

## **Information Note prepared for the Members of the Citizens' Assembly on differences between the Convention on the Constitution and the Citizens' Assembly and the Convention approach to voting**

### **Background**

Like the Citizens Assembly, establishment of the Convention on the Constitution was approved by Resolutions of both Houses of the Oireachtas. The Convention, under the chairmanship of Tom Arnold, held its inaugural meeting in December 2012 and its last meeting in February 2014.

It produced 9 Reports and made 38 recommendations in total, 18 of which would require constitutional change. A full list of these is provided as an appendix to this document. The previous Government responded to all of the Convention's Reports during its term in office.

The two referendums held in May 2015 were based on Convention recommendations, on reducing the age threshold for Presidential candidates and on same-sex marriage. The previous Government accepted a number of other recommendations made by the Convention including amending Standing Orders in the Houses of the Oireachtas to allow for a secret ballot to elect the Ceann Comhairle, adoption of the d'Hondt system for Committee chairs and the establishment of an Electoral Commission.

The Convention also recommended that a referendum be held to give Irish citizens living outside the State a right to vote in Presidential elections, to which the Taoiseach recently announced the Government was committed.

### **Comparison with the Citizens' Assembly**

A number of fundamental differences exist between the Convention and the Assembly.

- Composition

The Convention consisted of 100 members - 33 politicians and 66 citizen members, plus the Chair.

- Topics/Meetings

With the exception of one topic (Electoral Reform), the Convention considered each topic over the course of one, single weekend. Electoral Reform was considered over two weekends.

This meant there was comparatively little time to get into a detailed examination of each topic. The Saturday consisted of presentations from experts, advocacy groups and roundtable discussions and the Sunday morning was dedicated to ballot paper formation and voting.

As members of the Assembly will be aware, the Eighth Amendment is being considered over five weekends, with the final weekend being dedicated to the recommendations to be made to the Oireachtas. The remaining topics on the Assembly's work programme will follow the same format as the Convention on the Constitution.

- Reports

The Convention submitted its separate Reports and recommendations in respect of each topic to the Houses of the Oireachtas, and the Government then provided a response.

In the case of the Eighth Amendment of the Constitution, the Resolution states that the Assembly's Report will be referred for consideration to a Committee of both Houses of the Oireachtas. That Committee will in turn bring its conclusions to the Houses for debate. This marks a change from what previously occurred with the recommendations made by the Convention.

The Assembly will report and make recommendations to the Houses of the Oireachtas on the remaining topics in the same way as was done for the Convention.

In all cases, and in keeping with the procedure for the Convention on the Constitution, the Government will then provide in the Houses of the Oireachtas a response to each recommendation, and if accepting of the recommendation will indicate the timeframe it envisages for the holding of any related referendum.

### **Voting on Recommendations/ Ballot Papers at the Convention**

The Convention operated using the following principles regarding balloting. The approach to be taken at the Assembly meeting in April is provided in detail in a separate paper.

- A draft ballot paper was prepared by the Convention's Academic and Legal Support team on the Saturday night and presented to the members on the Saturday night/ Sunday morning for discussion.
- Time was provided on the Sunday morning for discussion amongst the members, and for clarification by relevant experts about the wording on the ballot paper. The format for this varied between roundtable discussions followed by Q&A session, or simply Q&A sessions. The structure was in many cases determined by time pressures.
- Agreed changes were incorporated into a revised ballot paper (sometimes in advance of the public session). It should be noted that the time available for revisions was limited and this has a significant impact on the Chair's ability to be responsive to suggestions.
- The wording of the ballot papers was then agreed by the members. This was done by simply asking the room and moving forward based on the sound of 'yes' or 'no' from the floor. In instances where there were audible 'nos', the chair then moved on to a show of hands. The decision was then taken to move forward on the basis of the views of the majority.
- The ballot papers were available in English and Irish, at the request of some of the members of the Convention. The requirement to translate the ballot paper once agreed had a significant impact on the time available for discussion.
- Members voted at their tables and placed their ballots in ballot boxes on the platform, observed by the Chairman and the Secretary to the Convention.
- The votes were counted at the back of the room (in full sight) by two members of the academic team, and two Convention members acting as observers.
- The results were put on a Powerpoint slide and delivered to the Chair for him to announce. In all cases the announcement was made before the conclusion of the Sunday meeting at 1pm.
- The results were presented in percentage terms.
- The ballot papers were destroyed after the count (they were destroyed some months afterwards).

### ***March 2017***

## Appendix

### Convention on the Constitution: Ballot Papers

#### First Report on Reducing the Voting Age and the Presidential Term in Office

##### Convention Recommendations

After some discussion, it was agreed that the voting should be taken in three parts: first to consider the issue of whether to recommend reform or not, second to consider the detail of the reform in question, and third to consider other prominent themes that had emerged in the discussion.

**Table 1: Voting Age (percentage)**

	Yes	No	No opinion
Are you in favour of reducing the voting age for all elections?	52	47	1

	17	16	No opinion
If the Convention favours a change, would you prefer ...	39	48	14

	Yes	No	Don't know
Reduce the age of candidacy	42	51	7
Reduce voting age for some types of elections only (e.g. local elections)	28	68	5

Table 1 reports the results of the votes relating to the voting age. There was a small majority (52 percent) in favour of the proposal that the voting age should be reduced. In the second part of the ballot where the members were asked to consider between whether to reduce to age 17 or age 16, the stronger support was for the latter, which received a plurality (48 percent) of the vote. Neither of the two issues being voted on in the third part

of the ballot received majority support, with majorities against (of 51 percent and 68 percent respectively) reducing the age of candidacy from the current age of 21 and reducing the voting age only for certain types of elections such as local elections.

**Table 2: Presidential Term (percentages)**

	<b>Yes</b>	<b>No</b>	<b>No opinion</b>
<b>Reduce the presidential term to five years</b>	<b>43</b>	<b>57</b>	<b>0</b>

	<b>Align</b>	<b>Don't align</b>	<b>No opinion</b>
<b>If we reduce the presidential term, should it be aligned with the local and European elections?</b>	<b>14</b>	<b>80</b>	<b>6</b>

	<b>Yes</b>	<b>No</b>	<b>Don't know</b>
<b>Give citizens a say in the nomination process</b>	<b>94</b>	<b>6</b>	<b>0</b>
<b>One-term presidency – seven years</b>	<b>44</b>	<b>44</b>	<b>12</b>
<b>One-term presidency – five years</b>	<b>14</b>	<b>78</b>	<b>8</b>
<b>Reduce the age of candidacy for presidential elections</b>	<b>50</b>	<b>47</b>	<b>3</b>

Table 2 reports the results of the votes relating to the presidential term. On the main question – the first part of the ballot paper – there was a majority (of 57 percent) against the proposal of reducing the presidential term. On the second question (of the detail of any change that might be recommended) there was a clear majority (80 percent) against the proposal that a reduced presidential term might be aligned with European and local elections. In short, the principle of reducing the presidential term was not supported by the Convention.

On the supplementary issues that were voted on (the third part of the ballot paper) there was virtual unanimity (94 percent support) for the proposal that the citizens should be given a say in the presidential nomination process. There was the narrowest of support (50 percent in favour, 47 percent against) for reducing the age of candidacy for presidential elections. Finally, one-term presidencies were not favoured

## Second Report on the Role of Women in the Home

### Convention recommendations - Amending the clause on the role of women in the home.

#### Article 41.2 of the Constitution

41.2.1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

41.2.2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

	Yes	No	No opinion
Should the clause (art. 41.2) be left as it is?	11%	88%	1%

	Delete	Amend/Modify	No opinion
If the clause (art. 41.2) were to be changed would you delete it or amend/modify it in some way?	12%	88%	0%

In the event that the Convention supports change, what change or changes would you support?	Yes	No	No opinion
Make it gender-neutral to include other carers in the home	98%	2%	0%
Do you want to include carers beyond the home?	62%	31%	7%

Noting that Art.41.2.2 says 'The State shall, ... endeavour to ensure that [mothers] shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home', what level of obligation should be placed on the State (on a scale of 1-5) ?	
1 - Endeavour to support	20%
2	4%
3 - Provide a reasonable level of support	35%
4	12%
5 – Shall support	30%

## Third Report on Same-Sex Marriage

### Convention Recommendations

Following a lengthy discussion of the detail of the ballot paper below, including the consideration of a number of alternatives, the members of the Convention decided to confine the issues for ballot to those directly associated with the subject matter in the terms of reference i.e. the provision for same-sex marriage.

	Yes	No	No opinion
<b>Should the Constitution be changed to allow for civil marriage for same sex couples?</b>	<b>79</b>	<b>19</b>	<b>1</b>

<b>If the Constitutional Convention votes in favour of change, what form should this amendment take?</b>	<b>Mark X in ONE box</b>
The amendment should be <u>permissive</u> (e.g., ‘the State <u>may</u> enact laws providing for same sex marriage’)	<b>17</b>
The amendment should be <u>directive</u> (e.g., ‘the State <u>shall</u> enact laws providing for same sex marriage’)	<b>78</b>
No opinion	<b>1</b>

	Yes	No	No opinion
<b>In the event of changed arrangements in relation to marriage, the State shall enact laws incorporating necessary changed arrangements in regard to the parentage, guardianship and upbringing of children.</b>	<b>81</b>	<b>12</b>	<b>2</b>



## Fourth Report on the Dáil Electoral System

### Convention Recommendations

The votes on the first ballot paper that were most related to the main theme of these two weekends. On the question of whether the existing electoral system (PR-STV) should be changed at all, the majority (54%) voted in favour. This was followed by two questions specifically designed to reflect the changes that members were looking for, namely: (1) to keep the existing electoral system (79% voting against the alternative electoral system on offer – MMP), and (2) to make two key changes to the existing electoral system – ensuring that no constituency size should be less than a 5-seater (86% in favour), and replacing the alphabetical ordering of candidates on the ballot paper (67%).

Given the result of the second vote – against MMP – the fourth vote was made redundant, though even here the level of attachment to PR-STV is notable (60% of members would have wanted PR-STV to be at the core of any MMP system that might have been adopted).

Finally there were two votes aimed at reflecting members' opinions on the question of the size of Dáil Éireann, which indicated strong support (49%) for greater than 159 members. As things stand, the number of members will be reduced to 158 at the next General Election.

### Electoral Systems

#### 1. Should we change our existing PR-STV electoral system? \*

Yes	No	No opinion
<b>54</b>	<b>45</b>	<b>1</b>

#### 2. Should we replace our existing PR-STV electoral system with MMP? \*

Yes	No	No opinion
<b>20</b>	<b>79</b>	<b>1</b>

#### 3. In the event that the Convention votes for changes to our existing PR-STV electoral system, which of the following should be considered?

	Yes	No	No opinion
Larger constituencies (smallest constituency size will be 5-seaters)	<b>86</b>	<b>13</b>	<b>1</b>
Changing the alphabetical order of	<b>67</b>	<b>16</b>	<b>17</b>

candidates on the ballot paper			
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**4. In the event that the Convention votes to replace our existing PR-STV electoral system, what form of MMP should be adopted?\***

Classic MMP with single-seat constituencies and a party list	<b>13</b>
MMP with multi-member STV for constituency counts	<b>60</b>
No opinion	<b>25</b>

**5. Should we change the number of members of Dáil Éireann?\***

<b>Yes</b>	<b>No</b>	<b>No opinion</b>
<b>37</b>	<b>59</b>	<b>4</b>

**6. In the event that the Convention votes to change the number of members of Dáil Éireann, what range would be most appropriate?\***

<b>100-130</b> <b>(1 per 40k-50k electorate)</b>	<b>130-158</b> <b>(1 per 30k-40k electorate)</b>	<b>159+</b> <b>(1 per &lt; 30k electorate)</b>
<b>12</b>	<b>38</b>	<b>49</b>

\* a constitutional amendment would be required

**Other changes to the electoral system**

The second ballot paper contained four sets of votes. First, there were six items – an electoral commission, extending polling hours/days, postal voting, the electoral register, ‘measures to improve voter turnout’, education programmes in schools – that shared in common a desire on the part of the members for more to be done to improve electoral turnout. On all six items the votes were overwhelmingly (in one case unanimously) in favour of change.

The members next voted on the question of non-parliamentary ministers in government, with the majority voting in favour of the two main alternative approaches that had been discussed: non-members of the Oireachtas as ministers (55% in favour) and requiring TDs to resign their seats on being appointed minister (59% in favour).

Finally, the members had two sets of votes on the issue of direct democracy, with the basic principle receiving strong support (83% in favour), with adequate safeguards to ensure that no measures could be adopted that would have the effect of undermining citizens’

fundamental rights. There was also strong support for the two main forms it might take: 80% favoured the right for citizens to petition on influencing the (constitutional and non-constitutional) legislative agenda; 78% favoured the right to petition for referenda. Time didn't permit a more detailed consideration of the merits of this issue.

**7. What other electoral system-related changes should be considered?**

	<b>Yes</b>	<b>No</b>	<b>No opinion</b>
The Establishment of an Electoral Commission	<b>97</b>	<b>1</b>	<b>1</b>
Extending polling hours/days	<b>89</b>	<b>11</b>	<b>0</b>
Greater access to postal voting	<b>91</b>	<b>8</b>	<b>1</b>
Improving the accuracy of the electoral register	<b>100</b>	<b>0</b>	<b>0</b>
The introduction of measures to improve voter turnout	<b>96</b>	<b>1</b>	<b>3</b>
Introduction of relevant education programme in schools	<b>95</b>	<b>0</b>	<b>5</b>

**8. Non-Parliamentary Members of the Government \***

	<b>Yes</b>	<b>No</b>	<b>No opinion</b>
Should Dáil Éireann be permitted to appoint non-members of the Oireachtas as Ministers?	<b>55</b>	<b>42</b>	<b>3</b>
Should members of the Dáil be required to resign their seats following appointment to ministerial office?	<b>59</b>	<b>40</b>	<b>1</b>

**9. Should 'direct democracy' (i.e. citizens' initiatives) with adequate safeguards be introduced? \***

<b>Yes</b>	<b>No</b>	<b>No opinion</b>
<b>83</b>	<b>16</b>	<b>1</b>

**10. In the event that the Constitutional Convention votes in favour of direct democracy, which of the following should it apply to: \***

	<b>Yes</b>	<b>No</b>	<b>No opinion</b>
Placing items on, or removing them from, the legislative agenda	<b>80</b>	<b>19</b>	<b>1</b>
Requiring constitutional referenda to be held	<b>78</b>	<b>17</b>	<b>4</b>

\* a constitutional amendment would be required

## Fifth Report on Amending the Constitution to give citizens resident outside the State the right to vote in Presidential elections at Irish embassies, or otherwise

### Convention Recommendations

Following a lengthy discussion of the detail of the ballot paper below, including the consideration of a number of alternatives, the members of the Convention agreed to make recommendations on the following issues – the content and nature of the discussion can be seen in more detail in Chapter 7:

	Yes	No	Undecided/ No opinion
Should citizens resident outside the State have the right to vote in Presidential elections?	<b>78%</b>	<b>21%</b>	<b>1%</b>

	Yes	No	Undecided/ No opinion
Should citizens resident in Northern Ireland have the right to vote in Presidential elections?	<b>73%</b>	<b>20%</b>	<b>7%</b>

**Which of these citizens living outside the island of Ireland should have the right to vote in Presidential elections? (Mark X in ONE box)**

All Irish citizens resident outside the island of Ireland	<b>36%</b>
Just citizens who have lived in Republic of Ireland.	<b>26%</b>
Just citizens who have lived in Republic of Ireland as adults and who have left for a period of time (see below)	<b>27%</b>
Undecided/No opinion	<b>11%</b>

**If there should be a time limit on how long citizens resident outside of the island of Ireland can have a vote, what should that be? (Mark X in ONE box)**

No time limit	Voting rights only for 5 years abroad or less	10 years	15 years	20 years	25 years
<b>38%</b>	<b>14%</b>	<b>17%</b>	<b>20%</b>	<b>6%</b>	<b>4%</b>

## Sixth Report on Blasphemy

### Convention Recommendations

The result of the ballot was that a clear majority of Convention members favoured (a) the removal of the offence of blasphemy from the Constitution, (b) its replacement by a general provision to include a prohibition on incitement to religious hatred; and (c) the introduction a new set of detailed legislative provisions to include incitement to religious hatred. The detailed ballot results were as follows:

**1. Should reference to the offence of blasphemy in the Constitution be kept as it is?**

Yes	No	Undecided/ no opinion
38%	61%	1%

**2. In the event that the Convention favours change to the Constitution, should the offence of blasphemy be:**

Removed altogether	Replaced with a new general provision to include incitement to religious hatred	Undecided/ no opinion
38%	53%	9%

**3. Should there be a legislative provision for the offence of blasphemy?**

Yes	No	Undecided/ no opinion
49%	50%	1%

**4. In the event that the Convention favours a legislative provision, it should be:**

The existing legislative blasphemy provision	A new set of detailed legislative provisions to include incitement to religious hatred	Undecided/ no opinion
11%	82%	7%

## Seventh Report on Dáil Reform

### Convention Recommendations

#### 1. Amendments to the Constitution

	Yes	No	No opinion
Reference to the Office of the Ceann Comhairle should be enhanced to give it more status.	<b>88</b>	<b>7</b>	<b>5</b>
Secret ballot to elect the Ceann Comhairle	<b>88</b>	<b>12</b>	<b>0</b>
Include reference to Committees in Constitution	<b>76</b>	<b>9</b>	<b>15</b>

	Yes	No	Refer elsewhere for further consideration
Amend Article 17.2 of the Constitution (relating to prior government approval for expenditure proposals)	<b>53</b>	<b>11</b>	<b>36</b>

### Changes to Standing Orders (Dáil rules) or Parliamentary Practice

#### 1. Dáil Reform

	Yes	No	No opinion
Dail Reform Committee should include external members and former TDs	<b>85</b>	<b>8</b>	<b>7</b>
The Dáil Reform Committee should bring forward proposals for genuine reform, reflecting the Convention discussion	<b>99</b>	<b>0</b>	<b>1</b>
Introduction of Family-friendly hours	<b>63</b>	<b>20</b>	<b>17</b>

## 2. Ceann Comhairle

	Yes	No	No opinion
Secret ballot to elect the Ceann Comhairle (which may require constitutional change)	88	11	1
Members set the Dail agenda (ensuring adequate time for debate) in a forum chaired by the Ceann Comhairle	73	18	9

## 3. Committees

	Yes	No	No opinion
Proportionate allocation of committee chairs and secret ballot for their election	84	11	5
More technical and professional resources to the committees	93	5	1
The Working Group of Committee Chairs (like the House of Commons Liaison committee) should be given the power to call Taoiseach	70	14	16
Have a 'committee week' each month the Dail is sitting, with only Leaders' Questions taken in a Dail plenary session	89	8	3

## 4. Whip

	Yes	No	No opinion
More "free votes" on Dáil and committee business	84	15	1

## 5. Financial matters

	Yes	No	Refer elsewhere for further consideration
Create procedure to allow all TDs to make recommendations that involve a charge on the public purse, or the People	68	11	21



## Eighth Report on Economic, Social and Cultural Rights

### 1. Amendments to the Constitution

1.	Yes	No	No opinion
In principle, should the Constitution be amended to strengthen the protection of Economic, Social and Cultural rights?	85%	15%	
2.	Now	Elsewhere	No opinion
In the event that the Convention votes in favour of reform, does the Convention wish to make recommendations <b>now</b> or refer it <b>elsewhere</b> for further consideration of the implications of possible reforms?	56%	43%	1%

### 3. If the Convention wishes to make recommendations on the issue now, which options are best? (Rank in order of your preference, 1, 2, 3)\*

Option 1: Update Article 45 but keep the first paragraph (“...principles of social policy... for the general guidance of the Oireachtas... not... cognisable by any Court”)	24%
Option 2: Insert provision along the lines that the State shall <i>endeavour to</i> progressively realise ESC rights, subject to maximum available resources, and that this duty is cognisable by the Courts	16%
Option 3: Insert provision that the State shall progressively realise ESC rights, subject to maximum available resources and that this duty is cognisable by the Courts	59%

\*none of the above are intended to diminish the level of protection already afforded in the Constitution

### 4. In the event that the Convention wishes to make recommendations on the issue now, are there specific additional rights that should be enumerated in the Constitution?

	Yes	No	No opinion
Housing	84	8	8
Social security	78	12	10
Essential health care	87	6	7
Rights of people with disabilities	90	3	7

Linguistic and cultural rights	75	15	9
Rights covered in the International Covenant on ESC Rights	80	10	10

## Ninth Report on Conclusions and Final Recommendations

**Ballot results - constitutional amendments which Convention members feel should be considered by the Government, the Oireachtas or any future Convention.**

Issue	% vote
Environmental Protection	52%
Seanad Reform	52%
Local Government Reform	35%
Definition of the Family	29%
Separation of Church and State – secularisation of the Constitution	27%
Right to Die – providing for an assisted peaceful death	21%
Courts Service and the appointment of Judges	19%
Private Property Rights	17%
Abortion – the repeal of Article 40.3.3	15%
Bill of Rights – the further protection of human rights	15%
The Referendum Process	15%
The Irish Language	14%
Constitutional provision for Freedom of Information	12%
Pensions	12%
Constitutional provision Equality budgeting	12%
Constitutional provision for the Ombudsman	10%
Mental Health	10%
Right to vote for all citizens in all elections	10%
Amendment of the Preamble	8%
Role and powers of the President	6%
International relations, Third-level education, Economic Policy and issues associated with the referendum on same-sex marriage	(Each) 3%
Official recognition of Irish sign language, Official name of the State, Animal rights, Children’s rights, Role of the Comptroller & Auditor General, Gender Recognition, Awarding of Honours, Civil service Reform, Immigration, “Recall” Voting, a general revision of the Constitution.	(Each) 1%

