

Preface

This book concerns the evolving role of national parliaments in the European Union. That role, as will be seen in Chapter 1, has developed considerably over time. It seems likely to continue to do so, and to feature centrally in efforts to ensure adequate democratic accountability exists in the institutional architecture of the Union. Why this should be so is an issue looked at in Chapter 2.

The book focuses on one parliament as a case study in this regard: the national parliament of Ireland, the Oireachtas. The basic structure of that parliament is modelled on that of the United Kingdom. Ireland operates the so-called Westminster system of parliamentary government. It has a bicameral legislature. Under the Irish Constitution,¹ the two houses of the Oireachtas comprise the lower House, Dáil Éireann, commonly referred to simply as the Dáil, and the upper House, Seanad Éireann, referred to in common parlance as the Seanad or the Senate.²

Like the United Kingdom, Ireland joined the then European Communities on 1 January 1973. Chapter 3 examines the initial adaptations of its parliament to European integration and how Ireland's domestic parliamentary accommodation of membership slowly changed over time. Particular focus is brought to bear in Chapter 4 on the considerable impact on domestic parliamentary arrangements of the recent banking and foreign debt crises and of the Treaty of Lisbon. Chapter 5 is devoted to an assessment of the role of the Oireachtas in European law and policy during the lifetimes of the 30th Dáil (2007–11) and the 31st Dáil (2011–16) – the most recent periods during which comprehensive information is available – before Chapter 6 turns to the topic of possible future reforms.

The research in this book should be regarded as up to date to the end of the 31st Dáil (which was dissolved on 3 February 2016), although it has occasionally been possible to insert more recent material. Time and events have not stood still since the end of the period under study – even if the implications for the Oireachtas role in relation to European Union affairs remain as yet largely unclear. The Oireachtas generally takes time to adjust in the wake of Dáil elections, given the constitutional requirement for Seanad elections to take place not later than ninety days after a dissolution of Dáil Éireann,³ and the time needed for the creation of the Committee structure in the wake of the election of each new Dáil and

Seanad. The process did so with particular slowness in 2016, thanks in particular to the failure of any political party or viable coalition of parties to secure victory in the general election which followed the dissolution of the 31st Dáil.

In brief, the sequence of events which has occurred since the period studied in the main part of this book has been as follows.

At the request of the then Taoiseach (or prime minister) Enda Kenny, the 31st Dáil was dissolved by President Michael D. Higgins on 3 February 2016. The subsequent general election for membership of the 32nd Dáil⁴ took place on 26 February, resulting in the election of 157 “Teachtaí Dála” (members of parliament, normally referred to as “TDs”) from forty constituencies across the country.⁵ Elections to the Seanad were completed by 26 April and the Taoiseach availed of his right to nominate eleven out of sixty senators on 27 May 2016. The 25th Seanad met at Leinster House for the first time on 8 June.⁶

The 32nd Dáil had already met for the first time on 10 March. The general election results had dealt a severe setback to Taoiseach Enda Kenny’s Fine Gael (although it remained the largest political party) and had devastated its junior Coalition partner, Labour. No party or coalition of parties secured enough seats to govern without opposition cooperation. A new Fine Gael-led administration could be formed only with some difficulty, only as a minority government and only after tortuously long negotiations.⁷ Agreement on a new government was ultimately reached only on 29 April, some sixty-three days after the election. The agreement reached constituted a new phenomenon in Irish political life (even if one far from unknown in other parliamentary democracies based on the Westminster system): a so-called ‘confidence-and-supply’ agreement between the minority government formed by Fine Gael and some independents, on the one hand, and the Opposition Fianna Fáil party on the other. This (renewable agreement) lasts until the end of 2018, and involves Fianna Fáil facilitating government budgets which are consistent with agreed policy principles and either opposing or abstaining on confidence measures.⁸ Subsequently, on 6 May (on what was its fourth attempt) the Dáil finally re-elected Enda Kenny as Taoiseach, making him the first ever Fine Gael party Taoiseach to win re-election. (Notwithstanding this, the aftershock of the election was sufficient to lead to Kenny being replaced by Leo Varadkar as Taoiseach just over a year later, on 14 July 2017.)

Perhaps unsurprisingly, given its minority status, the new administration has suffered from ongoing instability and an inability to ensure legislation is adopted at anything near the rate of previous parliaments.⁹ Neither the new administration nor the Oireachtas (and in particular, the Joint Committee on European Union Affairs) has lacked ongoing challenges in the European field. Principal among them is the challenge of dealing with the effects of the referendum vote on 23 June 2016 in the United Kingdom in favour of leaving the European

Union (so-called “Brexit”), the implementation of which has already and will continue to present difficult negotiating challenges for Irish governments, particularly given such factors as the high level of trade between the two states, the enduring interest of both states in maintaining the hard-won peace in Northern Ireland secured by the 1998 Good Friday agreement after decades of political conflict and the political risks associated with a “hard” border between Northern Ireland and the Republic.

The Oireachtas faces challenges which include imposing adequate democratic accountability, particularly in relation to Irish governmental involvement in any such (Commission-led) negotiations at Council and European Council level,¹⁰ and subsequently in relation to any arrangements which derive from them – both *vis-à-vis* the European Union and *vis-à-vis* the United Kingdom. Its response to such challenges remains to be fully seen.

On the positive side, the Oireachtas committee structure has seen some significant reforms. At the time of writing, the number of joint committees has been increased to twenty-one. There has also been recourse to more over-arching committees, an example of this being the establishment of the Dáil Select Committee on Budgetary Oversight in July 2016 with the objective of enhancing the role of the Oireachtas in the budgetary formation process, and which includes in its role consideration of the limitations arising from the application of EU fiscal rules. Use has also increased of *ad hoc* committees (including, to take one somewhat European-related example, through the establishment of the Joint Committee on the Future Funding of Domestic Water Services, which sought to find a way ahead in the politically controversial field of water charges).¹¹ Another change to the operation of committees is that efforts have been made to avoid previously endemic clashes between Dáil time and committee time (so that the Dáil now sits only in the afternoon).

Of particular relevance to the contents of this book has been the formation of the Joint Oireachtas Committee on European Union Affairs, which held its first meeting in private on 19 July 2016, and its first public meeting on 7 September. The chair of the new group is Independent TD Michael Healy-Rae, whose chairmanship reflects the very large number of independent members elected to the 32nd Dáil.¹²

The membership of the new Committee comprises seven TDs¹³ and four Senators,¹⁴ with the Committee’s composition capable of ensuring a pro-Government Independent–Fine Gael majority – or, if not, effective control through conditional support on the part of the Opposition Fianna Fáil party. That much said, the Committee has traditionally operated in a non-partisan manner in any case. In the twelve months following the first meeting of the new Dáil, the Joint Oireachtas Committee, however, met on only ten occasions.¹⁵ Even taking account of the greater role accorded to other sectoral committees which began

in the previous (31st) Dáil period, this seems inadequate to establish systematic accountability in European affairs, although it is only fair to acknowledge that a considerable portion of the fault for this lies with (a) the (by now normal) slowness in re-establishing the Oireachtas Committee system after the 2016 election and (b) the considerable delay on this occasion before it proved possible to put together any new government at all.

As Chapter 5 of this book illustrates, it would be a mistake, however, in assessing the impact of the Oireachtas in European affairs, to focus on the role of the Joint Committee on European Affairs alone. Other formations of the Oireachtas have a role to play. The topic of Brexit, for example, has featured with great frequency in Oireachtas debates of all kinds, including Dáil questions, and can be expected to continue to do so in the two-year period of negotiations on UK exit after the triggering by the UK government of the Article 50 exit clause in the Treaty on European Union.¹⁶ In the twelve months following the first meeting of the 32nd Dáil, four Joint Oireachtas Committees conducted seven debates or hearings on the issue¹⁷ – including the Joint Committee on European Union Affairs (which held two of these hearings, and which also sent a delegation to Brussels in February 2017 to meet with the key individuals involved in the Brexit negotiations).¹⁸ The new Dáil Business Committee also hosted a half-day symposium on the economic implications of Brexit on 22 September 2016 in the Mansion House for members of the Dáil, Seanad and European Parliament to inform debate in advance of the then forthcoming parliamentary session.

Three members of the European Commission appeared before Dáil committees on separate occasions to discuss controversial issues including Brexit in the same twelve-month period.¹⁹ Nor was there any sign of such activity reducing in intensity. Another interesting development in this field was the Seanad's decision in February 2017 to establish a ten-person cross-party Seanad Special Committee on the Withdrawal of the United Kingdom from the European Union, in order to consider the implications for Ireland of Brexit. The Special Select Committee was to report to Seanad Éireann on 4 July 2017. From April 2017, it had become active in hearing submissions by a range of actors in political life (including two former Taoisigh), civil society and business.

The Oireachtas may thus be said to have been active in informing itself and certainly not been entirely bereft of a public communications role in relation to European issues in the short lifetime to date of the 32nd Dáil. However, the establishment by the Government in November 2016 of an All-Island Civic Dialogue on Brexit was also worthy of note. By late February 2017, this had met twice in plenary session and on fourteen separate occasions in sectoral meetings throughout the country. This process saw official efforts to communicate with the public concerning Brexit-related issues move away from the Oireachtas to

some extent, just as they had earlier during the 2001–09 lifetime of the National Forum on Europe. It may thus be that the responsibility of such communication will continue to be shared by the Oireachtas rather than being borne exclusively to it in the near future.

All of the foregoing EU-relevant changes and developments have taken place in the context of more broadly relevant parliamentary reforms being introduced in the 32nd Dáil period, including the election for the first time of a Ceann Comhairle, the introduction of the d'Hondt system to govern the appointment of committee chairs; the shifting of what was heretofore the Taoiseach's prerogative (normally implemented by the Government party whips) to set the Dáil agenda to a Business Committee representing all groups in parliament; the empowerment of more groups to propose legislation; and moves towards improved administrative and legal supports for parliamentarians. Many of these developments had been long planned. Others were introduced effectively as the price of Opposition participation in negotiations on the formation of a Government. The effect of such changes remains to be seen: the 32nd Dáil has certainly garnered a reputation for less efficiency (particularly in legislating) than its predecessors. But this probably is in large part more properly ascribed to the minority status and consequent weakness of the Government than the negative effects of parliamentary reforms. A proper assessment of the true effect of the latter reforms may well have to await the future election of a majority regime, however.²⁰

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Notes

- 1 See Article 15.
- 2 The continued existence of the Seanad was ensured on 4 October 2013 when a Government proposal to alter the Constitution to abolish the upper House was defeated. In a referendum held on that date on the Thirty-second Amendment of the Constitution (Abolition of Seanad Éireann) Act 2013, 634,437 (51.7%) of the 1,240,729 voters who voted (a relatively low 39.2% turnout), rejected the Act (and thus to retain the Seanad). 591,937 (48.3%) of those voting cast their ballots in favour of the Act (and abolition of the Seanad).
- 3 See Article 18.8 of the Constitution.
- 4 Under Article 16.3.2^o of the Constitution, a general election is required to take place not later than thirty days after a dissolution of Dáil Éireann.
- 5 The *Ceann Comhairle* (chairman) was in addition returned automatically, bringing the total membership of the new Dáil to 158. (Under Article 16.6 of the Irish Constitution, provision is required to be made by law to enable the member of Dáil Éireann who is the *Ceann Comhairle* immediately before a dissolution of Dáil Éireann to be deemed without any actual election to be elected a member of Dáil Éireann at the ensuing general election. Provision is currently made for this by s. 36 of the Electoral Act 1992.)
- 6 In terms of its composition, there are nineteen *Fine Gael*, fourteen *Fianna Fáil*, seventeen *Sinn Féin*, five Labour Party, one Green Party and fourteen independent members in the 25th *Seanad*.
- 7 The election results constituted something of an earthquake in terms of their implications for the established political parties. *Fine Gael* remained the largest party in the Dáil but with only fifty members (if one includes the automatically-returned *Ceann Comhairle*) – twenty-six less than the total achieved in the 2011 election to the 31st Dáil (in which however they had not the advantage of having a *Fine Gael* Deputy automatically returned as *Ceann Comhairle*). A rejuvenated *Fianna Fáil* secured forty-four. *Sinn Féin* attained twenty-three, putting it in third place and the Labour Party achieved its worst-ever result of only seven TDs (down from thirty-seven in 2011, from which it emerged as the second-largest party). A combination of independents and members of smaller parties secured the (very large) total of thirty-four seats.
- 8 The text of the agreement is available in F. Kelly, “*The Full Document: Fine Gael-Fianna Fáil Deal for Government*”, *Irish Times*, 3 May 2016.
- 9 See for one recent assessment in this regard, H. McGee, “Ten Ways the Engine Room of Irish Politics Has Changed Since Last Year’s Election”, *Irish Times*, 28 February 2017. See also M. Lehane and C. McMorrow, “*A Year On, Has ‘New Politics’ Gone Stale?*” RTE.ie, 10 March 2017, S. Collins, “It’s Obvious That the Current Dáil is Unworkable”, *Irish*

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- Times*, 6 April 2017 and N. Whelan, “Current Dáil Remains a Very Feeble Legislator”, *Irish Times*, 5 May 2017.
- 10 See regarding the respective roles of Council and European Council, Article 50 of the Treaty on European Union.
 - 11 This Committee finally reported in April 2017 after a fractious, highly-publicised debate, a key feature of which were differing party political views as to what the need for any water funding regime to comply with the requirements of the EU Water Framework Directive (Directive 2000/60/EC of 23 October 2000) entailed. (See generally S. Bardon, “FF Concessions Seal Deal on Water Charges”, *Irish Times*, 12 April 2017.)
 - 12 As is noted in the text below, Committee chairs in the 32nd Dáil – including that of the EU Affairs Committee – were selected, for the first time ever, on the basis of the d’Hondt system. Healy-Rae’s appointment made this the second successive occasion a chair has been appointed to the European Union Affairs Committee, who has not previously been noted for any expertise or interest in EU matters (although, in fairness, this has not previously prevented successful tenure of the position).
 - 13 Two of these are from *Fine Gael*, two from *Fianna Fáil*, one from Sinn Féin and two are independent members – including the Committee chair – who are loosely affiliated in the Rural Independent Group.
 - 14 Two of these are from *Fine Gael*, one from *Fianna Fáil*, and one is an independent member.
 - 15 This includes a joint sitting with the Joint Committee on Foreign Affairs and Trade, and Defence on 21 February 2017.
 - 16 A search on 17 May 2017 for the term “Brexit” on the website KildareStreet.com, in which it is possible to search through Oireachtas debates for particular terms, yielded a remarkable 1,805 hits.
 - 17 These debates were in the Joint Committee on European Affairs (on 8 November and 7 December 2016); in the Joint Committee on Agriculture, Food and the Marine (on 17 January and 24 January 2017); in the Joint Committee on Communications, Climate Action and Environment (on 14 and 28 February 2017); and in the Joint Committee on Foreign Affairs and Trade, and Defence (on 9 March 2017).
 - 18 This occurred on 7–8 February 2017. See report at www.oireachtas.ie/parliament/media/committees/euaffairs/Report-of-the-Committee-Travel-to-Brussels-7-8-February-2017.pdf (accessed on 12 May 2017).
 - 19 Commissioner Vice-President Frans Timmermans appeared before a joint sitting of the Joint Committee on Foreign Affairs and Trade, and Defence and the Joint Committee on European Union Affairs on 21 February 2017 to discuss Brexit. The Commissioner for Competition Margrethe Vestager appeared before the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach to discuss the Commission’s controversial 2016 decision that tax arrangements in Ireland concerning companies in the Apple group constituted illegal state aid and Commissioner for Economic and Financial Affairs, Taxation and Customs Pierre Moscovici discussed EU corporate taxation strategy and EU investment and growth strategies with the same Committee on 24 January 2017. Michel Barnier, the Chief Negotiator for Brexit (appointed by the European

Commission) addressed a joint session of the Dáil and the Seanad on 11 May 2017. (See further Commission website https://ec.europa.eu/info/persons/director-head-service-michel-barnier_en (accessed on 15 May 2017).)

- 20 See in this regard C. Lynch, E. O'Malley, T. Reidy, D. Farrell and J. Suiter, "Dáil Reforms Since 2011: Pathway to Power for the 'Puny' Parliament?" (2017) 65 *Administration* 37 at 55–56.