



# THE COUNTESS

## **Proposal to hold Referendums on Family, Care and Gender Equality**

**Public Consultation Response**  
19 May 2023



# Referendums on Family, Care and Gender Equality

Public Consultation Response, 19 May 2023

## Introduction

The Countess welcomes the chance to comment on Government's proposal to hold one or more referendums in response to the recommendations of the Citizens' Assembly on Gender Equality and the Oireachtas Special Joint Committee on Gender Equality.

It is positive to see that this is being examined further by an Inter-Departmental Committee, chaired by the Department of Children, Equality, Disability, Integration and Youth, as we view it as vital that great care be taken to ensure any proposal to amend the Constitution is measured, balanced, and cognisant of the need to last the test of time.

We offer the comments below in the spirit of open and respectful dialogue with respect to sex and gender. Our team would be most happy to provide additional information to the Inter-Departmental Committee should it be required either in person or by correspondence.

## About us

The Countess is a non-profit, volunteer-led organisation formed to promote the rights and interests of women and children in Ireland. Inspired by her significant contribution to Irish public life, we take our lead and our name from Countess Constance Georgine Markiewicz who, as Minister for Labour in the First Dáil, was the first female cabinet minister in all of Europe.

Countess Markiewicz blazed a trail for women's rights at a time when they were severely restricted. She was at the vanguard of a social revolution that envisioned an Ireland that cherished all her children equally, irrespective of socio-economic status, religion, sex, or other social markers used to limited life choices and chances.

A fundamental part of the Irish revolution championed by Markiewicz and her contemporaries was achieving equality for women and affording adequate social and economic protection to all children. Sadly, though Ireland's statehood was eventually won, the rights of women and safeguarding of children has remained elusive for much of our first century as an independent State. The Countess was formed to address this through campaigning, awareness raising, policy development, advocacy, and constructive dialogue.

## Our Work

Though we have a broad interest in women's rights and child safeguarding, The Countess was initially established in 2019 to focus attention on the conflict of rights and child safeguarding issues emerging from the self-ID approach to gender recognition introduced through the Gender Recognition Act 2015.

We promote constructive, respectful, and rights-focused dialogue on this issue, and wish to see a balanced approach to gender recognition that will,

- vindicate the rights of women,
- achieve best practice in safeguarding for children and young people,
- defend the hard-won rights of same sex attracted people.

At our core is the belief that by virtue of our common humanity, all groups in society must be afforded the ability to live with dignity, respect, and safety.

## Membership

Our membership is a diverse cross-section of people concerned by the conflict of rights and child safeguarding issues arising out of gender self-ID. It is made up of a wide spectrum of professions including doctors, lawyers, writers, IT specialists, students, carers, full-time parents, and anyone willing to contribute their time and skills to further our mission.

We are volunteer-led, self-funded, and not affiliated with any political party or religion.

## Summary of Recommendations

1. That no change be made to the original text of Article 40.1.
2. That the proposal not to alter Article 41.1 be accepted.
3. That either no change be made or that the language of Article 41.2 solely be updated to remove reference to neglect of her duties in the home and better reflect the full and complex lives and potential of women and mothers in modern society.
4. Article 41.3.1
  - a. Explore alternative phrasing options to 'marital family', however only deviate from this phrase if a superior option is identified.
  - b. Include the 'and to protect it against attack' in the newly proposed provision.
1. That the Inter-Departmental Committee adopt and use the following definitions to ensure clarity and unambiguity in its work, and to remain in line with the plain meaning rule, which requires that words be given their plain, ordinary, and literal meaning.
  - Woman: 'Adult Human Female'
  - Man: 'Adult Human Male'
  - Girl: 'Female child or adolescent'
  - Boy: 'Male child or adolescent'
  - Sex: 'Either of the two categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions'
2. Empower the Inter-Departmental Committee to consider the unique needs, interests, and experiences of women and girls as a distinct group to ensure visibility and clear understanding of their distinct experience as a communal group.
3. Should the Inter-Departmental Committee view it as necessary to deliberate over the needs and interests of those with gender questioning identities, that it do so in addition and separately to deliberations over the needs of women and girls or men and boys to ensure no communal group obscure the others.



## Proposal to hold Referendums on Family, Care and Gender Equality

We have specific comments with respect to some of the proposals made by the Joint Oireachtas Committee in response to the recommendations of the Citizens Assembly.

### Article 40.1

#### *Original Text*

*All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.*

#### *Proposed Text*

*All citizens shall, as human persons without distinction as to sex, be held equal before the law. The State shall in its enactments have due regard to the principles of equality and non-discrimination.*

#### *Inserting 'without distinction as to sex'*

The Joint Committee has recommended the insertion of the words 'without distinction as to sex' into Article 40.1 in response to the expressed wish of the Citizens Assembly to emphasise the importance of gender equality and non-discrimination. While the motivation of both bodies in proposing this change is well received, we are concerned that this addition will introduce ambiguity into an otherwise strong and unequivocal provision.

This change would be contradictory to the provision as it aims to single out for mention a particular type of discrimination, which is not needed for any legal purpose as the original text is clear that it is human personhood that bestows equality before the law on citizens of Ireland.

#### *Replacing the second sentence in the provision*

The phrasing of the second sentence in this provision is somewhat dated and in need of amendment to reflect a greater understanding of diversity. However, it is our view that the original provision is, on balance, more appropriate than the proposed text.

The original text sets out that the State shall 'in its enactments have due regard to differences of capacity, physical and moral, and of social function'. This means the State may provide for the needs of different segments of society without being bound to rigidly uniform treatment. Such a provision envisions initiatives such as, for example, income limits to access supports such as free legal aid, social protection payments, gender quotas for elected office and other leadership roles, and so forth.

Replacing this with text that instructs the State to 'in its enactments have due regard to the principles of equality and non-discrimination' is not the same. While it is positive that the State would be compelled to have due regard to these important principles, there is a significant difference in how the original text and proposed text can be interpreted. Specifically, by acknowledging that different capacities and social functions may inform the State's enactments, the original drafters appear to be speaking to the principle of equality of outcome. At its root, this principle is based on the understanding that we do not all have the same opportunities in life and specific action is sometimes needed to address the inherent inequity of that. This suggests that the State should take positive action to address the need for equity rather than equality.

Conversely, the new provision speaks of the principles of equality and non-discrimination. Equality may be interpreted in a range of different ways, including as equality of opportunity rather than equality of outcome. This interpretation, for example, would mean that the State must simply have due regard to retaining open access to opportunities, but it conveys no obligation or acknowledgement of the need for action to make those opportunities accessible in a real sense where people begin from unequal starting points. Similarly, while the principle of non-discrimination is again an important one, this suggests a negative rather than a positive obligation on the part of the State to simply guard against discrimination rather than actively address it by having due regard to differences within the population.



It would be preferable for the references to 'moral' and 'social function' to be updated to take on a less normative tone and focus, nevertheless the new wording as proposed is problematic for the ambiguity it would introduce and the change in focus it would bring about with respect to the State's obligations towards its citizens.

**Recommendation: That no change be made to the original text of Article 40.1.**

## Article 41.1

We support the recommendation to make no change to this provision.

**Recommendation: That the proposal not to alter Article 41.1 be accepted.**

## Article 41.2

### *Original Text*

*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.*

### *Proposed Text*

*1° The State recognises that care within and outside the home and Family gives to the State a support without which the common good cannot be achieved.*

*2° The State shall, therefore, take reasonable measures to support care within and outside the home and Family.*

Though we understand and see the positive motivation for the proposed changes to Article 41.2 as seeking to acknowledge the diversity and value of caring roles undertaken inside and outside the home, we would nevertheless caution against the removal of reference to women and motherhood from this provision.

Mothers have a unique role within a child's life that is separate and distinct from all other relationships. The nature of this role and the relationship between mothers and their children is of such importance that it has lifelong impacts that ripple outward into all relationships with family, other social groupings, communal groups, and broader society. It is well established that what happens in the first 1000 days of a child's life will remain with them throughout their lifetime in a multitude of complex and interwoven ways. The important role of the mother in setting the tone for that first 1000 days, and indeed the years that follow in a child's life, is incomparable to any other. In this respect, no relationship has a greater impact on the common good than the mother / child relationship.

We acknowledge that the language within this provision should be updated to better reflect the complex lives and unending potential of women and mothers within broader modern society. This includes removing reference to neglect of the duties in the home. However, we do not agree that the specific reference to mothers and women should be removed in their entirety. This Article has not hindered the full participation of women in Irish life and thus its removal is unnecessary.

To avoid any unintended consequences that may flow from the proposal to recast the acknowledgement of women and mothers as more generally applicable to caring, we urge that either no change be made or that the language solely be updated to remove reference to neglect of her duties in the home and better reflect the full and complex lives and potential of women and mothers in modern society.



**Recommendation: That either no change be made or that the language of Article 41.2 solely be updated to remove reference to neglect of her duties in the home and better reflect the full and complex lives and potential of women and mothers in modern society.**

## Article 41.3.1

### *Original Text*

*The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.*

### *Proposed Text*

*The State pledges itself to guard with special care the Family, including but not limited to the marital family.*

It is welcome to see that different definitions of family are provided or by disaggregating marriage and family, although it is welcome to see that the Joint Committee has recommended the inclusion of reference to marriage in this recommended text. As mentioned in their report, the term 'marital family' does not appear elsewhere in the Constitution, so it may be worth exploring alternative phrasing to achieve this aim.

It is, however, noteworthy that the Joint Committee's final report is silent on the choice to recommend removing the words 'and protect it against attack'. We would recommend that this phrase remain within this provision as it sends a clear statement to the State that it has a positive obligation to protect the family from attack, which would be wholly absent should this phrase be removed. There is no clear benefit to doing this.

### **Recommendation:**

- 1. Explore alternative phrasing options to 'marital family', however only deviate from this phrase if a superior option is identified.**
- 2. Include the 'and to protect it against attack' in the newly proposed provision.**

## Broader Narratives on Gender Equality

The comments below are made with a view to addressing some of the narratives that may arise with respect to gender and sex as part of this consultation and the broader referendum campaign to come.

### Definitions

As an organisation, The Countess is concerned with preventing the erosion or erasure of clear, sex-based terms that are important to how most people describe and think of themselves to enact their own meaning. With that in mind, and for the avoidance of doubt, the following are the interpretations of those words applied in this submission and in all our work that have become contested within debates around gender and sex. We would urge the Inter-Departmental Committee to apply them through the course of its work on this matter to ensure clarity for all concerned. They are:

- Woman: 'Adult Human Female'
- Man: 'Adult Human Male'
- Girl: 'Female child or adolescent'
- Boy: 'Male child or adolescent'
- Sex: 'Either of the two categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions'

To use any other interpretation of the terms listed above, in our view, would make it impossible to guarantee enduring clarity and consistency in the use and interpretation of the language used in the Irish constitutional



framework. These are the best established, clearest, and plainest definitions of the words: woman, man, girl, boy, and sex. When tackling questions of constitutional change, those are essential criteria for any terminology used.

**Recommendation:**

**That the Inter-Departmental Committee adopt and use the following definitions to ensure clarity and unambiguity in its work, and to remain in line with the plain meaning rule, which requires that words be given their plain, ordinary, and literal meaning.**

- **Woman: ‘Adult Human Female’**
- **Man: ‘Adult Human Male’**
- **Girl: ‘Female child or adolescent’**
- **Boy: ‘Male child or adolescent’**
- **Sex: ‘Either of the two categories (male and female) into which humans and most other living things are divided on the basis of their reproductive functions’**

## **Focus of Work**

The mandate given to the Citizens Assembly on Gender drew attention to specific aspects of gender (in)equality to be considered in its work. The Oireachtas Joint Committee on Gender Equality progressed this through its deliberations and subsequent Report (2022), which built out specific action points to be implemented in response to the Assembly’s recommendations.

This work focused on well-documented aspects of modern life that underly the inequality remaining between women and men (and boys and girls) and that, in turn, reinforce the power-structures propagating those inequalities. All of them are linked to the referendum topics to be considered by the Inter-Departmental Committee, i.e., family, care, and gender equality.

The existence of these challenges is inextricably linked to the traditional gender roles that have been placed upon women, men, girls, and boys in Irish society, and society more widely, since time immemorial. It is, therefore, important that when seeking to address them we examine and understand these challenges through a prism of sex and gender that is appropriate to their origins and drivers. This means acknowledging that the socially constructed gender projected onto each person remains linked to their biological sex in that society continues to impose gender-based expectations upon us based on our biological sex.

As this is the case, it is not possible for someone born female to know what it is to experience male socialisation from birth, and neither is the converse possible. Irrespective of whether gender questioning arises at a later point in life, we share a common experience of socialisation with those who share our biological sex. The way we experience the world, therefore, differs based on whether we are born male or female, and that impacts every facet of our social development. Whether we accept the messages delivered to us through that process of socialisation or reject them, only by receiving them and being subject to the social weight they impose upon us can we know what that experience entails.

This inherent intermingling between biological sex and socialised gender is fundamental to the experience of being a woman or girl, or a man or boy. When it comes to deliberating over the proposal to hold referendums on family, care, and gender equality it is, therefore, vital that the Inter-Departmental Committee is clear on the importance of providing equally for the needs of men and women (and boys and girls). To do this, it is vital that the normative values placed upon us by virtue of our biological sex are understood and clearly acknowledged.

### *Focus on Women and Girls*

The great focus and success of the feminist movement was to shift the social paradigm by challenging expectations leveraged upon us by virtue of our biological sex. This was instrumental in forcing wider society to see that the only true requirement of womanhood or girlhood was to be born female. In doing so, feminists advocated the view that there was no right or wrong way to be a woman, girl, man or boy. Simply being born into that sex was enough.

To achieve this, feminists subverted the socially constructed ideal of gender by pushing the boundaries of what it meant to be a woman or a man within the bounds of one’s biological sex. They pushed to have society accept that, should they so wish, women and men (and girls and boys) could and should safely and readily



take on mannerisms, clothing, behaviours, forms of expression, employment, and pursuits traditionally associated with the opposite sex.

The liberalising effect of this has been revolutionary for society across the broad spectrum of life from family, society, public life, and the economy. Men and boys have been freed from narrow views of masculinity, which has opened a world of opportunities for those born male. Equally, the full talents of women and girls are now recognised and leaned upon alongside those of men and boys. That said, residual disadvantage and discrimination continues to persist for women and girls.

To properly consider the proposal to hold referendums on family, care, and gender equality, it is necessary to identify and address the unique experiences of women and girls, men and boys, and those living with gender questioning identities as standalone, albeit interlinked, issues. Investigating and addressing the disadvantage and discrimination that is unique to women and girls does not diminish or undermine the specific needs and experiences of men and boys just as it does not diminish the needs of those with gender questioning identities. Rather, it ensures that the needs of one group are neither masked nor superseded by the other.

The traditional obscuring and dismissal of the unique lived reality of being women and girls is arguably at the heart of the enduring inequality we face and the need to hold these referendums. It is, therefore, vital that the Inter-Departmental Committee retain a focus on this significant cohort of the Irish population as part of its deliberations on family, care, and gender equality.

This is important as women and girls take on disproportionate levels of caring responsibilities both inside and outside the home, and we are subject to unique and often historically derived forms of discrimination and disadvantage. The Committee must, therefore, be empowered to consider the unique needs, interests, and experiences of women and girls as a distinct group. To do otherwise would simply risk recreating the power structures that have led to the pervasive inequality that continues to be experienced by women and girls on the ground of sex as reflected in the current constitutional provisions on the family and role of women.

**Recommendation:**

**Empower the Inter-Departmental Committee to consider the unique needs, interests, and experiences of women and girls as a distinct group to ensure visibility and clear understanding of their distinct experience as a communal group.**



## Conclusion

Though imperfect, the Irish Constitution is the foundation stone of the Irish legal framework, having provided legal certainty and protection since enactment. Great care must be taken when proposing that it be amended as, once made, such changes become embedded in the very fabric of our legal system.

We have seen in the past how unintended consequences can flow from changes made based on a particular zeitgeist. It is important that any effort to provide differently for family, care, and gender equality in the Irish Constitution be carried out with restraint, balance, and a view to the long-term evolution of Irish society.

We wish the Committee well in this incredibly important work and are open to providing any additional information or assistance we can to support this work.



**For further comment or information, contact:**

**Laoise Aodha de Brún**

Founder & Spokesperson, The Countess

[hello@thecountess.ie](mailto:hello@thecountess.ie)



**THE COUNTESS**