

Government formation in Ireland



The Constitution sets some clear parameters for forming a government after a general election.

1. A Taoiseach and other ministers must be appointed following the reassembly of the Dáil, even if the outgoing government has a majority in the new Dáil.
2. The Taoiseach and other ministers in office at the dissolution of the Dáil continue to hold office until their successors are appointed. This is so even if the individuals concerned did not seek re-election to the Dáil or were unsuccessful in doing so.
3. A person can be appointed by the President as Taoiseach only if that person has been nominated for such appointment by a resolution passed by the Dáil. It is not for the President to anticipate who might be able to command the support of a Dáil majority and to appoint such a person; the President must wait until a resolution is passed. Similarly, no new ministers can be appointed until after the Dáil passes a resolution approving this.
4. If the proposal that the Taoiseach be nominated for reappointment is defeated and he or she does not advise the President to dissolve the Dáil, past practice has been that he or she should resign (which implies the resignation of all the other members of the Government); in that event, “the Taoiseach and the other members of the Government shall continue to carry on their duties until their successors shall have been appointed.”
5. If the Taoiseach has ceased to retain the support of a majority in Dáil Éireann, the President may in his or her absolute discretion refuse the Taoiseach’s advice to dissolve the Dáil. In any other situation, the President must act in accordance with that advice. The main considerations for the President to take into account, where he or she has an absolute discretion in this matter, seem to be whether an alternative government can be formed which would command the support of a majority in the Dáil and, even if this is the case, the people ought to have the opportunity of expressing their wishes again at a fresh general election. The second factor would normally seem to be a less significant one in cases where the advice to dissolve the Dáil comes within only a few months of the previous general election.

Constitutional Studies Group



In the past when the Dáil has been unable on reassembling after a general election to pass a resolution nominating a person for appointment as Taoiseach this deadlock has been broken by negotiations between the political parties, leading to a coalition government that has the support of a majority in the Dáil. This occurred in 1989 and 1992-93; in the latter case, it took just under a month to form a new government. Something similar happened in 1994-95, without a general election having taken place.

In all three cases, political parties resolved the deadlock through direct negotiations, without needing any kind of formal broker or go-between. In 1987, the Taoiseach Dr Garret FitzGerald and the President Dr Patrick Hillery discussed in advance how they would proceed if the Dáil failed to nominate any person for appointment as Taoiseach. They agreed that if this happened, Dr FitzGerald would resign and announce that he would discuss with the President how to proceed. The two agreed that Dr FitzGerald would then attempt to “knock heads together” to break the deadlock (most likely by seeking the passage of a resolution that Charles J Haughey be nominated for appointment as Taoiseach). If Dr FitzGerald failed in these attempts, the President was to give him a public instruction to try again, “acting on the authority of the President.” As things turned out, Mr Haughey was nominated at the first attempt, even though only on the casting vote of the Ceann Comhairle.



Since, on three separate occasions since then, the political parties have been able to deal with the inability of the Dáil to nominate a new Taoiseach by negotiations between themselves it seems unlikely that even indirect involvement of the President of the kind contemplated in 1987 will be invoked. If some kind of honest broker or go-between is required it is also open to question whether it is appropriate to involve the President. The President’s constitutional powers in relation to the formation of a government are either purely symbolic (in making the formal appointments required) or purely negative (in refusing to dissolve the Dáil, in those cases where he or she is entitled to do so). It is also unclear whether the outgoing Taoiseach is a suitable intermediary for this purpose, even where – as in the case of Dr FitzGerald in 1987 – he or she is out of contention for

reappointment. All things considered, it seems more likely that political parties and other political groupings which encountered difficulties in concluding an agreement through bilateral or multilateral discussions would resort, if at all, to a mediator of their own choosing, who would be unlikely to be either the President or the outgoing Taoiseach.

UCD’s Constitutional Studies Group builds on a long and distinguished tradition of constitutional scholarship at UCD. The Group has two core objectives. Firstly, it to promote research in this area by providing an active and co-ordinated research community which engages in both traditional individual scholarship and collaborative and inter-disciplinary research and secondly, to encourage understanding and discussion of constitutional law both in Ireland and internationally through a wide range of activities including publications, conferences, public lectures, research seminars, policy submissions and research projects. If you have any questions on this, please contact: John O’Dowd, UCD Sutherland School of Law at john.odowd@ucd.ie.