

ISME does not consider the holding of a referendum on housing to be a good idea, for the following reasons:

1. Firstly, the phrase “referendum on housing” is objectively meaningless without some statement on what such a referendum would set out to achieve. In our view, the Irish Constitution is the fundamental law of Ireland, setting out the fundamental rights of citizens, the form and function of the State and its legislative branches, and the manner and extent to which laws may be enacted. We do not view it as prudent that anything requiring the allocation of resources should be enumerated in the constitution, since doing so robs our legislature of authority, as well as being an unwieldy process which is likely to provoke unintended and unwelcome outcomes. While Art 45 does set out “Directive principles of Social Policy,” it states these are “intended for the general guidance of the Oireachtas...” and also expressly states that “shall not be cognisable by any Court under any of the provisions of this Constitution...”
2. It is arguable that Art 45.2 already confers an implied right to housing.
3. ISME notes that the Eighth Amendment of the Constitution, inserted into the constitution with the intention of protecting the right to life of the unborn, eventually resulted in a Supreme Court decision which permitted abortion up to date of delivery in certain circumstances.
4. Were we to hold a referendum on housing that went beyond Art 45, and was cognisable by a court, the following considerations would arise:
 - a. At what age could a plaintiff seek to assert whatever right was enumerated in the amendment?
 - b. Against whom would the amendment be enforceable?
 - c. Could the right to housing be invoked among adults who already had access to housing, for example those who separated or divorced, with one partner leaving the family home?
5. Those right-to-housing provisions in other European jurisdictions are effectively aspirational rather than justiciable, in that they do not confer actionable rights to housing upon citizens.
6. We do not perceive any deficit, mistake or imbalance in the 1937 constitution which contributes to the housing problem. The 1973 Committee on the Price of Building Land Report¹ (“The Kenny Report”) outlined a series of legislative proposals which would alleviate the land-price appreciation issue without constitutional amendment. Even the dissenting opinion within that report did not identify a constitutional impediment to progress. This report has never been subsequently actioned.

¹ <https://www.icfj.ie/wp-content/uploads/2021/07/Report-to-the-Minister-for-Local-Government-Committee-on-the-Price-of-Building-Land.pdf>

7. A referendum on housing will not, of itself, improve the supply of housing.
8. If, therefore, it is our intention to create aspirational rather than justiciable rights by way of constitutional amendment, what is the justification for using up so much legislative resource and referendum resource on a provision which will not improve access to housing.
9. The current housing crisis (which we define as an absence of availability combined with a lack of affordability) has been long predicted, with the 2017 National Risk Assessment² identifying housing bottlenecks. The crisis has no proximate or predominate cause, but has had a number of contributing legislative factors plainly visible for many years:
 - a. The impact of VAT on construction input and output costs.
 - b. The impact of site and development levies, and the costs of connection to utilities.
 - c. The effective outlawing of bedsit accommodation.
 - d. The ending of Section 23 incentives.
 - e. The increasing regulatory burden on landlords.
 - f. The reduction of deductibles for private landlords, and the application of social charges to rental income (but not for institutional landlords). Local property tax is not a permissible deduction, meaning landlords must pay this tax from their “after tax” income. Meanwhile, institutional landlords pay tax only on dividends.
 - g. A planning system which is very accommodative of lengthy legal review, including from persons unaffected by a particular planning application.
 - h. A legal system which is very accommodative of tenants who do not pay rent, even for extended periods of time.
 - i. A legal system which is very accommodative of property owners who do not pay their mortgages, which leads to a premium in the cost of mortgage finance for all of society. Cases of non-payment for ten years have occurred.
 - j. Rent pressure zones have frozen many landlords with long-sitting tenancies into rents that are far below market value.
 - k. For many self-employed persons, buy-to-let property is their sole method of pension provision. The increasing disincentives to invest in buy-to-let property not only attack their pension arrangements, but are pivotal in the contraction in rental supply.
10. We also concur with the findings and conclusions reached by Jim Power³ in his report for IPAV and the IPOA.
11. Not alone will the expenditure of significant political and social capital on a referendum on housing not alleviate the burdens of our current housing crisis, they will prolong them. It is therefore imperative for us that the energies of the executive and the legislature are expended not on a constitutional white elephant, but on the practical, deliverable nuts and bolts of legal, planning and taxation reforms that will deliver affordable housing for Irish society. It follows, therefore, that if the executive and legislative branches are serious about housing reform, a constitutional referendum on housing is avoided in favour of legislative

² <https://assets.gov.ie/2275/241018133005-79185c8804314719bc9656328a460308.pdf>

³ [The Irish Private Rental Market](#)

reform and action on housing. The solutions to the availability and affordability problems are legislative, not constitutional. The former must be prioritised over the latter.