



**IRELAND'S
FUTURE**



***THE CONVERSATION
ON IRELAND'S FUTURE***

A PRINCIPLED FRAMEWORK FOR CHANGE

IRELAND'S FUTURE

Ireland's Future was established to advocate for, and promote, debate and discussion about Ireland's future, including the possibility and viability of new constitutional arrangements on the Island.

We are guided by the values of the Good Friday Agreement and dedicated to the promotion and protection of human rights, equality and fostering mutual respect between all views and traditions that share this island.

Brexit has dramatically changed the social and political dynamic on this island. The prospect of a new constitutional arrangement on the island of Ireland is growing.

We believe that new constitutional arrangements have the potential to mitigate the most negative impacts of Brexit and address the aforementioned promotion and protection of human rights, equality and the fostering of mutual respect.

We are not a political party and are not affiliated to any political party. We welcome participation from people from all political persuasions interested in furthering the goals of Ireland's Future.

Ireland's Future also notes that any move to new constitutional arrangements requires serious thought, consideration and planning. We believe that the requisite planning for these potential changes must be broad, inclusive, detailed and comprehensive.

Constitutional change must be on the basis of the consent of citizens of the island of Ireland, as informed by the Good Friday Agreement.



INTRODUCTION

A CIVIC ORGANISATION FOR CONSTITUTIONAL CHANGE

Ireland's Future is pleased to see the intensification of interest in the conversation about achieving a united Ireland. The steady growth of serious engagement across these islands, and internationally, is welcome and to be encouraged. The coercive removal of N. Ireland from the EU has renewed the focus on constitutional change, as more people now openly consider the option of a united Ireland. The inept and disrespectful handling of N. Ireland by the current British Government has further propelled this project centre stage.

Ireland's Future is a civil society organisation seeking to build support for proper planning on the constitutional future. We have organised several successful public conversations, including an event at the Waterfront Hall Belfast in January 2019, widely viewed as the most significant gathering of 'civic nationalism' in a generation. We have engaged with the Irish Government and other political parties, and gathered support from leading figures from the worlds of law, politics, business and healthcare across the island. We are particularly concerned about

the ongoing impact of Brexit, and the resultant need to prepare the ground for a united Ireland.

In the next phase of our work we will continue to lead this debate. We want a united Ireland that is genuinely new, globally ambitious, and successful. This requires careful and extensive efforts to construct a coalition for change that will deliver a positive outcome. With this in mind, we suggest three principles to inform the present discussion. We also include a recent briefing note produced by the Constitutional Conversations Group on unity referendums.

1

PRINCIPLE 1**'NORMALISE' THE
CONSTITUTIONAL CONVERSATION**

The Good Friday Agreement anticipates the possibility of constitutional change, and includes a right of self-determination that belongs to the people of Ireland. The Agreement sets out how this right will be exercised. This is the constitutional core of what was agreed, and is now mainstreamed in law, policy and practice; there is nothing controversial about it.

We call on participants in the public debate, and in public life, to stop using the lazy language of 'division', and recognise that this is an Agreement right, with the envisaged referendums the way of realising it.

There is no contradiction between making the Agreement work, in all its parts, and planning for the referendums that will determine the future of Ireland. Those who continue to label this process 'divisive' and 'dangerous' are simply encouraging the spread of fear and anxiety.

We urge all committed to the values of the Agreement to help to 'normalise' the debate. This means, for example, that the new Shared Island Unit must not run away from the government-resourced work required to prepare for a united Ireland.

2

PRINCIPLE 2

PLAN AND PREPARE FOR CONSTITUTIONAL CHANGE

We place emphasis on advance planning and the need for an evidence-based and informed debate. That is why we have suggested an all-island Citizens' Assembly to underline the centrality of civic leadership in preparing the ground for change. This is only one part of what is required. We believe that when these referendums are triggered people should have as clear an idea as possible about the consequences. What follows will then be primarily about implementing the successful outcome. We are particularly concerned about the idea of an elite-level negotiation - either before or after the referendums - that hands a communal veto to one political

community in the north, and excludes effective civic engagement. We see inclusive all-island civic dialogue as central to making sustainable progress and as one way of exploring difficult questions in a transparent manner.

We acknowledge and welcome additional proposals and suggestions that would ensure that Ireland is well prepared for change, including, for example, the establishment of a Joint Oireachtas Committee.

Our principal objective is to ensure that the hard questions about what a new Ireland will look like can be addressed honestly when these referendum campaigns commence.

3

PRINCIPLE 3

THE GOOD FRIDAY AGREEMENT
PROVIDES THE FRAMEWORK

The Agreement provides a principled framework for an agreed pathway to a united Ireland. In particular, it endorses the right of self-determination of the Irish people and its exercise through processes of concurrent consent. We believe that an approach that is faithful to the spirit and letter of the Agreement is vital, and in our view, this means determining concurrent consent through referendums held, north and south, at the same time. In our view, this is what it means for the people of the island of Ireland to exercise their right of self-determination, and give voice to their consent concurrently. It follows the approach adopted to endorsement of the Agreement itself.

The outcome will be determined by a 'simple' majority in each jurisdiction. The Agreement's provision for concurrent consent is already a sufficient limit on the right of self-determination, without

the addition of further procedural hurdles. It prescribes the types of guarantees that should ensure confidence across all communities. We are increasingly concerned about the ongoing attempts to insert special rules or impose a communal veto on the process and the implementation of the outcome. This would constitute a serious breach of the Agreement and highlights the need to pay close attention to matters of process. There is a real risk that opponents of change may seek to impose novel procedural requirements that accord primacy to the concerns of one community only. That would be unacceptable.

The values and institutions of the Agreement will frame a conversation about a new Ireland, as a floor and not a ceiling for our collective ambitions. This will include discussion of amendment or replacement of Bunreacht na

hÉireann. While we accept and acknowledge the huge challenges of the transition to new constitutional arrangements, we are supportive of those who want this transition to be transformative. We seek a new and better Ireland that will heal and transcend the appalling legacies of partition.

The values of the Agreement, if implemented effectively, will assist in ensuring mutual respect is a lived reality in a united Ireland. Advance planning that makes the consequences clear will also help. We note in particular the obligation of 'rigorous impartiality', and the notion of 'equivalence' contained in the Agreement. If applied consistently and fairly, combined with other values from the Agreement, these should ensure that

there is no diminution of protection, and that a united Ireland discharges its responsibilities towards British citizens and British identity. With notable exceptions, insufficient attention has been paid to this existing protective framework. This should also be read in the context of a united Ireland that we hope will have strong constitutional and legislative guarantees, will continue to be an EU member state and have a range of international legal obligations. In particular, we underline the significance of building robust human rights and equality guarantees into this conversation at an early stage. We want to ensure that the human rights of everyone in Ireland are protected.

A BRIEFING NOTE ON UNITY REFERENDUMS

This briefing note is produced by the Constitutional Conversations Group. It is intended to assist those who are interested in the mechanics of Irish unity. The aim is not to be prescriptive but we hope this note may be of benefit to those participating in any pre-referendum consultations or discussions about aspects of the process.

It reflects the thinking of the Group on some of the procedural questions raised by the unity referendums. The Group is aware that there are a range of possible views, but this note advances an interpretation that we believe is as faithful as possible to the letter and spirit of the self-determination provisions of the Good Friday Agreement.

1

HOW WILL A REUNITED IRELAND BE ACHIEVED?

The Agreement provides that Irish reunification is a matter for the people of the island of Ireland. The right of self-determination has been given effect in the Irish Constitution and the Northern Ireland Act 1998. Reunification can be achieved through positive votes in concurrent referendums in both jurisdictions on the island. Each referendum will be subject to the distinctive traditions, rules and processes in each state.

The votes should follow political and civic planning and preparation. Those eligible to vote in these referendums, and everyone affected by the outcome, must be clear about the constitutional, political, economic, social and cultural consequences in advance.

2

WHO DECIDES IF A VOTE ON IRISH UNITY IS TO TAKE PLACE IN N. IRELAND?

The power to call a referendum on Irish unity is conferred on the Secretary of State (SoS) for Northern Ireland in section 1 of the Northern Ireland Act 1998. This power includes a discretion to hold a poll at any time. The duty to do so comes into effect when it appears likely to the SoS that a majority of those voting would express a wish for Irish reunification.

3

WHO DECIDES IF A VOTE OCCURS IN THE REPUBLIC OF IRELAND?

Irish reunification remains a constitutional goal of the Irish State, and is described as the firm will of the 'Irish Nation'. However, it requires a positive vote by the electorate in the Republic. The decision to propose a referendum on unity lies with the Oireachtas, although the political reality is that it will have to be sponsored by the Irish Government.

4

SHOULD SEPARATE REFERENDUMS OCCUR?

No. The Agreement, properly interpreted, envisages concurrent referendums on reunification to mirror the votes which occurred on the 22nd May 1998 across the island of Ireland. In our view, this requires simultaneous votes.

Should a referendum be proposed in either jurisdiction, by the Irish Government or by the SoS, there will be a presumption that steps will be taken to provide for a concurrent vote in the neighbouring jurisdiction. Neither state can legitimately impose Irish reunification on the other. Equally, neither state can legitimately frustrate or delay Irish reunification.

The most faithful interpretation of the Agreement is that the referendums should be held at the same time.

5

RIGHT TO VOTE IN N. IRELAND

The phrase used in the Agreement is the ‘people of Northern Ireland’. The franchise in N. Ireland for the reunification referendum is not yet determined. Schedule 1 to the Northern Ireland Act 1998 requires that the Secretary of State specify the persons entitled to vote. Options for the franchise include: (i) Westminster list, which is limited to British, Irish and qualifying commonwealth citizens who are resident or registered as overseas voters and are over the age of 18; (ii) the Assembly, European Parliament and local elections list, which also includes citizens of the European Union; or (iii) specially constructed franchise, as occurred with the Scottish independence referendum permitting, for example, voting by those over the age of 16.

Given the implications of potential constitutional change on everyone in N. Ireland, a case can be made for an inclusive franchise that acknowledges, for example, the impact on young people and future generations. There is considerable merit in the approach adopted for the independence referendum in Scotland.

6

RIGHT TO VOTE IN THE REPUBLIC OF IRELAND

The right to vote in any reunification referendum in the Republic of Ireland is determined by combined reading of articles 12 and 46 of the Constitution, together with the Referendum Acts. The franchise will be restricted to Irish citizens resident in the territory of the State and registered as referendum electors. No expansion of the electorate is possible without a separate and preceding constitutional amendment.

7

CONSEQUENCES OF A VOTE FOR REUNIFICATION IN N. IRELAND

The status of N. Ireland as part of the UK will change. A positive vote in favour of reunification in N. Ireland is a demonstration of Irish self-determination which, in accordance with article 1(iv) of the British-Irish Agreement, imposes a duty on the UK Government to introduce and support legislation in its Parliament to give effect to that wish. It is assumed that section 1 of the Northern Ireland Act 1998 will be repealed.

Unless and until amended or superseded, the Agreement (bilateral British-Irish Agreement) will remain in place, including the existing institutions, and those obligations intended to apply in the event of a transfer of sovereignty.

As noted above, it should be clear in advance of the referendums what model and arrangements people are opting for if they select the change option. In the event of votes for reunification it will then be a matter of implementing the proposals that have been democratically endorsed.

8

CONSEQUENCES OF A VOTE FOR REUNIFICATION IN THE REPUBLIC OF IRELAND

The status of N. Ireland will change, and the whole territory of the island of Ireland will be part of the EU. The Irish Constitution will be amended or replaced in accordance with the proposal approved by the electorate. At a minimum, it is presumed that this will require amendment to articles 2 and 3 as currently configured. But it is also possible that discussions will lead to proposals for a new constitution. Advance civic and political discussion is needed on the depth, scale and extent of the constitutional reforms that will follow votes for reunification.

While it is possible that reunification could be achieved in a way that minimises constitutional and political disruption, there is also an opportunity

to consider more ambitious arrangements that reflect a commitment to a modern, pluralist 'New Ireland'.

Those advocating reunification will need to have a settled view on the precise implications of votes for change and how transformative this will be.

9 WHAT BECOMES OF BRITISH CITIZENSHIP IN A UNITED IRELAND?

In the Agreement both the Irish and British governments promised the continuation of citizenship regardless of the status of N. Ireland. British citizenship is governed by UK nationality legislation and that would continue to the case. It would continue in perpetuity for those currently entitled to that status. It would be available for future generations in accordance with British legislation.

Proposals for reunification should provide agreed guarantees for British citizens to ensure that British identity is respected based on the values of the Agreement.

10 WHAT BECOMES OF THE GOOD FRIDAY AGREEMENT INSTITUTIONS IN N. IRELAND IN A UNITED IRELAND?

The Agreement does not contemplate the abolition of the Assembly or the Executive following reunification. These institutions remain operable in a united Ireland and would, presumably, continue unless and until alternative institutions are approved. This would also be the case for other Agreement structures, which may prove particularly valuable in maintaining East-West and British-Irish connections.

11

WHAT BECOMES OF THE GOOD FRIDAY AGREEMENT HUMAN RIGHTS AND EQUALITY PROTECTIONS?

The Agreement requires that ‘the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities’.

The obligation of ‘rigorous impartiality’ will transfer to the Irish Government in the event of reunification. The commitments to parity of esteem, equality of treatment and rights will have implications for reunification proposals.

The Irish Government is under an obligation to provide at least an equivalent level of rights protection, and has already made changes to reflect this aspect of the Agreement.

It is notable, for example, that the Agreement anticipated a Bill of Rights for N. Ireland and led to further effect being given to the European Convention on Human Rights, and the creation of the NI Human Rights Commission. Any Bill of Rights adopted for N. Ireland will have implications for the guarantees required in the event of reunification.

Work will be needed to ensure that there is at minimum equivalence, and that reunification results in no diminution of protection. As noted above, this will also create an opportunity to discuss the adoption of a more expansive range of rights and equality guarantees.

12 WHAT LEVEL OF SUPPORT IS NECESSARY IN EACH JURISDICTION?

Article 47.1 provides that a simple majority of votes cast is sufficient to amend the Irish Constitution. The Agreement recognises the equal legitimacy of both the unionist and nationalist position, and the principle of consent rests constitutional status on a majority of the people of N. Ireland. Therefore, any threshold beyond a simple majority of those voting in N. Ireland can be rejected as contrary to the Agreement, undemocratic, and an attempt to frustrate the self-determination provisions.

13 DOES THERE NEED TO BE MORE THAN CONCURRENT REFERENDUMS?

No. The Agreement is clear that the process by which Irish reunification will be achieved is concurrent consent. The novel imposition of, for example, further confirmatory referendums in either jurisdiction would amount to a significant and unjustified deviation from what was agreed in the Agreement and approved in 1998. The right to Irish self-determination is already significantly qualified by the requirement of concurrent votes in each jurisdiction.

If reunification is achieved through the existing Irish Constitution, the proposal to be put to the electorate will have to be crafted in such a way as to achieve Irish unity whilst not conflicting with any other provisions of the Constitution. If a new constitution is proposed, to replace the 1937 Constitution, then this could be endorsed through a referendum.

Multiple referendums beyond the two anticipated in the Agreement carry risks of inconsistent outcomes and additional instability. This is particularly the case in N. Ireland where a confirmatory vote will be viewed by many as another attempt to place procedural hurdles in the way of constitutional change. Proposals should be fully worked through in advance of the concurrent referendums.

14

WHAT WOULD BECOME OF THE IRELAND – NORTHERN IRELAND PROTOCOL CONTAINED WITHIN THE EU-UK WITHDRAWAL AGREEMENT?

The reunification of Ireland in accordance with the provisions of the Agreement has already been considered by the European Council in April 2017. The 1990 precedent of German reunification would be followed. The entire territory of a united Ireland would form part of the EU, without the need for Treaty change. The Protocol would no longer be necessary and will be superseded by the return of N. Ireland to the EU. Both states may, however, wish to continue the Common Travel Area arrangements, and it is assumed the EU would remain willing to permit this, within existing and prescribed limits.

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