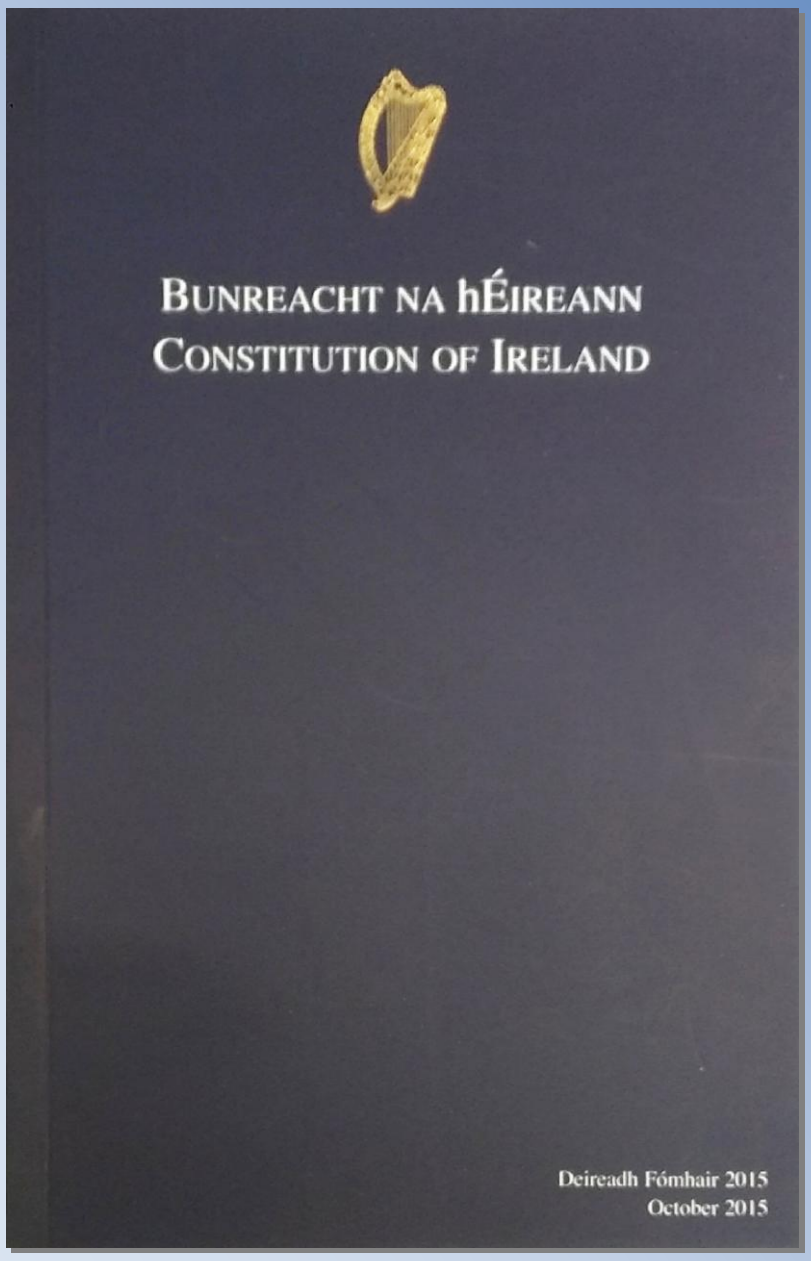
in Ireland



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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 twenty-eight 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)

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 – 2018"

Published by the Department of Housing, Planning and Local Government. 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.housing.gov.ie.

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 3.1 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.

A register of electors is compiled each year by county and city councils, who are the registration authorities. A draft register is published on 1st November and is displayed for inspection in public libraries, post offices, and other public buildings. Claims for corrections to the draft may be made up to 25th November. Claims are adjudicated on by the county registrar who is a legally qualified court officer. An appeal may be made to the Circuit Court against a county registrar's decision.

The register of electors comes into force on 15th February and remains in force for a year from that date. Eligible persons not included in the register may apply for inclusion in a supplement to the register, the closing date for which is 15 days (excluding Good Friday, Sundays and Public Holidays) before polling day. It is the responsibility of eligible individuals to ensure that they are included on the current register or supplement to the register of electors. For persons who wish to be included in the postal and special voters supplement to be published at an election, the application must be received by the county/city council at least 22 working days before polling day.

2.4 Information on proposed amendment

Referendum Commission

The law provides for the establishment of an independent Referendum Commission to prepare and disseminate information on the subject matter of a referendum. The Minister for Housing, Planning and Local Government may establish a Referendum Commission not earlier than the date on which a Constitution Amendment Bill is initiated in Dáil Éireann (in the case of an "ordinary referendum", not later than the date of the order appointing polling day). A Commission comprises a chairperson who must be a former Supreme Court judge, a former Judge of the Court of Appeal, or a serving or former High Court judge nominated by the Chief Justice; the Comptroller and Auditor General; the Ombudsman; the Clerk of the Dáil and the Clerk of the Seanad.

The role of a Referendum 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, Planning and Local Government 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, Planning and Local Government 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 Referendum Commission (see paragraph 2.4) to attend at polling stations to assist in the prevention of electoral offences.

2.6 Voting arrangements

Generally, electors vote in person at their local polling station.

Postal voting is available to the Garda Síochána (police force), Defence Forces and civil servants (and their spouses/civil partners) attached to Irish missions abroad, as well as to electors living at home who are unable to vote at a polling station due to a physical illness or physical disability and to prisoners. A person employed by a returning officer on polling day in a constituency other than where they are registered to vote may apply for entry on the supplement to the postal voters list.

Postal voting is also available to electors whose occupations are likely to prevent them from voting at their local polling station, 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.

Special voting is available to electors living in a hospital, nursing home or similar institution who are unable to vote at a polling station due to a physical illness or physical disability. The ballot paper is brought to them and they vote in the presence of a special presiding officer accompanied by a Garda.

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 visual impairment, physical disability or reading or writing difficulties may be assisted by the presiding officer or by a companion.

The presiding officer may order the arrest of any person suspected of committing an electoral offence.

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 Referendum 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.housing.gov.ie) 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

DEPARTMENT OF HOUSING, PLANNING AND LOCAL GOVERNMENT

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