



THE
Referendum

on Northern Ireland

your time to decide

Arguments **FOR**
AND AGAINST

Constitutional Amendments to Articles 2, 3 and 29

Introduction

ON THE 10TH APRIL, 1998 agreement was reached in Belfast by all the participants in the Multi-Party negotiations on a range of matters covering relationships within Northern Ireland, between North and South and between the two islands. In the context of this Multi-Party Agreement, the Irish Government undertook to propose and support changes in the Constitution of Ireland.

The proposed changes are an essential element in the Multi-Party Agreement and a pre-condition for the entry into force of the British-Irish Agreement.

On 22nd May you will be asked to vote YES or NO to these proposals.

You will have already received a booklet explaining the details of the proposals. (For your convenience, these are summarised below under 'SUMMARY OF THE PROPOSED CHANGES':)

This leaflet also contains the statements for and against acceptance of the proposed changes to the Constitution.

The statements in this leaflet have been prepared and published by the Referendum Commission. The Commission is an independent statutory body established under the Referendum Act, 1998. The Commission advertised in the national and local press seeking submissions from the public on the merits of the proposed amendments to the Constitution. Having regard to the submissions received, these statements represent the arguments for and against acceptance of the proposed changes to the Constitution.

There is no significance in the order in which the individual arguments are presented. The Commission cannot express a view on the comparative merits or demerits of the arguments; that will be a matter for you to consider when voting on Friday 22nd May.

The Case For

GENERAL

The conflict in Northern Ireland has resulted in the deaths of thousands of people and has blighted the lives of many on these islands. The compelling argument for voting YES is that these agreements, the products of inclusive negotiations, represent a real opportunity for peace and a just society in Northern Ireland and for peaceful relations between both parts of the island. This opportunity should be grasped. This is the dominant consideration in every issue arising in the referendum.

All of the proposed amendments are conditional upon the legislative measures specified in the British-Irish Agreement being put in place. Thus if, for any reason, such as a NO vote in Northern Ireland, these measures are not implemented, the proposed amendments to the Irish Constitution will not take effect. This ensures that no changes to the Irish Constitution will take effect unless preceded by corresponding changes in Britain and Northern Ireland.

The Multi-Party Agreement provides for a fair accommodation between Nationalists and Unionists and provides a balanced constitutional settlement, involving constitutional change in Britain, Northern Ireland and Ireland. It also provides for new institutional arrangements for internal government in Northern Ireland operating on the basis of partnership and agreement between the two main communities.

Major advances in equal treatment in the areas of politics, economics, in social and language policies and in the protection of human rights are also provided for.

ARTICLE 2 AND ARTICLE 3

Sovereignty will be defined not in terms of territory but in terms of people; this reflects the principle that it is the people who are sovereign.

The proposed wording of Articles 2 and 3 embraces all peoples on the island, taking into account diverse traditions, identities and political affiliations.

The proposed changes involve putting into the Constitution the principle which Ireland has already, quite rightly, accepted: that unity can only be achieved with the consent of the people of Northern Ireland. This same principle of consent is accepted by the British Government who have agreed that, in the event of a majority of people in Northern Ireland favouring unity, it will take the necessary steps to give effect to that decision. So, the British Government and people will not stand in the way of a united Ireland if that is agreed by the Irish people. This improves the prospects for future unity.

ARTICLE 29

The proposed amendment to Article 29 which allows the State to be bound by the British-Irish Agreement will give a legal basis to the implementation of appropriate structures for cross-border co-operation. This co-operation will be carried out by cross-border bodies, which will have certain executive powers, but they will be implementing policies agreed by the Oireachtas and the Northern Ireland Assembly. Any extension of their powers will be subject to the endorsement of the Oireachtas.

The North/South bodies will provide an opportunity for the two administrations to work together for the benefit of all the people of the island. They will have clearly defined areas of responsibility and these can be extended by agreement.

The Case Against

GENERAL

You should vote NO because the proposed changes enshrine partition in the Irish Constitution and surrender our claim to Northern Ireland. These radical changes are not justified by the terms of the Multi-Party Agreement because that agreement does not sufficiently enhance the rights of nationalist citizens in Northern Ireland.

The referendum is not a vote on the desirability of peace and a NO vote is not a vote for violence or against peace.

Because of the form of the proposed amendments it is the Government, by a declaration, and not the people, by way of a further referendum, who have the final say in whether or not the amendments take effect. This is inconsistent with the people's role in amending the constitution. The absence of an absolute time limit for implementation makes this even more objectionable.

Even if the changes come into effect, the structures and arrangements set out in the Multi-Party Agreement may subsequently break down. There is no provision for undoing the constitutional changes other than by a further referendum and we would have made major concessions with no practical benefit to anyone.

The provision in the Multi-Party Agreement that it would be wrong to make a change in the status of Northern Ireland, save by a majority of its people, may be construed as requiring a majority of those entitled to vote, not just of those actually voting - an impossible result to achieve in Northern Ireland.

ARTICLE 2 AND ARTICLE 3

There is no evidence that Articles 2 and 3 contributed in any way to the violence in Northern Ireland. If any changes in these Articles were considered necessary they should have been confined to a declaration that the existing claim would only be pursued by peaceful means.

The changes will leave the national territory undefined. It is not possible to have a nation without a defined territory. The sense of Irish identity may be lost, particularly by people living in Northern Ireland. The change may also affect future claims in relation to oil, fisheries or other natural resources.

There is no obligation on either Government to work towards a united Ireland. The constitutional obligation on the Irish Government to pursue unification will be removed.

The new Article 2 will give a constitutional right of citizenship to anyone born in Ireland. This will make it very difficult to change the laws on citizenship and it may prevent the enactment of necessary laws to regulate immigration.

ARTICLE 29

The North/South bodies provided for in the Multi-Party Agreement and made permissible by the proposed changes to Article 29 will not be elected by or be accountable to the people. Their areas of responsibility are vaguely defined and, in the event that any dispute arises about their operation, it is unclear who will be responsible for resolving such disputes.

The execution and operation of these North/South bodies will inevitably involve the transfer of sovereignty from the Irish Government.

The acceptance by the government of the British-Irish Agreement under this Article would effectively confer on Unionists a veto on a united Ireland, so long as they are a majority in Northern Ireland.

Summary of the Proposed Changes

When you vote on 22nd May, you will be asked:

Do you approve of the proposal to amend the Constitution contained in the undermentioned Bill?

Nineteenth Amendment of the Constitution Bill, 1998.

That Bill contains the detailed proposals for changing the Constitution. There are three major elements to these proposals:

- 1 *Proposed new Article 2 and Article 3;*
- 2 *Proposed additions to Article 29;*
- 3 *The conditions under which these changes, if accepted by you in the referendum, will be implemented.*

You will be required to vote YES or NO on the proposal as a whole; it is not possible to vote separately on each change.

1. PROPOSED NEW ARTICLE 2 AND ARTICLE 3

It is proposed to amend the Constitution by deleting the present Article 2 and Article 3 and replacing them with new Articles.

The proposed new Article 2 no longer makes a claim as a legal right to the territorial area of the whole of the island of Ireland. It defines who is entitled to be part of the Irish nation rather than the extent of the national territory. The proposed Article acknowledges that 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 together with such other persons qualified by law to be citizens of Ireland. Finally, it recognises that the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.

The proposed Article 3 acknowledges that it is the will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland. The Article explicitly acknowledges that a united Ireland shall only be brought about by peaceful means with the consent of the majority of the people, democratically expressed in both jurisdictions in the island. It goes on to recognise that until then, laws enacted by the Oireachtas do not and cannot have effect in Northern Ireland.

There will be a new subsection 2 of Article 3 to the effect that institutions with executive powers and functions that are shared between both jurisdictions may be established by the relevant authorities and may exercise powers and functions in respect of all or any part of the island. This provision gives constitutional validation and recognition to the cross-border bodies which are envisaged in the agreement reached in the Multi-Party negotiations.

2. PROPOSED CHANGES TO ARTICLE 29

A new section will be added to Article 29 of the Constitution which specifically allows the State to be bound by the British-Irish Agreement, the terms of which were agreed between the British and Irish Governments as part of the Multi-Party negotiations.

A further section will be added to give constitutional authority for the exercise of powers in all parts of the island of Ireland by certain new institutions to be set up under the British-Irish Agreement. Finally, Article 29 is being changed to provide that the changes in Articles 2, 3 and 29 will come into effect only when certain conditions are fulfilled.

3. THE CONDITIONS UNDER WHICH THE PROPOSED CHANGES MAY BE IMPLEMENTED

The proposed changes to the Constitution will not come into effect unless the people agree in the referendum on 22nd May. If there is a majority YES vote, then the changes will not come into effect immediately. Their implementation is dependent and conditional on the necessary measures being undertaken to implement all the provisions of the Multi-Party Agreement.

The proposed sequence of measures is as follows:

- (1) *The necessary constitutional and legal changes to give effect to the Multi-Party Agreement would be put in place in both jurisdictions;*
- (2) *The British and Irish Governments would agree that such changes have been completed;*
- (3) *This would cause the British-Irish Agreement to come into force; and*
- (4) *This in turn would cause the Irish Government to issue a declaration to bring the changes to Articles 2, 3 and 29 into effect.*

Terms and References Explained

The Multi-Party Agreement

The Multi-Party Agreement is the agreement reached by all the parties to the Multi-Party talks. A copy of the agreement was delivered to your home. It deals with, among other things, the internal arrangements for the governing of Northern Ireland, rights, safeguards and equal opportunities, decommissioning, security, policing and justice and prisoners. It also includes the British-Irish Agreement which was agreed between the two Governments.

The British-Irish Agreement

In the British-Irish Agreement, the British and Irish Governments affirm their commitment to support the provisions of the Multi-Party Agreement and to take the appropriate measures to implement the Agreement. They recognise the right of the people of Northern Ireland to choose its status; affirm both Governments' commitment to abide by that choice; agree that, whatever that choice is, sovereign government in Northern Ireland will be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions; recognise that all the people of Northern Ireland are entitled to identify themselves as Irish or British or both and confirm their right to hold both British and Irish citizenship.

The British and Irish Governments commit themselves to the establishment of certain institutions:

- (1) *a North/South Ministerial Council;*
- (2) *implementation bodies through which co-operation will take place on a cross-border or all-island level;*
- (3) *a British-Irish Council; and*
- (4) *a British-Irish Intergovernmental Conference.*