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Fixed Term Parliaments: What if they were introduced in Ireland? Pros and cons, implications and issues arising.

Introduction: setting out the alternatives

This paper will set out some of the main arguments in favour and against the current procedures for the dissolution of the Dáil, in comparison with some of the main alternative arrangements found in other parliamentary democracies. It will also briefly discuss the role of the President and the question of the length of the Dáil term.

As things currently stand, only the Taoiseach has the authority to request the early dissolution of the Dáil. That request goes to the President, who may refuse the request if the Taoiseach is deemed to have lost the support of a Dáil majority. As discussed in other submissions, the powers of the Taoiseach in this regard are quite strong in comparison to many other parliamentary democracies. In terms of the rules governing the dissolution of parliament, the most relevant alternatives can be broadly summarised as follows (this list is consistent with the definitions provided in the submission by Professor Schleiter)¹:

Flexible

- The Prime Minister can call an early election under any or most circumstances (e.g. Ireland; Denmark; New Zealand; Australia; UK until 2011)
- The Government/cabinet can call an early election (e.g. Netherlands, Japan, Sweden)

Semi-fixed

- Parliament can call an early election by simple or absolute² majority (e.g. Austria, Croatia, Hungary, Israel)
- Parliament can vote for an early election by supermajority³ (e.g. Czech Republic; Poland; UK after 2011)
- An early election can come about in the event of the government losing the support of a majority in Parliament, if no alternative government emerges (e.g. Germany; UK after 2011)

Fixed

- Parliament cannot be dissolved ahead of time (e.g. Norway)

Pros and cons of options for dissolution

This section will address a number of pros and cons for the various options for dissolution. Table 1 presents a summary of the arguments developed in this section.

¹ These alternatives are not all mutually exclusive; there are often several routes to dissolution in any given country. Goplerud and Schleiter (2016) provide details on the various routes to dissolution in a wide range of parliamentary democracies.

² Simple majority means a majority of those voting; absolute majority means a majority of all members of parliament.

³ Supermajority means a threshold greater than half; for example, a two-thirds majority.

Table 1: Summary of pros and cons of options for dissolution

	Taoiseach can call early election	Gov't can call early election	Parliament can call early election by majority	Parliament can call early election by supermajority	Early elections only possible when gov't defeated	Fully fixed term
Electoral fairness	Taoiseach's party has advantage	Puts junior coalition parties on equal footing	Fair	Fair, but potentially higher 'cost of governing'	Fair, but potentially higher 'cost of governing'	Fair, but potentially higher 'cost of governing'
Government cohesion (enabling policy consistency)	High	Possibly reduced?	Possibly reduced?	Reduced	Reduced	Reduced
Short-termism in final years	Possibly	Possibly	Possibly	No	No	No
Effective opposition throughout Dáil term	Yes	Yes	Yes	Potentially less effective	Potentially less effective	Potentially less effective
Danger of 'political business cycle'	Low	Low	Low	Moderate	Moderate	Moderate
Problem of lame-duck governments	No	No	Unlikely	Possible	Possible in limited circumstances	Possible

1. Electoral Fairness and the 'cost of governing'

One of the main arguments against the current situation is that it hands an unfair advantage to the party of the Taoiseach over other parties. The Taoiseach, it can be assumed, will try to call an election at a time where his/her party is in a relatively strong position. Indeed, comparative research shows that the electoral success of a government party is significantly influenced by the ability of the Prime Minister to decide when the election is held (Schleiter and Travits 2016).

This is certainly a credible argument for changing the current system. However, it is also important to consider the fact that government parties in Ireland generally tend to lose votes at the subsequent election. Strategic election timing might minimise these losses, but generally there does tend to be an electoral cost to being in government. There are of course other incentives for parties to go into government, but it is important that going into government is not viewed as a poisoned chalice. As we saw after the last election, the reluctance of many parties to enter into government made government formation extremely difficult.

With this in mind, it could be argued that the main unfairness in the current system is that only one government party - that of the Taoiseach - has a formal role in calling an election. In most countries where the Prime Minister has considerable discretion over election-timing (such as Australia, New Zealand, Canada, Spain, and the UK until 2011), single-party governments have traditionally been

common. Single-party government is no longer common in Irish politics, but the rules regarding the dissolution of the Dáil do not reflect this.

Indeed, it is small parties that tend to suffer most after a period in government, and small parties are often reluctant to go into government for this reason. As O'Malley reports, between 1927 and 2010 large government parties in Ireland lost on average just over 5% of their seats at the subsequent election, while small government parties lost 19% of their seats on average (O'Malley 2010).

Under the current arrangement, junior coalition partners are usually consulted by the Taoiseach before an election is called, but this is not formally required. The position of small parties in government would be strengthened if it was the cabinet as a whole (rather than the Taoiseach) who had the right to request the dissolution of the Dáil. This was effectively the situation that existed under the 1922 Irish Free State constitution⁴.

The implications of more far-reaching changes in this area, such as semi- or fully-fixed term parliaments, are less clear-cut on this issue of the cost of governing for small parties. If an election could only be called if the government lost a vote of confidence, or if a supermajority was required to call an election, this could potentially weaken the influence that small government parties have over election timing, and thereby further increase the cost of governing for these parties. On the other hand, as discussed below, these arrangements could make it easier for small parties to leave a governing coalition that they were unsatisfied with (perhaps to form an alternative coalition), without fear that the Taoiseach would call an election that they did not want.

2. Government cohesion

The ability to call an election can be used by a Taoiseach to keep government backbenchers and coalition partners in line. As the famous 19th century political writer Walter Bagehot wrote, the power of the Prime Minister to dissolve parliament 'is the secret which keeps parties together' (Bagehot 1873). If members of the Taoiseach's own party, or more likely members of a junior coalition party, feel that the Taoiseach will call an election if they do not toe the line, this is a significant disincentive to rebel.

This view is supported by empirical research, which shows that governments (as opposed to parliaments) actually last longer on average when the Prime Minister has the power to dissolve parliament, compared to cases of semi-fixed terms (Schleiter and Issar 2016). This is because where the Prime Minister cannot dissolve parliament, he or she is less able to impose discipline on the members of the governing coalition, and hence is more likely to be replaced in a backbench rebellion. It is important to note that this research does not look at cases where the government collectively can call an election, or where the parliament can call an election by simple majority vote. It is therefore not possible to say with confidence how a move to one of these options would affect government cohesion and durability.

Is government cohesion necessary? While cohesion should not be enforced at all costs, in general cohesion is important so that the government can implement its agreed policy programme. Rapid turnover of governments is not good from a policy perspective. Research on the fulfilment of election pledges by Irish governments suggests that election pledges made by a government party have about a 50:50 chance of being fulfilled if the government lasts longer than three years, but this

⁴ Article 28 of the 1922 constitution states that 'Dáil Eireann may not at any time be dissolved except on the advice of the Executive Council'

falls to a 1 in 3 chance when the government ends during the first three years (Thomson and Costello 2016). If governments break down more often than they do now – as may occur under a semi- or fully-fixed parliament – then we would see fewer governments being able to follow through on their policy programmes.

3. Short-termism at the end of Dáil term

Another criticism that is sometimes levelled against the current system is that governments tend to become consumed by the question of election timing when it gets into the final year or so of the Dáil term. If we think back to the last election, from at least the summer of 2015 until the election was finally called in early February 2016, there was intense media speculation regarding when the election would be called, and this may have also distracted from the business of government. Reducing the discretion of the Taoiseach to call an election could potentially improve this situation. A similar argument was made in the case of the UK, where it was argued that the introduction of the Fixed-Term Parliaments Act would ‘reduce the short-termism that dominated the final years of previous legislatures’ (Schleiter and Issar 2014).

4. Opposition effectiveness

The fact that the Taoiseach can call an election at any time can serve to keep the opposition on its toes. The opposition plays a crucial part in a functioning democracy, providing alternatives to government policy and scrutinising government performance. Under the current arrangement for dissolution, opposition parties must always be election-ready. If they fail to provide effective opposition the government can exploit their weakness by calling an early election. Hamlin (2010) argues that without the threat of an election hanging over it, an opposition party might be tempted to ‘keep its ammunition dry’ during the early years of a government term, and thereby fail to provide effective opposition.

5. Danger of ‘political business cycle’

It has often been argued that government parties have an incentive to manipulate the economic cycle in order to maximise their chances of re-election. In other words, they will seek to engineer economic growth so that it peaks at election-time. This is usually called the ‘political business cycle’ (Nordhaus 1975). Existing studies do not find strong evidence for this in Ireland (e.g. Adrikopoulos, Loizides and Prodromidis 2004; Klomp and de Haan 2013), although opposition parties and the media often characterise expansionary budgets as being ‘election budgets’.

The ability of the Taoiseach to choose the timing of the election is one possible reason why political business cycles are not more prevalent in Ireland. Rather than trying to manipulate the economic cycle to fit the electoral calendar, the government can instead design the electoral calendar around the economic cycle, choosing an election when the economy is doing well. As Heckelman and Berument (1998) put it, where governments can choose election timing “we might expect fewer attempts at manipulation of the economy and therefore a more stable economy than in those democracies where term length is predetermined”.

It is possible, therefore, that a move to a less flexible arrangement for election timing could increase the incentives for the government to attempt to manipulate the economic cycle. However, it is

important to note that there are a number of other reasons (apart from flexible election timing) that serve to limit the prevalence of political business cycles in Ireland. Monetary policy (such as setting interest rates) is decided by the European Central Bank, and therefore out of the hands of the government. Fiscal policy (taxing and spending) is also constrained by EU rules that oblige the government run a generally balanced budget. Independent bodies, in particular the Fiscal Advisory Council, have been established in Ireland to monitor and assess fiscal policy. For these reasons, it seems unlikely that a move to greater rigidity in Dáil terms would lead to a significant increase in the occurrence of political business cycles.

6. 'Lame duck' governments

One common criticism of fixed-term parliaments is that they can result in situations where the government lacks the necessary support in parliament to govern effectively, yet cannot call an election to overcome the impasse. Take the situation where the Prime Minister can only request an early election in the event of a failed vote of confidence in the government (this is the situation in Germany). If a government's majority is very slim, or there is some internal divisions within government parties, it could prove difficult to govern effectively; yet at the same time the government might not be defeated in a confidence vote. There have been occasions in Germany where the Chancellor has had to engineer a defeat in a vote of confidence in order to trigger an early election. In other words, Chancellors have occasionally had to resort to circumventing the spirit of the law in order to overcome a political stalemate. While this is unlikely to be a common occurrence should such a system be introduced in Ireland, it is certainly a potential problem to be considered.

The role of the President

To this point, we have been considering the issue of early elections when the government is in control of a majority in the Dáil. A different set of considerations arise when the government has lost the support of the Dáil, for example as a result of defections within the government. When this happens, it should be possible for a new government to form without fresh elections taking place. If a viable alternative government exists, then it would be wrong for a defeated Taoiseach to be able to prevent this government from forming by forcing an early election. However, ruling out the possibility for early elections altogether when a government has been defeated could potentially create another problem: a political stalemate could arise, whereby the existing government is defeated but no alternative government has the support of the Dáil.

To deal with this dilemma, Article 13.2.2 of the Constitution gives the President discretion as to whether or not to grant a request for an early election made by a Taoiseach who has lost the support of the Dáil. In effect, it is the President who must decide whether an early election is the best course of action in the event of a government being defeated. If there is an alternative government-in-waiting that would be able to command the support of a majority in the Dáil, then the President can give this alternative government an opportunity to form by refusing to dissolve the Dáil. If there is no obvious alternative government, then the President could agree to a request for dissolution, thereby avoiding a political stalemate.

There have been only five occasions in the past when the President's discretion on dissolution could have come into play, while there has been only one occasion to-date where the President appears to have prevented the dissolution of the Dáil (Gallagher 2012, p528). In 1994, after the break-up of the

Fianna Fáil-Labour coalition, President Mary Robinson indicated that she would not agree to any request for dissolution by the Taoiseach (Albert Reynolds), as she believed that an alternative government could be formed. Even though the Taoiseach had not been defeated in a vote of no-confidence, the President decided that the Taoiseach had lost the support of a majority in the Dáil, and on that basis was prepared to exercise her discretion on the matter.

The discretion of the President could potentially become a controversial issue if the President was deemed to be taking sides politically on the issue of dissolution. The rarity with which the President has been in this situation has meant that the issue has not generated much controversy to-date. One exception was when President Patrick Hillery came under severe pressure from opposition party Fianna Fáil not to agree to a request for dissolution by the Taoiseach Garret FitzGerald in 1982. President Hillery later indicated that he believed there could have been a constitutional crisis had he refused the request for dissolution⁵.

Given the rarity with which this issue arises, and the rationale for giving the President discretion in this matter, there is probably no pressing need to change this system currently. The only situation where the issue might need to be revisited would be if a decision was made to move to a semi-fixed term system, where an early election could only happen in the event of the government being defeated. There are two reasons why the role of the President might need to be changed under such a system. First, as discussed above, the frequency of government defeats would be likely to increase, thereby increasing the frequency with which the President would have to make a judgement about an early election. This would therefore increase the risk that the President would become embroiled in political controversy. Second, because the Taoiseach would be no longer able to pre-empt a vote of no confidence by calling an early election, there would be no need for a President to exercise discretion regarding whether the Taoiseach had lost the support of the Dáil, as President Mary Robinson did in 1994. The only thing that would have to be decided would be whether or not an alternative government was available. This could be decided without input from the President. For example, following the lead of the UK Fixed-Term Parliaments Act, there could be a 'cooling-off' period following a vote of no-confidence before the Dáil is dissolved (14 days in the UK case), during which time an alternative government could form⁶.

The length of the Dáil term

While the Constitution allows for Dáil terms of up to seven years, shorter limits can be set by legislation, and since 1927 the maximum term has been set at five years.

There is an important trade-off to consider on the issue of term limits. Shorter terms provide more opportunities for voters to have their say, but allow less time for governments to implement their policy programmes. Longer terms obviously results in less frequent input from voters, but can allow greater policy coherence as the government has the space to pursue longer-term policy objectives.

The choice, I would argue, is really between four years (the average maximum duration in European democracies) and the current system of five years. Arguably, four years is sufficient for a

⁵ See <http://historyhub.ie/aras-an-uachtarain-telephone-log-27182>

⁶ Another alternative arrangement would be a 'constructive vote of no confidence' procedure, whereby it would only be possible to defeat the government in a no confidence vote if an alternative government was nominated simultaneously. This system does not overcome the problem of gridlock, as there may be situations in which there is neither support for the current government nor support for any alternative government, in which case it should be possible to have an election.

government to implement the bulk of its policy agenda; most countries operate on the basis of four-year terms, and this does not appear to reduce the ability of government parties to implement their policy programmes (this can be seen in comparative research on election pledge fulfilment; see Thomson et al 2016). On the other hand, Dáil terms in recent decades have regularly gone over four years (four out of the last six Dáil terms went over four and a half years), and there is no obvious demand among Irish voters for more frequent elections. The five-year cycle is one that voters are accustomed to, as there is also a five-year cycle for both local elections and European Parliament elections.

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