



Abortion in Ireland: Referendum on the 8th Amendment of the Constitution of Ireland

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1983 – 2018: The 8th Amendment and its Legacy

- The early 1980s saw the emergence of an anti-abortion campaign lobbying the main Irish political parties (Fianna Fáil, Finne Gael, and the Labour Party) to introduce a Bill ensuring that the Supreme Court could not interpret the Constitution as granting the right to abortion.
- This led to the drafting of Article 40.3.3, the '8th Amendment of the Constitution of Ireland'. It states the following: 'The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.'
(https://en.wikipedia.org/wiki/Eighth_Amendment_of_the_Constitution_of_Ireland)
- A referendum was then held on 7 November, 1983. The 8th Amendment was approved by 66.9% of voters and added to the Irish Constitution. The life of the foetus and the mother were now legally equivalent. This meant, in effect, that abortion was outlawed in all circumstances.
- Since its inception, the Amendment has contributed to a number of high profile controversies, such as the 'X Case' and the 'C Case' (both involving underage pregnancies as a result of rape), various cases involving fatal foetal abnormality, and the death of Savita Halappanavar.
- The X case of 1992 involved a 13-year-old girl who had become pregnant after being raped. An injunction was sought by the Attorney General to prevent the girl from obtaining an abortion in the UK, but this was overturned by the High Court. Another Referendum was put to the people, leading to the implementation of two further amendments meaning that information about foreign abortion services could be disseminated without sanction, and that people could not be prohibited from travelling to procure an abortion.
- In 2012, Savita Halappanavar was denied an abortion after miscarrying on the grounds that the foetus still had a heartbeat. She died after developing sepsis. This led to the Protection of Life During Pregnancy Act (2013). The act clarified the grounds under which a legal abortion could be attained: only if there was a severe and substantial risk to the life and health of the mother, including the risk of suicide.
- Today, Ireland continues to have one of the strictest abortion regimes in the world, with only 77 terminations having been carried out since the introduction of the Protection of Life During Pregnancy Act in 2014. Technically, a woman can face 14 years imprisonment for procuring an abortion in Ireland. (<https://www.irishtimes.com/news/social-affairs/q-a-answering-your-key-questions-from-the-abortion-campaign-1.3502034>)

- Data drawn from the UK and the Netherlands reveal that 170,252 Irish women procured abortions abroad between 1980 and 2016. (<https://www.irishtimes.com/news/politics/fact-check-have-more-than-170-000-irish-women-travelled-abroad-for-an-abortion-1.3481581>)

May 25th, 2018: The Referendum on the 8th Amendment

- On May 25th, another referendum will be held. This will ask the Irish people if they are in favour of repealing the 8th. A ‘Yes’ vote would replace the Article 40.3.3 with a provision enabling the Government to legislate for abortion. A ‘No’ vote would retain the situation outlined above. (<https://www.irishtimes.com/news/social-affairs/q-a-answering-your-key-questions-from-the-abortion-campaign-1.3502034>)
- The current Government have published an outline of the legislation they support. If passed, this legislation would allow for free access to abortion up to 12 weeks, under the provisos that the medical practitioner would be legally bound to discuss other options with the pregnant woman, and a three-day waiting period would be enforced.
- After 12 weeks, abortion will only be available in cases where there is a fatal foetal abnormality or where there is a severe risk to the life or health of the mother.

Current Public Attitudes

- The public have been consistently polled on the topic since the referendum was announced. The most recent data suggests that 47% will vote to repeal the 8th, 28% to retain it, 20% are unsure, and 4% refuse to respond. (<https://www.irishtimes.com/news/social-affairs/irish-times-poll-public-favour-repeal-of-eighth-despite-slip-in-support-1.3467503>)
- While repeal still leads, the data have shown a reduction in support as the referendum approaches. This reduction is often attributed to the Government’s proposal of free access to abortion up to twelve weeks, which has been interpreted as over-liberal in some quarters. (<https://www.irishexaminer.com/breakingnews/ireland/plans-would-end-in-more-liberal-abortion-regime-than-england-i-cannot-live-with-current-laws--harris-831645.html>)

- Existing data reveal public divisions: the young, those in cities, women, and the better off are all more likely to support repeal. 'Retain' is at its strongest among the over-65s. The data on young voters in particular could be taken to further exemplify the reduction of Catholic influence in Irish society. (<https://www.irishtimes.com/news/social-affairs/irish-times-poll-public-favour-repeal-of-eighth-despite-slip-in-support-1.3467503>)
- While the issue does not fall totally along religious/secular lines (for example, liberal Catholics supportive of Yes do exist: <https://www.irishtimes.com/opinion/harsh-penalties-by-church-and-state-on-those-who-have-abortions-do-not-work-1.3397839>), Church spokespeople have been resolute in their opposition to a change in the law.
- Despite the poll results, the 'No' side remain outwardly confident. They are sometimes perceived to have run a stronger, better organised, and more well-funded campaign.
- The Yes campaign, however, has been dominant in the mainstream media, and some analysts believe that the majority of the unsure 20% are in fact 'shy' no voters. A 'Wisdom of Crowds' analysis, a technique which correctly predicted the outcome of the same-sex marriage equality referendum of 2015, predicts a narrow victory for repeal: 56% Yes to 44% No (<https://www.redcresearch.ie/crowd-predicts-narrow-yes-victory/>).

The Campaigns and their Implications

- Spokespeople and lobby groups on both sides have run highly emotive, morally charged campaigns. ‘Yes’ arguments tend to prioritise bodily autonomy. They revolve around personal choice, fairness, and equality for women. Rhetorical tropes include highlighting that Irish women already procure abortions in large numbers so the current situation merely exports the problem, and gesturing towards past mistreatment of children and women in Church-run institutions in order to undermine anti-abortion public stances around care for the vulnerable. Abortion laws are portrayed as a hangover from an archaic and brutal past. (<https://www.irishtimes.com/opinion/una-mullally-where-was-no-when-babies-were-put-in-septic-tanks-1.3502003>)
- ‘No’ arguments position the foetus or embryo as a full human being capable of suffering harm. Tropes include materials personifying the foetus, testimony from supportive medical professionals, ‘slippery slope’ arguments emphasising extreme outcomes, and arguments around untrustworthy politicians who should not be given free rein to implement abortion legislation. Further tropes link ‘No’ to Irish nationalism with slogans such as ‘Join the Rebellion’. UK abortion statistics are also often deployed in anti-abortion rhetoric (‘In England, 1 in 5 babies are aborted – Don’t bring this to Ireland’). (<https://www.newstalk.com/Both-sides-defend-approach-to-poster-campaigns>)
- While there is a sense in which the abortion debate has strengthened conservative Catholic stances by providing a moral cause to rally around, the nature of the anti-abortion campaign could also serve to further demonstrate Irish secularisation: religious authority is generally expunged from the argument, and the focus is squarely on issues of the prevention of harm to the vulnerable and equal rights for all. In other words, the public moral stances performed by both sides are actually quite similar as they try to win over a fairly secularised, only nominally Catholic middle ground.
- Lastly, a controversy with potential global significance was generated in the course of campaigning. Facebook prohibited campaign advertising originating outside of Ireland (<https://www.independent.co.uk/life-style/gadgets-and-tech/news/facebook-stop-foreign-ads-ireland-abortion-referendum-repeal-eighth-amendment-a8341756.html>), while Google blocked all advertisements relating to the referendum (<https://www.theguardian.com/world/2018/may/09/google-bans-irish-abortion-referendum-adverts>). These moves were ostensibly initiated in response to recent controversies surrounding ‘fake news’ and ‘election hacking’ in the US presidential election and UK Brexit referendum. Anti-abortion lobby groups – more reliant on non-traditional media to disseminate their message - responded particularly unfavourably to these developments, arguing that they constitute interference in Irish democracy. (<https://cruxnow.com/church-in-uk-and-ireland/2018/05/11/irish-pro-life-campaigners-criticize-google-decision-to-ban-campaign-ads/>)

Updated after 26 May 2018