

New Government, Better Government
changing a broken system

**Labour's 140 proposals to transform Government, Politics
and the Public Service**

CONTENTS

PREFACE.....	4
1. CONSTITUTIONAL CHANGE	6
Constitutional Convention	6
The Oireachtas	6
Dáil Éireann	6
Seanad Éireann	6
2. ELECTORAL REFORM.....	8
3. DÁIL REFORM	9
Making Law More Effectively.....	9
Representing the People on Issues of National Concern.....	10
More Effective Financial Scrutiny	11
An Independent Fiscal Advisory Council	11
The Estimates Procedure.....	11
Holding the Executive to Account.....	12
Openness, Transparency and Accountability	12
Attorney General’s Advice.....	13
Civil Service Evidence.....	13
Parliamentary Inquiries.....	13
A Committee of Investigations, Oversight and Petitions	14
4. THE NATIONAL PARLIAMENT AND THE EUROPEAN UNION	15
EU’s Annual Work Programme.....	15
Joint Oireachtas Committees	15
Transposing EU Legislative Measures	16
Oireachtas Accountability.....	16
5. MINISTERIAL RESPONSIBILITY.....	17
6. PUBLIC SERVICE REFORM.....	19
Public Service Structures, Delegation and Grading	19
Strategy Development.....	20
Performance Measurement and Evaluation.....	21
Performance Management including Staff Motivation.....	22
Service Delivery	24
Communications	25

APPENDIX: SEANAD ÉIREANN.....	26
Background to a Second Chamber.....	26
Why have two Chambers?	28
Can Seanad Éireann have a Role?	31
Conclusion	31

Preface

“Public confidence in the integrity of the Government is indispensable to faith in democracy and, when we lose faith in the system, we have lost faith in everything we fight and spend for”

– Adlai E Stevenson

The sudden and calamitous change in our national economic fortunes over the past three years, coupled with revelations of waste of public money and resources, has undermined public confidence – not alone in the present Government but also in the structures of government.

What’s more, this is the second time in a generation – and the third since the Second World War – that Ireland has been confronted by a profound economic crisis.

We have to stop lurching like this, from one disaster to the next.

To do that, we need to change the way that we run our country – to make sure that this doesn’t happen again.

And, more than that, we have to change the way that Ireland is governed. We have to ensure that individual citizens feel a far greater sense of involvement in the decisions that shape their lives.

Politics is, and must remain, the most accountable of all professions. There is no other job where the workers face scrutiny and judgment by public opinion, sometimes with devastating personal consequences. Politics is and must remain the property of the people.

But fewer and fewer people feel a sense of ownership of their politics. We need a more practical democracy, one that empowers citizens and ends the sense of exclusion of so many of our people.

Labour begins this process of renewal with a review of the Oireachtas itself. We set out our views and our proposals to reform our national parliament in a fundamental way, so as to meet the needs of the Irish people in the 21st Century.

The practice of politics is not easily measured. Apart from passing laws, our form of representational politics demands, rightly, a high degree of accessibility. Routinely, politicians carry out many hours of invisible work, dealing with the problems of constituents, attending meetings in constituencies, attempting to represent all the people who elected them to the best of their ability.

In their parliamentary work too politicians spend hours researching their briefs, preparing for their time in the chamber, developing policy ideas and responding to local and national media queries.

For all these reasons being a TD is not a conventional nine-to-five job, nor can the Dáil be regarded simply as a legislation factory.

But, conventional or otherwise, the job of a TD has undoubtedly been devalued in public perception in recent years. For that reason, if no other, radical, fundamental reform of the Houses of the Oireachtas has become a democratic imperative.

And there are deeper issues than perception. Reform cannot stop at the door of Leinster House. The principles and practices underpinning government accountability need change. Legislation and constitutional measures that give primacy to the public interest need to be a priority. The national parliament needs to be a modern and open workplace, with procedures that fit the times.

The need for accountability in Government and in public administration has never been greater, and at the same time the effectiveness of parliament in securing that accountability is in serious decline.

The Houses of the Oireachtas operate under procedural rules that were drafted in the 1920s. While society has changed to such an extent that the Members of the 1922 Dáil would find modern Ireland virtually unrecognisable, they would have little difficulty in adapting to the current Dáil Standing

Orders. The emphasis in those Standing Orders is on rules, procedure and precedent, on restrictions on Members, on upholding decorum and the dignity of parliament.

The structure of our sitting days still dates from an era when most Deputies took long hours to travel to Dublin. And the exceptionally long summer recess is a relic of the time when the Dáil was dominated by people who had businesses, farms and professional practices to run, for whom the task of representing the people was a part-time one.

The consequence is that when accountability is demanded, increasingly the last place people look to is their own parliament. This must change. If it does not, the cynicism and disillusionment already evident will deepen to the point where it begins to corrode our basic democratic values.

The measures outlined in this document would fundamentally alter the way the Oireachtas, the Government and the public service work.

Parties in opposition usually demand more effective and powerful parliament. Parties in government usually resist all such proposals. It is now time for real commitment to change.

Labour, with a real prospect of shaping a future government programme, is committed to making these changes.

Brendan Howlin TD
Labour Party Spokesperson on Constitutional Matters and Law Reform

1. Constitutional Change

Constitutional Convention

1. It is time for a fundamental review of our constitution. It is essential that the people be involved in the process. Labour proposes a constitutional convention, a coming together of all strands of Irish society to redraw our Constitution. The constitutional convention would include experts and specialists, but would also include individual citizens, randomly chosen to serve in much the same way that we choose juries. Labour proposes a 90-member constitutional convention with an open mandate. Thirty of its members would be drawn from the Oireachtas, 30 members would be academic or practicing lawyers and others with experience or expertise from non-governmental associations and organisations and 30 would be ordinary citizens. **The mandate would be to review the Constitution and draft a reformed one within a year.**

The Oireachtas

Labour believes that a nation of our size, scale and composition needs a strong, single-chamber, directly elected parliament with real legislative and oversight powers to effectively do the people's business in the 21st Century.

Dáil Éireann

2. We need **a national and inclusive debate about the system of electing members of Dáil Éireann.** This will be the first item for debate at the Constitutional Convention. The reality is that no electoral system is perfect: for every perceived benefit a change to a new system might offer, some detriment would be suffered. An informed debate will spell out the pros and cons of each of the major electoral systems and then decide on the system best suited to Ireland, to put to the people for their decision. Extensive work has been undertaken on these issues by the All-Party Committee on the Constitution and their research will inform this process.

Seanad Éireann

3. The Seanad's shortcomings are summarised as arising from the fact that it is dominated by the Government; it lives in the shadow of the Dáil; and the rules for choosing its members are bizarre and anachronistic. The reality is that there is popular indifference about its future. The reasons are that, quite simply, no one is sure what purpose it is meant to serve.

Maintaining the *status quo* is clearly unacceptable. There are really only two options:

- abolish the Seanad, or
- change the **nature** of the Seanad, by creating an electorate that is not directly representative of the people (the role of the Dáil) but that nonetheless needs to be heard, and change the **function** of the Seanad so that it does not duplicate what the Dáil already does but instead brings its own added value to the legislative and parliamentary process.

The Labour Party has taken a long, hard look at Seanad Éireann, both as members, former members and colleagues of members of that body. Our analysis is set out in the Appendix. **In our view, the case for the retention of Seanad Éireann has failed.** It is simply not possible to identify any bodies or sections in our society that deserve (because they are university

graduates or county councillors, for example) to be singled out as constituting a special and separate electorate, entitled to vote for their own separate House of the Oireachtas.

The decision about the future of the Seanad is one that will have to be made by the people as a whole. Labour will therefore bring its case for abolition of the Seanad to the constitutional convention, which will consider all the options. Ultimately, the decision will be for the people by way of referendum.

2. Electoral Reform

4. Labour will establish an **independent electoral commission**, with responsibility for both electoral administration and oversight. We will do this by re-constituting the Standards in Public Office Commission as a new Electoral and Public Offices Commission, that would take over the powers of Referendum Commissions and Constituency Commissions. It would also take over from local authorities responsibility for compiling the electoral register and from the Department of the Environment responsibility for the running of elections.
5. We will **revise the terms of reference for the revision of constituencies so as to ensure the most proportionate arrangement of constituencies that is achievable**, having regard to practical and relevant considerations. The fundamental requirement must be to protect and give effect to the proportionality of the system as a whole – that there is a close approximation between overall votes cast and overall seats won. Therefore, the number of deputies elected in five seat constituencies should predominate and recourse to three and four seaters should be regarded as a departure from the norm, justified perhaps by the necessity to accommodate special circumstances.

3. Dáil Reform

Labour is proposing radical reform of the way the Dáil operates. Labour's objective is to make Dáil Éireann fit for purpose in the 21st century. To carry out this task we must identify the fundamental goals of a properly functioning Dáil. These include:

- to make law,
- to represent the people on issues of national concern,
- more effective financial scrutiny, and
- to hold the executive to account.

On each of these headings the Dáil falls short, sometimes far short, of what is required. Labour in Government will institute a programme of short-term and urgent Dáil reform, within the existing Constitution, to make the Dáil fit for purpose.

Making Law More Effectively

6. Labour will introduce a package of changes that will bring about **a 50 per cent increase in Dáil sitting days**. Dáil Éireann will in future meet four days a week. There will be a summer recess of just six weeks and significantly reduced breaks at Christmas and Easter. We will abandon the practice of providing a "mid-term break" – a full week off at St Patrick's Day and Hallowe'en. When the Dáil is not in session the Committees shall agree by roster that a particular Committee shall meet in the Dáil Chamber.
7. Labour proposes to break the Government monopoly on legislation, and the stranglehold over the business of the Dáil, by providing that the new **Friday sittings will be given over exclusively to committee reports and private members business** except where urgent government business must be taken.
8. Labour will enhance the democratic process by involving public representatives at an earlier stage of the legislative process, particularly before Bills are published. Labour will amend cabinet procedure instructions so as to allow government to **publish the general scheme of a Bill** so that Oireachtas Committees can debate and hold hearings at an early stage.
9. While recognising that there may be exceptional circumstances in which debate may need to be concluded by a given deadline, Labour will **restrict the use of guillotine motions** and other procedural devices that prevent Bills from being fully debated, so that guillotining is not a matter of routine as it has become at present, particularly at the end of a session.
10. Labour will also deal with the related problem of legislation being shunted through at high speed and will ensure that Dáil standing orders provide a **minimum of two weeks between each stage of a Bill**, except in exceptional circumstances.
11. In order to enhance the role of the legislative committees, Labour will organise a **committee week every fourth sitting week**. The Dáil plenary will sit only for questions, including Leaders' questions, and the order of business and the remainder of the day will be taken up in committee.
12. Where there is opposition demand for **the time limit on speeches to be extended**, government will facilitate such reasonable extension."

13. Labour will **add to the current arrangements for private members' business of 1.5 hours on a Tuesday and 1.5 hours on a Wednesday**, by providing time on the new Friday sitting day to private members' business.
14. Labour will also **abolish the rule that a private member's Bill or amendment cannot impose a charge on public funds**. This will allow a much broader range of amendments to be debated. In order to comply with the Constitution, Labour will however provide that if an amendment or Bill imposing a charge on public funds is to be progressed, the Bill cannot pass beyond report stage without a message from the Government approving the expenditure. This restriction will ensure compliance with the Constitution while at the same time allowing any such amendment to be actually discussed by members.
15. Labour will **divide the Friday sitting so that a large number of separate proposals can be considered**. This will include at least 1 hour per sitting week for up to 3 Bills to be debated under a "ten minute rule", giving the proposer of a private member's Bill 10 minutes to make the case, and the Government 10 minutes to reply.
16. Labour will ensure that all members of the house have an enhanced capacity to play a full part in the legislative role of the House as well as its other constitutional functions, making **full use of the research, drafting and the administrative supports for members** that are now available.
17. Labour will **abolish the rule that leave of the house is required to introduce new legislation**. Under Labour's proposals, any member may introduce a Bill and have it printed without leave. Labour will not seek to limit artificially the number of Bills that any one member can introduce, indeed we consider that ideas for new legislation should be welcomed and examined, and not thwarted.
18. Labour will also **abolish the rule that an amendment must be narrowly "within the scope of the Bill"**. Over the years, many pertinent amendments have been ruled out of order on the basis of this restriction.

Representing the People on Issues of National Concern

19. Labour will **establish a petition system to the Dáil**, similar to that operating in the European Parliament, to be managed by a specific Dáil committee that will investigate and report on petitions which raise issues warranting attention.
20. Labour will enhance the parliamentary relationship with the European Parliament in conjunction with Ireland's MEPs. These arrangements will include **regular attendance by MEPs at relevant Dáil committees**.
21. Labour will legislate and change Dáil standing orders to **ensure the absolute confidentiality of information entrusted to members of the Dáil by their constituents or informants**, and ensure that such information cannot be compulsorily disclosed through the legal process except with the consent of the informant.
22. Labour will significantly **revamp the adjournment debate format**. It will be renamed the topical issue debate. There will be a minimum of 5 topical issues. These will be taken in the middle of the day and there will be provision for questions at the end. A Minister or Minister of State from the relevant Department will be present and there will be an end to the practice of one junior Minister reading out scripts on behalf of a number of Departments about a range of issues of which he or she knows nothing.
23. The standing orders on urgent issues are used regularly to attempt to raise issues that are not urgent and such requests are almost invariably refused. Labour will **made the Dail rules for raising urgent issues more meaningful** by requiring a minimum number of signatories for such a request.

More Effective Financial Scrutiny

An Independent Fiscal Advisory Council

24. Labour will **establish an independent Fiscal Advisory Council (FAC)**, separated from fiscal decision-makers in government, that would undertake official fiscal macroeconomic projections and monitoring.
25. The Fiscal Advisory Council functions would include **identifying and advising on cyclical and counter-cyclical fiscal policies** and structural deficits; the cyclical or temporary nature of particular revenues; and the need to maintain an appropriate and effective tax base.
26. The Fiscal Advisory Council will be **independent of Government and will report to the Dáil and the public.**
27. The modelling assumptions and inputs of the Fiscal Advisory Council will, as far as possible, be **open to public scrutiny and its outputs would be freely available to external bodies,** including in particular, the opposition parties.

The Estimates Procedure

28. Labour in Government will conduct a **Comprehensive Spending Review** to examine all areas of public spending, based on the Canadian model, and to develop multi-annual budget plans with a three-year time horizon. This plan will be presented to the Dáil for debate. The mainstay of Dáil scrutiny of public expenditure, however, will be a greatly enhanced annual estimates procedure.
29. Labour in Government will **bring forward the annual Estimates cycle**, so that it becomes more timely and relevant. It will in future start at the beginning of the preceding year and conclude by the summer.
30. The annual Estimates will in future **distinguish between monies being allocated to maintaining the existing level of service for existing programmes and money to support new programmes** or policy decisions.
31. Proposals for new expenditure programmes will be accompanied by a **five-year projection of costs and benefits**. The Estimates will also **distinguish between discretionary and non-discretionary spending**, i.e., spending arising from legal entitlements which must be met (such as pensions).
32. The Book of Estimates will be accompanied by a **detailed performance report on what the previous year's spending had achieved**. It will also give details of the level of performance achieved by agencies under service delivery agreements with Government.
33. Oireachtas members will be given, from within existing resources, **dedicated resources for the proper scrutiny of the Estimates**. An Estimates Commissioner, with strong powers to get all necessary information, will be appointed within the Houses of the Oireachtas to manage the advance detailed parliamentary scrutiny of spending proposals, in the same way that the Comptroller and Auditor General scrutinises the outcome of spending, after the event.

The Estimates Commissioner will have statutory functions and powers to publish reports as to the economy, efficiency and propriety of the Estimates, give the Dáil independent assessment and evaluation of the merits of individual expenditure proposals, evaluate the merits of proposals in the Estimates by reference to the key objectives, outputs and strategies of the Department concerned, as published in its strategy statement, and otherwise generally assist the Dáil and its committees in their consideration of the Estimates.

Holding the Executive to Account

34. Labour will **introduce a role for the Ceann Comhairle in deciding whether a Minister has failed to provide reasonable information in response to a question.**
35. Labour proposes a radical extension of the parliamentary question system, so that it shall be a statutory **duty on any body established by or under statute, or with a majority ownership or funding by the State, to submit to the same parliamentary questions regime as applies to Government departments.** This will involve a liability to provide answers to written questions within a specified number of Dáil sitting days. (Labour will however recognise the special position of bodies with a commercial mandate operating at arm's length from Government.)
36. In addition Labour proposes a **new procedure for answering oral questions by state bodies.** The chief executive of every state funded body will be required to attend the relevant Oireachtas committee on a regular basis to answer oral parliamentary questions that can be submitted by any member, on a similar basis to the attendance of Ministers before the full Dáil.
37. To facilitate such appearances, Labour will also introduce legislation to **repeal the “gag” clause that applies to the officers of public bodies,** preventing them from expressing an opinion on the merits of Government policy. The business of public administration can only gain from a more open system which will allow officials to express their views more freely before a Dáil committee.
38. Labour will amend Dail standing orders to **ensure that replies to written questions are furnished within a specified number of days,** even during Dáil recess.
39. To enhance the accountability of the Taoiseach to the Dáil, Labour will provide for **Leader's questions to the Taoiseach on each Dáil sitting day** other than the Friday private members sitting.
40. To make the oral question process more effective, Labour proposes to **increase the time allocated to oral questions** and to provide balance there will be a reduction in the number of oral questions being submitted to one per member. A member must be present in the chamber when his or her question is reached, although they may defer to another member the right to ask a supplementary question.

Openness, Transparency and Accountability

41. Labour will legislate on the issue of **cabinet confidentiality,** to ensure that it cannot be used to cover up necessary investigations.
42. Labour will legislate to **restore the Freedom of Information Act** to what it was before it was filleted by the present Government, and Labour will extend its remit to the Garda Síochána and other public bodies.
43. Labour will **extend Freedom of Information, and the Ombudsman Act,** to ensure that all statutory bodies, and all bodies significantly funded from the public purse, are covered.
44. Labour will **introduce Whistleblowers legislation.**
45. Labour will legislate to **introduce spending limits for local and Presidential elections,** and to reduce the ceilings for European and general elections.
46. Given that it is not constitutionally feasible to abolish outright donations to political organisations, Labour will **legislate to restrict contributions to political parties and candidates** to €2,500 and €1,000 respectively, and to require disclosure of all aggregate sums above €1,500 and €600 respectively.

47. Labour will **repeal the Official Secrets Act**, while retaining a criminal sanction only for breaches which involve a serious threat to public policy (affecting the international relations of the State, the conduct of a fair trial, national security and the like). Labour will retain a public interest defence in such cases.
48. Labour will **introduce a statutory register of lobbyists**, and rules concerning the practice of lobbying.
49. Labour will amend the rules to ensure that no senior public servant (including political appointees) can work in the private sector in any area involving a **potential conflict of interest** with their former area of public employment, until at least two years have elapsed after they have left the public service.

Attorney General's Advice

50. In specific circumstances the **Attorney General's advice to government should be published**. If the advice of the Attorney General is publicly relied upon as justifying or necessitating a particular course of action adopted by the Government or by a minister, privilege should not preclude the publication of a summary of the arguments as they relate to:
 - the development of a legislative proposal by the government, a minister of the government or a minister of state, or by any other member of the Dáil or Seanad,
 - the introduction of a Bill or resolution in either House of the Oireachtas or the passage, defeat or amendment of a Bill or resolution in either House,
 - the making, revocation or amendment of a statutory instrument, or
 - the development or amendment of a policy or programme of a public body, unless the advice is given in the course of litigation or in relation to pending or contemplated litigation.
 - Appropriate provision would be taken for the protection of commercially sensitive information and information to do with private individuals, national security, the detection and prosecution of crime, and so on.

Civil Service Evidence

51. **Restrictions on the nature and extent of evidence by civil servants to Oireachtas committees will be scrapped** and replaced with new guidelines for civil servants that reflect the reality of the authority delegated to them and their personal accountability for the way in which it is exercised.

Parliamentary Inquiries

52. Labour will put to a constitutional convention (proposed separately) for its consideration **an amendment to the Constitution providing for parliamentary inquiries** along the following lines:

The Government, its members and their officers and all others with responsibility for administering the public services of the State are trustees and servants of the People and shall be at all times accountable to their representatives.

The Government shall meet and act as a collective authority and shall be collectively responsible to Dáil Éireann. In addition, each member of the Government who has charge of a Department of State shall be individually responsible to Dáil Éireann for the administration by the member of that Department.

Provision shall be made by law enabling Dáil Éireann, in any matter stated by it to be of public importance, to inquire into and report upon an exercise of the executive power of the State or in relation to the administration of any of its public services.

A Committee of Investigations, Oversight and Petitions

53. Labour propose **an Investigations, Oversight and Petitions Committee of the Oireachtas**. It would be a powerful committee, constructed on the lines of the Public Accounts Committee, bi-partisan in structure and chaired by a senior member of the opposition.
54. The Committee would be the **formal channel of consultation and collaboration between the Oireachtas and the Ombudsman**, responsible for receiving and debating her annual and special reports and for ensuring that her criticisms and recommendations are acted upon. For that purpose, she would attend as a regular witness before the committee.
55. The Committee would **receive parliamentary petitions from individuals and groups in the community seeking the redress of grievances connected with the public services** of the State and with the public administration generally. Its functions would be to act as a "clearing house", directing complaints to those bodies most competent to act on them: the Ombudsman, the Data Protection Commissioner, the Local Government Auditor, the Oireachtas committee that has oversight of the relevant Department, and so on.
56. Where particular petitions warranted detailed investigation, the Committee would be empowered to order such **investigations through a Parliamentary Investigator**, who would undertake a preliminary investigation and, so far as possible, establish the factual position. Where the investigator was unable to establish clear facts, the report of a parliamentary investigator would if necessary be followed by either a formal parliamentary inquiry or other statutory investigation, as appropriate.

The consideration of reports of the parliamentary investigator, the making of recommendations as to whether a further inquiry was required, and as to the choice between Oireachtas or judicial inquiry, the drawing up of terms of reference for such inquiries, the maintenance of liaison with the inquiry as it proceeded - including receiving and considering reports from the inquiry as to its progress, co-operation given and any delays encountered - would all be functions of the Investigations, Oversight and Petitions Committee.

4. The National Parliament and the European Union

Labour believes the Oireachtas must be given responsibility for full scrutiny of EU draft proposals, for proper transposition of EU legislation and for holding the Government accountable for the decisions it takes in Brussels. All Oireachtas committees must share the burden of dealing with EU policies and legislative proposals. And systems must be put in place to ensure that Ministers do not bypass the Oireachtas and make decisions in Brussels on EU matters before these matters are subjected to scrutiny by the Oireachtas.

57. The **Taoiseach will be obliged to brief the Oireachtas prior to attending European Council meetings** and to engage with the Oireachtas in debate on EU issues of national significance and concern.
58. The Oireachtas will **devote a full week each year to debating major EU issues of concern to Ireland** such as the Draft Annual Work Programme, Green and White Papers and proposals for EU budget co-ordination.
59. The **Oireachtas will be linked up with the Irish offices of the European Commission and the European Parliament** in communicating Europe to the Irish people. Outreach programmes, meetings and competitions particularly in schools will be organised and TDs and Senators invited to participate.
60. Under the Lisbon Treaty provisions the Oireachtas is entitled to receive all documents produced by the EU Commission at the same time as the EU institutions and the Irish Government receive them. Labour will **ensure all EU documents are forwarded to the Oireachtas** through the Ceann Comhairle and the Cathaoirleach. They will transmit them to the Oireachtas library and the relevant Committees. Every TD and Senator will be informed of the documents as they arrive, so that they can engage in EU matters that concern or interest them.

EU's Annual Work Programme

61. The EU Commission produces its Draft Annual Work Programme in October/November for the following year. **Labour proposes that the week in which the 9th May, "Europe Day" falls will be the occasion for a week-long parliamentary debate on Ireland's priorities within the EU.** The debate will review the national progress in implementing the current year's work programme and focus on identifying the major issues of concern to Ireland for inclusion on the following year's EU Draft work Programme.

Joint Oireachtas Committees

The most significant new power conferred on the Oireachtas by the Lisbon Treaty, is the power to ensure that the policies of the EU comply with the principle of subsidiarity. In short that the EU does not overstep its competences under the Treaties and intrude in areas that are the preserve of the Member States.

62. Labour proposes that joint Oireachtas Committees will play the major role in scrutinising the EU in the coming years. Greater emphasis will be placed on deepening the involvement in EU matters of the joint Oireachtas committees that shadow the work of each Government Department. **Labour will oblige all sectoral committees to deal with EU matters that come within their remit within a defined period of time.**
63. **Joint committees will be supplemented by a system of subcommittees and a system of rapporteurs** who have a particular interest in an area of policy or scrutiny and who volunteer to carry out an in-depth study for the relevant committee.
64. If any Joint Committee believes that the principle of subsidiarity has been breached, the matter would be referred to the Dáil and Seanad for debate and determination. If both Houses

agree that a breach has occurred then the decision is forwarded to the EU Commission and to the European Court of Justice. **A streamlined and standardised communications system will be put in place to create an early warning system.**

Transposing EU Legislative Measures

65. The situation can no longer be tolerated where Irish Ministers enact EU legislation by statutory instrument. The checks and balances of parliamentary democracy are by-passed. **The parliamentary treatment accorded home-produced draft legislation must be extended to draft legislation initiated within the EU institutions.**
66. **The Regulatory Impact Assessments prepared for Ministers on all EU Directives and significant Regulations will be forwarded automatically to the relevant sectoral Oireachtas Committees.** These Committees should advise the Minister and the Joint Committee on European Affairs as to whether the transposition should take place by Statutory Instrument or by primary legislation. Where primary legislation is recommended the full Oireachtas plenary process should be followed.

Oireachtas Accountability

67. **All Ministers will be obliged to appear before their respective Joint Committees or before the Joint Committee on European Affairs prior to travelling to Brussels** for meetings of the Council where decisions are made.
68. A “Scrutiny Reserve” system, similar to that operating at Westminster – and which already operates here in relation to justice and policing issues – will be introduced, meaning that **Ministers will not normally be able to agree to EU legislation at Brussels without first giving the Oireachtas an opportunity to scrutinise the proposal.**

5. Ministerial Responsibility

69. **Labour proposes a reformulated code of laws, replacing both the Ministers and Secretaries Acts and the Public Service Management Act**, which would establish the present Departments of State, specifying their roles, their functions, powers and duties and the position of the Minister in charge of each Department.
70. **Labour will amend the law that defines the relationship between Ministers and their Departments**, so as to enshrine three basic propositions.
- a) If the Minister takes a decision personally, he or she should say so and account for it.
 - b) If the decision is taken by the Department, under a delegated power, then the relevant, named official should say so and account for it.
 - c) The Minister would then have to account for the degree of supervision he or she exercised over the Department in relation to the exercise within it of delegated powers.
71. **Departmental officials giving evidence to Oireachtas committees should be obliged to speak on their own behalf for their delegated responsibilities** and, where appropriate, defend themselves and their actions.
72. **The Carltona doctrine of implied general delegation of a Minister's statutory powers to civil servants will be abolished** and replaced by a fixed and determined system of delegation of specified powers to specified officers who would, to the extent of the authority delegated to them, be accountable both within the Department and also directly to the Oireachtas for the exercise of those powers.
73. **Where a responsibility is delegated through several grades, each grade will be held accountable for their element of it.**
74. Delegation orders would **spell out the function of the Minister in relation to supervision of the exercise of delegated power.**
75. Labour will ensure that the **Minister heading a Department is responsible for maintaining a level of supervision and oversight of that Department** that ensures that adequate standards are maintained in the performance by officers of the Minister of their functions; outputs are delivered as determined or agreed, and in accordance with the strategy statement approved, under the Public Service Management Act 1997; and procedures are in place to provide the Minister with the necessary and correct information to enable him or her to respond to problems of administration and to give an account in relation to those problems, and in relation to any necessary corrective action, to the Dáil and to the public generally.
76. The **responsibilities of Secretary Generals will be strengthened.** Labour will assign to the Secretary General authority and accountability for ensuring that the Department and its officers perform their functions in a non-political and impartial manner, in accordance with law and with the highest ethical standards of conduct and integrity and, in particular, in accordance with any prescribed code of conduct.
77. The Secretary General must also ensure that **risk management and other internal controls are in place** so that public funds are safeguarded, functions are performed effectively, efficiently and economically, laws, regulations and approved policies are complied with, and records and reports are adequate, reliable and accurate.
78. The **Secretary General will be given specific responsibility for ensuring that legal advice or opinion is brought to the personal attention of the Minister** that casts

substantial doubt on the constitutionality or validity of a statute, statutory instrument or departmental scheme, practice or course of action.

79. The **responsibilities of a Secretary General and of other civil servants will extend to ensuring that all persons concerned perform their functions in a way that avoids the unlawful, corrupt or irregular use of public funds** or public resources, acts done without proper authority, or on improper or irrelevant grounds, or contrary to established procedures, rules or guidelines, or that are oppressive or improperly discriminatory, or that give rise to a serious risk to public health, public safety or the environment or the maintenance of law, or that constitute or give rise to an offence or a failure to comply with a legal obligation, or that constitute gross mismanagement or gross negligence or are otherwise contrary to fair or sound administration.
80. **Rules of law and Departmental circulars that restrict the ability of civil and public servants – and CEOs – in the frankness of their evidence to Oireachtas committee will be scrapped** and replaced with new guidelines that reflect the reality of the authority they enjoy and their personal accountability for the way in which it is exercised.
81. Labour will bring to an **end the unacceptable executive practice that there is no record kept of ministerial engagement with an issue or decisions on that issue.** The practice has been destructive of trust and has hampered accountability to the Oireachtas. Executive decisions taken by county and city managers are effected by way of written minute. Consideration will be given to an appropriate amendment to the legislation so as to introduce this practice at national as well as local level.
82. Labour will **establish an Office of Government Commerce** within the OPW, with the aim of improving public services by working with Departments to help them meet their efficiency targets and delivering savings in central Government civil procurement.

6. Public Service Reform

Public Service Structures, Delegation and Grading

The Department of Finance directly controls the Civil Service and indirectly, through the other Departments, the broader public service. The nature of these controls is narrow and compliance-focussed, with the emphasis on processes and inputs rather than on desired outputs and outcomes.

The Department of Finance controls the public service budget on a limited basis of delegation which provides no real freedom for managers to manage. Staff grades, numbers and pay are determined at the centre and industrial relations matters relating to these key issues are centrally negotiated. Delegated budgets, which exclude payroll, are still largely managed on a crude basis of 'spend it or lose it', which does not reward effective budget management.

This attempt to maintain strict control of an ever-expanding and increasingly complex public sector is no longer working.

Grading structures have been in place in the civil and public service, with little review, since the establishment of the State. The number of management grades in a typical civil service Department is in itself unmanageable and creates huge gaps between the front line and the decision makers.

Far too much time is spent checking other officials' work, when it should be spent in responding to Government requirements on the one hand and the public's needs on the other. This lends itself to stagnation, disaffection and lack of accountability.

83. **Labour will establish an Office of Public Service Reform**, with responsibility for all matters in relation to the public service and headed by a Minister who sits at Cabinet. This Office will have particular responsibility for planning and implementing the change agenda and for ensuring that all aspects of that agenda are communicated fully to the public and to public sector staff.
84. Labour will **review the number, range and activities of State bodies and reduce their numbers where appropriate**.
85. Labour will **review the number and variety of local Government bodies, as proposed in the Bord Snip and the OECD reports, to eliminate overlaps**. At the same time, Labour will implement a programme to decentralise some central Government activities, including service delivery, to local authorities.
86. Labour will ensure that **State bodies are subject to the same reporting requirements as their parent Departments**.
87. Labour will ensure that policy initiatives are subject to robust consultation and analysis and that **relevant, meaningful measures of success are identified and monitored**.
88. Departmental and agency **budgets will be prepared for the medium term as well as on an annual basis**. Detailed business cases will be required for major projects, with review and reporting requirements built in to the plan. Potential time or cost overruns will be identified at an early stage and plans produced on how to get the project back on line. Sanctions will be imposed at an early stage for significant overruns, consisting of a range from replacing the project manager to withdrawal of funding.
89. Labour will **introduce increased delegation of budgets**, subject to detailed plans, relevant performance reporting and audited accounts compiled in accordance with generally accepted accounting principles will allow managers greater autonomy and increased flexibility, aligned with greater accountability.

90. **Greater autonomy will be provided to public service managers** in deciding how they apply funding provided, in terms of recruitments and dismissals, contract or permanent arrangements, numbers and grades of staff, harnessing of resources to achieve agreed outputs.
91. Labour will **establish guidelines to be followed when a new agency is being considered**, including specific reasons as to why the matter cannot be dealt with within existing frameworks.
92. Labour in government will publish **proposals for the orderly review of the structures in the State sector**, from a customer-centred perspective, and deliver plans for how these may develop into the future.
93. Where a public service requires input from more than one body, **ultimate responsibility will be assigned to one overall manager** of the project who will be accountable. Arrangements will be put in place to ensure the fullest co-operation between the relevant bodies. Clear lines of responsibility and accountability in relation to the service will be put in place and published.
94. The **grading structure of civil service Departments and in the public service will be reviewed** to move away from strict process supervision towards dynamic management of staff and resources.
95. **Less management grades** will allow more opportunities for developing improved services and policy making, improved levels of communication within Departments and offices and greater autonomy for staff at the front line.
96. Labour will **remove barriers to mobility between the Government Departments and the wider public sector, and between public sector bodies**. This will provide opportunities for moving staff to areas of greatest need. It can also provide opportunities for staff in terms of geographic location, career development and change of environment.

Strategy Development

Lack of clarity in relation to responsibility and accountability can often be traced to lack of clarity in Government policy and in departmental strategy statements.

The Public Service Management Act requires all Government Departments to publish Strategy Statements and annual reports of performance. However, Strategy Statements in many cases itemise vague and aspirational goals without any corresponding performance measurement that would indicate whether or not these goals have been achieved.

The Statements in many cases measure the resources to be applied to a particular strategy rather than focusing on how success in relation to the strategy will be identified.

There is little obvious linkage between Government objectives on the one hand and on strategy statements and annual reports on the other. While all Departments are now required to produce annual output statements, the overall effect of the planning and reporting systems is to cause confusion rather than bring about clarity in terms of achievement of national and organisational goals. They do not contribute in a coherent manner to planning and decision making at a national or departmental level.

Departmental Strategy Statements are supposed to 'cascade down' into divisional and unit business plans and performance plans. Lack of clarity at the top leads only to even more confusion at each level below. Lack of clear, measurable outcomes means that performance reports do not provide any useful information.

97. Government long-term goals will be clearly stated and communicated to the public service and citizens. The factors and factions influencing the formation of these goals will be identified. **Actions to achieve goals will be capable of measurement and a mid-term report on performance in relation to the goals provided.**

98. The **Government will provide clear, unambiguous short term strategic priorities** focussed on these goals which are subject to relevant performance measurement, with details as to risk factors and proposals for remedial action if necessary.
99. **Strategic priorities will be translated into high level goals for all relevant Departments, in a 'whole of government' approach** and in consultation with Ministers. Performance indicators will be identified to allow progress on the high level priorities to be monitored.
100. Departments' Statements of Strategy will be linked with Government strategic priorities and will identify **clear, defined, measurable outputs and outcomes**.
101. These goals and strategies will be cascaded through each Department and agency in **clear language through business plans and related team and individual performance plans**.
102. **Reports on individual performance plans and business plans will feed into the annual report of each organisation** to provide a comprehensive report on each organisation's statement of strategy.
103. **Output statements will be incorporated into annual reports** to ensure all relevant information is provided in a co-ordinated way. In this way an integrated planning and reporting system will facilitate accountability and improved decision making at national level.
104. Strategic management **capacity will be developed in the civil service and public service through training, secondment and open recruitment**.
105. The Office of Public Service Reform will be **responsible for co-ordinating research and development across the public service** and for advising the Government in relation to long term and short term planning and reporting.

Performance Measurement and Evaluation

The OECD in its report on the Irish public service found that the focus has been on performance reporting, rather than on managing for performance. They considered that, instead of focusing on inputs and processes, more and better quality information needs to be gathered on outputs and outcomes and what has actually been achieved.

The old management maxim that what gets measured gets done is particularly evident in the public sector. However, the quality of the measurement is key. When the assignment of a number of staff to a project is considered a target in itself, then the performance measure of "X people assigned to Project Y" can be ticked as achieved but does not provide any real information about the progress of the project.

New and meaningful output and outcome performance measures need to be devised that will provide relevant information for accountability and planning purposes. There is a need for an integrated planning and reporting process. Statements of Strategy need to be aligned with business plans, individual performance plans, annual reports and Department output statements, to ensure that performance can be monitored and reported on.

Aligning divisional goals to broader departmental goals would provide clear lines of responsibility and greater accountability for performance.

106. In defining meaningful performance measures, cross political party consultation will take place. **Information that is often provided only by means of replies to PQs will be provided with other performance information on a regular basis.**

107. **Statements of Strategy and annual business plans will be costed and the resources required identified** and these will form the basis for assignment of budgets. Meaningful measures will be aligned with the departmental goals and objectives and through those, with the broader Government goals and priorities. These measures will be output and outcome-focussed rather than input and process-focussed.
108. Annual reports of Government Departments and State Agencies will include **output statements and audited financial accounts prepared on generally accepted accounting principles**. The performance information provided in output and outcome-focussed measurement will feed into the decision making process for future plans at political and senior management level. Such information will facilitate decision making on priorities, resources and time frames for programmes.
109. Annual Reports of Government Departments and State Agencies will be **reviewed by the Office of Public Service Reform to monitor performance and ensure performance indicators are relevant**. The Office will be suitably resourced to provide advice and support in relation to the planning process.
110. Cost **benefit analyses will be provided for medium to long term projects** involving significant public expenditure.
111. **All major projects involving significant public expenditure will be subject to regular evaluation**. Programmes which are not meeting their objectives will be reviewed and if necessary, wound down.
112. **Evaluation programmes will be conducted under the auspices of the Office of Public Service Reform**, using external expertise where necessary.
113. **Results of programme evaluations will be published** on a programme evaluation website.
114. A **review of the structures of organisations and bodies** will be initiated to ensure that each one and each of its divisions, agencies and units are engaged in work which contributes to organisational goals
115. **Capacity will be developed within the civil and public service to improve project management skills and performance measurement skills.**

Performance Management including Staff Motivation

Commentary on managing performance in the public sector tends to focus on the subject of managing under-performance. This is certainly an important feature of performance management and one which needs to be improved in the public sector.

However, the real challenge for the public sector is to manage for good performance. Too many management layers, too much centralised control and a corresponding lack of power and autonomy at management level has stifled management initiative and flexibility.

Centrally negotiated staffing levels, numbers and pay limit managers' capacity to make resource decisions based on the needs of the service they are providing.

There are hundreds if not thousands of instructions controlling the activities of staff. Many of them originate at the centre and relate to attempts to control behaviour (use of the internet and e-mail, security and confidentiality of information, etc.).

Instructions originate at the centre also for activities such as public procurement, for which there is a confusing number of documents, none of which is written in clear language. Added to these are a vast number of internal departmental instructions which cover almost every activity in each Department.

The result is a massive rule book lacking real engagement with staff in relation to how they do their job.

Large civil and public service organisations with several management layers are not responsive to the real experience of front line staff or needs of the public. Even with modern improved communication methods, it is extremely difficult for a junior staff member to influence decision making and for messages from senior management to get to front line staff.

Government decisions affecting public servants' terms and conditions are distant and impersonal. In most large commercial organisations dealing with pay cuts or down-sizing, senior management would make the effort to tell staff first.

116. A **reduction over time in the number of management grades** will facilitate a move away from narrow supervision to an effective management of staff and resources to achieve national, organisational and team goals.
117. Clarity of national and organisational goals accompanied by meaningful performance measures stated in clear language will assist in identifying individual goals and performance and form the basis for a **new performance management and development system**.
118. The new system will be informed by **clarity of roles, responsibility and accountability at every level of public service**. It will be less paper-based and facilitate improved dialogue between managers and staff.
119. **Training in performance appraisal will be provided** for all managers and consistency of appraisal will be monitored by the managers' manager(s).
120. **Capacity of managers in the public service will be improved** through management skills training with particular focus on strategic management and evaluation, project management, resource management and communications.
121. Clarity of goals and meaningful measures within an integrated planning system linked to budgets will facilitate **increased delegation throughout the public service**. Delegation of budgets, staff numbers, elements of pay, combination of grades, recruitment and dismissal and the capacity to contract out work and delegation of other resources will facilitate increased autonomy and decision-making closer to the front line of service.
122. The Human Resource Management system will be better utilised to **identify the skills base of staff and match skills to the most appropriate work** either within the parent Department/body or elsewhere if appropriate to the relevant skill.
123. Barriers to mobility across the public service will be removed, allowing an increased facility to **match staff to the areas of greatest need and to areas for which they are particularly qualified**.
124. **Work in some divisions, Departments or bodies is more suited to flexible working than others**. Where a staff member cannot be facilitated in a work-sharing role in their current place of work, every effort will be made to facilitate them elsewhere across the public service.
125. A significant motivating factor for the individual is the belief that they can influence their work and work environment. **Staff recognition schemes will be developed and devolved**, with particular emphasis on team awards. All awards will be published within the organisation.
126. **Staff will be encouraged to put forward suggestions for improving service delivery and organisation efficiency and effectiveness**.

- 127. **Staff training and development including encouragement to study for professional qualifications** will be supported.
- 128. The range of **instructions will be reviewed, clarified, summarised and published on a targeted basis.**
- 129. The **performance of public sector organisations in achieving goals will be published** to a central Government website managed by the Department of the Public Service.
- 130. **The equality agenda will be progressed with studies undertaken to identify barriers to advancement and initiatives undertaken to remove them and encourage full participation.**

Service Delivery

Significant strides have been made in recent years in improving service delivery within the public sector but more needs to be done. Civil and public service bodies tend to view the citizen from the narrow perspective of their own Department or body rather than from that of the citizen. The result is that the citizen is faced with a confusing array of Departments and bodies when they are looking for a service or services.

Putting the emphasis on a “citizen-centred” approach will require public bodies to consider not only their own service but how that service can be integrated with others to make it easier for the public to access service.

This will be enhanced by a “life-cycle” approach which will match the service to the particular circumstances of the individual.

‘Agentification’, which has focussed on delivery of cross-cutting services by setting up a new body, has in many instances merely avoided the over-riding need to co-ordinate the activities of a number of Departments and bodies.

Development of on-line services has had some notable successes but these have been delivered in isolation from each other and there is no clear evidence of a whole of Government approach.

- 131. Review of **public service structures will start from the viewpoint of the public** and work back to identify the most appropriate structure. The main types of services the public needs to access will be identified and the current methods of delivery reviewed. The Office of Public Service Reform will engage with relevant Departments and bodies in relation to these methods of delivery to develop a seamless means of access for the public.
- 132. **A whole of Government approach to the provision of electronic services will be undertaken** with the Department of the Public Service responsible for co-ordinating strategy, planning and monitoring. A vision for electronic service delivery will be published, and responsibilities of Government Departments and bodies for delivery on the vision identified and subject to meaningful performance measures.
- 133. A priority will be that the public will be able to access service at the point and in the manner that is most convenient for them. **A Government services website, public offices, telephone services, helplines etc. will be developed to facilitate access to the broad range of Government services through one point of contact.**
- 134. **Processes, information provided and forms will be simplified** in consultation with customers to make it easier to access services and to comply with obligations.
- 135. **Consultation with the public on services will be undertaken through the Office of Public Service Reform.** This will include market research, focus groups, customer panels, blogging sites and phone lines which will be advertised widely. A customer’s

perspective will be considered in relation to Government decisions and public service initiatives to ensure that unnecessary complexity is avoided.

136. **Streamlined delivery of services in the most cost effective way possible** will be facilitated by shared services among Departments and bodies to free staff to deal directly with the organisation's priorities.
137. **Meaningful measures will be identified across organisations in consultation with customers** to allow the success or otherwise of service delivery to be monitored.

Communications

The importance of the role of effective communications in the reform of public service cannot be over-emphasised. Much of the current criticism levelled at public services is at least influenced by poor communications. This is reflected in many criticisms of Government policy. Much has been made of the need to improve communications capacities but, as with the concept of public service reform, it is not always clear what is the expected outcome of improved communications.

There are now a wide range of communications channels but this has not necessarily lead to improved communications between Government and citizens, Government and public servants, public service management and staff, or public service and customers. The language used by Government and public service can be confusing and alienating for the public and, at times, for public service staff.

On the other hand, the expertise of newer recruits with information and communications technology is not harnessed and internal communications channels are not adapted to facilitate this expertise.

Leadership of the change process will require communication of goals, measures and successes to all interested parties including staff and customers. Champions of the change process will need to be found throughout the public service and these champions must be the most committed, not necessarily the most senior.

138. **Government will use suitable language and relevant media to communicate high level goals including public sector reform to all interested parties**, with a specific focus on the public generally and public service staff. In particular, outputs and outcomes and meaningful measures of their achievement will be expressed in clear, unambiguous language and communicated to the public and public service staff. And Departments and bodies will review the information needs of customers and ensure that relevant information will be provided in clear language through customers' preferred channels.
139. **Websites will be developed to provide maximum information to the public about progress on national and departmental goals** and facilitating public comment and suggestions.
140. **Internal communications within Government** organisations will be reviewed to provide opportunities for staff to express views and make suggestions through channels such as staff forums and blogs. Suggestions from staff will in all cases receive a response, whether or not the proposal is being implemented. Incentives will be put in place to promote good internal communications and to ensure staff are widely consulted within public sector organisations and given the opportunity to influence their work and working environment.

Appendix:

Seanad Éireann

Background to a Second Chamber

Under our Constitution the National Parliament consists of the President, the directly elected Dáil, and an indirectly elected/nominated Seanad. The Dáil is the paramount body on proposals for legislation, public expenditure and taxation; the Seanad has specified delaying and deliberative functions.

In terms of their respective roles, the Dáil is stated by Article 15.1 of the Constitution to be the 'House of Representatives'. While the 'sole and exclusive power of making laws for the State' is vested in the Oireachtas as a whole¹, the Dáil has two additional important constitutional functions which are not shared with the Seanad.

The function of holding the Government accountable is vested in the Dáil by the Constitution. It is the body to which the Government is made responsible under Article 28.4.

The second constitutional function of the Dáil alone is the control of supply and scrutiny of public expenditure.

The Seanad by contrast is substantially a legislative chamber, albeit with constitutional functions when it comes to impeaching the President and a judge.

The national assembly which met in the Mansion House in January 1919 had just one chamber, Dáil Éireann. Three years later, the 1922 Constitution created a Seanad to sit alongside the Dáil. Both the Seanad and its nomination procedure were intended to ensure representation at parliamentary level for the southern unionist minority in the new Free State.

Although it was abolished in 1936, the 1937 Constitution re-instated the Seanad – but with no great enthusiasm on the part of the framer of the Constitution, Eamon de Valera. The arrangement he devised provides for membership from three sources.

First, there are representative panels from which candidates are nominated. For the panel election, the electorate is very limited, consisting of incoming TDs, the outgoing Senators and members of county councils and county boroughs.

Second, there are six members elected by the graduates of some of our universities.

Finally, 11 members are nominated by the Taoiseach.

In the 'Westminster' system of government that has been adopted here, the government sits in parliament. The prime minister and most of his or her ministers are drawn from the lower, directly elected house of parliament and the government must have and retain the support of the majority of members in that house and be answerable to it. Ultimate power (subject to the Constitution) belongs to the popularly elected house precisely because it is representative of the people.

Bicameral parliaments are a product of history. The story of parliaments in Britain and Ireland is about a gradual increase in parliamentary power, and of democratic principles, over the rule of an absolute monarch. Because, the monarch could no longer meet the cost of governing the state from his own resources, power had to be shared with those who provided the monarch with his income.

Gradually the practice developed whereby the lords of church and state who, as major landowners, were by far the richest class, were called to meet and sit separately from the representatives of the

¹ Article 15.2.

commoners. The gradual ascent to dominance of the commoners over the lords reflects the emerging dominance of enterprise over land as a source of income and power.

There are of course models for bicameral parliaments that differ from the Lords-Commons distinction that operated in Britain and Ireland for so many centuries. All of them have in common one house that is directly elected by, and representative of, the people, with another house elected on some different basis.

The Seanad of Saorstát Éireann was abolished in 1936 and, with the subsequent abolition of the office of Governor-General later that year, the Dáil functioned briefly as the sole constituent component of the national parliament.

Starting with a clean sheet, as the Dáil was doing in 1937, there was no obvious reason for reverting to a two chamber parliament. For example, in 1906 Finland abolished its second chamber, as did New Zealand in 1950, Denmark in 1953, Sweden in 1970, Bavaria in 1999, Iceland in 1991 and Croatia in 2001. And since 1937 the State of Nebraska has also had a one-house legislature.

However, in 1937 the Dáil considered a draft Constitution of Ireland which included provision for a new Senate. Eamon de Valera made clear his personal indifference to the revival of the institution.

At any rate, we set up a committee to deal with this question of a Seanad, and on that committee there were a number of people who were interested in this particular matter. As far as I could manage it, I got representatives on that committee from all the different Parties. They sat down and considered the question, and the result of their deliberations – I think it is not unfair to say – was, in the main, to prove the thesis that it is not possible to get a satisfactory Seanad; and the only thing that made me put a proposition for a Seanad into this measure at all is this: that there were members on the benches opposite, as I remember, who, during the Seanad debate, said: “Very well, even a bad Seanad would be better than no Seanad at all.” It is precisely on that basis – that some Seanad, the best Seanad we can get, even though it may be adjudged a bad Seanad, is still better than no Seanad at all – that this proposal is now included. My attitude is that, even though some of us may be largely indifferent to the question of whether or not there is a Seanad, if a large section of the people of the country think that there is something important in having a Seanad, then, even if we ourselves are indifferent to it, we should give way to the people who are anxious for it.²

When the Constitution was before the Dáil I made it quite clear that we were not the Party who believed that an ideal Seanad could be got. We believed that any Seanad that could be got was going to be very far indeed from the ideal, and we were far from favouring a Seanad which was going to be a reproduction of the primary House. To our mind a Seanad was going to be of very little use if we were going to have in the second branch of the Legislature exactly the same political controversies or antagonisms and the same political Party manoeuvring as in the First House.³

In theory the new Seanad was to be formed on a vocational and functional basis, representing various branches of social, economic and social life. The important question would not be whether the two chambers would agree or disagree but whether all the relevant social groups in the broadest sense would be included in the decision-making process.

The proposal fell apart, of course, not because the interests to be represented in the Seanad but because of their electorate. Article 18 of the Constitution provides for panels of candidates to be formed containing names of candidates having knowledge and practical experience of five specified groups of interests and services: labour, agriculture, industry, the professions and administration. It also provides for a general election for the Seanad, to be held by the system of proportional representation by means of the single transferable vote.

But the Constitution is completely silent on the composition of the electorate.

² Dáil Éireann, Official Report, Volume 67, 11 May, 1937: Bunreacht na hÉireann (Dréacht)—Dara Céim.

³ Dáil Éireann, Official Report, Volume 69, 7 October, 1937: Seanad Electoral (Panel Members) Bill, 1937—Second Stage.

Article 19 provides a clue. It allows for the direct election by any functional or vocational group of a number of senators in substitution for the election of an equal number of members from the corresponding panel.

It is unusual, perhaps unique, for a constitution to provide for an alternative method without specifying what the original is or may be. But, whatever it may be, it seems to be assumed that it will not be one of direct election.

Speaking on the legislation, President de Valera gave reasons for the lack of specificity: he wanted to allow for future developments that would permit future direct elections by the functional and vocational groups but he was not satisfied that such elections were immediately feasible.

“Consequently, in choosing the Seanad that was suggested by the commission to examine this question, a Seanad formed on a vocational basis, we did that because we believed that it might be possible on that basis to get a Seanad which would not be a mere reflection of the primary House ... If you were to select the Second House on any general democratic basis you could hardly avoid that, that is, if we were to have any general method of election such as that by which the Dáil members themselves are chosen ... So that the selection of the ideas put forward in the Minority Report was made in the hope that we might, on that basis, get a Second House which would not be a mere reflex of the first. That undoubtedly could be got if our economic life was at the moment organised on a functional basis so that we could get representative functional bodies who could themselves directly elect on to the Seanad. If we were organised in that way, I think, as was claimed in the Minority Report, a Second House formed on a functional basis would be a very useful supplement to what they call geographical democracy, or a House that was built up or formed as the Dáil is on a geographical basis. Unfortunately, from the point of view of getting a different Second House we are not so organised.”⁴

The result is the present hotchpotch: 43 members selected ostensibly because of their knowledge and experience of one of five functional and vocational areas but elected by local authority members, outgoing Senators and incoming members of the Dáil; six members elected by the graduates of five of the State’s seven universities and none of its 14 institutions of technology; and 11 appointees of the Taoiseach.

Unlike the representation in the lower chamber which is based on constituencies, the idea was that in the second chamber expression would be given to the various social interests of importance for society and which were not appropriately represented in the first chamber. The ostensible hope was that, in this way, a second chamber operating on an interest basis would become a useful complement, and a corrective, to a first chamber operating on a party political basis.

But nothing of the sort happened. Because of its party political electorate, topped up by the Taoiseach’s nominees, the membership of the Seanad replicates that of the Dáil and party political debate is replicated as well.

It goes without saying that only the chamber elected directly by the people and directly accountable to the people should have the final say when it comes to making decisions that have the force of law, including the power to raise taxes. Equally, there is no need to have a second set of general elections for a second chamber: there is no point at all in having two houses if both of them are directly elected by the people.

Why have two Chambers?

There are really only three arguments for a bicameral parliament.

The first is as part of a federal structure, which is not relevant to this State.

The second argument in favour of bicameralism is a desire to put some sort of check on the popular principle embodied in a popularly elected house. In emerging democracies in particular, there may be a perceived need to safeguard a process towards democratisation and consolidation of the rule of law

⁴ Dáil Éireann, Official Report, Volume 69, 7 October, 1937: Seanad Electoral (Panel Members) Bill, 1937—Second Stage.

and to impose checks on the exercise of power in a society where a simple majority-rule system may constitute a threat.

However, in its analysis of the relationship between the Dáil and the Seanad, the O’Keeffe committee (All-Party Oireachtas Committee on the Constitution, Second Progress Report, April 1997) concluded that the traditional view of the Seanad as providing a check on the legislative impetuosity of the people’s representatives in the Dáil no longer represented the reality of power. Legislative proposals were now drawn up and shaped within government departments; consultations with interest groups and experts made for a high degree of consensus before they reached the Dáil. Consequently it was the Dáil which now provides the check on the main promoter of legislation – which is nowadays the government.

The third argument for an upper house is a political philosophy that justifies bicameralism because of a need to represent the citizen as a member of “civil society”, socialised by the smaller constituent communities which the citizen forms and to which he or she belongs. On this argument, the majoritarian principle in a unicameral system is undemocratic in a pluralist society, because minorities are excluded and unrepresented.

In all cases, clearly, an upper chamber must be established on different principles than the lower chamber. There are two essential aspects: a different institutional basis and a different political makeup. Otherwise bicameralism is superfluous, as the second chamber, as de Valera feared – and as came to pass – would merely be a redundant duplicate of the first.

In other words, bicameralism makes sense only where there are differences of function between the two houses of parliament, derived from differences in their composition. Where, for example, direct popular representation in the lower house, founded mostly on functioning political parties, would be complemented in an upper house by representation of interests, founded on institutionally organised social interest groups.

But if the same system of general election applies to each chamber; if the political parties have the same institutional relationship within each chamber; if the members of both chambers have joint party caucuses and are subject to the same party whips and so on; then the second chamber loses its rationale because, as a duplication of the first house, it has nothing additional to offer.

Leaving federalism aside as irrelevant to the Irish situation, then if bicameralism is to be justified in this state, a different institutional arrangement for the second chamber would have to be an indispensable starting point.

The question boils down essentially to whether we really want or need a second chamber that represents a different configuration of the people. If so, what should that configuration be?

The fact that the question is so rarely asked indicates not so much an implicit approval for the status quo as a general indifference to both the question and the answer. And that indifference of itself answers the question whether we need a Seanad. The State can do without a house of parliament that so few of its citizens know about, care about, or would miss.

The Seanad’s current shortcomings are summarised by Michael Laver as arising from the fact that it is dominated by the Government; it lives in the shadow of the Dáil; and the rules for choosing its members are bizarre and anachronistic.

Only in genuinely federal states do second chambers of parliament have a clear role. Otherwise they are always anomalous with perhaps the most extreme example being the UK’s House of Lords.

Seanad Éireann is no exception. Its role is unclear and its composition and electoral processes are utterly unintelligible to society at large. These anomalies and uncertainties mean that the Seanad is largely seen as, and often is, irrelevant.

Bearing in mind the role of the national parliament in a unitary state and the functioning representative democracy that has largely been achieved in Ireland, the question arises as to what purpose is served by retaining an upper house of the Oireachtas.

In a relatively political mature society which is not federal; which is not an emerging democracy; where the rule of law is not threatened by majoritarianism but is maintained by the Constitution and the judiciary; and which is not sharply divided along ethnic or religious lines, it is not obvious whether or which of the numerous interests within the state should be institutionally represented or in what form.

And, quite separate and apart from the Seanad, for much of recent Irish history, representative functional and vocational groups were involved in the decision-making processes of government, albeit on an entirely non-constitutional basis. Such processes are reflected in bodies such as the National Economic and Social Council underpinned by the National Economic and Social Development Office Act 2006, and to be streamlined following the MacCarthy report.

If the reality is that the NESC works well the logical course of action at this stage is to abolish Seanad Éireann on grounds of redundancy. Other institutions are doing a job originally intended for it.

In this regard the comments of the All-Party Committee on the Constitution, in its seventh progress report on Parliament, are relevant:

“We share the view that the vocational element of the present arrangements has in practice become quite meaningless. Moreover, we would not support any attempt to revive it in a modernised form. Interest groups already have ample opportunity to make their views known in other fora and in direct dialogue with the government. Furthermore, the virtual impossibility of defining fair and objective criteria for the selection, and the relative weighting, of those groups and organisations which might be entitled to nominate representatives to an elected second chamber, is apparent.”⁵

Finally, it is often pointed out that membership of the EU entails the incorporation of a huge volume of European regulations, directives, decisions and so on into Irish law, bypassing the domestic legislative process. It is suggested that effective scrutiny, of necessity an onerous and time-consuming task, cannot adequately be carried out by members of the Dáil, “owing to the heavy calls upon their time”, and that the Seanad could play a major role in this regard.

Three points can be made. First, there may be an element here of transferring a worthy but hopelessly unattractive job to others who seem to have time on their hands. Second, neither house makes a great deal of effort to scrutinise the equally large body of domestically generated secondary legislation, which can relate to matters of equal or greater significance. Third, the more important issue may be one of backup resources for the scrutinisers rather than the house of which they are members.

But this proposal also ignores a fourth and essential point. “European” law is in fact Irish law and is applied as such in Irish courts. It is not a specialist or separate body of laws but it is instead encountered in every area of public administration and many areas of private life. It cannot be defined or confined by reference to subject matter. There would be no more point in having a body dedicated to scrutinising EU laws than there would be in having one that specialised in laws passed on Wednesdays.

That is why the sub-committee on European Scrutiny acts as a preliminary clearing-house and refers matters requiring further consideration to the appropriate “sectoral” committees of the Houses. For it – or any body with limited time and resources – to be attempting expert analyses on matters ranging from environmental protection to foreign divorce recognition to monitoring mechanisms for the general Government deficit would make little enough sense when there are such specialist sectoral committees in existence, with terms of reference that tie them to the activities of the relevant Government Departments.

The Constitution Review Group, an expert body that reported in 1996, pointed out that the fundamental justification for the existence of a second house must be that it differs from the main

⁵ All-Party Oireachtas Committee on the Constitution, Seventh Progress Report: Parliament, Dublin, Stationery Office, 2002, p. 37.

house in its representative character. In a unitary state, this difference could be achieved by giving a voice to vocational, regional or other groupings of the various elements in society not adequately represented at present in Dáil Éireann. However: "As things stand, the candidature produced by the panel nomination procedure and by the nature of the electorate results not in a vocational Seanad, as originally envisaged, but in one not markedly different from Dáil Éireann. The Seanad thus fails to satisfy the fundamental criterion specified above."⁶

Can Seanad Éireann have a Role?

What we must avoid is a reversal of the logical sequence of thought. Instead of taking the existence of Seanad Éireann as a given, then devising an acceptable membership selection process and, finally, seeking a role for the Seanad, we should first try to identify any unmet need in the parliamentary/legislative process; then decide whether that need could be met by the establishment of another house to complement the functions of the Dáil; and, finally, assess what membership selection system would result in a house best suited to meet that need.

This analysis would lead to a rejection as entirely inadequate of the opinion attributed by Eamon de Valera to his parliamentary opposition "that some Seanad, the best Seanad we can get, even though it may be adjudged a bad Seanad, is still better than no Seanad at all".

On the contrary, a bad Seanad is very much worse than no Seanad at all. It provokes cynicism, brings the political and parliamentary processes into disrepute and wastes scarce public resources.

The principal question therefore must be whether and to what extent the Seanad has contributed added value to the legislative process. In basic terms, would the statute book be different if the Seanad were not there?

The Constitutional Review Group commenced its deliberations on this question by stating that: "If the two main criteria for retention of the Seanad – the desirability of a system of checks and balances and of representation of as wide a cross-section of society as possible – cannot be satisfied by suitable reforms, then the case for a Seanad would fail and it should be abolished". The group concluded its deliberations by commenting that: "As constituted, the Seanad does not appear to satisfy the criteria for a relevant, effective and representative second house."⁷

Nothing in the 13 years since that report was written has shown that the Seanad today is in any better position to satisfy the criteria for a relevant, effective and representative second house.

Conclusion

In conclusion, if Ireland is to remain a representative democracy, then for all its faults Dáil Éireann is the essential component of our constitutional framework. There must be a parliamentary chamber composed of the directly elected representatives of the people, which chooses the government and holds it to account and approves legislation.

The Seanad, on the other hand, is not essential. It is an optional extra. Because it is not directly elected by the people, its existence is not central to the concept of representative democracy.

The second house must therefore have some other, additional function. It must in some way contribute added value to the process. It has to justify its existence. If the justification is inadequate, then it should go.

The reality is that there is popular indifference about the future of the Seanad. The reasons are clear enough; they have persisted since the Seanad's establishment in its present form in 1937. Quite simply, no one is sure what purpose the Seanad is meant to serve.

⁶ Report of the Constitution Review Group, Dublin, Stationery Office, 1996, p. 69.

⁷ Report of the Constitution Review Group, Dublin, Stationery Office, 1996, pp. 68 and 71.

We in the Labour Party have taken a long, hard look at Seanad Éireann, both as members, former members and colleagues of members of that body. We believe the popular indifference is justified. The case for a Seanad has failed. It is ultimately the decision for the people but our judgement is that the Seanad should be abolished.