

## Article XII – XIV The President

### Article 12

*12.1 There shall be a President of Ireland (Uachtarán na hÉireann), hereinafter called the President, who shall take precedence over all other persons in the State and who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law.*

*12.2.1° The President shall be elected by direct vote of the people.*

*12.2.2° Every citizen who has the right to vote at an election for members of Dáil Éireann shall have the right to vote at an election for President.*

*12.2.3° The voting shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.*

*12.3.1° The President shall hold office for seven years from the date upon which he enters upon his office, unless before the expiration of that period he dies, or resigns, or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five judges.*

*12.3.2° A person who holds, or who has held, office as President, shall be eligible for re-election to that office, but only once.*

*12.3.3° An election for the office of President shall be held not later than, and not earlier than the sixtieth day before, the date of the expiration of the term of office of every President, but in the event of the removal from office of the President or of his death, resignation, or permanent incapacity established as aforesaid (whether occurring before or after he enters upon his office), an election for the office of President shall be held within sixty days after such event*

# The President

## Introduction

Broadly speaking, democratic governments are of two kinds – presidential and cabinet. In a presidential government the President is both Head of State and Head of Government, that is, chief executive of the State. In a cabinet government the President, or a constitutional monarch, is Head of State and a Prime Minister, at the head of a group of ministers called the cabinet, is Head of Government.

In the Constitution, Ireland has chosen for itself the cabinet kind of government. The cabinet, led by the Taoiseach, exercises the executive power of the State, in accordance with the Constitution, and is accountable to the people through the people's representatives in the Dáil. The President has no executive powers apart from some discretionary ones that make the President the guardian of the Constitution. The President carries out the functions the Government wish him or her to perform on behalf of the State. The Constitution obliges the Taoiseach to keep the President generally informed on domestic and international policy.

The President signs and promulgates legislation, accredits Irish diplomatic representatives abroad and receives foreign ambassadors to Ireland, represents Ireland on State visits abroad, and acts in manifold other ways to strengthen the cultural and social ties binding the people of Ireland to one another and the people of Ireland to other peoples throughout the world.

On the ten occasions for which there has been an election to the presidency, it has not been necessary to proceed to a ballot on five occasions because only one candidate was nominated.

The President, freed from executive functions – and the divisiveness which political activity would necessarily entail – serves as a personification of the State. From the President the people seek a reflection of their highest values and aspirations. In return, the President takes precedence over all other persons in the State and is honoured in a style concordant with the republican character of the State and the social genius of its citizens.

The Review Group noted two features of the office of President which are important in defining its nature. The first is that, in being elected by direct vote of the people, in taking precedence over other persons and, in effect, discharging the functions of a Head of State, the President, in performing official duties, does not and cannot represent any particular group or interest but must represent all the people. The second is that, in providing that the President shall not be answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of the office, the Constitution underlines the non-political, non-partisan nature of the office.

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*12.4.1° Every citizen who has reached his thirty-fifth year of age is eligible for election to the office of President.*

*12.4.2° Every candidate for election, not a former or retiring President, must be nominated either by:*

*i. not less than twenty persons, each of whom is at the time a member of one of the Houses of the Oireachtas, or*

*ii. by the Councils of not less than four administrative Counties (including County Boroughs) as defined by law.*

*12.4.3° No person and no such Council shall be entitled to subscribe to the nomination of more than one candidate in respect of the same election.*

*12.4.4° Former or retiring Presidents may become candidates on their own nomination.*

*12.4.5° Where only one candidate is nominated for the office of President it shall not be necessary to proceed to a ballot for his election.*

*12.5 Subject to the provisions of this Article, elections for the office of President shall be regulated by law.*

*12.6.1° The President shall not be a member of either House of the Oireachtas.*

*12.6.2° If a member of either House of the Oireachtas be elected President, he shall be deemed to have vacated his seat in that House.*

*12.6.3° The President shall not hold any other office or position of emolument.*

*12.7 The first President shall enter upon his office as soon as may be after his election, and every subsequent President shall enter upon his office on the day following the expiration of the term of office of his predecessor or as soon as may be thereafter or, in the event of his predecessor's removal from office, death, resignation, or permanent incapacity established as provided by section 3 hereof,*

## The functions of the President

The President appoints the Taoiseach on the nomination of Dáil Éireann and the other members of the Government on the nomination of the Taoiseach with the previous approval of Dáil Éireann. The President's other functions are of two kinds – those the President performs at the instance or with the approval of the Government and those rarer ones which the President performs at his or her own discretion.

Article 13.9 makes it clear that the powers and functions conferred on the President by the Constitution are to be exercised and performed, in nearly all instances, on the advice of the Government. Article 13.10 allows legislation that confers additional powers and functions on the President – it is under this Article that the President has been given functions in foreign affairs – but Article 13.11 provides that any such additional powers and functions can be exercised and performed only on the advice of the Government.

Apart from the appointment of the Taoiseach and the other members of the Government, the President performs the following functions in relation to the appointment of constitutional officers:

- 1 the President appoints the Attorney General on the nomination of the Taoiseach (Article 30.2)
- 2 the President in his or her absolute discretion may appoint up to seven people to serve on the Council of State (Article 31.3)
- 3 the President appoints the Comptroller and Auditor General on the nomination of Dáil Éireann (Article 33.2)
- 4 the President appoints the judges of the Supreme Court, the High Court and all other courts established pursuant to Article 34 (Article 35.1).

(The President makes various other appointments in accordance with statutory provisions.)

The President performs the following functions in relation to the Oireachtas:

- 1 The President on the nomination of Dáil Éireann appoints the Taoiseach (13.1.1°)
- 2 The President on the nomination of the Taoiseach with the previous approval of Dáil Éireann appoints the other members of Government (Article 13.1.2°)
- 3 the President on the advice of the Taoiseach accepts the resignation or terminates the appointment of any member of the Government (Article 13.1.3°)
- 4 the President summons and dissolves Dáil Éireann on the advice of the Taoiseach (Article 13.2.1°) but may in his or her absolute discretion refuse a dissolution if the Taoiseach ceases to retain a majority in Dáil Éireann (Article 13.2.2°)

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*as soon as may be after the election.*

**12.8** *The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas, of Judges of the Supreme Court and of the High Court, and other public personages, the following declaration:-*

*In the presence of Almighty God 'I, do solemnly and sincerely promise and declare that I will maintain the Constitution of Ireland and uphold its laws, that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me.'*

**12.9** *The President shall not leave the State during his term of office save with the consent of the Government.*

**12.10.1°** *The President may be impeached for stated misbehaviour.*

**12.10.2°** *The charge shall be preferred by either of the Houses of the Oireachtas, subject to and in accordance with the provisions of this section.*

**12.10.3°** *A proposal to either House of the Oireachtas to prefer a charge against the President under this section shall not be entertained unless upon a notice of motion in writing signed by not less than thirty members of that House.*

**12.10.4°** *No such proposal shall be adopted by either of the Houses of the Oireachtas save upon a resolution of that House supported by not less than two-thirds of the total membership thereof.*

**12.10.5°** *When a charge has been preferred by either House of the Oireachtas, the other House shall investigate the charge, or cause the charge to be investigated.*

- 5 the President may at any time, after consultation with the Council of State, convene a meeting of either or both of the Houses of the Oireachtas (Article 13.2.3°)
- 6 the President may, after consultation with the Council of State, communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance (Article 13.7.1°) and address a message to the nation at any time on any such matter (Article 13.7.2°) provided the Government approves (Article 13.7.3°).

The President performs the following functions in relation to legislation:

- 1 every Bill passed or deemed to have been passed by both Houses of the Oireachtas requires the signature of the President for its enactment into law (Article 13.3.1°), but the President, after consultation with the Council of State, may refer any Bill (other than a Money Bill, a Bill to amend the Constitution, or, under Article 24, a Bill to preserve public peace and security or deal with a public emergency) to the Supreme Court for a decision as to whether the Bill is, or parts of it are, repugnant to the Constitution, and sign it into law only if it is declared not to be so repugnant (Article 26); the President, after consultation with the Council of State, may accede to a request from the Seanad to appoint a Committee of Privileges to determine whether a particular Bill is or is not a Money Bill (Article 22.2.3°); moreover, where a majority of the members of the Seanad and not less than a third of the members of the Dáil petition the President to decline to sign a Bill because it contains a proposal of such national importance that the will of the people thereon ought to be ascertained, the President, also after consultation with the Council of State, may decline to sign the Bill until it has been approved either by the people in a referendum or by a resolution of the Dáil following a dissolution and re-assembly (Article 27)
- 2 the President promulgates every law made by the Oireachtas (Article 13.3.2°). Promulgation – the public proclamation of a law – is an essential characteristic of law and is formally achieved by publication of a notice in *Iris Oifigiúil*, the official gazette.

The President has the following functions in relation to defence:

- 1 the supreme command of the Defence Forces is vested in the President (Article 13.4), but its exercise is regulated by law (Article 13.5.1°)
- 2 all commissioned officers of the Defence Forces hold their commissions from the President (Article 13.5.2°).

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*12.10.6° The President shall have the right to appear and to be represented at the investigation of the charge.*

*12.10.7° If, as a result of the investigation, a resolution be passed supported by not less than two-thirds of the total membership of the House of the Oireachtas by which the charge was investigated, or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, such resolution shall operate to remove the President from his office.*

*12.11.1° The President shall have an official residence in or near the City of Dublin.*

*12.11.2° The President shall receive such emoluments and allowances as may be determined by law.*

*12.11.3° The emoluments and allowances of the President shall not be diminished during his term of office.*

### **Article 13 – The President**

*13.1.1° The President shall, on the nomination of Dáil Éireann, appoint the Taoiseach, that is, the head of the Government or Prime Minister.*

*13.1.2° The President shall, on the nomination of the Taoiseach with the previous approval of Dáil Éireann, appoint the other members of the Government.*

*13.1.3° The President shall, on the advice of the Taoiseach, accept the resignation or terminate the appointment of any member of the Government.*

The President has the following function in relation to criminal punishment:

the right to pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are vested in the President (though not necessarily exclusively so) (Article 13.6).

The Review Group discussed two of the President's discretionary powers: that relating to the dissolution of the Dáil is discussed below and that relating to referral of Bills to the Supreme Court is discussed separately in chapter 4 – section entitled 'Constitutionality of Bills and Laws'.

## **Issues**

### **1 whether the office of President should exist**

The Committee on the Constitution (1967) was divided on the question. Those who would abolish it argued that the powers of the President were those of a figure-head, that the President's formal duties as Head of State could be performed by the Taoiseach, and that abolition would create savings. Those who wished to retain the office argued that the Taoiseach could not realistically perform the President's function of guardian of the Constitution, in particular that of assisting in ensuring that legislation repugnant to the Constitution does not become law, that the duties of the two offices would impose a severe burden on any single individual, and that the performance of the formal duties of Head of State necessarily involved costs, so that abolition would result in little or no savings.

The Review Group considers there is no public demand or good reason for abolition of the office. A State requires a Head of State; the President's function as guardian of the Constitution requires that the office be separate from the executive.

The Review Group notes that the Constitution does not describe the President as Head of State. The need for this reticence disappeared with the coming into force of the Republic of Ireland Act 1948 and the removal from the British monarch of all functions in relation to external affairs and their assignment to the President. The Review Group considers that Article 12.1, therefore, should be amended to describe the President as Head of State.

### *Recommendation*

Amend Article 12.1 to describe the President as Head of State.

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*13.2.1° Dáil Éireann shall be summoned and dissolved by the President on the advice of the Taoiseach.*

*13.2.2° The President may in his absolute discretion refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann.*

*13.2.3° The President may at any time, after consultation with the Council of State, convene a meeting of either or both of the Houses of the Oireachtas.*

*13.3.1° Every Bill passed or deemed to have been passed by both Houses of the Oireachtas shall require the signature of the President for its enactment into law.*

*13.3.2° The President shall promulgate every law made by the Oireachtas.*

*13.4 The supreme command of the Defence Forces is hereby vested in the President.*

*13.5.1° The exercise of the supreme command of the Defence Forces shall be regulated by law.*

*13.5.2° All commissioned officers of the Defence Forces shall hold their commissions from the President.*

*13.6 The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may, except in capital cases, also be conferred by law on other authorities.*

### **2 whether there should be direct elections for the Presidency**

Ireland is rare in electing its Head of State directly. Direct election gives the President two unique features: he or she is the only constitutional officer directly elected to an office and no other officer is elected by a majority of the national electorate. The mandate the President receives from the electorate is to carry out the constitutional duties of the presidency. These cannot be altered or added to via the election campaign.

The invocation by a President of a presumed mandate for a particular policy, for example one concerning the interests of a particular grouping in the community (which could not under the Constitution be questioned in Parliament or in the courts), could create tensions between the President, Parliament and Government. Indirect election of the President, by a majority in Parliament or a special electoral college, would obviate this danger. Thus in Australia, the proposed office of President is likely to be filled by a qualified majority of Parliament.

The 1967 Committee was divided on the issue.

The Review Group notes that there is no public demand for change and that it may be inferred that the people wish to retain their right to vote directly for a President.

The Review Group notes, too, that, if the President continues to be directly elected, the text of Article 12.2.3° would need to be amended. It describes the method of election as ‘proportional representation by means of the single transferable vote’. The term ‘proportional representation’ denotes the filling of a number of seats by different parties in proportion to the votes they receive. It cannot refer to the filling of a single seat. See the Review Group’s discussion of the electoral system in chapter 4 – section entitled ‘Elections to Dáil Éireann’.

#### *Recommendation*

Delete the words ‘and on the system of proportional representation’ from Article 12.2.3°.

### **3 whether the procedure for nominating a presidential candidate is too restrictive**

#### *Recommendation*

The Review Group considers that the constitutional requirements for nominating a presidential candidate are too restrictive and in need of democratisation. In some countries a popular element is secured by providing that a certain number of registered voters may conjoin to nominate a candidate. The Review Group feels that validation of such nominators would be difficult. However, some alternative mechanism, based on a specified number of voters, ought to be explored. Another method that might loosen the nomination procedure would be to reduce the number of members of either House required for nomination.

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*13.7.1° The President may, after consultation with the Council of State, communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance.*

*13.7.2° The President may, after consultation with the Council of State, address a message to the Nation at any time on any such matter.*

*13.7.3° Every such message or address must, however, have received the approval of the Government.*

*13.8.1° The President shall not be answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions.*

*13.8.2° The behaviour of the President may, however, be brought under review in either of the Houses of the Oireachtas for the purposes of section 10 of Article 12 of this Constitution, or by any court, tribunal or body appointed or designated by either of the Houses of the Oireachtas for the investigation of a charge under section 10 of the said Article.*

*13.9 The powers and functions conferred on the President by this Constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this Constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.*

### **4 whether the powers of the President should be expanded**

A total re-structuring of our governmental structure so that it becomes a presidential rather than a cabinet kind would result in a major expansion of the President's powers.

The Review Group notes that there is no demand for such a radical change.

It is sometimes suggested that the discretionary powers of the President should be expanded to embrace certain executive functions such as the selection of judges (at present the President has no choice but to appoint those candidates proposed by the Government) or the appointment of the chairman and members of the Constituency Commission.

#### *Conclusion*

The Review Group considers that to extend the powers of the President to allow him or her to act in the area of the executive would have two serious effects:

- i) it would involve the President in party politics. Thus if the President had the power to select judges, the appointment of judges could become a contentious political issue in presidential elections
- ii) it would reduce accountability. Whereas the Government are accountable to the Houses of the Oireachtas and the courts, the President is not so answerable.

The Review Group considers that the executive functions of government should be carried out by or on the authority of the Government, the democratically elected body whose actions are subject to continuous, public review.

In relation to the appointment of members of the Constituency Commission, the Review Group notes that this is in course of being determined by law and that therefore there is no need to recommend change. Indeed it feels that ordinary legislation should be capable of providing such transparency as is required in any area in which the executive operates.

### **5 the minimum age of eligibility for election to the office of President**

Countries that set an age limit for their President differ on the age specified. Some set thirty-five years, as we do, others set forty. Italy requires its President to be over fifty.

It was observed that no upper age limit is prescribed. On the question of the minimum age limit, opinion in the Review Group is divided. Some members see no sufficient reason to differentiate in this respect between eligibility for Dáil membership (and consequently for ministerial office) and for the presidency, and were prepared to rely on the judgment of the electorate to make a proper choice between candidates. Other members consider that the presidency calls for special qualities which are more likely to accrue and mature over a longer span of

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*13.10 Subject to this Constitution, additional powers and functions may be conferred on the President by law.*

*13.11 No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government.*

### **Article 14 – The Presidential Commission**

*14.1 In the event of the absence of the President, or his temporary incapacity, or his permanent incapacity established as provided by section 3 of Article 12 hereof, or in the event of his death, resignation, removal from office, or failure to exercise and perform the powers and functions of his office or any of them, or at any time at which the office of President may be vacant, the powers and functions conferred on the President by or under this Constitution shall be exercised and performed by a Commission constituted as provided in section 2 of this Article.*

*14.2.1° The Commission shall consist of the following persons, namely, the Chief Justice, the Chairman of Dáil Éireann (An Ceann Comhairle), and the Chairman of Seanad Éireann.*

*14.2.2° The President of the High Court shall act as a member of the Commission in the place of the Chief Justice on any occasion on which the office of Chief Justice is vacant or on which the Chief Justice is unable to act.*

*14.2.3° The Deputy Chairman of Dáil Éireann shall act as a member of the Commission in the place of the Chairman of Dáil Éireann on any occasion on which the office of Chairman of Dáil Éireann is vacant or on which the said Chairman is unable to act.*

years than the twenty-one, possibly falling to eighteen, which makes candidates eligible for membership of the Dáil.

### *Conclusion*

The majority of members favours no change, or only a minor reduction, in the age limit.

There is an apparent discrepancy between the English and Irish versions. The Irish version has ‘ag a bhfuil cúig bliana tríochad slán’ (that is, has completed thirty-five years), whereas the English version is ‘who has reached his thirty-fifth year of age’, which could mean has entered rather than completed that year.

### *Recommendation*

This discrepancy should be removed by substituting the word ‘completed’ for ‘reached’ in the English version.

## **6 whether the President should have discretion to refuse a dissolution of Dáil Éireann**

Article 13.2.2° states that the President may in his absolute discretion refuse to dissolve Dáil Éireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dáil Éireann. Ambiguity arises over how a President may determine whether or not the Taoiseach has lost the support of the Dáil. Is a Dáil vote necessary? Or is a public announcement of withdrawal of support by a crucial number of deputies sufficient? If a Taoiseach sought to pre-empt the President’s exercise of discretion by advice to dissolve the Dáil in advance of a Dáil vote, might not the President be able somehow to satisfy himself or herself that the Taoiseach had lost the support of the Dáil and therefore refuse a dissolution? No President has exercised this important power.

To remove the constitutional ambiguity there are the following possibilities:

- i) delete the latter half of Article 13.2.2° so that it reads, ‘The President may in the President’s absolute discretion refuse to dissolve Dáil Éireann.’

This would remove the Taoiseach’s power to dissolve the Dáil at will when he or she has a majority and seeks an opportunity to enhance the Government’s Dáil support. It would politicise the presidency by making the President a factor in the strategy of political parties. It might be argued that the President as Head of State should not be put in a politically divisive position, especially if the President’s actions are to be exempt from debate in the Dáil.

- ii) delete Article 13.2.2° in its entirety and in effect allow the Taoiseach to have power under Article 13.2.1° to dissolve Dáil Éireann whenever he or she so wishes.

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*14.2.4° The Deputy Chairman of Seanad Éireann shall act as a member of the Commission in the place of the Chairman of Seanad Éireann on any occasion on which the office of Chairman of Seanad Éireann is vacant or on which the said Chairman is unable to act.*

*14.3 The Commission may act by any two of their number and may act notwithstanding a vacancy in their membership.*

*14.4 The Council of State may by a majority of its members make such provision as to them may seem meet for the exercise and performance of the powers and functions conferred on the President by or under this Constitution in any contingency which is not provided for by the foregoing provisions of this Article.*

*14.5.1° The provisions of this Constitution which relate to the exercise and performance by the President of the powers and functions conferred on him by or under this Constitution shall subject to the subsequent provisions of this section apply to the exercise and performance of the said powers and functions under this Article.*

*14.5.2° In the event of the failure of the President to exercise or perform any power or function which the President is by or under this Constitution required to exercise or perform within a specified time, the said power or function shall be exercised or performed under this Article, as soon as may be after the expiration of the time so specified.*

It is arguably undemocratic for a Taoiseach to be able to call an election whenever he or she wishes. It might be argued that the checks the Dáil has on the Government are limited and would be strengthened by denying to the Taoiseach the initiative to dissolve the Dáil.

On the other hand, the power of dissolution is an invaluable aid to a Taoiseach in maintaining party and ministerial discipline and so sustaining government, the executive power of the State (as defined by the Constitution), while leaving the final decision, democratically, with the electorate. It can exercise a stabilising influence conducive to economic and social well-being.

- iii) let the Constitution define the circumstances in which the President might exercise absolute discretion, namely,
  - a) following the loss of a vote of confidence
  - b) following the rejection of a budget.

This would leave the initiative with the Taoiseach to seek a dissolution before either condition obtains. It would also politicise the President if he or she does exercise absolute discretion and refuses a dissolution.

### *Conclusion*

The Review Group would prefer that the involvement of the President in party political issues should, if possible, be avoided and, for that reason, has given consideration to other methods of dealing with the dissolution problem, principally the prescription of a fixed term for Dáil Éireann and provision for a constructive vote of no confidence. These are discussed in the context of Article 28; to give them effect, amendments would be required in Article 13.2.

### **7 whether the President should have a role in the formation of a new Government**

Articles 13.1.1° and 13.1.2° give the President no discretion in the selection and appointment of a new Taoiseach and Government. This is quite unusual in parliamentary government systems, and underscores a desire to maintain a position for the President impeccably remote from party politics. However, two problems may present themselves:

- i) where a new Dáil assembles and no party or group of parties has an overall majority

Recent Irish experience suggests that the parties in such circumstances feel obliged by the electorate to construct a stable Government based on an agreed programme. It is not clear that the intervention of the President in these circumstances would secure such a Government more quickly.

The Review Group considers that the President should not be given any role in this circumstance.

- ii) where a Government resigns voluntarily or on foot of a vote of no confidence, or the threat of one



A problem can arise where the Dáil cannot agree quickly on a nominee for Taoiseach and a defeated Government may be faced with a protracted term in office on an acting basis. In many other parliamentary government systems this problem is addressed in one of two ways:

- i) the Head of State is given a role in the process of identifying a new Prime Minister. The Head of State's intervention provides an alternative in what otherwise might be a chaotic, protracted process, but does not in all cases avoid the problem
- ii) a constructive vote of no confidence is used to force the legislature to nominate a new Prime Minister when voting no confidence in the old one.

#### *Conclusion*

On balance, the Review Group feels once more that the proposal to introduce a constructive vote of no confidence is preferable to increasing the powers of the President in the government formation process.

#### **8 declaration**

The Review Group notes the UN Human Rights Committee's concern, in their report on Ireland of August 1993, about the religious aspects of the President's declaration under Article 12.8.

#### *Recommendation*

Provision should be made for the President to make either a declaration or an affirmation.

The question has been raised whether the presidential declaration should be amended to incorporate the values a President should uphold in discharging official functions, for example, human rights. The promise to maintain the Constitution is, however, comprehensive in scope.

#### **9 period of office**

Is there a case for a shorter period? Since the President is elected by the people, the people should be able to make the President accountable to them reasonably frequently through elections. As guardian of the Constitution, in respect of any doubtful use of their legislative powers by either the Houses of the Oireachtas or the Government, the President should have a longer term than that of the Dáil or Seanad. If the Houses of the Oireachtas are given a fixed term (as discussed in the section on Dáil Éireann) of four years or less, the President's term might be set at five years. The issue has significance, too, for the type of people that might be attracted to the office. Thus a young President, who does not wish to have a second term of office because of a wish to pursue other interests or career options after having held the presidency, might be inhibited in going forward by the length of the period

and the pressure that might arise to serve a second term on the completion of the first.

On the other hand, there are now direct elections for the European Parliament, Dáil Éireann, local authorities as well as for the presidency, and the suggestion of a yet more frequent presidential election could, if implemented, lead to even greater electoral fatigue. A shorter term than seven years could tend to associate the presidency more with party political change. Moreover, the relative infrequency of a seven-year term contributes to the sense of the presidency's being removed from the rough and tumble of party politics. A seven-year term could also be seen to be more in keeping with the approbation uniquely signalled by a direct vote of the people. There are also those who would argue that for many presidential candidates the prospect of a seven-year term would be more attractive than a five-year one.

#### *Recommendation*

The seven-year term should be retained.

### **10 messages or addresses to the nation**

Article 13.7 formally accords to the President, after consultation with the Council of State, the right to 'communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance' and 'to address a message to the nation at any time on any such matter'. It is provided, however, that 'every such message or address must have received the approval of the Government' – an express reminder of the exclusive responsibility of the Government for policy statements and decisions. The Constitution is silent about other forms of communication by the President and this, it is understood, has given rise to some legal debate.

#### *Conclusion*

The Review Group sees no need to enter such a debate, being in no doubt that what the President does must at all times be consistent with his or her role under the Constitution and involve no intrusion on the executive functions which the Constitution reserves to the Government. From the beginning the President, in a simple phrase, has been described as being 'above politics', in the sense of abstaining from any public statement or intervention which could be judged to be politically partisan or inconsistent with the fundamental principle that there can be only one executive authority. This has been well recognised and the Review Group does not recommend the insertion of any more explicit wording in the Constitution. Matters of this kind are best left to the wisdom and sense of propriety of those entrusted with high public office.

### **11 the Presidential Commission**

The Commission acts when the President is absent, temporarily incapacitated, or permanently incapacitated, or dies, resigns, is removed from office, or fails to exercise and perform the functions of the office. The Commission is a common

Article XII – XIV  
The President

constitutional mechanism and its composition is broadly similar to such institutions elsewhere.

*Recommendation*

No change is proposed.