

**24TH
MAY
2019**



THE INDEPENDENT GUIDE TO THE REFERENDUM ON
THE REGULATION
OF DIVORCE

**YOUR VOTE MEANS
EVERYTHING**



**An Coimisiún Reifrinn
Referendum Commission**

The Referendum Commission is an independent body set up under the Referendum Act 1998. Its role is to provide accurate and neutral information to the public in advance of a referendum on a proposal to amend the Constitution.

The Commission members are:

Ms Justice Tara Burns, *Chairperson*

Mr Seamus McCarthy, *Comptroller and Auditor General*

Mr Peter Tyndall, *Ombudsman*

Mr Peter Finnegan, *Clerk of Dáil Éireann*

Mr Martin Groves, *Clerk of Seanad Éireann*

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Introduction

On 24th May 2019, you will be asked to vote on a proposal to change the Constitution of Ireland in relation to divorce. The Referendum Commission, which I chair, has prepared this guide to help you understand the proposed changes.

The Constitution is the fundamental law of the State. It can only be changed by a vote of the people, not by the Government or by our TDs and Senators.

The Referendum Commission's job is to explain the proposed change to the Constitution, and to encourage you to use your vote. We do not urge a Yes or No vote. Listening to the arguments on each side of this proposal, and reading the independent and neutral information we provide, should help you to make up your mind. If you do not vote, other people will make the decision.

The vote will take place on the same day as the local and European Parliament elections on Friday 24th May. When you go to vote, you will be given a ballot paper in relation to this referendum, as well as separate ballot papers for the European Parliament elections and the local elections.

In this guide, we explain what is being proposed, and what the effects of a Yes and No vote are. More detailed information is available on our website www.refcom.ie.



Tara Burns

Chairperson

Referendum Commission

The proposal

The proposal is about two issues relating to divorce, namely how long people must be living apart before applying for a divorce, and the recognition of foreign divorces.

There will be one question on the ballot paper and voters can either vote Yes to allow both changes, or No to reject both changes. Voters cannot accept one change and reject the other.

The present legal position

Divorce within the State

The Constitution originally prohibited divorce within the State.

In 1995, a referendum was passed by the people which removed the prohibition on divorce by permitting a court to grant a divorce when certain conditions are established including:

- At the date divorce proceedings are instituted, the spouses have lived apart for at least four out of the previous five years. The minimum four-year period does not have to have been continuous.
- There is no reasonable prospect of reconciliation between the spouses.
- Proper provision has been or will be made for the spouses, the children of either or both spouses and any other person prescribed by law.

The Oireachtas passed the Family Law (Divorce) Act 1996 to put into effect what the people had voted for, which includes the minimum four-year separation period.

Recognition of foreign divorces

The Constitution prohibits persons who have obtained a foreign divorce that is not recognised under Irish law from remarrying during the lifetime of the other party to the marriage.

The 1995 referendum, which removed the prohibition on divorce, did not alter this constitutional provision.

The Constitution does not set out the rules for recognition of a foreign divorce. Some foreign divorces are entitled to recognition within the State under existing law. At the moment, different recognition rules apply depending on where and when the foreign divorce was obtained.

One vote, two proposed changes

On 24th May 2019, you are being asked whether or not to change the current Article 41.3 of the Constitution.

The present Article 41.3

1. The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.
2. A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that-
 - i at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,
 - ii there is no reasonable prospect of a reconciliation between the spouses,
 - iii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and
 - iv any further conditions prescribed by law are complied with.
3. No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved.

The proposal in the referendum is:

1

to remove this section
and renumber the subsequent clauses

and:

2

to replace this section with the text below:

3. Provision may be made by law for the recognition under the law of the State of a dissolution of marriage granted under the civil law of another state.



The legal effect of a YES vote

If a majority votes Yes, then the Constitution will change.

- 1 The Constitution will no longer require a person applying for a divorce to have lived apart from his or her spouse for at least four years. The minimum period of four years of living apart set out in the Family Law (Divorce) Act 1996 will continue to apply, unless and until the Oireachtas changes the law.

and

- 2 The Oireachtas already has power to make laws recognising foreign divorces. This power will be made explicit in the Constitution.

The explicit constitutional prohibition on a person remarrying in the State who has obtained a foreign divorce not recognised under Irish law will be removed. It will still be prohibited for a person to remarry in the State unless their foreign divorce is recognised under Irish law.



The legal effect of a NO vote

If a majority votes No, then the Constitution will remain unchanged.

- 1 The Constitution will continue to require that those applying for a divorce must have been living apart for at least four out of the previous five years. The Oireachtas will not have the power to change this.

and

- 2 The existing power of the Oireachtas to make laws recognising foreign divorces will not change.

The explicit constitutional prohibition on a person remarrying in the State who has obtained a foreign divorce not recognised under Irish law will remain.

The referendum will be held on Friday 24th May 2019.

Voting in the European Parliament and local elections will take place on the same day. There will also be votes in Cork City, Limerick City and County, and Waterford City and County on the issue of whether they should have directly elected mayors.

Polling stations will open **from 7 a.m. to 10 p.m.**

You can check if you are registered at **checktheregister.ie**



Eligibility to vote

All voters must be on the electoral register. **Only Irish citizens can vote in the referendum.** EU citizens, including Irish citizens, can vote in the European and local elections. Non-EU citizens can only vote in the local elections.

Your polling station

Before polling day, you should receive a polling card in the post telling you at which polling station you should vote. If you do not receive a polling card, you can still vote if you are registered.

Bring identification

You do not need to have your polling card with you when you go to vote. However, you should bring some valid form

of personal identification such as a passport, a driving licence, a public services card, or an employee or student identity card with a photograph. Other forms of identification are also acceptable, such as a credit card or a birth certificate, as long as you also have another document which confirms your address in the constituency. You might not be asked for proof of identity, but if you are asked for it, you need to show it.

Ballot papers

On polling day, voters will be given a green ballot paper for the referendum. The other ballot papers will be different colours. You can see a sample referendum ballot paper on the next page.

You will be voting on the green ballot paper as to whether or not to approve the proposal to amend the Constitution contained in the Thirty-eighth Amendment of the Constitution (Dissolution of Marriage) Bill 2016.

You vote in the referendum by marking 'X' in the 'Yes' box or 'X' in the 'No' box, depending on how you want to vote. Mark only one box, or your vote will not count. Do not mark any other part of the ballot paper.

Remember that voting in the European and local elections uses a different system, so read the instructions for voting on each ballot paper carefully.

Sample Ballot Paper

An bhfuil tú ag toiliú leis an togra chun an Bunreacht a leasú atá sa Bhille thíosluaite?

Do you approve of the proposal to amend the Constitution contained in the undermentioned Bill?

An Bille um an Ochtú Leasú is Tríocha ar an mBunreacht (Scaoileadh ar Phósadh), 2016

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

Ná cuir marc **ach san aon chearnóg amháin**

Place a mark in **one square only**

Má thoilíonn tú, cuir **X** sa chearnóg seo.....

If you **approve**, mark **X** in this square

	Tá Yes
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Mura dtoilíonn tú, cuir **X** sa chearnóg seo

If you do **not approve**, mark **X** in this square.....

	Níl No
--	-------------------------