

OIREACHTAS LIBRARY



603

*Report
of the
Committee on the Constitution
December, 1967*

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE

To be purchased from the
GOVERNMENT PUBLICATIONS SALE OFFICE, G.P.O., [ARCADE,
DUBLIN 1
or through any Bookseller.

Price : Two Shillings and Sixpence.

(Pr. 9817.)

CONTENTS

	<i>Page</i>
INTRODUCTION ..	1
ARTICLE 3 — EXTENT OF APPLICATION OF THE LAWS ..	5
ARTICLE 4 — THE NAME OF THE STATE ..	6
ARTICLE 5 — REPUBLICAN STATUS AND EXTERNAL FUNCTIONS ..	6
ARTICLE 12.1 — THE OFFICE OF PRESIDENT ..	8
ARTICLE 12.2 — METHOD OF ELECTING THE PRESIDENT ..	8
ARTICLE 12.4 — NOMINATION FOR PRESIDENTIAL ELECTION ..	11
ARTICLE 13.1 — SELECTION OF TAOISEACH ..	11
ARTICLE 13.2.3° — POWER OF PRESIDENT TO CONVENE MEETING OF HOUSES OF THE OIREACHTAS ..	13
ARTICLE 15.10 — PARLIAMENTARY PRIVILEGE ..	14
ARTICLE 16.1.2° — QUALIFYING AGE FOR VOTING ..	16
ARTICLE 16.2.2° — NUMBER OF PERSONS PER MEMBER OF PARLIAMENT ..	17
ARTICLE 16.2.3° — DELIMITATION OF CONSTITUENCIES ..	19
ARTICLE 16.2.5° — THE ELECTORAL SYSTEM ..	21
ARTICLES 18 AND 19 — THE SEANAD ..	26
ARTICLE 21 <i>et seq.</i> — DISTINCTIONS BETWEEN DIFFERENT KINDS OF BILLS ..	33
ARTICLE 23.1 — DÁIL RESOLUTION DEEMING BILL TO HAVE BEEN PASSED BY BOTH HOUSES ..	34
ARTICLE 26 — REFERENCE OF BILLS TO THE SUPREME COURT BY THE PRESIDENT ..	35
ARTICLE 28 — EMERGENCY POWERS ..	37
ARTICLE 38 — SPECIAL CRIMINAL COURTS ..	39

ARTICI
ARTICI
ARTICI
ARTICI
ARTICI
ARTICI
SPENT

	Page
..	1
THE	5
..	6
NAY	6
..	8
ENT	8
AL	11
..	11
ENE	13
THE	14
..	16
BER	17
..	19
DIES	21
..	26
ENT	33
..	34
BILL	35
OTH	37
..	39

ARTICLE 40.4.1°	— RESTRICTIONS ON PERSONAL LIBERTY	Page 40
ARTICLE 40	— TRADE UNION ISSUES	41
ARTICLES 41.3 AND 44.2—	PROVISIONS RELATING TO MARRIAGE	43
ARTICLE 42.3.2°	— SCHOOL ATTENDANCE	46
ARTICLE 44.1	— RECOGNITION OF RELIGIONS	47
ARTICLE 45	— DIRECTIVE PRINCIPLES OF SOCIAL POLICY	48
ARTICLES 46, 47	— AMENDMENT OF THE CONSTITUTION	49
SPENT MATTER		51

INFORMAL COMMITTEE ON THE CONSTITUTION

INTRODUCTION

1. In August, 1966, the three political parties represented in Dáil Éireann agreed that an informal Committee should be set up to review the constitutional, legislative, and institutional bases of Government. The following persons were designated for membership of the Committee:—

David Andrews, T.D.,
Don Davern, T.D.,
Senator James Dooge,
Seán Dunne, T.D.,
Denis Jones, T.D.,
Robert Molloy, T.D.,
Senator Michael O'Kennedy,
T. F. O'Higgins, T.D.,
Senator Eoin Ryan,
Gerard Sweetman, T.D. and
James Tully, T.D.

George Colley, T.D., Minister for Industry and Commerce, acted as Chairman of the Committee. In November, 1966, Seán F. Lemass, T.D., was nominated a member of the Committee in place of Deputy Don Davern, who had been appointed Parliamentary Secretary to the Minister for Agriculture.

2. It was agreed between the political parties that participation in this Committee would involve no obligation to support any recommendations which might be made, even if made unanimously. It was also agreed that the members of the Committee, either as individuals or as party representatives, would not be regarded as committed in any way to support such recommendations.

3. The first meeting of the Committee took place on 12th September, 1966, and we have held in all 17 meetings.

4. Apart from the suggestions put forward by our own members, we have received submissions from a number of other individuals and bodies and we would like to record our gratitude for the interest taken in our proceedings. The announcement of the establishment of the Committee also gave rise to some discussion in different

journals about various provisions of the Constitution, and we have taken note of the views expressed on these matters. The legal points listed in Annex 27 were considered by the Committee and were referred to the Attorney General for examination by a legal committee under his chairmanship. Presumably, their opinion on these matters will be made available in due course.

Membership of the European Economic Community would, of course, involve changes in the Constitution. We did not deem it appropriate to include any reference to this in our report as an official examination of the Constitutional implications of this is proceeding at present.

5. Early on in our deliberations we decided that, where it was not possible to reach unanimity on any matter, we would set out the substantial arguments for and against each provision under consideration, leaving it to the Government of the day to decide the items which should be selected for inclusion in any legislative proposals that may emerge. It is our belief that, presented in this way, our report will be of assistance to the public at large in appreciating the nature of the issues involved and will also facilitate the members of both the Dáil and Seanad in the event of any Bill to amend the Constitution being submitted for their consideration. We wish to emphasise that, where this procedure has been followed, the inclusion of any argument for or against a proposal is not to be taken as an expression of the view of the Committee as a whole or of any member or group of members.

6. We have now reached finality in regard to a number of major provisions of the Constitution, and we think it appropriate to produce an interim report at this stage. Before proceeding with the general body of this report, we think it desirable to mention that in the course of our deliberations we examined a great deal of material relating to foreign constitutions. While there is always something to be gained by studying the manner in which other nations manage their affairs, we feel obliged to say that we were aware of the need to avoid any dangerous assumptions as to the manner in which systems imported from abroad might operate here. Political systems depend for their effectiveness on the entire complex of national characteristics, attitudes and history and what may be useful in one country may be quite dangerous in another. While taking careful note of such lessons as are to be learned from the comparative history of constitutions in action, it is, then, a matter for each country to mould its institutions to suit its own particular needs, relying more than anything else on the realities of its own political life and experience. As a general proposition, therefore, it might be said that our inclination was to adhere to the constitutional provisions which have worked well in practice, and to consider changes only in the case of those provisions which, from experience, might be regarded as not adequately fulfilling their purpose.

7. The basic principles are as follows:—

- (i) All
- (ii) For
dec
sit
whi
with
pres
- (iii) Eve
elec
- (iv) In
Pre
elec
- (v) Th
fur
- (vi) Th
en
thi
on
- (vii) Th
th
- (viii) T
de
ar
co
la
o
- (ix) C
si
o
fi
fi
fi
a
- (x) C
g
- (xi) C
i

ion, and we have

The legal points
committee and were
by a legal com-
opinion on these

nunity would, of
did not deem it
report as an official
this is proceeding

th where it was
would set out the
vision under con-
day to decide the
any legislative pro-
sented in this way,
rge in appreciating
ilitate the members

Bill to amend the
tion. We wish to
owed, the inclusion
to be taken as an
e or of any member

a number of major
ropriate to produce
ing with the general
n that in the course
material relating to
g to be gained
manage their affairs,
need to avoid any
n systems imported
ns depend for their
acteristics, attitudes
ntry may be quite
of such lessons as
of constitutions in
ould its institutions
an anything else on
nce. As a general
inclination was to
ave worked well in
of those provisions
adequately fulfilling

7. The basic elements of our Constitution are, broadly, the following:—

- (i) All powers derive, under God, from the people.
- (ii) For the purpose of enacting laws and taking other major decisions the people periodically elect representatives to sit in the principal house of the Oireachtas, the Dáil, which is free to take whatever decisions it thinks proper within the limits set by the provisions (including the preamble) of the Constitution.
- (iii) Every person over 21 has the right to vote in these elections and to seek a seat in the Dáil.
- (iv) In addition to the Dáil, the Oireachtas consists of a President elected directly by the people and an indirectly elected Seanad.
- (v) The President, who is the Head of State, has prescribed functions in relation to the protection of the Constitution.
- (vi) The day-to-day administration of the nation's affairs is entrusted to an executive body known as the Government; this is chosen by the Dáil and is responsible to that house only.
- (vii) The Government goes out of office on losing support in the Dáil.
- (viii) The interpretation and application of the laws by judicial decision is entrusted to the courts which are independent and subject only to the Constitution and the law; these courts also have the function of determining whether any law is in keeping with the Constitution; trial by jury for ordinary criminal offences is guaranteed.
- (ix) Certain fundamental rights of the individual are guaranteed such as personal liberty, equality before the law, freedom of expression (including criticism of the Government), freedom of assembly and association, rights relating to family, education, dwelling and property, and religious freedom. *Ex post facto* legislation may not declare any action to be an offence.
- (x) Certain principles of social policy are set out for the guidance of the Oireachtas.
- (xi) Certain provisions of the Constitution may be suspended in times of emergency in accordance with procedures set out in the Constitution.

- (xii) The Constitution may be amended only by vote of the people in a referendum.

8. Whatever may be said about subsidiary aspects of these provisions we are not aware of any public demand for a change in the basic structure of the Constitution. The republican status of the State, national sovereignty, the supremacy of the people, universal franchise, fundamental rights such as freedom of speech, association, and religion, the rule of law and equality before the law, were all part and parcel of this nation's struggle for independence and it is not surprising, perhaps, that, in the minds of the people, they are now to be regarded as virtually unalterable. There are, however, other aspects of the Constitution in respect of which less inflexibility might be expected, particularly in relation to the form of Government and the Parliamentary framework. But here, again, there appears to be general acceptance among the people at large of the institutions provided by the present Constitution. There is, for example, no apparent desire on the part of any significant number of persons for a departure from the cabinet system of government and it would appear that the immediate responsibility of the Government to the popularly elected house is a requirement which the people would not wish to relinquish. Nor is there any evidence of an inclination by the people to endow the second house of the Oireachtas with any greater powers than it has at present. We did not, therefore, see the need to consider any major departure from the existing principles. This review of the Constitution has, however, in our view, been well worth while, and we hope that similar reviews will take place after suitable intervals in the future.

9. While there may be no need to depart from the existing principles of the Constitution, the matters with which we deal in our report are of importance for the future good government of this country. Indeed many of them are of such significance that it is our earnest wish that every citizen, and particularly every public representative, will analyse most carefully the arguments for and against the propositions which we have considered. To ensure the widest possible circulation of our report we recommend that an adequate number of copies be published without delay, and that the sale price should be nominal. In order to facilitate the reading of the report we have consigned as much of the data as possible to the annexes.

10. This approach has made it necessary for us to express ourselves in fairly general terms without attempting to indicate the precise wording required to give full effect to any proposals which we considered; we hope that our meaning is, nonetheless, clear in all cases and that, in the event of any of these matters being submitted for determination in accordance with the prescribed legislative process, no difficulty will be found in drawing up the necessary statutory provisions.

11. We services re
Holloway.
received a
industry an
stages of c
our Assist

J. C. Hollo
Secretar
14 Decem

AR

12. At
"Per
out p
estab
whole
shall
of Sa

We have
We feel t
to replace
follows :

1.

2.

11. We wish to record our deep appreciation of the exceptional services rendered to this Committee by our Secretary, Mr. J. C. Holloway. As a result of his thorough and detailed research we received a great deal of documentation for our consideration and his industry and knowledge were of considerable assistance to us at all stages of our work. We have pleasure also in expressing thanks to our Assistant Secretary, Mr. K. Drake, for his valuable help.

Seoirse Ó Colla, *Chairman*,
David Andrews
James Dooge
Seán Dunne
Denis F. Jones
Seán F. Lemass
Robert M. Molloy
Michael O'Kennedy
Thomas F. O'Higgins
Eoin Ryan
Gerard Sweetman
James Tully.

J. C. Holloway,
Secretary,
14 December, 1967.

ARTICLE 3—EXTENT OF APPLICATION OF THE LAWS

12. Article 3 of the Constitution provides as follows :—

“ Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.”

We have given careful consideration to the wording of this provision. We feel that it would now be appropriate to adopt a new provision to replace Article 3. The wording which we would suggest is as follows :

1. The Irish nation hereby proclaims its firm will that its territory be re-united in harmony and brotherly affection between all Irishmen.
2. The laws enacted by the Parliament established by this Constitution shall, until the achievement of the nation's unity shall otherwise require, have the like area and extent

of application as the laws of the Parliament which existed prior to the adoption of this Constitution. Provision may be made by law to give extra-territorial effect to such laws.

13. The reason for the final sentence of the suggested re-draft is that we have borne in mind the possible implications of the extension of certain national laws to extra-territorial areas surrounding our coasts, known as the "Continental Shelf". This matter is regulated by the 1958 Geneva Convention on the Continental Shelf, the purpose of which was to set out more clearly the rights of states in regard to the "Continental Shelf" under international law. We think it desirable that the opportunity should now be taken to establish beyond all possibility of doubt the right of the State to avail of the provisions of the Convention in the matter of laws having extra-territorial effect. It occurs to us that considerations relating to the Continental Shelf may also be relevant in relation to Articles 2 and 10 of the Constitution; if any changes of wording are necessary or desirable in relation to those Articles we would recommend that appropriate action be taken at this stage to rectify the position.

ARTICLE 4—THE NAME OF THE STATE

14. Article 4 provides as follows:—

"The name of the State is Éire, or in the English language, Ireland."

Throughout the years since 1937 the term "Éire" has been widely misused in English as the name of the State. Those who so use it can point to the Article itself as their justification, arguing that the word "or" in the English text of the Article indicates that "Ireland" is merely an alternative English form of the name. There is, perhaps, at least an ambiguity in the Article that provides a colourable pretext for this misuse. In the light of past experience we feel that the opportunity might now be taken to remove this difficulty by declaring in the Irish text "Éire is ainm don Stát" and in the English text "The name of the State is Ireland". There would seem to be no objection to this simplification since both texts are of equal validity (except in a case of conflict), and the word "Ireland" is the English equivalent of the Irish word "Éire".

ARTICLE 5—REPUBLICAN STATUS AND EXTERNAL FUNCTIONS

15. Article 5 states that Ireland is a sovereign, independent, democratic state. It does not, however, proclaim that Ireland is a Republic nor does any other Article of the Constitution, despite the fact that

many c
in relat
of a R
with tl
Execut
the Co
procla
declar
Repub
Relati
power

16.
nised
Cons
shoul
notin
some
pract
dispo
Finl
and
is d
desi
the

1
the
sign
Pre
for
Ar
be
by
19
A
th
G
by

A