



UCD Constitutional Studies Group
UCD School of Law

A Guide to the referendum on the 29th Amendment to the Constitution

What is the proposed amendment about?

The amendment is designed to allow for the possibility of reductions in the income received by sitting judges in certain circumstances.

Why are we having a referendum?

Article 35. 5 of the Constitution states that “The remuneration of a judge shall not be reduced during his continuance in office”.

The idea behind this rule is to protect the independence of the judiciary. It is designed to prevent a situation in which a Government might try to influence the decisions of the courts by reducing, or threatening to reduce, the income of judges. Many constitutions have similar rules.

At the moment, judges pay the same income and other taxes as everyone else.

Following recent economic difficulties, it was decided to impose a “Public Service Pension Levy” on public servants. The consequence of the levy is that a public servant’s income is reduced.

It was decided the levy could not be applied to judges because this would reduce their remuneration during their term of office in breach Article 35. 5.

Arrangements were put in place to allow judges to pay the levy on a voluntary basis. It has been reported that 85% of current judges made arrangements to voluntarily return a portion of their income to the State.

What does the Constitution say at the moment?

Article 35. 5:

The remuneration of a judge shall not be reduced during his continuance in office.

If the People vote 'Yes, what would the Constitution say?

Article 35. 5.:

1° The remuneration of judges shall not be reduced during their continuance in office save in accordance with this section.

2° The remuneration of judges is subject to the imposition of taxes, levies or other charges that are imposed by law on persons generally or persons belonging to a particular class.

3° Where, before or after the enactment of this section, reductions have been or are made by law to the remuneration of persons belonging to classes of persons whose remuneration is paid out of public money and such law states that those reductions are in the public interest, provision may also be made by law to make proportionate reductions to the remuneration of judges.

What are the arguments for and against?

<u>Arguments in favour of a 'Yes' vote</u>	<u>Arguments in favour of a 'No' vote</u>
<p>The Chief Justice, Mrs. Justice Susan Denham, has said that the judiciary are not opposed to a reduction in remuneration to “pla[y] their part in sharing the financial pain required of everyone in this difficult time”.</p>	<p>Reducing the remuneration of judges undermines judicial independence.</p>
<p>It is important for public confidence in the judiciary that they are seen to make a contribution to Ireland’s economic situation.</p>	<p>The decision to reduce judges’ pay should be taken by an independent body. This is what happens in other countries where judges’ pay can be reduced.</p> <p>This would avoid the danger of Government or the Oireachtas trying to influence or put pressure on the judiciary.</p>
<p>The amendment allows for flexibility to deal with different situations in the future. If issues arise in the future about what “public interest” or “particular class” means, they will be subject to review by the courts.</p>	<p>The amendment is vague about the circumstances in which judges’ pay can be reduced. In particular, it does not define “particular class”.</p> <p>This creates uncertainty and places few real, if any, limits on the power of the Oireachtas to reduce judges’ pay.</p>
<p>The amendment will save money for the State at a time of economic hardship.</p>	<p>85% of the judiciary have already voluntarily reduced their income. The savings that might be made by applying the levy are insignificant when the costs of organising the referendum are taken into account.</p>

