

IVANA BACIK TD SPEECH ON ELECTORAL (AMENDMENT) BILL 2023,

SECOND STAGE, DAIL EIREANN, 14 November 2023

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I welcome the opportunity to speak on the Electoral (Amendment) Bill 2023. It is standard procedure to introduce a Bill like this to implement the recommendations of the Electoral Commission. We have seen similar legislation in the past on foot of the recommendations of constituency commissions. What marks this out is that it is the first report from the newly established An Coimisiún Toghcháin.

It goes without saying that we accept the recommendations of this report, as is the practice, but we believe there are flaws in the process. I was very struck by really a strong analysis of the report's findings and indeed of the process by Professor Michael Gallagher in *The Irish Times* on 6 September, in which he rightly suggested that there are serious questions about the appropriateness of a procedure whereby we have a redraw of constituency boundaries approximately every five years and whereby county boundaries are, it seems, almost routinely breached, therefore resulting as he says in a sort of profoundly anti-democratic system where individual voters and communities of voters are moved between constituencies depending on boundary redraws. I will return to Professor Gallagher's analysis during my speech because he makes some really excellent points about how we manage this process. In particular he makes international comparisons which are very useful when we are looking at this report. He points out:

...the number of seats per constituency (known by the term 'district magnitude') is exceptionally small for a proportional representation (PR) system. With 174 seats and 43 constituencies in the next Dáil, average district magnitude is barely above four, much lower than that of most European countries that employ PR. In Spain, for example, it's seven, while in Finland it's more than 15.

He argues in keeping with this that three-seat constituencies are simply too small to ensure proportionality. While smaller parties are disadvantaged by this - I know the Minister of State will appreciate that, as do I - the real concern is not about whether the concept of three-seat constituencies is fair to any particular party. The primary concern should be about whether it is fair to voters and whether it ensures the composition of the Dáil reflects the way people voted. I do not mean to criticise the commission on this. Clearly the commission had no option but to abide by the legislation that specified it was confined to proposing constituencies in the three- to five-seat range.

I hope that, as Professor Gallagher argues, this will be the last time we hear about three-seaters. We should move away from three-seaters. I see the Minister of State nodding. I know the Green Party had a view on this as did we. In the Labour Party's submission to the commission, we made clear our preference for larger numbers of seats per constituency. A mix of constituencies in the range of four to six, or four to seven, would guarantee a better district magnitude.

There is the political science from an objective political scientist of some international renown.

Professor Gallagher has also pointed out, as regards flaws in the process, that it is very unusual, comparatively, for the size of parliament to fluctuate constantly. The norm across the world is for the size of parliament to remain fixed over time, yet in Ireland we have become used to having an increase or a decrease in the number of parliamentarians. There is a trope we hear constantly that Ireland has too many TDs *per capita* but, again, Professor Gallagher contests that and suggests that it depends on where one looks. If we take the ratio of population to MPs in India as the norm, the Dáil should consist of only two TDs. If, however, we were to use Malta as the touchstone, the Dáil would have more than 800 TDs. It depends, therefore, on where one looks when making that argument. Professor Gallagher argues that it is facile to take such a ratio as one's guide. What he argues, ultimately, is that the size of the Dáil should be fixed. We should have a fixed number of TDs and, crucially, we should have stable constituency boundaries in order that, while the number of TDs per county, for example, would change according to population size, the boundaries would remain the same. There is real merit in that from the point of view of better functioning of democracy. An end to three-seaters, stable constituency boundaries and a fixed-member parliament would be better for democracy, Professor Gallagher argues, and would be perfectly possible within the terms of the Constitution.

I offer those critiques, drawing on Professor Gallagher's criticism, to point to the constrained statutory criteria that the commission was given by the Government and, we would argue, a somewhat conservative interpretation of those terms of reference. That means we believe there were flaws in the system. By relying on a narrow reading of the statutory terms of reference, the commission, in our view, failed to be appropriately guided by two key criteria set out in the Constitution, specifically the maximum limit of one TD per 30,000 persons and the principle of proportional representation, which, in our view and in the view of Professor Gallagher and other political scientists, requires that move to constituencies with higher seat numbers and a move away from three-seaters.

In our submission to the commission, the Labour Party outlined in extensive detail our views on these provisions, but our arguments were not taken on board to the extent that we would have liked, clearly. The commission, as I have said, was restricted in its freedom of manoeuvre most critically by the size of constituencies it was allowed to propose. We sought to amend that, and the Government opposed that. The ability to provide for six-seater constituencies would, in our view, have made the commission's task much easier, would have made the report and the findings much more robust and would have enabled better future-proofing. Again, that is a critique we have of the process because we do not think - again, there was a fairly wide interpretation - that the findings are sufficiently future-proofed. Given the growing population and demographic change, it would have been infinitely preferable for the commission to have been asked to look at a much longer-term fix for the issue it was given.

For the first time in this process, the Minister and the Government gave the commission a range of possible future seats for the next Dáil rather than clearly defining a set number. There may have been some political expediency to that. It ensured that it was not the Government itself that recommended the creation of a number of new TDs, but it did leave the commission with an unenviable task. It could have interpreted this, though, as meaning that the Oireachtas was comfortable with a "future-proofing" approach, and it could have

taken more discretion on this but it seemed to have decided that the terms of reference governed or overrode its discretion as to seat numbers. It picked a number that best enabled it to meet the other terms of reference. It retained the established precedent to leave the Ceann Comhairle with a casting vote.

The commission's work was clearly necessary because all but one of the current constituencies breached the constitutional maximum of 30,000 people per TD due to population growth. Between 2016 and 2022, the overall population grew by 7.6%. We all knew, therefore that an additional number of seats - at least 12 - would be required to bring the national ratio of population below 30,000. As we said in our submission, 20 new seats would have been appropriate to avoid the radical reshaping of constituency boundaries that has resulted in some cases, to ensure that future-proofing could be maintained and to ensure that constituencies would be adaptable to continued population growth. Instead, as we know, the commission proposed an increase of 14, to 174 seats, structured across 43 constituencies, 16 of which breach the constitutional limit of 30,000 people. While the most recent rate of growth in population may not be maintained over the next five years, even a lower increase, say of 5%, in the current population would require a 180-seat Dáil for a population per TD of just under the constitutional limit. Twenty additional seats would therefore have provided greater certainty into the future and would have avoided many individual constituencies being over the constitutional limit.

The commission has also recommended constituency sizes with much larger variances than had been the case in previous years, ranging from 8.08% to -8.13%. In Clare we will see 31,985 people per TD versus 27,186 in Kildare South. There will be quite a wide variance. The usual rule in the past had been 5% variance. There had been a number of court cases litigating the issue. The commission spoke about a somewhat flexible approach; therefore, it noted it would have to recommend in a limited number of cases a variance of greater than 5%. It went as far, it acknowledges, as 8.13% when this resulted in the restoration of a currently breached county boundary or the avoidance of recommending a new breach. Clearly, therefore, it was very cognisant in its report of the criteria it had been given. It was struggling, it seems, to maintain county boundaries as far as possible. We are still seeing some unfortunate consequences of that. We think there was not enough regard to future-proofing because the necessary review of boundaries after the next census, it seems, will have to go through this entire exercise again, presumably with some equally unfortunate consequences. What is the point of continuity - the commission refers to the desire to maintain continuity - if you know you will have to change continuity again in five years' time? It should be noted that in the submissions to the commission, the undesirability of breaching county boundaries was the issue most often raised. People really care about this. It is a huge issue to breach county boundaries, to move people in and out of constituencies which they may have become very accustomed to voting in.

In particular, the deployment of three-seaters has meant, as Professor Gallagher writes, that the outcome of votes in a particular constituency will simply not be reflective of the way people have voted in that constituency. The whole point of the PR-STV system is to ensure as accurate as possible a reflection of the way people vote in the representatives who are elected, so this is a really serious issue. Not allowing six-seat constituencies tied the hands of the commission to act. It was clear even before the publication of the report that by not allowing six-seat constituencies we would see breaches of county boundaries, either in this redraw or in the next, which we now know will be inevitable due to the failure to future-proof. I can list for the Minister of State the currently existing five-seaters, which we all knew will require

some change if population growth is to be adequately accounted for with a large enough Dáil: Dublin Fingal, Donegal, Tipperary, Wicklow, Wexford and so on. The need to allow six-seaters to be included was extensively raised, as the Minister of State knows, in previous debates. The failure of the Green Party to secure an amendment dictated, in effect, the outcome of the commission report. Again, I suppose that is the *realpolitik* of it. Six-seat constituencies have existed before, but we know it is not in the interest of the larger parties, particularly Fianna Fáil and Fine Gael, to reintroduce them. I stress, however, that this is not about the interest of parties. Again, the analysis by Professor Gallagher makes that clear. This is about ensuring the most reflective representation possible and the best democratic representation possible.

We therefore believe the commission should have been more cognisant of the nature and purpose of our electoral system, PR-STV, in multi-seat constituencies. It is unusual in comparative terms to have this system, but we are all, I think, very mindful of just how democratic it is because we know such a system is designed to ensure that, as far as practicable, no vote cast is wasted, even vote No. 18 in a constituency with 18 candidates. It continues to work in the course of the electoral count until a most effective form of representation is achieved. This ensures a proportionate overall result in terms of a parliamentary configuration that matches the votes cast. I think all of us adhere to that principle and see it as infinitely preferable to the first-past-the-post model we see in our neighbouring jurisdiction across the water.

The commission itself, it is clear, believed that the failure to include a requirement to future-proof limited its options, and that absence was used by the commission, maybe, as the reason to provide for the more conservative increase in the number of TDs.

The commission adopted a generally indifferent approach to constituency magnitude. It said there was no guidance in the terms of reference as to whether a review should favour any particular magnitude within the terms set of three-, four- or five-seat constituencies. The commission acknowledged that in the submissions it received, there was a clear preference for more five-seat constituencies and a general view that there should be a reduction in the number of three-seat constituencies. It stated: "These [submissions] were mostly based on the view that constituencies with larger seat numbers provide for more proportional results, and allow for more choice for the electorate." It is unfortunate the commission did not engage on this argument having made that statement, which is self-evidently true.

It is somewhat bizarre that having acknowledged the bulk of the submissions and the basis for them, the commission then went on to increase the number of three-seaters by four to 13 in total. It said it took the general view that there should be a reasonably even distribution between three-, four- and five-seat constituencies. That flies in the face of the evidence-based submissions, however. The commission does not give any reason for taking this approach. The commission states that it "endeavoured to tailor the constituency size and number of seats to the population and circumstances of each constituency". It noted in passing that, while the majority of submissions proposed more five-seat constituencies, it was cognisant that "given the anticipated continued rise in population, it may not be possible to retain the current 5 seat county constituencies in future reviews". Again, the commission is acknowledging lack of future-proofing that is built into this.

The reality is that more three-seaters produce a skewed result under the proportional representation single transferable vote, PRSTV, system that does not represent fully the views

of the votes cast by the electorate. That is self-evidently true. The 2017 proposals represented a positive shift in thinking when the number of three-seat constituencies decreased from 13 to nine, and the number of five-seater constituencies increased from 11 to 13. That work has been partially undone. I believe I am correct in those figures. That is regrettable. The commission should be guided by the fundamental need to ensure as close an approximation as possible between votes cast and the seats won, so that PR is achieved in practice as well as in theory.

Moving now to the recommendations, it is noteworthy that for the first time some of the decisions of the commission were leaked in advance and were circulating in political circles. It may be well-known where the leak came from, but it is not good practice. It certainly has been a difficult period for those individual representatives most affected by redrawn boundaries but, more importantly, for their voters and for the communities represented by them.

The UK's Electoral Commission publishes draft constituency boundaries for further public consultation. That practice would be welcome here because it would eliminate the surprise element and would allow people in different communities affected by constituency redrawings to absorb and respond to what was being proposed. The only other alternative is for local communities having to wait for another five years before they can mobilise a campaign to get boundary changes reversed because there have been some bizarre decisions.

The hybrid Wicklow-Wexford constituency has been the subject of much public commentary. This would have been avoided if two six-seaters could have been created instead. With Tipperary split into two three-seaters, a portion of north Kilkenny was redrawn across provincial lines. Again, six-seaters would have addressed this change.

In Cork we saw the most unlikely and bizarre redrawing. The town of Mallow, long a feature of Cork East constituency, has been transferred to the Cork North-Central constituency without its hinterland. It was joined there along with Ballincollig, an urban area south of the Lee with no real connection to north Cork. No submission to the commission called for this hodgepodge of a change, yet that is what those voters must now live with for the next general election. There was no justification given by the commission for the radical changes it made. An opportunity for the public to see draft boundaries would avoid mistakes like this happening.

We should say that in my Dublin Bay South constituency, although there was relatively minimal change, nonetheless, the electoral division of Kimmage C, which I have been proud to represent and I have worked really hard in along with my Labour Party colleagues, has now gone into Dublin South-Central. That is a community that has moved over successive boundary redraws between Dublin South-Central and what was Dublin South-East constituencies. That is not really particularly democratic. I regularly find when I am canvassing doors in the Kimmage C ward that people ask me if they are going back again. They have been moved back and forth. I do not believe it is respectful to particular communities that have very distinctive views and concerns to be constantly on the boundary and on the fence between different Dáil constituencies. I do not believe that that is helpful or appropriate.

The Labour Party will certainly be making a submission to the commission when it is seeking views on its proposed research programme. We welcome the move by the commission to

write to Deputies asking for views. That is very sensible and it is sensible to hear the commission say that it will be looking now at the number of Deputies appropriate in the context of a rising population and the size of constituencies. We will, again, be making those arguments we have made previously to phase out three-seaters and to create six-seat constituencies to ensure fixed boundaries and constituencies as far as possible.

Any move to limit the size of the Dáil and the ratio of Deputies to population would have to be aligned with a strengthening of local government. The Minister of State will have noted that a recent report adopted by the Council of Europe shows Irish local government is ranked fourth weakest among 46 European states. This is a very serious concern that at local government level we are seeing the powers and responsibilities of elected councillors being eroded.

There are other measures which need to be looked at in the context of the commission's research programme. The use of posters in election campaigns, which we support, is a critical part of a democracy enabling new candidates to establish themselves and to become known. I note that the question of by-elections is also being discussed.

I also want to use this opportunity to briefly note that our dear friend and colleague, Senator David Norris, has announced today that he will be retiring from politics in January, thereby triggering a by-election in the Seanad. I pay tribute to David. I had the pleasure and honour of working with him in the Seanad for many years. He has been a great friend and dear colleague. I know that we will all miss him. I just want to refer to that.

People would say that I would be against replacing by-elections, particularly as I was elected in one. We need to see more research on the issue. We need to look at lowering the voter age to 16, something we in the Labour Party support. We need to look at the widening of the franchise to citizens living abroad and other matters.

The Constitutional Convention addressed a number of these issues in 2013 and we have had numerous reports on Seanad electoral reform. All of these are matters which should be reviewed appropriately in the commission's research programme.

We accept the commission's findings, but it is worth noting the flaws in the process and, in particular, the move away from larger constituencies, which is regrettable.

ENDS.