Speech by An Taoiseach
on publication of 28th Amendment of the Constitution Bill 2007

19th February 2007

The publication of the 28th Amendment of the Constitution Bill 2007 is a watershed for Ireland’s children. It is the logical conclusion of the long process which I have led since I became Taoiseach in 1997. In 10 years of Fianna Fáil / PD government we have massively improved the practical and legal framework for the protection of children. We have done that in a way that has not been to the detriment of the rights of parents or the structure of the family.

In this period, we have:
1. Enacted the *Protections for Persons Reporting Child Abuse Act 1998*.
2. Enacted the *Sex Offenders Act 2001* (which provides for monitoring of convicted sex offenders).
3. Established the Garda Central Vetting Unit in 2002 to ensure that those working with children are screened.
4. Appointed Brian Lenihan TD as the first ever Minister for Children, with cross-Departmental powers and a seat at the Cabinet table.
5. Enacted the *Child Trafficking and Pornography Act 1998*.
6. Established and appointed an Ombudsman for Children.
7. Enacted the *Children Act 2001*.
9. Enacted the *Children Act 1997*. 
Over those years during which we have been legislating to protect children, and providing resources for the protection of children, it became clear to me that there is a gap in our child-protection framework. That gap is in our Constitution.

Last November I identified that gap. I said:

“It appears increasingly clear that the inadequate recognition in our constitutional law of the rights of children as individuals has to be addressed. That is an essential first step in creating a new culture of respect for the rights of the child.”

I believe that the fundamental law of our land, the Constitution, should fully reflect our commitment to valuing and protecting childhood.

When I outlined my intention to have a referendum to give constitutional protection for children, I set a very high standard for what the constitutional amendment should contain. Brian Lenihan, the Minister for Children, embraced the challenge posed by that high standard. He began a process of study and consultation with all the interested groups – children’s rights representatives, Government and opposition politicians, constitutional experts and others – with a view to finalising a suitable wording.
I want to pay tribute to the work Minister Lenihan has done and to thank all of those who contributed to the consultation process. This proposal has been dealt with in good faith by all sides, and for that we are grateful.

The wording which we have now produced is, in my view an excellent one. It proposes the replacement of the existing Article 42(5) – which contains limited protections for children – with a new Article 42A which contains a number of different substantial and practical elements.

All of these elements will protect the rights of children.

None of them will undermine the role of parents or the constitutional safeguards for the family.

It is remarkable and commendable that such a balance has been achieved.

The first provision of the new amendment is the central and guiding provision. It says:

“The State recognises and affirms the natural and imprescriptible rights of all children.”
This is a powerful and concise statement of how the unique and precious condition of childhood is to be valued and protected in our society.

I said in November that we would introduce an explicit protection of the rights of children and that is what this provision does. It is a global protection that will be expounded on, and developed by, the Oireachtas and Courts over time, and will allow us to always keep pace with new developments and new challenges.

This provision does not try to list exhaustively what the rights of children are to be. To try that would be counter-productive, for it would have the effect of excluding all the rights which are not listed. Instead we have taken a broad and inclusive approach consistent with the nature of our Constitution as a living and developing document.

By putting this onus onto the State – both the Courts and the legislature - to protect and continually develop the rights of children, we will ensure that Ireland remains to the forefront among our international peers. This provision is a framework within which our law will continue to develop so that it enshrines the highest possible standards of protection for children. My objective is that we have provisions which are as strong and effective as those possessed by any country in the world not just now, but well into the future.
The next number of provisions – at Articles 42A (2), (3) and (4) – will regulate those unfortunate situations where the custody, care and family conditions of children come under scrutiny. These provisions will ensure that the best interests of children are made central to the determination of such issues, while always recognising that, except in exceptional circumstances, the best place for a child to be reared is with his or her parents.

In particular, the new Article 42A (4) provides that in any court proceedings concerning the adoption, guardianship, custody of or access to any child, the courts must endeavour to secure the best interests of the child. These are the relevant circumstances in which the best interests of the child must be secured, and this new provision makes it clear to the courts that they are under a positive obligation to ensure that this is so.

These provisions will put an end to the tragic situation which forbids certain categories of Irish children from being adopted by loving new parents.

The new Article 42A(5) will provide two enormously important provisions which will allow the Oireachtas to put in place laws to protect children from sexual and other forms of abuse.

The first of these will permit the exchange of so-called “soft information” about suspected child abusers. It is a matter of grave concern to me now to be told that the Constitution as it stands inhibits
the power of the Oireachtas to provide for the exchange of information between the Gardaí, social services and prospective employers of people working with children. This means that it is difficult to warn employers about people who have been suspected of, but not charged with, sexual misconduct relating to children. This is clearly an imbalance in our Constitution, one which this present amendment will set right.

The second change in Article 42A (5) will be even more fundamental. It will permit the Oireachtas to implement for offences of strict or absolute liability in respect of children. The crucial need for such offences is clear. It is simply not acceptable for persons who take sexual advantage of young children to later claim that they believed the child was older, or to subject the child to harmful cross-examination by lawyers in Court, about how the child was dressed or may have acted. This provision will allow us to take away the so-called “honest belief” defence in such cases and to provide a clear an unbendable rule – that those who sexually abuse children will be punished.

No exceptions; no loopholes; no excuses.

I am committed to putting this wording to the people, whether before the general election or in the Autumn is a matter which remains to be decided. This week, I will be asking the opposition parties to engage in a process of reflection and consideration about the wording. They have been aware over the past number of weeks about the
substance (though not the wording) of the proposed amendment, so I am hopeful that they may be in a position to conclude their consideration within a short time-frame.

Ladies and gentlemen, in 1999, I looked back at the failures of the past and made an apology to all of those children whom we had failed to protect from abuse, exploitation and maltreatment. I was the first Taoiseach ever to make such a gesture.

Now I am looking forward and making a promise to the children of the future. We will change the Constitution to protect these children. We will value and defend childhood to an extent never before attempted, and we will do it in a way that enhances the position of families and defends the rights of parents.

I have a very simple view about the constitution. I say the People’s constitution must protect the People’s children. The wording we have proposed today will do just that and I commend it to the Irish people.