

KNOW YOUR REFERENDUMS

On Friday the country will be asked to decide whether to abolish the Seanad and to establish a Court of Appeal. If you don't yet know which way to vote, this guide might help

Ruadhán Mac Cormaic
Legal Affairs Correspondent

ABOLITION OF THE SEANAD

■ **WHAT IS IT?** The Seanad is the upper house of the Oireachtas, which also comprises the President and Dáil Éireann. It has 60 members, of whom 11 are nominated by the Taoiseach and six are elected by graduates of the National University of Ireland and Trinity College Dublin. The remaining 43 senators are elected through Seanad panel elections, in which only TDs, outgoing Senators, and councillors can vote. Seanad members must be Irish citizens aged 21 or over.

■ **WHAT DOES IT DO?** The main business of the Seanad is the revision of proposed laws, or Bills, sent to it by the Dáil. With the exception of money Bills and Bills that amend the Constitution, the upper house can also initiate legislation. Its powers are much weaker than those of the Dáil, however. It can delay a Bill by up to 90 days but has no power to prevent it becoming law or to change it unless the Dáil agrees. The Seanad also debates issues.

■ **WHAT WILL HAPPEN?** If the constitutional change being proposed in the referendum is passed, the Seanad will be abolished the day before the Dáil meets after the next general election; the Oireachtas will in future consist of the President and the Dáil, and a Bill will become law if it is passed by the Dáil and signed by the President. If the proposal is rejected, the constitutional position of the Seanad will not change.

Yes or no? Arguments for and against

✓ It will save money. The Oireachtas Commission says the Seanad costs €20 million a year. That could pay for 350 primary-school teachers.

✓ We'll have fewer politicians. New Zealand, which has about the same population as Ireland, abolished its upper house 60 years ago. It currently has 121 members of parliament.

✓ The Seanad is undemocratic and elitist. Only a tiny percentage of the population has a say in who is elected to it. Parties use it as a compensation prize for candidates who lose a Dáil election.

✓ It's a powerless rubber stamp. The Seanad has never checked or balanced the Dáil. It has delayed a Bill only twice (the last time in 1964).

✗ Voting no to abolition gives a mandate for reform, as retention of the Seanad in its current form will be unsustainable.

✗ We lost our economic sovereignty because of the failure of our systems of governance. What sense does it make to remove a component of our constitutional checks and balances?

✗ The vast majority of common-law countries around the world have two houses of parliament. Abolishing the upper house will cement ministerial control over the political system.

✗ Our legislation needs more scrutiny, not less. No Seanad means removing important potential checks in our system.



■ Last look?: the Seanad chamber at the Houses of the Oireachtas, facing the chair of the Cathaoirleach. PHOTOGRAPH: ALAN BETSON/THE IRISH TIMES

Ballot boxes Turnout at recent referendums

33.5%
Children's rights, November 2012

50.6%
European Fiscal Compact, May 2012

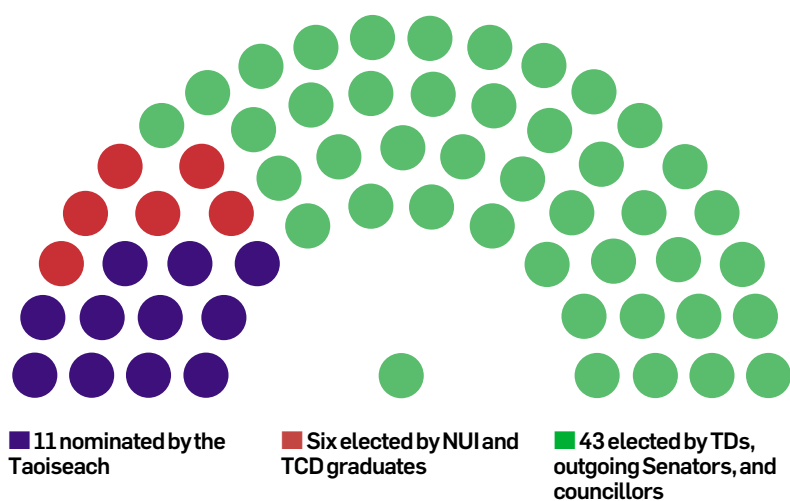
55.9%
Oireachtas inquiries, October 2011

55.9%
Judges' pay, October 2011

58%
Lisbon Treaty, October 2009

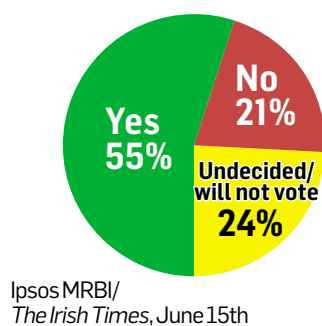
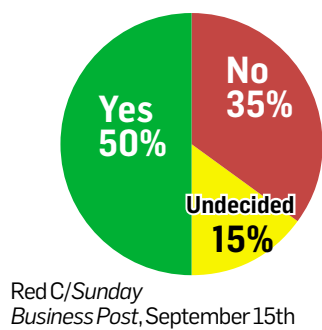
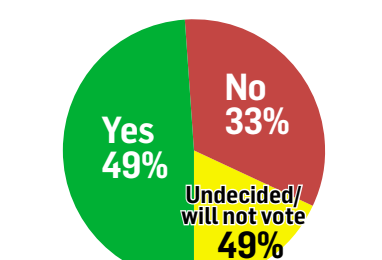


Who elects the Seanad? Composition of the chamber



■ Senators: the members of the 24th Seanad. PHOTOGRAPH: ERIC LUKE/THE IRISH TIMES

Public opinion Will you vote for abolition?



Historic moments Key Seanad speeches

“I think it is tragic that within three years of this country gaining its independence we should be discussing a measure which a minority of this nation considers to be grossly oppressive

WB Yeats advocates divorce in a speech in the Free State Senate on June 11th, 1925, opposing the new clericalism then in the ascendancy. “It is sometimes one’s duty to come down to absolute fundamentals for the sake of the education of the people,” he had begun.



“It is unfortunate that responsible literature about family planning is not available in this country. It is medically unsound and socially unjust

Mary Robinson advocates freer availability of contraception, in 1971. The young lawyer, elected as an Independent two years earlier, attempted to introduce the first Bill to liberalise the law on contraception. It was not allowed a reading. Archbishop McQuaid described Robinson’s Bill to decriminalise contraception as a “curse on Ireland”.



“This is an appalling Bill and among the most diabolical, patronising and insulting legislation I have seen in many years in this house

Shane Ross on discovering a loophole in a piece of legislation in July 2001. It forced the government to shelve a controversial proposal to ban opinion polls in the seven days before a referendum or general election.



The cost How much does the Seanad need each year?

€20m

Approximate annual cost of running the Seanad, according to the Oireachtas Commission. This includes members’ salaries (€4.2 million), expenses (€2.5 million) and staff (€2.1 million). The commission says it is unable to estimate the net savings that would follow the abolition of the upper house.

ESTABLISHMENT OF A COURT OF APPEAL

■ **WHAT IS IT?** The establishment of a Court of Appeal, as proposed in next week’s referendum, would be the biggest shake-up in the courts system since 1937. At present there are four key rungs on the courts ladder: at the apex is the Supreme Court, followed by the High Court, the Circuit Court and the District Court. There is also a three-judge Court of Criminal Appeal, whose rotating membership must include two High Court judges and a member of the Supreme Court. Next Friday, voters will be asked to amend the Constitution so as to allow for the creation of an intermediate court between the High and Supreme Courts.

■ **WHAT WOULD IT DO?** The Court of Appeal would hear most of the appeals currently heard by the Supreme Court, and its decision would in most cases be final. The Supreme Court could still hear a challenge to a Court of Appeal decision if it considered that the decision involved a matter of general public importance or that the interests of justice required such an appeal. The Supreme Court could also hear an appeal directly from the High Court in limited circumstances. The Court of Appeal would hear civil and criminal appeals, and would therefore take over the functions of the Court of Criminal Appeal.

■ **WHAT ELSE WOULD CHANGE?** The referendum also proposes to remove the “one-judgment rule”, which compels the Supreme Court to issue a single judgment when it decides whether a law passed by the Oireachtas is constitutional. If the referendum is passed, each judge will be allowed to give an opinion in such cases.

Yes or no? Arguments for and against

✓ The Supreme Court is a bottleneck, with more than 500 appeals waiting to be heard. A Court of Appeal is vital to reduce the backlog.

✓ All other common-law countries have a court of appeal. The delay in dealing with appeals undermines the rule of law, imposes costs on business and blights Ireland’s reputation.

✓ While it is possible to set up new courts without amending the Constitution, establishing a Court of Appeal by statute alone would mean it would be unable to deal with constitutional challenges.

✓ The one-judgment rule should go. Courts are independent, but so is each judge. Allowing minority judgments in constitutional challenges would create more transparency.

✗ It’s too expensive. The annual cost of up to €3 million is too high in these straitened times.

✗ The backlog at the Supreme Court could be cleared by changing its work practices.

✗ Instead of adapting the system at the top, we should be pushing more business into the lower courts. Hiring extra Circuit Court judges would cost less than Court of Appeal judges.

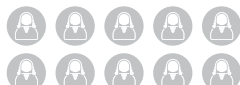
✗ The one-judgment rule should stay. Allowing judges to dissent from opinions weakens the court’s authority.

Power structure How Ireland’s judges are divided between courts

Supreme Court Eight judges



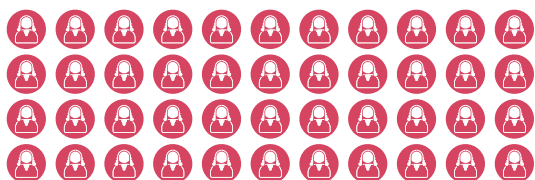
Potential Court of Appeal Would begin with 10 judges



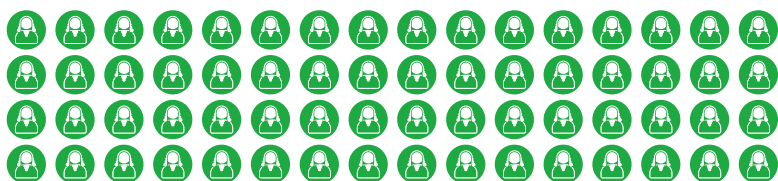
High Court 36 judges



Circuit Court 44 judges

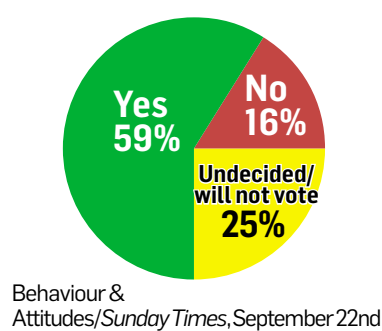


District Court 64 judges



■ Justice on show: inside the Four Courts, home of the Supreme, High and Dublin Circuit Courts. PHOTOGRAPH: BRYAN O'BRIEN/THE IRISH TIMES

Public opinion Will you vote to set up the court?



The cost What budget might the court need?

€3m

Department of Justice’s estimate of the court’s maximum annual cost were it to have 10 judges – a figure that may change

Workload How productive is the Supreme Court?

190

Number of appeals the Supreme Court disposed of with orders and written judgments in 2011.

258

Number of appeals it disposed of in 2012.

64

Number of judgments made by the nine-judge US supreme court in 2012.

85

Number of judgments made by the 12-judge UK supreme court in 2012.