



### Summary of the Children's Referendum Wording

If passed, the Children's Referendum will insert a new Article into the Constitution. The new Article, 'Children', will be numbered Article 42A and will sit between Articles 42 and 43.

**Article 42A.1** recognises that all children have rights and pledges to protect those rights by law. It allows the courts to identify rights for children on a case-by-case basis. It is the first time that the rights of all children – those from married and from unmarried families – are brought together in the same place within the Constitution. This provision is essentially a signpost to the courts to develop new thinking in relation to children's rights and to break with past decisions, some of which have resulted in bad outcomes for children.

**Article 42A.2** contains two parts. The first part sets out how and when the State can intervene in family life to protect a child. The second part reforms our adoption laws to allow 'abandoned' children to be adopted in certain circumstances.

*Article 42A.2.1* clarifies how and when the State can step in to protect children. It is an amended version of an existing Article in the Constitution (Article 42.5), which it will replace. It shifts the trigger of intervention from focusing solely on the parents' failures to the impact of that failure on the children. It provides a strong constitutional foundation for our child protection system, by providing the State with power to act when the "safety or welfare" of a child "is likely to be prejudicially affected". This new wording should encourage the State to intervene earlier in families that are struggling to offer them support and better protect the child. Importantly, it also contains safeguards to protect against over-intervention by the State, by including the phrases 'exceptional cases' and 'proportionate'. It provides, for the first time, the same type of protection to children, regardless of whether their parents are married or unmarried.

Under the Constitution at present, the best interests of children from married parents are presumed to be found within the child's family. This new wording could be used to challenge this presumption in cases where the child's "safety or welfare" is at risk.

*Article 42A.2.2* commits the Oireachtas to bring in a law to allow a child to be given the opportunity of being adopted, where their parents have met a high threshold of failure towards their child. This law must also set out the length of time that parents have failed in order for the child to be eligible for adoption. Critically, such adoptions can only take place where it is in the best interests of the child.

The Government has published draft legislation [<http://www.oireachtas.ie/documents/bills28/bills/2012/7812/b7812d.pdf>] to show what will change in the area of adoption, if the referendum is passed. Under the legislation, there must have been a continuous failure on the part of the parents towards the child for a period of 36 months (three years). There must also be no reasonable prospect of the parents resuming care

of the child, and the child must have been living in the home of their prospective adoptive parents for a minimum continuous period of 18 months.

**Article 42A.3** commits the Oireachtas to bring in a law that allows parents, either married or unmarried, to voluntarily place their child for adoption. At present, it is not legally possible for married parents to place their child for adoption, or consent to the adoption of their child.

**Article 42A.4** contains two parts. The first part commits the Oireachtas to bring in a law in relation to the best interests of the child. The second part commits the Oireachtas to bring in a law to provide for the courts to listen to the views of the child. This Article is unique to the Constitution in that it legally obliges the Oireachtas to define these rights and to make sure that relevant legislation is in place.

*Article 42A.4.1* commits the Oireachtas to bring in a law that ensures the best interests of the child will be “the paramount consideration”, in certain areas of decision making affecting a child. This means those decisions will be determined based on what is best for the child in question. It applies only to proceedings:

- brought by the State involving children in the care system; and
- concerning the adoption, guardianship or custody of, or access to, any child.

*Article 42A.4.2* commits the Oireachtas to bring in a law to ensure the views of the child are taken into account in the proceedings listed in 4.1 (children in care, adoption, guardianship, custody and access cases). This does not mean that the child’s views will be the determining factor in the case. Rather, the child’s views will be considered by the judge and given due weight according to the child’s age and maturity. At present, the views of the child are heard on an ‘ad hoc’ basis, and largely depend on the type of case before the Court and the judge hearing the case. Such gaps will be addressed by this new wording.