

## Check Against Delivery

### Explanation of Wording on Draft Ballot 2

by Chairperson, Justice Mary Laffoy,

22 April 2017

#### *If required*

In Ballot 1, the members voted by a majority that Article 40.3.3° should not be retained in full. This represents a clear decision that the members seek change to the status quo.

To be clear, if the Oireachtas was to act on this initial recommendation, a constitutional referendum would be required.

It is a mandate for the assembly to move forward with the formation of our recommendations for the Houses of the Oireachtas.

Ballot 2 will look at the legal nature of the desired change.

The proposed text of draft Ballot 2, as prepared by myself and the Secretariat with the assistance of the Expert Advisory Group and with input from the Steering Group, is on the screen behind me.

The proposed wording of the question on this ballot paper reads “Do you think Article 40.3.3° should be repealed (i.e. deleted and not replaced) or replaced or amended?”.

The members have three voting options before them here and these are now presented on the screen.

Option 1- Article 40.3.3° should be repealed (i.e. deleted and not replaced)

Option 2- Article 40.3.3° should be replaced or amended

Prefer not to state an opinion

I will now explain each of these in turn.

### Option 1

Option 1, repeal, would involve the deletion of Article 40.3.3°. The text would be deleted in full from the Constitution. Brian Murray S.C. outlined the potential consequences of repeal to us at our last weekend. In advance of this meeting the members were encouraged to reread Brian's paper and a copy of it has been included in your briefing packs today. The important point is that it cannot be said with full certainty which consequence would prevail if Article 40.3.3° was simply repealed.

Brian Murray S.C. identified three views on what the consequence of repeal would be. They were:

1. That the form of abortion legislation would exclusively be a matter for the Oireachtas;
2. That the pre-1983 Constitutional position would revive, including any implied rights of the unborn under the Constitution before 1983;
3. That the rights of a pregnant woman to privacy, to bodily integrity and autonomy would prevail over many countervailing circumstances, including any rights of the unborn.

Brian indicated that he felt option 1 would prevail but as I have already mentioned this cannot be said with full certainty. Accordingly, the implications of a recommendation from the Assembly for a simple repeal of Article 40.3.3 would be uncertain.

If option 1 is selected the citizens would then go on to vote in Ballot 4A. Ballot 4A would provide the recommendations of the Citizens' Assembly to the Oireachtas about the reasons, if any, for which termination of pregnancy should be lawful in Ireland, as well as any gestational limits that should apply.

### Option 2

Option 2, replace or amend, would leave open the potential for the Constitution to continue to address the right to life of the unborn and/or the termination of pregnancy, either exclusively or in conjunction with legislation. This type of change could be done in a number of different ways:

- An entirely new provision could replace what is already there.

or

- An amendment could change the wording of the existing text.

The text of a replacement provision or amendment could be drafted in a multitude of ways to provide for a range of issues. The citizens must recall that it is not the role of the Assembly to draft or suggest a replacement provision, but rather to provide recommendations.

At this point, we are not considering the substance or text of a replacement provision or amendment.

A replacement provision or amendment to the Constitution could only be subsequently amended, i.e. altered or changed, by the people in a Referendum.

It is important to note that voting for either Option 1 and Option 2 in draft Ballot 2 may result in an outcome that allows for the liberalisation of the current legal regulation of termination of pregnancies in Ireland, or alternatively an outcome which results in the rights of the unborn being given greater protection. This is because both legislation enacted in consequence of repeal or a provision replacing or amending Article 40.3.3° in the Constitution could have either effect.

### Final voting option

The final option available to the members is *Prefer not to state an opinion*. This is on the draft Ballot paper as it is important that those who vote in favour of the retention of Article 40.3.3. in Ballot 1 are not forced by the ballot paper into specifying how change will be enacted. They are of course free to do so regardless of how they voted in Ballot 1, but they are not required to do so, or to abstain to avoid doing so. Instead, they can select the option: *Prefer not to state an opinion*. This option might also be selected, for a variety of reasons, by citizens who voted against the retention of Article 40.3.3 in its current form in Ballot 1.

### Presentation of Results

Before moving on, I want to once again to briefly describe how the results of this Ballot would be presented.

A sample results sheet for this ballot is provided on the screen behind me.

Once again it will specify the number of citizens eligible to vote, and the number of citizens who voted.

The results will provide details of the number of votes cast in respect of Option 1, Option 2 and Prefer not to state an option.

However for the avoidance of doubt, a majority will be determined by reference to the total votes cast in favour of both Option 1 and Option 2.

### Next Steps

That concludes the description of Ballot 2.

We will now go into private session to allow the members to discuss the draft ballot paper amongst themselves in roundtable format.

We will resume at 12.40 for a feedback and questions and answers session.

### Following the Roundtable discussion

I will now take questions from the floor on draft Ballot 2.

I am joined once again by the lawyers on the Expert Advisory Group: Dr Oran Doyle, Professor Deirdre Madden and Dr Rachael Walsh. They will assist in responding to your questions and comments concerning the wording of draft Ballot 2.