

Briefing note

The proposal to replace Article 41.2 dealing with mothers in the home

If the carers' referendum is passed, the State will no longer be committed, even in theory, to protecting mothers from being forced out of the home due to economic necessity. The word 'mother' will no longer appear in the Constitution at all.

Introduction

Two referendums are to be held on March 8. One is to change the constitutional definition of the family and the other to replace Article 41.2, the clause that aims to protect the mother in the home. This briefing note will deal with the referendum on carers. The Government says the current language is sexist.

The current wording and proposed of Article 42.1

The current wording is:

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.

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.

The Government wishes to delete Article 42.1 entirely and replaced it with a new Article 42B which will read, if passed:

"The State recognises that the provision of care, by members of a family to one another by reason of the bonds that exist among them, gives to Society a support without which the common good cannot be achieved, and shall strive to support such provision."

Government justification for the proposed change

Minister Roderic O'Gorman

"The introduction of today's Bill [to pave the way for the referendum on carers] is an opportunity, at last, for this House to put a proposal to the people to remove the archaic and sexist reference to a woman's place in the home".

Dáil, Dec 14

The effect of the proposed change

Article 41.2 is mostly aspirational and so is the clause intended to replace it. However, the current aspiration does *not* seek to confine women to the home, as the former Chief Justice Susan Denham pointed out in a court case in 2001. (See quote below). It is a total mischaracterisation of Article 41.2 to suggest otherwise.

The intention is that women in their role as mothers, should not be forced out of the home because of economic necessity.

The Government could have chosen to make the language of Article 41.2 gender neutral. It could, for example, suggest that Article 41.2.2 be changed to *“The State shall, therefore, endeavour to ensure that parents shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.”*

Instead, it is deleting this aspiration completely.

The former legal advisor to the Government on children’s rights, Geoffrey Shannon, has said that he believes Article 41.2 protects maintenance payments to mothers after divorce or separation because of its requirement that mothers not be forced out of the home due to economic necessity. (See quotes below).

Former Justice Minister, Michael McDowell, has suggested that Article 42.1 *“also supports maternity leave, payment of child benefit to mothers, and might well have a bearing on future legal entitlements to work from home.”*

He points out that it was used by the Supreme Court in the Murphy case of 1980 *“when it found that income tax laws were unconstitutional insofar as they treated a married couple less favourably than two unmarried people.”*

Brief historical background

Article 41.2 was not plucked out of thin air by a Catholic-influenced State. It was commonplace at the time to believe that it was unfair for both the mother and the father of a child to be forced out of the home by economic necessity, especially at a time when many jobs were backbreaking, many children did not go to school past the age of 12, and there were no labour-saving devices at home like washing machines.

The trade union movement in particular wanted to make it possible for the mother to be able to stay at home if so wanted and backed campaigns for men to be able to earn enough money to support an entire family.

Julia Lathrop, Director of the Children's Bureau under Roosevelt, said: *“Let us not deceive ourselves: the power to maintain a decent family living standard is the primary essential of child welfare. This means a living wage and wholesome working life for the man, a good and skillful mother at home to keep the house and comfort all within it”.*

American Federation of Labour (which strongly influenced the Roosevelt Government) commented: *“We stand for the principle that it is wrong to permit any of the females our country to be forced to work, as we believe that the man should provided with a fair wage in order to keep his female relatives from having to work.... The man is the provider and should receive enough for his labor to give his family a respectable living”.*

A selection of quotes about the proposed changes

Former Chief Justice, Susan Denham

“Article 41.2 does not assign women to a domestic role. Article 41.2 recognises the significant role played by wives and mothers in the home. This recognition and acknowledgement does not exclude women and mothers from other roles and activities.” (Sinnott vs Ireland, 2001)

Geoffrey Shannon, Former legal advisor to the Government on children’s rights

“A dependent spouse fares better in Ireland than in virtually any other jurisdiction in the world, and that’s due to this lifelong obligation. It is a safety net or a protective mechanism for the spouse who acts as homemaker.

In other countries, a time is reached after which you cannot seek further maintenance. There is no such thing as a ‘clean break’ here, as far as maintenance is concerned. You can always return for further support if you are a dependent spouse. That protects children as well.” (Sunday Times, July 23, 2017)

Senator Michael McDowell, Former Justice Minister and Attorney General

“The Constitution nowhere states that ‘women’s place is in the home’; so campaigners’ use of that phrase is simply wrong. It does provide that ‘men and women equally’ have a right to work for their livelihoods. The amendments remove the sole constitutional reference to mothers, and their not being forced by economic necessity against their wishes to seek work outside the home.

The amendments also remove wording in article 42.1 expressly relied on by the Supreme Court in the Murphy case in 1980, when it found that income tax laws were unconstitutional insofar as they treated a married couple less favourably than two unmarried people. That wording also supports maternity leave, payment of child benefit to mothers, and might well have a bearing on future legal entitlements to work from home.” (Irish Times, Jan 31, 2024)

Brenda Power, Columnist

“Removing Article 41.2 will absolve the state of any obligation to acknowledge the value of what such women do, and to make the slightest effort to support them.” (Sunday Times, Jan 14, 2024)

Lorraine Courtney, Columnist

“Keep Article 41.2, acknowledge the diversity of choices women make, and let our increasingly tone-deaf Government know how you feel. On a day that often celebrates the groundbreaking achievements of women in boardrooms and laboratories (and rightly so), don’t forget that the labour of love happening within the four walls of a home is just as revolutionary.

Erase the acknowledgment and what are we left with? A hole in our Constitution that no longer honours the women who keep the wheels of our society turning.” (Irish Independent, Jan 22, 2024)

Some facts and figures

- Census 2016 revealed that 445,000 mothers still stay at home to mind their children. (The figure for fathers is 9,200).
- Data from the CSO last year showed that 120,500 mothers working only part-time in order to spend more time at home with their children. (The figure for fathers is 9,000).
- An Amarach poll from 2016 showed that only 17pc of mothers with children under the age of 18 want to work full-time. 48pc said they would like to work part-time and 35pc said they were prefer to stay-at-home full-time with their children.