

END DISENFRANCHISEMENT OF IRISH CITIZENS OVERSEAS

SUMMARY: The Constitution should not permit voter disqualification on grounds of residence. Instead it should provide for the extension of the franchise in order to allow and encourage participation of non-resident Irish citizens in public affairs.

1 Background: The Federation of Irish Societies (FIS) was established almost 40 years ago as a national umbrella organisation of the Irish in Britain and today draws together more than 100 affiliated cultural and welfare organisations, sports, clubs and societies. The Federation champions the case for better recognition of the Irish community and for its specific interests and needs to be addressed more effectively.

2 History: Irish migrants helped create modern Britain and many settled with their families. New generations with new skills and experiences created a rich cultural mix. The community of which we are a part of has a history and remembers troubled times; it is also hi tech and cutting edge. Common identity. “Ours is a community that supports Ireland for sure. We belong alright, we are citizens of Ireland. But because of where we live, we are denied the most basic right to vote.”

3 The fact of it: If you are an Irish citizen living abroad today you cannot be entered on the Register of Electors. This means that you cannot vote in an election or referendum in Ireland. The only exceptions are Irish officials abroad who can register on the postal voters list along with their spouses.

4 In contrast, every British citizen registered to vote in the UK within the last 15 years remains eligible to vote. They may cast a vote both in General Elections and European elections in the constituency where they previously registered. Those who were too young to register when they left the UK, can still register as overseas voters providing a parent or guardian was registered in the last 15 years. Overseas voters in the UK on election day can vote in person at a polling station. Those abroad can apply to vote by post or nominate someone to cast a proxy vote on their behalf.

Entitlement of Irish citizenship

5 The Irish Constitution, *Bunreacht na hEireann*, is the fundamental legal document that defines the sovereign state of Ireland and the rights of its citizens. It establishes the principle institutions and sets out how Ireland should be governed. The ‘new’ Article 2 of the Constitution, introduced as an integral part of the Good Friday Agreement, puts inclusivity at the heart of nationhood and expresses ‘special affinity’ with the Irish abroad at its heart..

“It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.” (Article 2 Bunreacht na hEireann)

Shared and contested history

6 People of Irish origin can today be found in countries around the world. Sovereign Ireland holds its place among a global community of nations. Yet it is in the relations between the peoples of Ireland and Britain that we find the most complex interweaving of society, politics and economics. The relations between us are rooted in both shared and contested history. Almost two hundred years passed between the 1801 Act of Union that created the United Kingdom of

Great Britain and Ireland and the Good Friday Agreement of 1998 that established a mutually accepted framework for relations between sovereign states and between the peoples of these islands.

7 Even after the Irish declaration of independence, citizens of the Irish Free State were still regarded by London as British subjects, as were all other members of the Empire. According to the British authorities, Irish citizenship "*did no more than confer ... a national character as an Irish citizen within the wider British nationality*".

8 There was however a positive aspect of that legacy: Common citizenship created a template in both jurisdictions for mutual recognition of Irish and British citizens. Even before the two States became part of the European Union, Irish and British citizens had equal access to public services - education, health care and social welfare. The 'Common Travel Area' allows passport-free travel between the two countries. Irish and British citizens are entitled to the right of residence. Importantly for this submission, Irish citizens retain the right to vote and stand in elections in the United Kingdom. British citizens retain the right to votes and stand in elections in Ireland (except for the election of the President).

Citizenship and Political rights

9 The link between citizenship and political representation is one of the most fundamental principles of democracy. It is a strange anomaly that Irish citizens in Britain - members of the Irish community - can vote in Britain but not in Ireland. British citizens living in Ireland can vote in Irish elections and remain entitled to register as overseas voters to participate in British elections. The law as it stands creates a second class of Irish citizenship for the Irish in Britain.

10 The International Covenant on Civil and Political Rights (ICCPR) is a core document of international law and human rights within the United Nations. Ireland is committed to its provisions and presently sits on the UN Human Rights Council that promotes its standards worldwide.

11 ICCPR Article 25 provides (in part) that "*every citizen shall have an equal right and opportunity without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*"

12 The UN provides a supplementary 'general comment': "The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements."

13 This submission argues that the residence requirement for Irish citizens overseas to be entered on the Register of Voters goes against the grain of reaching out to the Diaspora engagement. In the era of modern communications, it is an unreasonable restriction.

Irish in Britain

14 The Irish in Britain constitute one of its largest minority groups. In March 2012, the British Prime Minister, David Cameron, and Irish Taoiseach, Enda Kenny, declared:

"The relationship between our two countries has never been stronger or more settled, as complex or as important, as it is today. Our citizens, uniquely linked by geography and history, are connected today as never before through business, politics, culture and sport, travel and technology, and of course family ties. These vital human links are nowhere more evident than in the presence of a large, confident, valued and integrated Irish community in Britain and in the increasing number of British people who now live and work in Ireland.

15 The Good Friday Agreement established an institutional framework for "East-West" relations between Ireland and Britain. The British Irish Council provides an inter-governmental link and the British Irish Parliamentary Assembly (BIPA) provides a forum for elected representatives from Ireland and Britain including all the devolved governments and assemblies. BIPA has conducted two inquiries into Irish communities in Britain, including Irish Travellers.

16 In the 2011 Census, the population of England and Wales contained more than 600,000 people born in Ireland, north and south. Responding to the ethnic group identity question, over half-a-million declared themselves Irish. In England and Wales, some 400,000 people possess an Irish passport. The number of those with a looser Irish cultural heritage is generally taken as between 2 and 3 million. Movement between our two countries continues with net migration from Ireland to Britain rising sharply in recent years.

Strong European views on Diaspora engagement

17 Since the mid 1990s, the Council of Europe (COE) has been investigating the need for governmental and intergovernmental responses to migration. There is a growing understanding that labour mobility, when well managed, is advantageous both for destination countries and countries of origin. As one COE Parliamentary Assembly resolution puts it: *“How best to manage mobility, multiple identities and diversity in a way that can maximise engagement of diasporas both in countries of origin and host countries is a challenge that governments need to tackle today.”*

18 The authors consider it essential to strike and maintain a proper balance between the process of integration in the host societies and the links with the country of origin. *“Policies that grant migrants rights and obligations arising from their status as citizens or residents in both countries should therefore be encouraged.”*

19 Council of Europe (Parliamentary Assembly Resolution 1696 (2009)) found:

“It is in the interest of member states to ensure that their diasporas continue to actively exercise the rights linked to their nationality and contribute in a variety of ways to the political, economic, social and cultural development of their countries of origin. It is convinced that globalisation and growing migration may have an impact on host countries in many positive ways by contributing to building diverse, tolerant and multicultural societies.

20 The Council of Europe believes that States *“have responsibilities towards their expatriate communities residing in another state, particularly where they form a significant national minority”*. The resolution quoted above proposes States could: *“ease the acquisition or maintenance of voting rights by offering out-of-country voting at national elections”*. It also suggests that States *“to involve diasporas in policy making, in particular concerning the issues of nationality and citizenship, as well as political, economic, social and cultural rights”*.

21 An earlier paper, “Links between Europeans living abroad and their countries of origin” (Rec 1650 (2004)) argued, that expatriates have a role to play as *“intermediaries between their countries of origin and host countries, and for their respective cultures, promoting co-operation and exchange in different fields, based on respect for other peoples and cultures”*. The document goes on to argue it is *“essential for all parties that the right balance between the process of integration in the host country and the links with the country of origin is defined and maintained”*.

22 In their approach toward the Irish in Britain, successive Irish governments have worked within such a framework and played an important role in assisting community development. The Department of Foreign Affairs provides funding for the Emigrant Support Programme and supports the network of Embassies throughout the world in maintaining institutional links with expatriate communities.

23 The Council of Europe stresses that links be created to enable citizens overseas *“to defend their rights, express their opinions and influence any decisions which might concern them”*. Governments should *“take account of their expatriates’ interest in policy making, in particular concerning questions of nationality; political rights, including voting rights; economic rights, including taxation and pension rights; social rights, including social schemes; and cultural rights; encourage and support the activities of expatriate associations and NGOs.”*

International Understanding

24 Understanding the fundamental link between citizenship and the right to vote is not restricted to Europe; the number of countries making provision for members of their diaspora communities to vote from abroad continues to rise.

25 In the International Institute for Democracy and Electoral Assistance handbook, “Voting from Abroad” (2007), Andrew Ellis and others found that voting from abroad is now possible for Diaspora communities from 115 home countries. Of these, 28 come from home countries in Africa; 16 in the Americas; 20 in Asia; 41 in Western, Central and Eastern Europe; and 10 in the Pacific.

Time limits for overseas voting

26 States that allow non-resident voting may choose to limit eligibility by the length of a citizen's absence. In his article "*Standards for External and Absentee Voting*", Jeremy Grace of the International Foundation for Electoral Systems describes a variety of responses. Canadian voters may vote by absentee ballot for up to five years following their departure so long as they intend to resume permanent residence in the future. In the United Kingdom, voters are presently removed automatically from the electoral roll 15 years after moving abroad. German voters may live abroad up to 25 years before losing eligibility, although those nationals residing in member states of the Council of Europe retain their voter eligibility indefinitely. New Zealand maintains no fixed time-away threshold but does require that citizens return to their home constituency at least once every three years in order to remain on the register.

Are voting restrictions on non-residents reasonable?

27 The European Court of Human Rights has resisted proposals to compel states to extend overseas voting rights indefinitely. In a 1999 case challenging the UK 15 year limitation to overseas voting (*Hilbe v. Liechtenstein*), the Commission argued a residence requirement may be justified on a number of grounds: That a "*non-resident citizen is less directly or continuously concerned with and has less knowledge of day-to-day problems*"; that it would be *impractical* for candidates to present their manifestos to citizens living abroad; that overseas citizens would *not be aware of the political influence of resident non-citizens on the selection of candidates and on the formulation of their electoral programmes*; and finally, that there is a *correlation between one's right to vote in Parliamentary elections and being directly affected by acts of the political bodies so elected*.

28 In 2013, these grounds are outdated. While voter education and awareness is an essential component of the democratic process, the right to vote is universal and none of the grounds cited would constitute incapacity. In today's world it is no longer possible to argue that the Irish citizens overseas are disadvantaged or unable to access sources of information, study the manifestos, form an opinion on candidates and issues, discuss day-to-day issues with their family and fellow citizens at home. In Britain, Europe and the wider reaches of the Irish diaspora, citizens are stakeholders in Ireland and entitled to participate in decision-making.

29 In his paper "Realising political equality: the European Court of Human Rights and positive obligations in a democracy", Dr Rory O'Connell of Queen's University Belfast (NILQ 61(3): 263–79) argues that in more recent judgments, the Court has suggested that there is a growing consensus on the need to provide for the right to vote of nationals resident abroad. In language that is more familiar to lawyers, the Court has also suggested that since the right to vote is a fundamental aspect of democracy there might be a narrower 'margin of appreciation' in right to vote cases.

30 Every generation of migrants experiences the pain of separation from family and community. But the experience of emigration today is transformed from that of the 1950s or even ten years ago. This generation of migrants is better educated and better informed. Communication by mobile phone, Skype and social media, keeps families in touch. Ease of travel, particularly since the advent of low cost airlines, provides a continuity of relationships and facilitates engagement of individuals in both their country of origin and country of residence. Many European migrants return for regular visits. Access to news through internet, satellite and social media removes the barrier of distance from understanding of election issues. Closer relations and interdependence between our countries in matters of social, economic, political and cultural policy means that migrants are no longer isolated from the political consequences of elections at home. Both individual citizens and the Irish body politic have little to fear and everything to gain and from deepening all forms of engagement.

Practicalities of overseas voting

31 While the practicalities of voting from overseas will have to be examined closely, particularly on grounds of cost; the evidence from other countries is that an effective system of voter registration, distribution of information and administration of the ballot can be put in place with a reasonably modest expenditure. In the cost benefit analysis, the benefits of maintaining and increasing engagement of the Irish diaspora are immense.

32 In days gone by, a citizen living overseas might have had to return to their home country or appoint a proxy to cast a vote. An Embassy or Consulate might provide the facilities of a polling station. Citizens overseas could apply for a ballot paper to be sent by post and returned to be counted.

33 While these options should remain open, on-line systems can now be put in place providing instant voting at a fraction of the cost. It would be necessary to employ suitable security for a secret ballot and scrutiny against electoral

fraud. Special measures would also be required to ensure the electoral process was equally accessible to hard-to-reach sections of the community and those less familiar with the technology.

Representation of overseas voters

34 If the Convention recommends an extension of the franchise to voters overseas, legislation must determine how to translate the will of this electorate into the country's system of representation. In the considering reform of the electoral system for Dail Eireann, a citizen overseas might wish to have their vote counted in the constituency in which they were previously a resident. We believe they should have that right. This has the merit of providing continuity for voters who may return in a short period of time and preserve their local identity and affiliation.

35 Would the resident electorate risk getting 'swamped' by millions of overseas votes? In "Perfecting Political Diaspora", Peter J Spiro dismisses fears of a 'hypothetical mass invasion of electors from abroad'. He quotes a 1999 Council of Europe report arguing "the issue has nothing to do with the number of people concerned, but is essentially a matter of fundamental, inalienable human rights". The right to vote, he argues is an essential part of the democratic process and every expatriate European should be entitled to exercise it fully in their country of origin'.

36 In reality, the challenge of overseas voting is in encouraging voter registration and turnout. Despite allowing British citizens to register overseas, most recent figures suggest they constitute only 23,000 of a total electorate of 27 million. An average parliamentary constituency would comprise 65,000 voters.

Diaspora constituency

37 Some countries, most notably France and Italy, have created specially designated or 'reserved' constituencies for the representation of overseas voters in national assemblies. In Ireland, such an arrangement would allay any residual fears of 'swamping' but more importantly would allow nomination of candidates for election to a constituency established to represent the experience and interests of the Diaspora. Historically, an analogous process has operated for the participation of graduates in elections to a reserved panel in Seanad Eireann.

38 While the Constituency Commission might be involved in recommending the most appropriate mechanism for achieving this end, the timetable for its introduction should not be prolonged. It would not need to await the completion of boundary changes proposed in 2012. To allow for effective representation of the global diaspora, we think it might be useful to consider a number of single seat constituencies encompassing the most populous regions of historic and present migration. Such an arrangement would encourage politicians and political parties to engage more directly with the citizens of the Irish Diaspora and the issues that are specific to them. Greater involvement of overseas citizens can only enhance the democratic process .

Conclusion

39 We believe the Constitutional Convention has the opportunity to redress a serious shortcoming in the provision for Irish citizens resident overseas to participate in the democratic process. This submission of the Federation of Irish Societies sets out the case for change and puts forwards an alternative approach.

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**DIASPORA
VOICE** | Listening
to the Irish
in Britain
CONSTITUTIONAL CONVENTION

DIASPORA VOICE makes the case for a strong Irish in Britain response to the call for contributions to the Constitutional Convention. The Federation of Irish Societies is raising awareness of the Convention among the wider community and encouraging active participation. Diaspora Voice provides an opportunity to press the case for better representation in Irish public life.