

Citizens' Assembly Meeting on
“The Manner in which Referenda are Held”

14 January 2018

Draft Ballot Paper Explanation by the Chairperson

Introduction

This weekend marks a break with how the Assembly has traditionally carried out its business.

Our work programme to date has allowed us consider topics over a number of weekends.

In light of the extension received from the Houses of the Oireachtas we must complete our work on the remaining two topics by the end of March this year.

For this reason, yesterday we began our consideration of the topic “*the manner in which referenda are held*” and this morning we will formulate our recommendations to be sent to the Houses of the Oireachtas on this topic.

This is the first occasion where we have examined an issue and made recommendations over the course of one weekend. We will replicate this model for our next topic also, *fixed term parliaments*.

This change is particularly evident regarding the preparation of the draft Ballot Paper.

A draft Ballot Paper, prepared by the secretariat in consultation with the Expert Advisory Group after the conclusion of proceedings yesterday evening, has been circulated to the Members this morning.

Ultimately, it is a matter for you, the Members, to decide on the ballot paper before any voting can take place. This means that you can add

questions, suggest new wording or indeed remove questions. Following the Assembly's rules of business, we will decide questions about the content and design of the ballot paper based on a show of hands.

This is the first opportunity the Members have had to view the draft Ballot Paper. I would remind everyone that although this is unusual for the Assembly, it is the primary way in which our predecessor, the Convention on the Constitution, functioned and produced its recommendations.

Before the Members go into Private Session to discuss the draft Ballot Paper, I want to provide a brief explanation of each of the questions; to explain what the question is trying to get at, what each of the options presented to the Members mean, and in some cases why certain terminology has been used.

A copy of each question will go up on the screen as I am explaining it for the benefit of those watching online. A copy of the draft Ballot Paper will also appear on our website for those who wish to follow along at home.

Following the Roundtable discussions, the members of the Expert Advisory Group; Rachael Walsh, Oran Doyle, Robert Elgie, John Garry, Theresa Reidy and Kevin Rafter, together with the Chair and Secretariat will then be available to answer any questions. Time has been included on the agenda to allow any amendment agreed by the members to be included on the Ballot Paper.

As I've mentioned, the results of the final Ballot will form the basis of the recommendations to be made to the Houses of the Oireachtas.

Draft Ballot Paper Structure

The draft Ballot Paper is broken down into three sections as follows:

- A. Organisation of Referendum Campaigns
- B. Voting in a Referendum
- C. Citizens' Initiatives

Question 1

Question 1 is the first question in Section A: Organisation of Referendum Campaigns.

The question asks *“Do you think the functions of the Referendum Commission should be carried out by a permanent Electoral Commission?”*

This question was informed by the material presented to the Assembly from a number of the speakers we have heard from over the course of the weekend.

This issue also emerged in feedback from the Members following sessions 3 and 4 and 5 and 6 yesterday.

In terms of reporting for this question, you are asked to mark X in one box – either Yes or No. A majority, and therefore the recommendation of the Assembly, will be determined by reference to the total votes cast in favour of ‘Yes’ and ‘No’, with the answer with the highest number of votes deemed to be the majority.

Question 2

The Referendum Commission remains the focus of our second question.

It asks:

“Do you think the Referendum Commission should be obliged to give its view on significant matters of factual or legal dispute that arise during a referendum campaign in the public domain (including on social media)?”

Mark Brennock in his paper explained the role that the Referendum Commission plays. He explained that more recent Referendum Commissions have intervened to outline their own view of what effect a referendum will have, occasionally clarifying issues in dispute. However they are not obliged to do so.

In their feedback, many Members suggested an enhanced role for the Referendum Commission, particularly in respect of factually incorrect claims.

This question is designed to allow the Members to vote on whether such an enhanced role is appropriate. Many Members expressed particular

concerns around the role of social media and that is why this is referenced explicitly.

The Members are again asked to vote Yes or No and the option that receives the highest number of votes will be a recommendation of the Assembly.

Question 3

This question concerns the McKenna principles which were outlined to us in Conor O'Mahony's paper and presentation.

Simply put, the McKenna principles interpret the Constitution as precluding the Government from spending public money on advocating for one side of a referendum campaign.

With this in mind the question asks:

“Do you agree with the current position where the Government is not permitted to spend public money to advocate on one side only of a referendum campaign?”

The Members have a simple Yes or No choice in response to this question.

A change of the current position would have to be effected by an amendment of the Constitution, following a referendum.

Question 4

Question 4 continues to examine spending in referendum campaigns. Governments have implemented the McKenna principles by allocating no public funds to referendum campaigns. However, they could have chosen to allocate funds equally to both sides of a referendum campaign. This question asks the Members whether that approach would be preferable.

“Do you think the Government should provide money to both sides equally in referendum campaigns?”

We heard yesterday how traditional media, such as television, radio and the print media, continues to play a vital role in informing the public on a

referendum proposal. For certain cohorts of society, it can be the sole source of information.

Question 5

Question 5 is also about spending in referendum campaigns. Conor O'Mahony in his paper explained how some countries impose spending limits rather than donation limits. Several Members suggested that they should vote on a recommendation in relation to this. Having discussed the issue with the EAG, I am of the view that this raises complicated issues about the interaction of a spending limit and a donations limit, which the Members have not heard detailed evidence about. The draft ballot question therefore doesn't ask Members to vote for or against a spending limit as such. Instead, it asks Members to decide if the possibility of a spending limit merits further consideration by the Oireachtas. The question asks:

“Do you think the Oireachtas should give consideration to a system of spending limits in referendum campaigns for registered political parties and campaign groups?”

Members can indicate their agreement or disagreement by answering either Yes or No.

Question 6

Question 6 is the first question in Section B: Voting in a Referendum.

This question relates to the indication we received from the Houses of the Oireachtas regarding what aspects of this topic they wished us to consider – the notion of super referendum days.

The question asks:

“Do you think that it is a good idea to have more than one referendum, on unrelated issues, at the same time?”

Whichever option, either Yes or No, that receives the higher number of votes will be the Assembly's recommendation in respect of this question.

Question 7

Following on from the previous question, this question asks:

“In the event that there is more than one referendum, on unrelated issues, at the same time, what do you think should be the maximum number of referendums?”

- *There should be no more than two referendums at the same time;*
- *There should be no more than three referendums at the same time;*
- *There should be no upper limit on the number of referendums held at the same time”*

Members are asked to mark an X against one of the three options. The option that receives the highest number of votes will constitute the recommendation of the Assembly in respect of this question.

Question 8

Yesterday morning, Niamh Hyland outlined what must happen for a change to the constitution to be made. The Dáil and Seanad must first approve a referendum bill, which has been commenced in Dáil Éireann and which then must be approved by the people in a referendum. The implication of this is that the Dáil, the Seanad and the people must consecutively approve the same proposal. This means that, at present, multi-option voting in constitutional referendums is constitutionally prohibited.

Yesterday afternoon, Michael Marsh provided the Members with an overview of how multi-option voting might function in a referendum context. He provided the Members with some of the arguments in favour and against such an approach.

The question asks:

“Do you think that it is a good idea to use multi-option voting in referendums?”

Obviously the introducing of multi-option voting in referendums would necessitate an amendment of the Constitution following a referendum.

Whichever option, either Yes or No, that receives the higher number of votes will be the Assembly's recommendation in respect of this question.

Question 9

Yesterday Gary Murphy drew attention to how the Oireachtas never enacted legislation to expand the franchise for election to the University seats in the Seanad, as it was permitted to do by a constitutional change approved in a referendum in 1979.

In their feedback, several Members suggested that the Members should vote on a recommendation that would ensure that this could not happen in relation to a future referendum. Having discussed it with the EAG, I am of the view that this again raises complicated issues that might well differ from one referendum to the next.

For this reason, the draft ballot question is phrased as follows:

“Do you agree that, in principle, the Oireachtas and the Government should give effect to the outcome of a referendum within 5 years?”

Whichever option, either Yes or No, that receives the higher number of votes will be the Assembly's recommendation in respect of this question.

Question 10

Question 10 asks: *“Which, if any, of these initiatives do you think should be introduced to try to increase voter turnout ..”*

Currently we have included eight possible initiatives labelled a) to h) as follows:

- a) Early Voting in the weeks before the poll*
- b) Extended Voting over a number of Days*
- c) Weekend Voting*
- d) Online voting*

- e) Wider availability of postal voting*
- f) The ability to vote at any polling station in the State*
- g) Automatic inclusion of all eligible voters on the electoral register*
- h) Compulsory Voting”*

For each of the initiatives listed the Members are asked to mark an X in either the Yes or No box. The result for each initiative will constitute a recommendation of the Assembly.

Question 11

Question 11 is the only question in Section C: Citizens’ Initiatives.

Yesterday evening Theresa Reidy explained to us the different types of citizens initiatives which exist in other countries.

Following this, we are asking:

“Which, if any, of the following types of citizens initiatives do you consider should be provided for?”

- a) A citizens’ initiative to put a constitutional referendum proposal to the people ;*
- b) A citizens’ initiative to put a legislative change proposal to the people (including enacting, changing or repealing legislation);*
- c) A citizens’ initiative to put an item on the agenda for decision by the Oireachtas.”*

Similar to Question 8, recommendation 11(a) would involve a change in the way in which constitutional referendums are currently required to be initiated and would necessitate amendment of the Constitution following referendum.

As with Question 10, the Members are asked to mark an X in either the Yes or No box beside each initiative. The result for each initiative will constitute an individual recommendation of the Assembly.

General Observation

In framing the questions the focus has been on the relevant principle underlying the relevant question, not on the detail of how it could or might be implemented.

Conclusion

That completes the explanation of the draft ballot paper. Members will now move into roundtable discussions and we will resume in public session at 11.45am for feedback and questions and answers before we finalise the ballot paper.