

## **CONSTITUENCY COMMISSION**

### **Statement on relevant provisions of the Constitution in relation to Dáil constituencies and on population statistics relating to Dáil and European Parliament constituencies**

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#### **Introduction**

Section 10(2) of the [Electoral Act 1997](#) requires a Constituency Commission to prepare a statement setting out the relevant provisions of the Constitution in relation to Dáil constituencies to which the Commission is required to have regard in preparing its report. Section 10(2) also requires the commission to prepare statements, based on the population in the Census Preliminary Results report, for the Dáil and European Parliament constituencies currently in force. The Commission has prepared this statement in line with the requirements of the 1997 Act. Section 6 of the Electoral Act 1997 detailing the function and terms of reference of the Commission is on page 8 of this statement.

#### **Dáil constituencies**

The Dáil constituencies currently in force are set out in the [Electoral \(Amendment\) \(Dáil Constituencies\) Act 2013](#) which was enacted following on from the [Constituency Commission Report 2012](#).

Constitutional provisions in relation to Dáil Constituencies

Article 16.2.2° of the Constitution provides that:

“The number of members shall from time to time be fixed by law, but the total number of members of Dáil Eireann shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population.”

Article 16.2.3° of the Constitution provides that:

“The ratio between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall, so far as it is practicable, be the same throughout the country.”

Article 16.2.4° of the Constitution provides that:

“The Oireachtas shall revise the constituencies at least once in every twelve years, with due regard to changes in distribution of the population.....”

The text of Article 16.2 of the Constitution is set out in full on page 7 of this statement.

### **Equality of representation - Court cases**

The issue of equality of representation across constituencies has been considered by the courts on a number of occasions.

In *O'Donovan v. The Attorney General* [1961] I.R. 114 the court found that the Electoral (Amendment) Act 1959 was unconstitutional because the ratio of members to population was not, so far as was practicable, the same throughout the country and because due regard had not been had to changes in the distribution of the population. Budd J. held that the dominant principle of Article 16.2.3 is “the achievement of as near an equality of the parliamentary representation of the population as can be attained, paying due regard to practical difficulties.” In *O'Donovan* the highest deviation from the average per constituency was in the order of 25%. The Court did not lay down what variation from the national average would be regarded as permissible but did say that -

*“Attention should be paid to one important point. It is not the rise or fall of population in any particular constituency to which ‘due’ regard is to be had. It is something much wider than that. It is the constituencies themselves which have to be revised so as to give effect to the contemplated changes in the distribution of population. They, the constituencies, must be so formed and revised as to give effect to the changes.”*

This was followed by the passing by the Oireachtas of the Electoral (Amendment) Bill 1961. The variances from national average representation in the constituencies set out in the Bill were all within a 1,000 population of the average population per member. Pursuant to Article 26 of the Constitution, the President referred the Bill to the Supreme Court for its decision on whether the Bill was repugnant to the Constitution or to any provision thereof. In its decision, reported at [\[1961\] IR 169](#), the Court said, at p.183:

*“The subclause [i.e. Article 16.2.3<sup>o</sup>] recognises that exact parity in the ratio between members and the population of each constituency is unlikely to be obtained and is not required. The decision as to what is practicable is within the jurisdiction of the Oireachtas. It may reasonably take into consideration a variety of factors, such as the desirability so far as possible to adhere to well-known boundaries such as those of counties, townlands and electoral divisions. The existence of divisions created by such physical features as rivers, lakes and mountains may also have to be reckoned with. The problem of*

*what is practicable is primarily one for the Oireachtas, whose members have knowledge of the problems and difficulties to be solved which this Court cannot have. Its decision should not be reviewed by this Court unless there is a manifest infringement of the Article. This Court cannot, as is suggested, lay down a figure above or below which a variation from what is called the national average is not permitted."*

Legal textbooks and the reports of a number of constituency commissions over the years made reference to a standard of 5% variance as having been regarded in the *O'Donovan* case as being acceptable, having regard to Article 16.2.3 of the Constitution. However, Clarke J., in the joined cases of *Murphy v. The Minister for the Environment* and *Molloy v. Minister for the Environment* [\[2007\] IEHC 185](#) took the view that it was not possible to establish any such universal threshold, and he followed the guidance given by the Supreme Court quoted above. He pointed out that the figures referred to by Budd J. in *O'Donovan* represented not a variance of 5% but rather a variance of between 1% and 1.66%. He stated -

*"That is not to say that, in general terms, a margin of 5% is, or is not, an appropriate consideration. The true answer is that it may depend on the extent to which all of the other relevant factors can properly be met within that or a smaller margin. I merely note these matters for the purpose of identifying that there does not appear to be justification for the assertion that *O'Donovan* is authority for the acceptability of a 5% margin."*

### **European Parliament Constituencies**

The European Parliament constituencies currently in force are set out in the [European Parliament Elections \(Amendment\) Act 2014](#), following the recommendations in the [Report on European Parliament Constituencies 2013](#).

Under the provisions of the Treaty on European Union and European Council decision of 28 June 2013 establishing the composition of the European Parliament, the total number of members to be elected in the State to the European Parliament for the 2014 – 2019 term was 11. In accordance with the 2013 Council Decision, that number is to be reviewed on the basis of an initiative of the European Parliament to be presented before the end of 2016. The Constituency Commission is required to report on the election of members to the European Parliament on the basis of the current allocation to the State of 11 members. Should this be altered after the

Commission presents its report the Minister can under Section 5(1A) of the Electoral Act, 1997 establish a committee to make a report.

### **Population statistics for constituencies**

The tables below contain the following details in relation to each Dáil constituency and to each European Parliament constituency, based on the population data taken from [Census 2016 Preliminary Results](#) (published by the Central Statistics Office on 14 July 2016). These show an overall increase in population in the order of 169,724, mostly in the Dublin region.

#### **Dáil constituencies**

- the population of the constituency in 2016;
- the number of TDs established for the constituency under the [Electoral \(Amendment\) \(Dáil Constituencies\) Act 2013](#) ;
- the population per TD in 2016; and
- the percentage variance of population per TD in the constituency from the national average population per TD, in 2016.

The Census Preliminary Results show that for 158 TDs the average population per TD is in excess of 30,000. If the Census Final Results are to the same effect, in order to comply with Article 16.2.2 the number of TDs would need to be increased. In these circumstances the effect of s.6(2) of the Electoral Act, 1997 (as amended in 2011) would be that the number of TDs would be increased to 159 or 160.

#### **European Parliament constituencies**

- the population of the constituency in 2016;
- the number of MEPs established for the constituency under the [European Parliament Elections \(Amendment\) Act 2014](#);
- the population per MEP in 2016; and
- the percentage variance of population per MEP in the constituency from the national average population per MEP, in 2016.

<b>Existing Dáil Constituencies</b>				
<b>Constituency</b>	<b>2016 Population (preliminary)</b>	<b>Number of TDs</b>	<b>Population per TD</b>	<b>% Variance</b>
Carlow-Kilkenny	151,492	5	30,298	0.61
Cavan-Monaghan	124,289	4	31,072	3.18
Clare	112,702	4	28,176	-6.44
Cork East	121,269	4	30,317	0.68
Cork North-Central	124,699	4	31,175	3.52
Cork North-West	89,187	3	29,729	-1.28
Cork South-Central	122,013	4	30,503	1.29
Cork South-West	85,028	3	28,343	-5.88
Donegal	150,342	5	30,068	-0.15
Dublin Bay North	152,830	5	30,566	1.50
Dublin Bay South	120,562	4	30,141	0.09
Dublin Central	96,048	3	32,016	6.32
Dublin Fingal	151,758	5	30,352	0.79
Dublin Mid-West	117,588	4	29,397	-2.38
Dublin North-West	96,898	3	32,299	7.26
Dublin Rathdown	94,125	3	31,375	4.19
Dublin South-Central	119,121	4	29,780	-1.11
Dublin South-West	150,816	5	30,163	0.16
Dublin West	122,507	4	30,627	1.70
Dún Laoghaire	123,149	4	30,787	2.24
Galway East	93,604	3	31,201	3.61
Galway West	154,816	5	30,963	2.82
Kerry	147,554	5	29,511	-2.00
Kildare North	122,248	4	30,562	1.49
Kildare South	91,989	3	30,663	1.82
Laois	92,625	3	30,875	2.53
Limerick City	117,352	4	29,338	-2.58
Limerick County	83,748	3	27,916	-7.30
Longford-Westmeath	120,533	4	30,133	0.06
Louth	150,481	5	30,096	-0.06
Mayo	120,092	4	30,023	-0.30
Meath East	91,151	3	30,384	0.90
Meath West	90,358	3	30,119	0.02
Offaly	88,851	3	29,617	-1.65
Roscommon-Galway	84,901	3	28,300	-6.02
Sligo-Leitrim	118,818	4	29,705	-1.36
Tipperary	149,593	5	29,919	-0.65
Waterford	116,401	4	29,100	-3.37
Wexford	149,605	5	29,921	-0.64
Wicklow	146,833	5	29,367	-2.48
<b>Total</b>	<b>4,757,976</b>	<b>158</b>	<b>30,114</b>	

<b>Existing European Parliament Constituencies</b>				
<b>Constituency</b>	<b>2016 Population (preliminary)</b>	<b>No. of MEPs</b>	<b>Population per MEP</b>	<b>% Variance from national average population per MEP</b>
<b>Dublin</b>	1,345,402	3	448,467	3.68
<b>Midlands-North-West</b>	1,684,250	4	421,063	-2.65
<b>South</b>	1,728,324	4	432,081	-0.11
<b>Total</b>	<b>4,757,976</b>	<b>11</b>	<b>432,543</b>	

## **CONSTITUTION OF IRELAND**

### Article 16 - THE NATIONAL PARLIAMENT

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|-----------|---|
| 16. 2. 1° | Dáil Éireann shall be composed of members who represent constituencies determined by law.   |
| 2°        | The number of members shall from time to time be fixed by law, but the total number of members of Dáil Éireann shall not be fixed at less than one member for each thirty thousand of the population, or at more than one member for each twenty thousand of the population.          |
| 3°        | The ratio between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall, so far as it is practicable, be the same throughout the country.                                 |
| 4°        | The Oireachtas shall revise the constituencies at least once in every twelve years, with due regard to changes in distribution of the population, but any alterations in the constituencies shall not take effect during the life of Dáil Éireann sitting when such revision is made. |
| 5°        | The members shall be elected on the system of proportional representation by means of the single transferable vote.   |
| 6°        | No law shall be enacted whereby the number of members to be returned for any constituency shall be less than three.   |

**Electoral Act, 1997 (as amended) - Part II - Constituency Commission**

6. (1) It shall be the function of a Constituency Commission to make a report in relation to the constituencies for—
- (a) the election of members to the Dáil, and
  - (b) the election of members of the European Parliament.
- (2) In preparing a report under subsection (1)(a) a Constituency Commission shall, in observing the relevant provisions of the Constitution in relation to Dáil constituencies, have regard to the following:
- (a) the total number of members of the Dáil, subject to Article 16.2.2 of the Constitution, shall be not less than 153 and not more than 160;
  - (b) each constituency shall return 3, 4 or 5 members;
  - (c) the breaching of county boundaries shall be avoided as far as practicable;
  - (d) each constituency shall be composed of contiguous areas;
  - (e) there shall be regard to geographic considerations including significant physical features and the extent of and the density of population in each constituency; and
  - (f) subject to the provisions of this section, the Commission shall endeavour to maintain continuity in relation to the arrangement of constituencies.
- (3) In preparing a report under subsection (1)(b) a Commission shall have regard to the following:
- (a) the total number of members of the European Parliament to be elected in the State shall be such number\* as may be specified for the time being pursuant to the treaties governing the European Communities;
  - (b) there shall be reasonable equality of representation as between constituencies; and
  - (c) the matters specified in paragraphs (b) to (f) of subsection (2).
- (4) The reference in subsection (2)(c) to county boundaries shall be deemed not to include a reference to the boundary of a city or any boundary between any two of the counties of Dún Laoghaire-Rathdown, Fingal and South Dublin.

\* Note: The number stands at 11.