann

Source: Oireachtas Library and Research Service, gleaned from Oireachtas Database.

the Dáil election (general election). Two, the nominating bodies bring something different to the candidate selection process. The resultant vocational expertise can strengthen the quality of legislative scrutiny and debate, and it is often welcome.

Secondly, the university senators bring another distinct type of representation. The concept of the university senators, and the electoral system which confines representation to graduates of Trinity College and the universities of the NUI, has been criticised as elitist and unrepresentative (covered in Coakley, 2013, pp. 122–3). A Private Members' Bill (PMB) proposes to address the latter issue by extending the franchise to all graduates and creating one six-seat constituency to replace the two three-seat constituencies (Seanad Electoral (University Members) (Amendment) Bill 2020).³ Yet most analyses of the Seanad highlight the outcome in terms of the quality of representation given by university senators as consistently high. Murphy (2016, p. 245) argues that 'more than other elected members, university senators meet the vocational representativeness of the institution's founders' and 'are typically among the more vocal and visible' of senators. Manning notes that many university senators have given particularly vocal representation to social issues (McGing, 2021), and Gallagher (2018, p. 184) states that these six senators, most of whom are not members of a political party, are often an innovative and independent force in the Oireachtas. Senators who represent political parties and who are elected from the university panels have also been noteworthy for independence and a non-partisan approach. University senators are the most frequent proponents of PMBs; of the

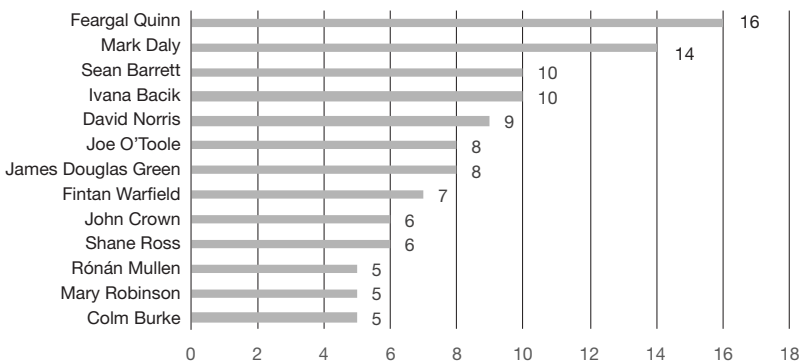
³ An amendment to the Constitution approved by referendum in 1979 allows for this legislation.

thirteen senators who sponsored most PMBs from 1922 to 2020, nine were university senators (Figure 2).

A new parliamentary instrument – vocational debates – was introduced in 2021 to recognise the distinct contribution that can be made by senators elected from the vocational and university panels. This gives senators elected from a vocational or university panel the right to table a motion for debate on an issue related to the interests of their panel or university. Senators are encouraged to engage with the relevant stakeholders before tabling and debating their motions. Senators elected from the relevant panel or university are given priority speaking rights for that debate. Motions on bullying and sexual harassment in third-level institutions and on maternity/paternity leave for county and city councillors were the first to be debated. It is too early to assess the impact of these debates and senators will of course continue to use private members’ motions, which tend to be party-based proposals, to propose motions for debate.

Finally, that the Taoiseach appoints eleven of the sixty senators means that the executive nearly always has a majority in the Seanad, but this right is also an opportunity to ensure that minority voices are represented. Taoisigh have frequently nominated representatives from Northern Ireland and in particular senators who would help to build bridges between communities. In fact, a report by the BBC

Figure 2: Senators who were primary sponsor of most Private Members’ Bills (up to February 2021)



Source: Gleaned from Houses of the Oireachtas Database Bills and Acts 2021 (PMBs have, for a variety of reasons, become a more popular instrument in general since about 2011 and, as such, recent senators are over-represented in Figure 2).

presented the possible abolition of the Seanad in 2013 as a threat to Northern Ireland's representation in the Republic of Ireland (Flanagan, 2013). For example, John Robb, a Presbyterian-born surgeon from County Down, was appointed for three consecutive terms (1982 to 1989). Senator Robb memorably presented the *Leas-Chathaoirleach* with a poppy as an 'emblem of remembrance, repentance, thanksgiving and forgiving' in the aftermath of an IRA bombing of a commemoration in Enniskillen in 1987 (Seanad Éireann debate, 11 November 1987). Gordon Wilson, a Northern Irish protestant and peace campaigner, whose daughter had been killed by an IRA bomb, was appointed senator by then Taoiseach Albert Reynolds in 1992.

Other Northern Irish voices have also been represented in the Seanad. For example, Maurice Hayes, a former chairman of the Northern Ireland Community Relations Council and The Ireland Funds, and contributor to the Patten Commission on Policing in Northern Ireland, was appointed by Bertie Ahern from 1997 to 2007. Martin McAleese, husband of the then President Mary McAleese, and known for his peace-building work in Northern Ireland, was appointed by Enda Kenny to the 2011–16 Seanad. Senator McAleese was the instigator of the Seanad's invitation to the Secretary of the Grand Orange Lodge – Mr Drew Nelson – who memorably addressed the Seanad in 2012 (Seanad Éireann debate, 3 July 2012).

The approach taken to Taoiseach's nominees over the last few Seanads has brought voices which reflect changes in Irish society that are unlikely to be reflected in the Dáil (as the issues represented are not geographical and might be thinly reflected across the state). In 2020 Taoiseach Micheál Martin nominated Senator Eileen Flynn, the first senator to represent the Irish Traveller community. Taoiseach Enda Kenny nominated several voluntary sector representatives to the Seanad, including Joan Freeman, founder of the suicide prevention programme Pieta House; Collette Kelleher of Alzheimer's Ireland; and Billy Lawless, an advocate for Irish immigrants in the US. In 2011 amongst Taoiseach's nominees were Senator Jillian van Turnhout, CEO of the Children's Rights Alliance; and Senator Katherine Zappone, who ran an organisation to provide services to women from disadvantaged areas and who was the first openly lesbian member of the Oireachtas and the first member in a recognised same-sex relationship (Houses of the Oireachtas, 2022).

Women are comparatively well-represented in the twenty-sixth Seanad. Forty per cent of senators (twenty-four of sixty) are women, a

percentage which owes much to the Taoiseach's nominees (nine of the eleven are women). Only 22 per cent of TDs in the Dáil are women, in spite of gender quotas which are applied at candidate selection stage in general elections.

In sum, the result of the complex system of electing the Seanad is a chamber with more independent voices and a distinct representation to that of the Dáil. Further, while party senators still dominate in terms of numbers (Figure 1), and the agenda for business of the Seanad is negotiated and agreed by the group whips, senators (even party senators) have more space to express an independent voice. This is in part because the Seanad is not a confidence house – the government is not responsible to the Seanad and does not have to retain its confidence to survive. It is also because some party senators do not aspire to represent a geographical constituency (i.e. do not aspire to become TDs). Party senators play an important role in what might be seen as a two-way process – bringing their parties' viewpoints to the Seanad and representing the views of the Seanad to their parties.

The result of the unique type of representation is that debate is less fractious and less partisan and, while there is no doubt that partisanship features, debate is less exaggerated and is diluted by the voice of independents. As such, Garvin's (1969, pp. 44–6) observation in 1969 that 'a certain vocational or individualist flavour pervades much of the committee work' in the Seanad holds true as the Seanad celebrates its centenary.

Legislative and policy role: Seanad's influence on government legislation and as a chamber of reflection

All legislation must be considered by the Seanad, and to debate, comment on and propose amendments to government's proposed legislation is the Seanad's primary function.⁴ During its consideration of legislation, the Seanad regularly amends it (and the amended Bill will be subsequently approved by the Dáil). If the Seanad completely disagrees with legislation approved by the Dáil, it can delay its passage for ninety days. Prior to 1936, the Free State Seanad could delay the passage of a Bill for nine months (eighteen months from 1928) (see Appendix 1). The Seanad may make recommendations, but may not amend, money Bills (Article 20 of the Constitution).

⁴ Legislation may be introduced in the Seanad or in the Dáil and it goes through a number of stages in each House before being referred to the other House.

The Seanad's influence on government-proposed legislation cannot be understood by simply counting the number of amendments proposed by non-government senators which are accepted by the government or by looking for government Bills which are defeated in the Seanad (O'Dowd, 2010). Government Bills are rarely defeated in the Seanad. This is partly because governments tend to have the support of a majority of senators and also because if the Seanad completely rejects a government Bill, any Seanad amendments accepted by the government during the legislative process also fall (Garvin, 1969, pp. 43–4). As the Seanad only has delaying powers, and therefore a government Bill may be enacted even if the Seanad has rejected it, the chamber will have more influence over a Bill if it convinces the government to accept amendments, than if it defeats it. In fact, just two government Bills have been defeated in the Seanad since 1937 (Manning, 2010): the Third Amendment of the Constitution Bill 1959 (to replace proportional representation by single transferable vote (PR-STV) with the first-past-the-post electoral system) and the Pawnbrokers Bill in 1963.

The Seanad does, of course, consider rejecting government's legislation. Senators Catherine McGuinness, Michael D. Higgins, Mary Robinson and others urged the Seanad to reject the Eighth Amendment of the Constitution Bill 1982. Senator McGuinness argued that while this would not prevent the referendum from going ahead, it would affect public opinion in the referendum – as she believed that the Seanad's rejection of the Third Amendment of the Constitution Bill to replace PR-STV with the first-past-the post electoral system had done (Seanad Éireann debate, 11 May 1983). And governments do, on occasion, withdraw Bills or have allowed them to lapse when the issues identified during Seanad debates expose flaws. The Wildlife Amendment Bill 2016 and Judicial Appointments Commission Bill 2017 underwent rigorous debate (and amendment) in the Seanad and were subsequently allowed to lapse. The Adoption Information and Tracing Bill 2017 was eventually withdrawn after then Minister Zappone debated it in detail on several occasions with senators (see Seanad Éireann debates, 17 May 2019, 12 June 2019).

More frequently, however, the Seanad influences government legislation in the following two ways. Firstly, senators raise an argument or a point about a Bill which is accepted by the minister in principle, who goes back to the Attorney General and returns at the next stage of the legislative process with amendments. Garvin (1969, p. 94), who examined the Seanad's legislative activity in its earlier years

(1938–66), wrote that amendments proposed by opposition-party or independent senators, especially if they show an expert knowledge of the subject, are usually considered seriously by ministers and (if not accepted as they stand) may result in a government amendment of the same substance. This remains very much the practice today. O’Dowd (2010) refers to this as the government’s responsiveness to Seanad debates, and he notes that rejecting an opposition amendment and reintroducing it as a government amendment is not always motivated by party politics but by the need to redraft the amendment to parliamentary-draftsman standards (O’Dowd, 2010).

Secondly, if a flaw is spotted in a Bill – which has sometimes been subject to a tight timetable – and has been approved by the Dáil, this flaw is then addressed by way of amendments during the Seanad debates. For example, a proposal to ban opinion polls during the week coming up to elections was withdrawn from the Electoral Amendment Bill 2000 when a loophole was identified by the Seanad (Laver, 2002). In this way, the Seanad’s legislative process serves as a safeguard against rushed, ill-considered legislation, a second chance for the minister to improve the legislation.

One way of assessing the influence of the Seanad is through a review of the number of Bills it has amended. Over its lifetime (1922–36) the Free State Seanad amended 37 per cent of government Bills (182 of 489), virtually all of which were accepted by the Dáil; it used its power to suspend legislation on nine occasions, and in two of these nine cases the government refrained from passing the Bills into law when the period had expired (Manning, 2010). The Bills which it amended included formative Bills such as that establishing the Garda Síochána, the Courts of Justice, local government bodies and the rules for general elections (Dorney, 2019). The original draft of the Courts of Justice Bill had proposed that the executive should set salaries of district judges, but after senators argued that this imperilled the independence of the judiciary, it was amended so that the Oireachtas as a whole could vote on setting judges’ pay until 1926 (Dorney, 2019, p. 161). It was a Seanad amendment that resulted in a name change from the Civic Guard to An Garda Síochána (Hunt, 2010).

Twenty-one per cent of government Bills were amended in the Seanad between 1938 and 1966 (157 of 743 Bills), and an unusually high number of government Bills (45 per cent, or 13 Bills) were amended by the Seanad in 1946 (Garvin, 1969). Research undertaken by Laver & Coakley (and cited by the All Party Oireachtas Committee on the Constitution, 1997, p. 5) extended this data up to 1995 and

found that 18 per cent of Bills were amended in the Seanad from its inception until 1995 (Hunt, 2010, p. 60). Research carried out for this article found that between 2020 and 2021 a total of 110, or 34 per cent of, government Bills initiated in the Seanad (Seanad Bills) were amended by the Seanad. These amendments vary from technical to substantial.⁵

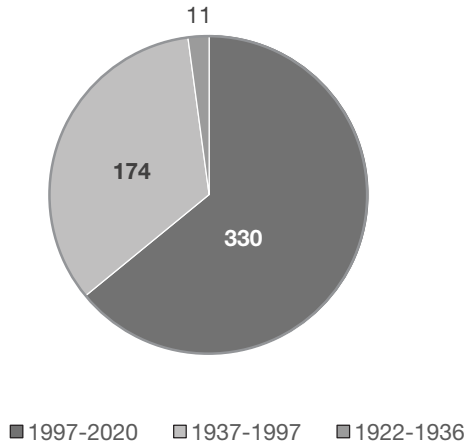
As already noted, the Seanad may not amend money Bills (defined in Article 22 of the Constitution), but it can pass them with a recommendation. This was not a frequent practice between 1938 and 1966, during which only four money Bills were passed with recommendation. Nor is it a common practice today. In the first instance, money Bills are quite rare and, given their importance (e.g. the Finance Bill giving effect to the budget; the Appropriation Bill, which votes the moneys for government spending), they have usually been prepared with rigour. Secondly, the scope for opposition recommendations is very limited since the Seanad may not recommend imposing or increasing charges on the Exchequer or on the people (taxes). That it has limited powers does not stop senators with expertise and knowledge on budgetary issues from raising matters of concern with ministers during Seanad proceedings.

To help manage the workload of the Houses (Downey, 2000, p. 3), the practice of initiating government Bills in the Seanad has grown in popularity. This was unheard of before 1948 and used sparingly for many years (Figure 3). Between 1997 and 2021, 330 government Bills were Seanad Bills (Figure 3).

It has been argued that the Seanad offers a good opportunity to tease out the details and implications of Bills (Manning, 2010, 163), and that senators bring ‘new and important perspectives to legislation that might not be heard in the more pressurised Dáil chamber’ (MacCarthaigh, 2005). Former Taoiseach Garret FitzGerald wrote that the introduction of Bills in the Seanad is frequently a choice;

⁵ This is calculated as follows. We generated a list of all Seanad Bills which had an amended Bill published during the legislative process between 2000 and 2021 – a total of 110 Bills. To calculate this as a percentage of all Bills, we generated a list of Seanad Bills enacted by the Oireachtas between 2000 and 2021 (325). From this list we included only the Bills which were amended during 2000–21 and this resulted in 10 Bills being removed (as they were taken in the Seanad in 1999 or before even though they were enacted in 2000). This left 315 Seanad Bills taken for debate and enacted between 2000 to 2021. As only two Seanad Bills have so far been enacted in 2022, and they were taken in 2022 (and not in 2021), they are not relevant to the calculation. The total of 110 as a percentage of 315 is 34 per cent. For the list of the 315 Bills and the 110 Bills in Excel format contact the authors.

Figure 3: Number of government bills initiated in the Seanad over different periods



Source: Houses of the Oireachtas Database.

some Bills receive a better debate in the Seanad and, despite its broadly partisan composition, the atmosphere is less partisan than in the Dáil and senators are sometimes inclined to scrutinise legislation thoroughly (FitzGerald, 1992, p. 56). Former Taoiseach Bertie Ahern said that debates in the Seanad are ‘better, more relaxed, less adversarial’, and former Chief Whip Tom Kitt noted that ‘there are individual Senators there who bring real expertise in certain areas and who can influence the degree of scrutiny which a Bill receives’ (Hunt, 2010, p. 61). Former Minister for Justice and current university Senator Michael McDowell (NUI) has stated that, having introduced major reforming legislation to both Houses over the years, the better legislative work by far was done in the Seanad (Hunt, 2010, p. 61).

PMBs were once a very small part of a senator’s workload (Garvin, 1969) but they have increased in significance for a variety of reasons, especially since 2011. PMBs serve several purposes, not only as a route to enacting legislation, including to encourage the government to introduce legislation, to draw public attention to a Bill, and/or to initiate and generate support for legislative change. Seventeen PMBs initiated in the Seanad have been enacted since its creation in 1922. Of these seventeen, eleven were enacted between 2008 and 2022 and seven have been enacted during the twenty-fifth (2016–20) and twenty-sixth Seanad (2020–) (Table 1).

Table 1: Enacted Private Members' Bills originating in the Seanad

	<i>Bill</i>	<i>Title</i>	<i>Main sponsor</i>
1	Bill 51 of 2020	Children (Amendment) Bill 2020	Michael McDowell
2	Bill 112 of 2018	Criminal Justice (Perjury and Related Offences) Bill 2018	Pádraig Ó Céidigh*
3	Bill 116 of 2017	Landlord and Tenant (Ground Rents) (Amendment) Bill 2017	Robbie Gallagher
4	Bill 26 of 2017	Intoxicating Liquor (Amendment) Bill 2017	Billy Lawless
5	Bill 78 of 2016	Irish Sign Language Bill 2016	Mark Daly
6	Bill 67 of 2016	Civil Law (Presumption of Death) Bill 2016	Colm Burke
7	Bill 8 of 2016	Competition (Amendment) Bill 2016	Ivana Bacik
8	Bill 23 of 2013	Equality (Miscellaneous Provisions) Bill 2013	Ivana Bacik
9	Bill 38 of 2012	Protection of Children's Health (Tobacco Smoke in Mechanically Propelled Vehicles) Bill 2012	John Crown
10	Bill 21 of 2010	Construction Contracts Bill 2010	Feargal Quinn
11	Bill 36 of 2008	Mental Health (Amendment) Bill 2008	Dan Boyle
12	Bill 38 of 1963	Protection of Animals (Amendment) Bill 1963	William Ryan
13	Bill 23 of 1957	Destructive Insects and Pests (Consolidation) Bill 1957	Eamon Kissane
14	Bill 5 of 1928	Bodies Corporate (Executors and Administration) Bill 1928	James Green Douglas
15	Bill 37 of 1925	Shop Hours (Drapery Trades Dublin and Districts) Bill 1925	James Green Douglas
16	Bill 43 of 1924	Private Bill Costs Bill 1924	James Green Douglas
17	Bill 42 of 1924	Oireachtas Witnesses Oaths Bill 1924	James Green Douglas

*This bill lapsed during twenty-fifth Seanad/thirty-second Dáil and was reinstated and enacted in 2021.

In performing their legislative role, senators frequently articulate minority viewpoints during legislative debates. In the context of an increasingly conservative society, vocal dissent against the government's 'illiberal laws' of the 1920s and 1930s was heard in the Seanad. These laws included a Bill to ban divorce (which was famously opposed by W. B. Yeats), a Bill to ban women from serving on juries and a Bill to limit the employment of women in the civil service. The latter was passed into law via the Civil Service (Regulation) Amendment Bill, which was defeated in the Seanad and had its passage delayed by twelve months. Senator Edith Costello won approval for proposed amendments to the Juries Bill, whereby women were able to apply to have their names retained on the jury roll under certain circumstances (see Dorney, 2019).

It was in the Seanad that progressive proposals aiming to liberalise these and other laws emerged in the 1970s. For example, Senator Mary Robinson introduced two PMBs on family planning in the 1970s,⁶ aiming to open up access to contraception to reflect a Supreme Court Judgement in 1973. Senator David Norris sponsored a motion in 1991 calling on the government to remove continued restrictions on the availability of condoms, particularly in light of the AIDS crisis. Having won a case in the European Court (1988),⁷ which ultimately led to the decriminalisation of homosexuality in Irish law in 1993, Senator Norris sponsored a Civil Partnership Bill in 2004 before this was eventually legalised in 2010. During debates over the Eighth Amendment to the Constitution in 1982–3, and later on the X Case (when the Supreme Court judgement led to a political crisis over the meaning of the Eight Amendment (Smith, 2000)), many independently minded senators spoke out against enshrining a view of morality not shared by all people in the Constitution (Seanad Éireann debate, 11 May 1983).

Oversight of government and stability

Committees of the Houses play an increasingly important role in the scrutiny of legislation and oversight of government by the Houses of the Oireachtas (Gallagher, 2018). Also, cross-party committees which focus on one particular policy issue are becoming a more common feature in the Houses.

⁶ Family Planning Bill 1973, Bill No. 33, 1973.

⁷ Senator Norris appealed a decision taken by the Irish Supreme Court in 1983.

Oireachtas committees meet and act most frequently as joint committees comprising TDs and senators, including for pre-legislative scrutiny of government's general schemes (drafts of Bills) and for detailed scrutiny of PMBs. While the Seanad is not a 'confidence House', joint committees play an increasingly important role in holding government and its agents to account (see Gallagher, 2018). Ministers also regularly appear before the Seanad to discuss government policy and events of the day (whether in response to an invitation to make a statement or to debate a motion).

Senators have chaired specialist committees established to examine and report on controversial issues. Senator Catherine Noone chaired the all-party committee established to advise on how to implement the removal of the constitutional ban on abortion in 2017 (which had been recommended by a Citizens' Assembly) (Committee on Eighth Amendment of the Constitution). A joint committee dealing with water services was chaired by Senator Pádraig Ó Céidigh and the Committee on the Future of Mental Health Care was chaired by Senator Joan Freeman. The most prominent inquiry committees – for example, the Joint Committee on the Banking Inquiry – comprise TDs and senators.

The Seanad Public Consultation Committee, first established in 2011, has examined a diverse range of topics, including the rights of older people, small and medium enterprises, and the Traveller community in Ireland. The Seanad established its own select committee to monitor Ireland's preparedness for Brexit, engaging with stakeholders and experts concerning its impact on the economy and society (Seanad Select Committee on UK Withdrawal from the EU, 2021).

A Seanad Committee on Statutory Instruments which existed in the 1940–60s was considered to be very influential and wide-ranging in its activities, and to vastly improve how statutory instruments were drafted (Garvin, 1969, p. 57). In November 2022 the Seanad, with the agreement of the government, prepared to establish a select committee on the scrutiny of secondary legislation for the transposition of EU directives. The select committee will consider statutory instruments which seek to transpose EU directives into Irish law and refer those which it believes require closer scrutiny to the relevant joint committees. This will allow the Oireachtas to scrutinise such statutory instruments – and prepare an advisory report for government – before they are signed into law. At present, the Oireachtas is confined to seeking annulment (not amendment) of these statutory instruments after they have been signed.

In the broader sense of the word oversight, the Seanad has a clear function in the checks and balances on power set out in the Constitution (e.g. it has a role in the process for impeaching a President or a Judge for stated misbehaviour – Articles 12.10 and 35 of the Constitution, respectively). The Seanad is mentioned seventy-five times in the Constitution and the 2013 Act which proposed a referendum to abolish the Seanad involved over forty amendments to the Constitution, far beyond amendments to Articles 18 and 19, which provide for the Seanad and its election (Seanad Éireann debate, 17 July 2013). For example, Article 27 gives the Seanad a role (along with the President and one-third of the Dáil) in safeguarding the Constitution from an executive which tries to enact legislation that may contradict the Constitution or counter vital national interest.⁸ It has never been necessary to use this power.

In the context of the Seanad's possible abolition and its role under Articles 12 and 35 of the Constitution, Senator Fergal Quinn called for a 'proper debate on whether it is democratically proper for a transient Dáil majority to be able to impeach a President or a Judge'. Senator Quinn proceeded that the abolition of the Seanad would:

fundamentally alter the nature of our parliamentary democracy and ... change the system of checks and balances upon which our Constitution is founded. (Seanad Éireann debate, 3 July 2013)

An empirical study in the aftermath of the Seanad referendum found that voters who elected to retain the Seanad were most likely to explain their vote as to ensure against a 'power-grab' – that abolishing the Seanad would only further concentrate power in the hands of an already powerful executive (cited in Oireachtas Library and Research Service, 2018).

Conclusion: Agility and the future evolution of the Seanad

The 2013 referendum created an expectation of reform. The report of the Implementation Group on Seanad Reform (2018), which was chaired by Senator Michael McDowell, considered how to implement

⁸ Article 27 of the Constitution states that a referendum or a general election can be initiated where a majority of the Seanad, combined with one-third of the members of the Dáil, petition the President that a Bill 'contains a proposal of such national importance that the will of the people thereon ought to be ascertained'.

reforms, in particular those advocated by the Manning report (Working Group on Seanad Reform, 2015). The group's proposals are a reflection of what might be politically viable, and all of its non-electoral recommendations have been progressed as the Seanad completes its hundredth year. They are:

- vocational debates;
- the scrutiny of EU transposition legislation (discussed above) as well as the introduction of formal mechanisms to engage collectively with members of the European Parliament (MEPs are invited in three groups based on the constituency for which they were elected);
- the practice of inviting committee chairs (whether a TD or a senator) to contribute to Seanad debates on joint committee reports.

In spite of the many reports and political commitments to reforming how the Seanad is elected, it is uncertain if electoral reform will be part of its future. What does seem to be clear, however, is that the Seanad's distinct role and its strengths stem to a considerable extent from its unusual composition. Those charged with designing electoral reform will be aware of this, and of the conclusions of several studies (see Heller, 2007; Oireachtas Library and Research Service, 2012, pp. 10–12; Russell, 2001) on bicameralism in unitary states: whether the benefits of bicameralism in terms of representation, oversight of the executive, and the quality of legislation materialise seems to depend on the extent to which the second chamber's composition is sufficiently different from that of the first, as well as on the second chamber's formal powers, and there is some consensus that the first – the distinctive composition – is the more important factor in unitary states.

Appendix 1

Formal powers of the Free State Senate and the 1937 Seanad

	<i>Powers of Senate (1922 Constitution)</i>	<i>Powers of the Seanad (1937 Constitution)</i>
Legislative	<p>All Bills had to be considered by the Seanad.</p> <p>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 twenty-one 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 ninety days.</p> <p>Seanad can make a recommendation on a money Bill (not an amendment) and can delay its passage by twenty-one days.</p> <p>Non-money Bills may be initiated in Seanad Éireann provided they do not propose to amend the Constitution.</p> <p>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).¹</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>

Formal powers of the Free State Senate and the 1937 Seanad (Contd.)

	<i>Powers of Senate (1922 Constitution)</i> ¹	<i>Powers of the Seanad (1937 Constitution)</i>
Separation of powers	A resolution of the Senate (and of the Dáil) required for the removal of a High or Supreme Court Judge for stated misbehaviour or incapacity (Article 68).	Under Articles 33.5 and 35.5 of Constitution, a majority of the Seanad and the Dáil by resolution is required to 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 two-thirds of one House must be investigated and supported by two-thirds of the other House.

¹ Sean Moylan was appointed Minister for Agriculture in 1954 and James Dooge as Minister for Foreign Affairs in 1981.

Composition of (and method of electing) Free State and 1937 Seanad

Free State Seanad (1922-36)

1937 Seanad

60 members.

Elections not aligned with Dáil elections.

Candidates thirty-five 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).

Senators serve for twelve years; one-quarter of House elected by PR-STV in one national constituency every three years by all citizens of thirty years and older. Elected from a panel (two-thirds nominated for election by the Dáil and one-third by the Seanad (method of proposing and selecting nominees was set out in legislation)).

In 1922, to avoid having a direct election for sixty senators in a single constituency, there was a special arrangement for first Senate: thirty were appointed by President of the Executive Council in line with the above criteria (fifteen for six years and fifteen for nine years). Thirty were elected from a list of candidates by the Dáil. The first and only nationwide election for ninety (as there were four casual vacancies) was held in 1925. After 1928 the Constitution was amended, and the electorate was changed to senators and TDs but the rolling basis (fifteen every three years) continued.

60 members.

Elections aligned with Dáil elections (must take place within ninety days of dissolution of the Dáil).

Forty-three senators are elected from five 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 one candidate must be elected from each. The electorate for the forty-three senators from these panels comprises local government councillors, incoming members of the Dáil and outgoing senators.¹ The subject of the vocational panel is set out in the Constitution.

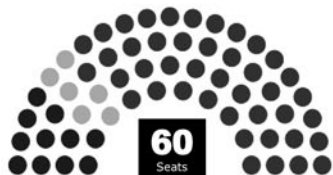
Six senators are elected by university graduates: three by graduates of Dublin University and three by graduates of NUI.² Eleven are appointed by the Taoiseach.

¹ Seanad Electoral (Panel Members) Act 1947, as amended.

² Seanad Electoral (University Members) Act 1937, as amended.

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THE SEANAD ÉIREANN ELECTORAL PROCESS



Total membership of Seanad Éireann	60
Taoiseach's nominees	11
University seats	6
Represent vocational interests	43

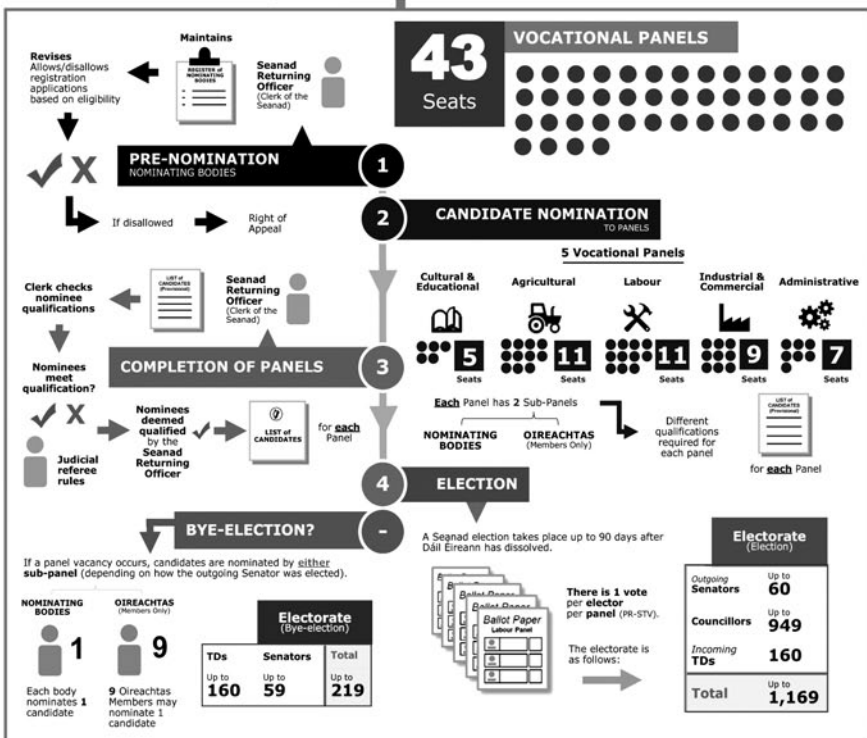
11
Seats

TAOISEACH'S NOMINEES

6
Seats

UNIVERSITY SEATS

University of Dublin (Trinity College)	65,000 (≥18 years old with degree)
National University of Ireland (NUI) (Maynooth, NUI Galway, University College Cork and University College Dublin)	110,000 (≥18 years old with degree)



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