



THE LEGAL EFFECTS OF THE MAY 25TH REFERENDUM: A PLAIN ENGLISH GUIDE.

What are we being asked to vote on?

You are being asked to remove the 8th Amendment from the Constitution and replace it with the 36th Amendment. The 8th Amendment states that the right to life of the pregnant woman and the right to life of the foetus she is carrying are equal. This means abortion is illegal in Ireland except as a last resort to save the pregnant woman's life. The 36th Amendment says 'Provision may be made by law for the regulation of termination of pregnancy'. It would confirm the Oireachtas' power to make new legislation allowing abortion for a wider range of reasons than the constitution currently allows.

What are the effects of the 8th Amendment?

- A woman living in Ireland cannot legally access abortion if she has been raped, if her health is at risk, or if her foetus has been diagnosed with a condition that means the baby cannot be born alive. Women must travel abroad, or must use abortion pills illegally. We know that this has caused women distress and suffering.
- If a woman's health deteriorates during pregnancy, and ending that pregnancy would protect her health, a doctor cannot intervene early: instead they must wait until she is at death's door.
- A woman loses her ordinary legal right to refuse consent to medical treatment during pregnancy. Even if she is fully competent to make her own medical decisions, those decisions can be overruled. The High Court has the power to require women to accept medical treatment, including compulsory C-sections. In principle, a woman may be required to accept very invasive medical treatment in the interests of the foetus.

Why do we need the referendum?

Why can't we just reform Irish abortion legislation?

The Oireachtas cannot pass unconstitutional legislation. The 8th Amendment means the Oireachtas cannot allow women to access abortions unless their life is at risk. That is why the current legislation, the Protection of Life During Pregnancy Act 2013, is so restrictive. Some kinds of limited reform might be possible, but with the 8th Amendment in the Constitution, women will continue to be denied safe abortion care in Ireland in most circumstances.

But couldn't we just replace the 8th Amendment with a new, less restrictive Amendment, allowing for abortion in a slightly wider range of circumstances?

Few countries regulate abortion in their Constitutions, and Ireland's abortion clause is one of the strictest in the world. It is a bad idea to regulate abortion in the Irish Constitution because it is so difficult to change. We need to take abortion out of the Constitution so that the Oireachtas can change the law when necessary, in response to hard cases or new medical treatments. That is why the Joint Oireachtas Committee rejected proposals to replace the 8th Amendment with a new constitutional provision regulating abortion.

If we remove the 8th Amendment from the Constitution, what protection is left for foetal life?

The only constitutional right of the foetus is the right to life under the 8th Amendment. If the 8th Amendment is removed, that right will also be removed. This does not mean that the foetus cannot be protected.

The Supreme Court has confirmed that the state will be entitled to regulate abortion in the interests of the common good, to ensure that the law respects foetal life, while also protecting women's health and dignity. Constitutional courts in other jurisdictions have recognised that the state's interest in controlling access to abortion is strongest in later pregnancy.

What would the new abortion legislation say?

The Minister for Health published a full draft of the proposed legislation in late March. It would allow women to access abortions in Ireland, when needed, up to 12 weeks' pregnancy. One doctor would date the pregnancy, but would not be required to evaluate the woman's reasons for doing so. Women would have to wait 72 hours between first requesting the abortion and obtaining treatment. Most women who need abortions, including women who have been raped, would access them before 12 weeks.

After 12 weeks, a woman could only have an abortion in exceptional circumstances: if she had received a diagnosis of fatal foetal anomaly; or two doctors (including an obstetrician) confirmed that her life was at risk, or her health was at risk of serious harm. In cases where the foetus cannot be born alive, there is no time limit. In cases where the woman's life or health are at risk, there is a time limit. If the foetus is viable the proposed law says that it must be delivered alive and cared for like any other premature baby. It would not be constitutional to pass this legislation unless there is a Yes vote.



What about abortion on disability grounds?

The proposed legislation does not permit abortion after 12 weeks solely because a foetus has been diagnosed with a non-fatal disability. The Institute of Obstetricians and Gynaecologists has said that, in practical terms, it is difficult to confirm diagnosis of foetal impairment before 12 weeks. If that changed in the future, the Oireachtas could amend the legislation as appropriate.


Will doctors be required to perform abortions?

No. The same 'conscience clause' already in the Protection of Life During Pregnancy Act 2013 would carry over to the proposed new legislation. Whole hospitals could not opt out of providing abortion care on their staff's behalf. Individual doctors, nurses and midwives with a genuine conscientious objection to abortion would be entitled to refuse to participate. However, they would have to refer their patient to somebody who can provide the care she needs.

Would the new legislation contain the same 'mental health ground' as in England?

No. Under the English Abortion Act 1967, abortion is never available on request as it would be in Ireland. Most abortions there take place under the mental health ground, which is very different to the 'serious risk to health' ground proposed in Ireland. In England, a woman can access an abortion up to 24 weeks if the risk to her mental health of continuing the pregnancy is greater than if the pregnancy were terminated. Given that modern medically supervised abortion is safer than continuing pregnancy, this test is almost always satisfied.

In Ireland, by contrast, between 12 weeks and viability, a woman will only be able to access abortion if her mental health is at risk of 'serious harm'. This is a very restrictive test. The Irish proposals and the English law are not comparable.



Where can I find out more?

To find out more, go to www.aboutthe8th.com.

You can ask any further questions in the comments, or by emailing lawyers4choice+questions@gmail.com

Who produced this document?

This booklet is a collaboration between Lawyers for Choice and www.aboutthe8th.com.

We are all working for a Yes vote in the May 25th referendum. We are pro-repeal lawyers, but we don't think we need to misrepresent the law to make our case.



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