



Rialtas na hÉireann
Government of Ireland

The Referendum in Ireland

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The Referendum in Ireland

1. Introduction

This note is intended as a practical guide. It is not a definitive legal interpretation of referendum law. For more information you should consult the law relating to the referendum listed in section 4 of this note.

There are two types of referendum: a referendum to amend the Constitution and a referendum on a proposal other than a proposal to amend the Constitution (an "ordinary referendum" – see section 3).

2. Constitutional Referendum

2.1 Amendment of the Constitution

The Constitution of Ireland (Bunreacht na hÉireann) was approved by the people at a plebiscite held on 1st July 1937 and came into operation on 29th December 1937. During a transitional period to June 1941 the Constitution could be amended by ordinary legislation and two Constitution Amendment Acts were enacted during this period. Since the expiry of the transitional period, it has been possible to amend the Constitution only with the approval of the people at a referendum.

There have been thirty Constitutional amendments to date on foot of referendums held over a number of decades, the first of which was in 1972.

They are as follows:

- Accession to the European Communities (1972)
- Voting Age (1972)
- Recognition of Specified Religions (1972)
- Adoption (1979)
- University Representation in the Seanad (Senate or Upper House of Parliament) (1979)

- Right to Life of the Unborn (1983)
- Voting Right at Dáil (Lower House of Parliament) elections (1984)
- Single European Act (1987)
- Treaty on European Union (1992)
- Right to Travel (1992)
- Right of Information (1992)
- Divorce (1995)
- Bail (1996)
- Cabinet Confidentiality (1997)
- Treaty of Amsterdam (1998)
- British-Irish Agreement (1998)
- Local Government (1999)
- Prohibition on the Death Penalty (2001)
- International Criminal Court (2001)
- Treaty of Nice (2002)
- Citizenship (2004)
- Treaty of Lisbon (2009)
- Judges' Remuneration (2011)
- Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (2012)
- Children Referendum (2012)
- Court of Appeal (2013)
- Marriage Equality (2015)
- Thirty-sixth Amendment of the Constitution Bill 2018 (2018)
- Thirty-seventh Amendment of the Constitution (Repeal of offence of publication or utterance of blasphemous matter) Bill (2018)

- Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Bill 2016 (2019)

Eleven proposals to amend the Constitution were rejected at a referendum.

They were:

- Voting System (1959)
- Formation of Constituencies (1968)
- Voting System (1968)
- Dissolution of Marriage (1986)
- Right to Life (1992)
- Treaty of Nice (2001)
- Protection of Human Life in Pregnancy (2002)
- Lisbon Treaty (2008)
- Houses of the Oireachtas Inquiries (2011)
- Abolition of Seanad Éireann (2013)
- Age of Eligibility for Election to the Office of President (2015)

“Referendum Results 1937 – 2019”

Published by the Department of Housing, Local Government and Heritage.

This sets out in convenient form the subject matter and result of each referendum held. It is available to download (in pdf format) at

www.gov.ie/housing

2.2 Procedure at a Constitutional Referendum

Under Article 46 of the Constitution, a proposal to amend the Constitution must be introduced in the Dáil as a Bill. When the Bill has been passed by both Houses of the Oireachtas (Parliament), it must be submitted to the people for approval at a referendum. If a majority of the votes cast at the

referendum are in favour of the proposal, the Bill is signed by the President and the Constitution is amended accordingly.

2.3 Who can vote?

There are in excess of 3.3 million registered electors entitled to vote at a referendum. Every citizen of Ireland ordinarily resident in the State who is aged 18 years or over and whose name is entered on the register of electors is entitled to vote.

The Register of Electors is maintained on an ongoing basis by registration authorities (county, city and city and county councils in their role as registration authorities under the electoral acts). It is their role to add, remove or update details as necessary to ensure a complete and accurate register of electors. Registration authorities are also required to publish the register in force in advance of an electoral event.

Persons entitled to vote at referendums who are not on the register or whose details in respect of their registration are outdated, can register or update details directly with the registration authority where they ordinarily reside by submitting a form or online at www.checktheregister.ie. An application to register or update details in the register must be received at least 15 days before polling day, (excluding Sundays, Good Friday and Public Holidays) in order to be considered for that referendum. Different closing dates apply to postal and special voting applications – see paragraphs 2.6.1 and 2.6.2 below. An application received on or after the 14th day in advance of polling day will not be considered until after polling day.

Where an application cannot be completed online, or where a person prefers to submit a paper form, the relevant forms can be downloaded at www.checktheregister.ie or requested from the registration authority.

Where a person lives in Dublin and has a verified MyGovID they can also engage with their registration authority via www.voter.ie.

The relevant registration authority will consider and decide on each application to register or to update details as soon as practicable, and where an application is refused, the person will be notified of the reasons therefore and of their right to appeal the decision to the county registrar.

An elector can appeal against decisions of a registration authority to the county registrar. Ordinarily, an appeal must be made within 4 weeks of the date of the decision of the registration authority, but where a polling day has been set, this changes. As soon as possible after the date for an electoral event has been set, the County Registrar is required to give public notice of the last dates for receipt of an appeal in respect of that particular electoral event, in the case of postal voting or special voting, this will not be less than 2 days later than the last day for making an application.

More information regarding the register of electors can be found in the separate leaflet “The Register of Electors” available in this series on the Department’s website (www.gov.ie/housing)

2.4 Information on proposed amendment

Electoral Commission

The law provides for the independent Electoral Commission to prepare and disseminate information on the subject matter of a referendum.

The role of the Commission is to explain the subject matter of the referendum to the electorate. It does this by preparing a statement or statements on the main issues and it may include any other information which it considers appropriate. The Commission’s role also includes promoting public awareness of the referendum and encouraging the electorate to vote at the poll.

Statement for the information of voters

A formal statement may be prescribed by the Oireachtas regarding the subject matter of the referendum. This statement is sent to each elector

usually combined with the polling information card, and is displayed at each polling station.

2.5 The Poll

When the Houses of the Oireachtas have passed a Bill containing a proposal to amend the Constitution, the Minister for Housing, Local Government and Heritage appoints a Referendum Returning Officer who is responsible for the overall conduct of the referendum including the count and the declaration of the result. The country is generally divided into the same constituencies as for a Dáil election and the Dáil returning officer for a constituency (i.e. the sheriff or county registrar) is the Local Returning Officer for the constituency at a referendum. The Local Returning Officer is responsible for the detailed polling arrangements in each constituency and for reporting results to the Referendum Returning Officer.

When the constitutional amendment bill is passed, polling day is appointed by order of the Minister for Housing, Local Government and Heritage and must be between thirty and ninety days after the making of the order. This order also fixes the period for voting. At least twelve hours within the period between 7 a.m. and 10.30 p.m. must be allowed for voting. A polling information card is sent to each elector informing the elector of his or her number on the register of electors and the polling station at which he or she may vote. The Local Returning Officer makes the necessary arrangements for voting by postal and special voters.

At each polling station the poll is taken by a presiding officer, assisted by a poll clerk. Personation agents may be appointed by members of the Oireachtas and by bodies approved by the Electoral Commission (see paragraph 2.4) to attend at polling stations to assist in the prevention of electoral offences.

2.6. Alternative voting arrangements

Generally, electors vote in person at their local polling station, however, in certain circumstances the following alternative voting arrangements are available.

2.6.1 Postal Voters List

Registration authorities prepare and maintain a postal voters list as part of the register of electors. Postal vote applications require some additional information, documentation or certification – the requirements vary depending on the reason for the application and are set out on the relevant application form.

The following categories of persons **must be registered** as postal voters:

- whole-time members of the Defence Forces - members who live in military barracks may be registered either at the barracks or at their home address; and
- Irish diplomats posted abroad and their spouses/civil partners - they are registered at their home address in Ireland.

The following categories of persons **may apply** for registration as postal voters:

- members of the Garda Síochána (police force);
- persons living at home who are unable to go to a polling station to vote because of an illness or disability;
- persons whose occupations are likely to prevent them from voting at their local polling station on election day, including full-time students registered at home who are living elsewhere while attending an educational institution in the State (*under this arrangement, a ballot paper is posted to the elector at home who must arrange to have his or her declaration of identity witnessed by a Garda before marking the ballot paper and returning it by post to the returning officer.*);
- electors unable to vote at their polling station due to circumstances of their detention in prison pursuant to an order of the court;
- certain election staff employed at a polling station outside the constituency where they live; and

- persons who consider their safety, or the safety of a member of their household would be at risk if their name and address were to be published may apply to be an anonymous elector – such electors may only vote by post.

An application for inclusion in the postal voters list can be made at any time once the elector is eligible for entry on the postal voters list however, the latest date for receipt of applications for a postal vote in respect of a specific electoral event is –

- two days after the date of dissolution of the Dáil in the case of a general election;
- two days after the polling day order is made in the case of a Dáil bye-election;
- in the case of a Presidential, European or local election or a Referendum an application must be received by the registration authority at least twenty-two days before polling day (excluding Sundays, Good Friday and Public Holidays).

Where an application is received after that time it will not have any effect for that electoral event.

As soon as possible after the date for an electoral event has been set, the County Registrar will set the last dates for receipt of an appeal in respect of that particular electoral event, in the case of postal votes, this will not be less than 2 days later than the last day for making an application.

An elector registered as a postal voter may vote by post only and may not vote at a polling station.

2.6.2 Special Voters List

Registration authorities also prepare a list of special voters comprising electors with an illness or disability which prevents them from going to a polling station to vote and who are living in hospitals, nursing homes, mental health facilities or similar institutions who wish to vote at these locations. In the case of a first application it must be accompanied by a certificate from a registered medical practitioner (such as a GP).

An application may be made at any time once the elector is eligible for entry on the special voters list however, the latest date for receipt of applications for a special vote in respect of a specific electoral event is –

- two days after the date of dissolution of the Dáil in the case of a general election;
- two days after the polling day order is made in the case of a Dáil bye-election;
- in the case of a Presidential, European or local election or a Referendum an application must be received by the registration authority at least twenty-two days before polling day (excluding Sundays, Good Friday and Public Holidays).

Where an application is received after that time it will not have any effect for that electoral event.

As soon as possible after the date for an electoral event has been set, the County Registrar will set the last dates for receipt of an appeal in respect of that particular electoral event, in the case of special votes, this will not be less than 2 days later than the last day for making an application.

Electors on the special voters list vote at the hospital, nursing home, mental health facility or similar institution, where they are residing by marking a ballot paper delivered to them by a special presiding officer accompanied by a Garda.

In the exceptional event that the hospital, nursing home or similar institution of the special voter is not accessible to the special presiding officer, the returning officer can apply special voting procedures such as issuing a postal vote to the special voters affected.

Electors with physical disabilities who have difficulty in gaining access to their local polling station may be authorised to vote at a more accessible station in the constituency.

2.7 Voting

Voting is by secret ballot. The form of ballot paper is prescribed by law and contains brief instructions on how to vote. The ballot paper shows the title of the Bill proposing to amend the Constitution.

The elector applies for a ballot paper in the polling station by stating his or her name and address. The elector may be required to produce evidence of identity and, if he or she fails to do so, will not be permitted to vote. Where the presiding officer is satisfied as to the elector's identity, a ballot paper is stamped with an official mark and handed to the elector.

The elector votes in secret in a voting compartment. The voter indicates whether or not he or she approves of the proposal by marking an "X" in either the "yes" box or the "no" box on the ballot paper. The voter folds the ballot paper to conceal how it has been marked and places it in a sealed ballot box. A person may vote only once at a referendum.

Persons with a physical or sight disability who cannot vote without help may be assisted by the presiding officer or by a companion. Persons with reading or writing difficulties may be assisted by the presiding officer. Persons with a visual impairment may also use a Ballot Paper Template (available at every polling station) to cast their vote. These are devices that can be attached to a ballot paper to enable vision impaired voters to vote in secret.

The presiding officer may order the arrest of any person suspected of committing an electoral offence such as personation, interfering with the ballot box or destroying a ballot paper.

2.8 The Count

The votes are counted in the individual constituencies at a designated count centre. Generally, the count commences at 9 a.m. on the day after polling day. Each ballot box is opened and the number of ballot papers checked against returns furnished by the presiding officers. The votes for and against the proposal are counted and the result is reported by the Local Returning Officers to the Referendum Returning Officer. The counting may be observed by persons appointed for this purpose by members of the Oireachtas and by bodies approved by the Electoral Commission.

2.9 Referendum Result

Based on the Local Returning Officers' reports from each constituency, the Referendum Returning Officer draws up a provisional referendum certificate stating the results of the voting and indicating whether or not the proposal has been approved. The provisional certificate is published in *Iris Oifigiúil* (the Official Gazette). Within 7 days after formal publication, any presidential elector may apply to the High Court for leave to present a petition questioning the provisional certificate. If no petition is presented, the certificate becomes final and, if it shows that the majority of the votes cast were in favour of the proposal, the relevant Bill is signed by the President and the Constitution is amended accordingly.

3. Ordinary referendum

Articles 27 and 47 of the Constitution also provide for a referendum on a proposal other than a proposal to amend the Constitution (referred to in law as an "ordinary referendum"). An ordinary referendum may take place when the President, on receipt of a joint petition from a majority of the members of the Seanad and not less than one third of the members of the Dáil and following consultation with the Council of State, decides that the Bill contains a proposal of such national importance that the will of the people thereon ought to be ascertained before the measure becomes law.

Where the President decides that a Bill which is the subject of a petition contains a proposal of such national importance that the will of the people on it ought to be ascertained he or she must decline to sign the Bill unless

- it is approved by the people at a referendum within 18 months of the President's decision, or
- it is approved by a resolution of the Dáil within that 18 month period after the holding of a general election.

The procedure at an ordinary referendum is similar to that in relation to a Constitutional referendum except that the proposal is held to have been

vetoed by the people if the majority of the votes are cast against the proposal and such votes represent at least one-third of the presidential electors on the register of electors. No ordinary referendum has been held in the State to date.

4. Law relating to Referendum

The law relating to the referendum is contained in Articles 27, 46 and 47 of the Constitution of Ireland and in the Referendum Act 1994 and the Referendum Act 1998 both of which have been amended. These amendments can be viewed at www.irishstatutebook.ie

5. Other Leaflets

Other leaflets available in this series on the Department's website (www.gov.ie/housing) are as follows:

- How the President is Elected
- How the Dáil (House of Representatives) is Elected
- How the Seanad (Senate) is Elected
- European Parliament: How Ireland's MEPs are Elected
- How Members of Local Authorities are Elected
- The Register of Electors
- Information for Voters with Disabilities

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