

Referendum  
Commission



**Independent**

# Guide

**to the Seanad &  
Court of Appeal  
Referendums  
4 October**



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# The Referendum Commission

The Referendum Commission is an independent body set up under the Referendum Act 1998. The Chairperson of the Commission is Ms Justice Elizabeth Dunne. The other members are: Mr Kieran Coughlan, former Clerk of Dáil Éireann; Ms Deirdre Lane, Clerk of Seanad Éireann; Mr Seamus McCarthy, Comptroller & Auditor General and Ms Emily O'Reilly, Ombudsman.

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Commission



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This publication is available in Braille, on CD and in large text format through NCBI. It is also available in Irish sign language on the websites of the Irish Deaf Society ([irishdeafsfociety.ie](http://irishdeafsfociety.ie)) and DeafHear.ie

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## Welcome

On Friday 4 October, you have the opportunity to vote in two referendums on changing the Constitution of Ireland:

- One asks do you agree to the abolition of Seanad Éireann.
- The other asks do you agree to the establishment of a Court of Appeal and other changes to the Courts system.

The Referendum Commission's role is to provide you with unbiased and independent information. We do not argue for a yes or no vote. We simply set out the facts about what is being proposed.

When you go into the polling station on 4 October, you will be given two separate ballot papers: a white one for the Seanad referendum, and a green one for the Court of Appeal referendum. **You may vote Yes or No to each proposal.** We urge you to complete both ballot papers.

This guide, which is being delivered to all homes in the State, contains a brief, general description of each of the two referendum proposals. We have detailed explanations and background information on **referendum2013.ie**.

It's up to you how you vote and it's important that you vote. The Constitution belongs to you and you can decide whether or not to change it. Make sure your voice is heard by voting on 4 October.

A handwritten signature in blue ink that reads "Elizabeth Dunne".

**Elizabeth Dunne**  
Chairperson  
Referendum Commission

**referendum2013.ie**



## Seanad Éireann referendum



## The Seanad referendum proposal

In this referendum, **you may vote Yes or No** to the proposal to abolish Seanad Éireann.

### **If this referendum is passed:**

- The articles in the Constitution dealing exclusively with the Seanad will be removed. All references in the Constitution to the “Houses of the Oireachtas” or to “either House of the Oireachtas” will be replaced by a reference to Dáil Éireann.
- The Seanad will be abolished on the day before the Dáil meets after the next general election. The current Seanad will continue until then.

### **If this referendum is not passed:**

- The constitutional position of the Seanad will not be changed.

## Role of the Seanad

At present, the main role of the Seanad is as part of the process of making laws. It also has a number of further functions which are set out in the Constitution.

# Making laws

At present, the Oireachtas (the National Parliament of Ireland) consists of the President, the Dáil and the Seanad. The Dáil and Seanad are the Houses of the Oireachtas. The Oireachtas makes the laws of the country.

Proposed laws are called Bills. In order to become law, a Bill must be passed both by the Dáil and by the Seanad and then signed by the President. The Bill then becomes an Act.

The process of making general laws starts when a Bill is presented in either the Dáil or the Seanad. Members of each House may propose changes to Bills. The Seanad has the power to delay a Bill by up to 90 days but does not have the power to prevent it becoming an Act or to change it unless the Dáil agrees.

## **If this referendum is passed:**

- The Oireachtas will in future consist of the President and the Dáil.
- A Bill will become law if it is passed by the Dáil and signed by the President.

## Money Bills

The President has the power to refer Bills to the Supreme Court for a decision on whether or not they are constitutional except in the case of Money Bills.

Money Bills are different from other Bills:

- They are essentially proposed laws that deal only with matters relating to public finances including, for example, matters relating to taxation.
- They must start in the Dáil.
- The Seanad must consider them but may not make changes; it can make recommendations within 21 days which may be accepted or rejected by the Dáil.
- The Seanad cannot delay the passage of Money Bills.

The Constitution contains provisions for the Seanad to dispute whether or not a Bill is a Money Bill.

## **If this referendum is passed:**

- The final decision on whether or not a Bill is a Money Bill will be for the Dáil alone.

## Referral of Bills to the People

The Constitution provides that Bills may be referred to the people for a referendum if a majority of members of the Seanad and not less than one third of the members of the Dáil ask the President not to sign a Bill because it contains a proposal of such national importance that the decision to have such a law should be made by the people. The President may agree or disagree with this request.

### **If this referendum is passed:**

- This possibility of the reference of Bills to the people by the President will be removed from the Constitution.

## Approval of certain European Union (EU) proposals

At present, Ireland may adopt and implement certain EU laws and decisions – for example, in the areas of justice, free movement of people and certain amendments to EU treaties – only if this is approved in advance by both the Dáil and the Seanad.

### **If this referendum is passed:**

- Only the approval of the Dáil will be required for the adoption of such EU laws and decisions.

## National Emergency

The Oireachtas has the power to pass laws for the purpose of securing public safety and the preservation of the State in time of war or armed rebellion. These laws may not be challenged in the Courts on the basis that they are unconstitutional.

If a war is going on but the State is not involved in it, such laws may be passed provided the Dáil and the Seanad has each decided that, arising from the war, a national emergency exists affecting the vital interests of the State.

### **If this referendum is passed:**

- The Dáil alone will have the power to pass national emergency laws and to decide a national emergency exists.

# Further functions of the Seanad

## Nominations for President

At present, a candidate for President may be nominated by 20 members of the Dáil and Seanad.

### **If this referendum is passed:**

- A nomination for President may be made by 14 members of the Dáil.

## Presidential Commission

The Presidential Commission is the body that takes on the duties of the President if he or she is absent or unable to act for various reasons. At present, its members are the Chief Justice, the Ceann Comhairle (Chairman of the Dáil) and the Cathaoirleach (Chairman) of the Seanad.

### **If this referendum is passed:**

- The Presidential Commission will include the Leas-Cheann Comhairle (Deputy Chairman of the Dáil) instead of the Cathaoirleach of the Seanad.

## Council of State

The Council of State is an advisory body to the President. At present its membership includes the Cathaoirleach of the Seanad.

### **If this referendum is passed:**

- The Council of State's membership will include the Leas-Cheann Comhairle instead of the Cathaoirleach of the Seanad.

## Members of the Government

At present a maximum of two government ministers may be members of the Seanad. All the rest must be members of the Dáil.

### **If this referendum is passed:**

- All ministers must be members of the Dáil.

## Removal of the President from office

The President may be impeached for stated misbehaviour. That means that formal charges may be made against him/her. The process may start in either the Dáil or the Seanad. A proposal to impeach the President must be signed by at least 30 members of one of the Houses. That proposal may be adopted if it is supported by at least two-thirds of the total membership of the House. If adopted by one House, the charges against the President are then investigated by the other House. If at least two-thirds of the total membership of the other House decides that the charges are valid, the President is removed from office.

### **If this referendum is passed:**

- Impeachment of the President would be dealt with by the Dáil. A proposal to impeach would need the signatures of at least 30 members of the Dáil and its adoption would need the agreement of at least four-fifths of the total membership of the Dáil. The Dáil would then investigate the charges against the President and could remove him/her from office if four-fifths of its total membership agree.

## Removal of Judges from office

Judges of the Supreme Court and the High Court may be removed from office for stated misbehaviour or incapacity only if a simple majority of the members present and voting in each of the Dáil and Seanad pass resolutions to that effect.

### **If this referendum is passed:**

- Judges could be removed from office for stated misbehaviour or incapacity if at least two-thirds of the total membership of the Dáil so decide.

## Removal of the Comptroller & Auditor General from office

The present arrangements for removing the Comptroller & Auditor General from office are the same as for judges.

### **If this referendum is passed:**

- The arrangements for removing the Comptroller & Auditor General from office would be changed in the same way as for judges.





# Court of Appeal referendum



## The Court of Appeal referendum proposal

**In this referendum, you may vote Yes or No to the proposal:**

- to establish a Court of Appeal and
- to change how the Supreme Court issues decisions in cases where it is asked to decide whether or not a law is constitutional (the “one judgment” rule).

### The Courts system

**The present Courts system includes:**

- the Supreme Court (highest court)
- the High Court
- the Circuit Court
- the District Court (lowest level court)

There is also a Court of Criminal Appeal which hears appeals in criminal cases from the High Court, the Circuit Court and the Special Criminal Court. The roles of the High Court and the Supreme Court are set out in the Constitution.

**If this referendum is passed:**

- A new Court – the Court of Appeal – will be set up at a level between the High Court and the Supreme Court.

## What the proposed Court of Appeal will do

At present, there are long delays in having appeals heard by the Supreme Court.

### **If this referendum is passed, the new Court of Appeal will hear:**

- most of the appeals which are currently heard by the Supreme Court
- virtually all appeals from decisions of the High Court
- appeals from other courts if laws are passed to provide for this.

## Appeals to the Supreme Court

In general, the decision of the Court of Appeal will be final. In some cases, there may be a further appeal from the Court of Appeal to the Supreme Court and there may be some direct appeals from the High Court to the Supreme Court.

### **If this referendum is passed:**

- The Supreme Court will hear appeals from the Court of Appeal if the Supreme Court considers that:
  - the decision involves a matter of general public importance or
  - the interests of justice require such an appeal.
- The Supreme Court will hear appeals directly from the High Court if it considers that there are exceptional circumstances which warrant a direct appeal to it. The Supreme Court must be satisfied that:
  - the decision involves a matter of general public importance and/or
  - the interests of justice require such an appeal.

## Appeals waiting to be heard

The referendum proposal also includes provisions which deal with what is to happen to appeals already in the courts system when the Court of Appeal is established. In general, the Supreme Court will issue directions about which of these appeals may be heard by the Court of Appeal.

## Establishing the Court of Appeal

If the referendum is passed, the Oireachtas will be required, as soon as practicable, to pass a law establishing the Court of Appeal. This law will, among other things, provide for the date on which the Court of Appeal will be established.

This law or future laws may provide for a range of other matters including:

- appeals to the Court of Appeal from courts other than the High Court
- incorporating the Court of Criminal Appeal into the new Court of Appeal
- the appointment of judges to the Court of Appeal.

The Court of Appeal will hear cases about whether or not a law is constitutional. Any laws passed will not be able to restrict this.

## The “one judgment” rule

There must be at least five judges of the Supreme Court sitting when a decision is being made on whether or not a law passed by the Oireachtas is constitutional. At present, the Constitution states that the decision of the Court in these cases must be given by one judge. It is then not known if any of the judges disagree with the decision or why they do so.

### **If this referendum is passed:**

- The rule that the judgment must be given by one judge in these cases will be removed. Each judge could then give his or her opinion.

The President may refer a Bill which has been passed by the Houses of the Oireachtas but not yet signed to the Supreme Court for a decision as to whether or not it is constitutional. The referendum proposal does not seek to change this. A decision in these cases will continue to be given by one judge.



**Your vote decides**

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