

Proposed Citizenship Referendum:

Article by Minister for Justice, Equality and Law Reform Mr. Michael McDowell, T.D., published in Sunday Independent on 14 March, 2004

When I announced the Government's proposals for a referendum to deal with universal entitlement for those born in Ireland to claim Irish citizenship, I knew it would provoke public debate. My purpose is to ensure that the debate proceeds on the basis of a true understanding of the facts and clear public awareness of what is proposed—and, especially, of what is *not* being proposed.

The 2002 Programme for Government contains a commitment for all-party discussions on the need for constitutional or other measures which might be required to address the number of applications to remain in the State being made by non-national parents of children born in the State. That commitment was in the context of two important features of Irish law: first, the entitlement, derived from Article 2 of the Constitution, of those born in Ireland to be Irish citizens; and second, the apparently strong legal claim on the part of non-national parents of a child born here to remain in the State, based on the *Fajujonu* case.

The second aspect altered dramatically in 2003 when the Supreme Court delivered its judgment in the *L and O* case, involving the proposed deportation of the parents and families of two children born in Ireland. The Court made clear that the factors to be taken into account went beyond the location of birth alone - the length of stay of the families and their circumstances and the general requirements of the common good were also relevant. In other words, the Minister could after due consideration of the issues in each case decide that the parents of an Irish born child should be deported. That consideration is now under way: it is a careful, painstaking statutory process which gives each person the opportunity to make representations as to why they should not be deported.

In the thirteen months or so since that judgment there has been no significant diminution in the numbers of non-nationals arriving heavily pregnant. This is cause for concern in a number of respects. The inescapable conclusion is that non-national parents, whether based in Ireland or not, quite reasonably perceive an advantage by giving birth in Ireland to a child who thereby becomes an Irish, and thus an EU, citizen. And this is something not experienced in other EU States: the equally obvious conclusion is that this is because no other EU state has citizenship laws that operate in the immediate and absolute way that Irish law does as regards birth on their territory.

Our maternity services come under pressure because they have to deal at short notice with women who may have communications difficulties, about whom no previous history of the pregnancy or of the mother's health is known, and who in about half of the cases of first arrival (according to the Master of the Rotunda, Dr Michael Geary, as interviewed on RTÉ during the week) are already at or near labour. Hospitals cannot predict the demand on resources from month to month, and all the resources in the world would be of little use in dealing with suddenly-presenting crisis pregnancies. Most importantly, it is clear that women are putting their own health and the lives of their unborn children at risk by undertaking journeys from abroad in late pregnancy.

How do we respond? We cannot rely on immigration controls; to require non-national women of child-bearing age to make declarations of pregnancy or otherwise when arriving in the State is clearly unworkable – especially in a common travel area. We have a responsibility under the Refugee Convention anyway to admit to our territory anyone who claims that they are in fear of persecution, whether or not they are pregnant women (though there is a strong trend for expectant non-national mothers not to seek asylum).

On the contrary, the Government is convinced that in order to address the real issues posed by women putting themselves at risk (or being put under pressure by their partners or others to take that risk) by undertaking hazardous journeys late on in pregnancy, we must address the incentive that induces them to make the journey in the first place. I consulted with the Attorney General to see whether we could solve this by simply bringing forward a suitable Act of Parliament, but his firm advice strongly concurred with my own view: that any such Act would be inconsistent with the Constitution as it now stands. That is why we have decided to put a proposition to the people to amend the Constitution.

The wording of the amendment is being developed, as is the detail of the legislation which will give effect to it once the people have spoken. I welcome all reasonable suggestions from whatever quarter as to what the final outcome might be. But I can guarantee certain things. The first is that it will not be the case that the health of any pregnant non-national mother or her unborn child will be put at risk as a result; in fact, the opposite will be the case. The proposal will not deprive anyone who already is an Irish citizen of that entitlement. It will most certainly not be racist: it will apply even-handedly to the children of all non-nationals irrespective of colour, ethnicity or any other criterion on which racism is based. It will be based on a reasonable period of lawful residence in the State on the part of at least one of the non-national parents. It will be at least as generous as the citizenship laws of most of our European Union colleagues as regards children born to non-nationals. It will be clear and transparent in its operation, and won't involve the exercise of Ministerial discretion. It won't affect the citizenship entitlements of a child born North or South at least one of whose parents is Irish or entitled to be an Irish citizen. A draft of the proposed implementing Bill will be published in an explanatory document at the same time as the text of the Bill to amend the Constitution.

I look forward to debate as we work out the details; and the Government will make a calm and rational decision as to when the referendum will be conducted. Two obvious possible options are to make use of the polling day already fixed for the European Parliament and local authority elections, on 11 June next or to run it in conjunction with the presidential election if such were called next November. Either way, however, I can reiterate now that the Government campaign in support of the proposal will not be racist because the proposal itself will not be in any way racist. I simply won't allow the proposal to be hijacked by those who wish to further a racist agenda; but equally I will be harsh in my criticism of those on the other end of the political spectrum who claim to detect racism in any action, however rational, fair-minded or soundly based, that affects immigration or citizenship policy.

I take this opportunity to reiterate most strongly that most non-nationals living in Ireland have come here properly documented and are sharing in and contributing to Ireland's

economic success. We're delighted to have them here; to welcome them; and to help them establish themselves permanently here if that's what they want. This proposal will ensure that children born to those who have settled here for a reasonable time will have an entitlement to Irish citizenship, as much in acknowledgment of the fact that the family has settled into Irish society and are welcome to do so as for any other reason.