



THIRTY-FIRST AMENDMENT OF THE CONSTITUTION (CHILDREN) BILL 2012

EXPLANATORY MEMORANDUM

Purpose of the Bill

The Programme for Government committed to holding a Referendum to amend the Constitution in respect of children. The proposed introduction of dedicated provisions for children is in line with the recommendations of many experts over the years, including the report of the Joint Committee on the Constitutional Amendment on Children (2010) and the report of the All Party Oireachtas Committee on the Constitution (2006).

The purpose of the Thirty-first Amendment of the Constitution (Children) Bill 2012 is to expressly recognise children in their own right within the Constitution. Dedicated provisions in our Constitution will give children special protection having regard to their young age and their potential vulnerability.

The provisions contained in the Bill will strongly affirm each individual child's inherent rights. The Bill will enshrine and give firmer recognition to the protection of children under the Constitution while continuing to respect and preserve the rights of the family as set out in the existing Article 41. Article 41 which gives special recognition to the family will be retained in full.

The main features of the Bill will provide for—

- the strengthening of protections for all children and the provision of express rights;
- greater clarity in the State's role in protecting children where parents are failing;
- the making of laws regarding adoption where the parents of a child have either failed in their duty towards that child or wish to voluntarily place the child for adoption;
- the making of laws regarding consideration of the best interests of the child and the views of the child in proceedings brought by the State to protect any child or proceedings concerning adoption, guardianship, custody of or access to any child; and
- no discrimination between children based upon the marital status of their parents when it comes to child care proceedings, family law proceedings, access to adoption and consideration of their best interests and views.



AN BILLE UM AN AONÚ LEASÚ IS TRÍOCHA AR AN mBUNREACTH (LEANÁI), 2012

MEABHRÁN MÍNITHEACH

Cuspóir an Bhille

Gealladh sa Chlár Rialtais go seolfaí Reifreann chun an Bunreacht a leasú maidir le leanaí. Tá sé i gcomhréir le moltaí a rinne cuid mhór saineolaithe i rith na mblianta forálacha tiomnaithe a thabhairt isteach, mar a bheartaítear, le haghaidh leanaí, lena n-áirítear an tuarascáil ón gComhchoiste um an Leasú Bunreachta maidir le Leanaí (2010) agus an tuarascáil ón gCoiste Uile-Pháirtí Oireachtais ar an mBunreacht (2006).

Is é an cuspóir atá leis an mBille um an Aonú Leasú is Tríocha ar an mBunreacht (Leanaí), 2012 leanaí a aithint as a gceart féin sa Bhunreacht. Tabharfar cosaint speisialta do leanaí le forálacha tiomnaithe i mBunreacht na hÉireann, ag féachaint dá n-óige agus don tsoghontacht a d'fhéadfadh a bheith ag baint leo.

Déanfar, leis na forálacha atá sa Bhille, cearta dúchasacha an uile linbh aonair a dheimhniú go daingean. Déanfar, leis an mBille, cosaint leanaí a chumhdach, agus aitheantas níos daingne a thabhairt di, faoin mBunreacht ach leanfar san am céanna de chearta an teaghlaigh mar atá leagtha amach in Airteagal láithreach 41 a urramú agus a chaomhnú. Déanfar Airteagal 41, ina dtugtar aitheantas speisialta don teaghlach, a choinneáil ina iomláine.

Déanfar socrú leis na príomhghnéithe den Bhille maidir leis na nithe seo a leanas—

- bearta cosanta le haghaidh na leanaí uile a neartú agus cearta sainráite a chur ar fáil;
- ról níos soiléire ag an Stát maidir le leanaí a chosaint i gcásanna nach bhfuil a ndualgais á ndéanamh ag tuistí;
- dlíthe a dhéanamh maidir le huchtáil nuair nach ndearna tuistí linbh a ndualgais don leanbh sin nó nuair is mian leo an leanbh a shuíomh go saorálach lena uchtáil nó lena huchtáil;
- dlíthe a dhéanamh maidir le haird a thabhairt ar bharr leasa an linbh agus ar bharúlacha an linbh in imeachtaí a thabharfaidh an Stát chun aon leanbh a chosaint nó in imeachtaí a bhaineann le huchtáil, caomhnóireacht nó coimeád aon linbh, nó rochtain ar aon leanbh; agus
- gan idirdhealú a dhéanamh ar leanaí bunaithe ar stádas pósta a dtuistí nuair a bhíonn imeachtaí cúraim leanaí, imeachtaí dlí teaghlaigh, rochtain ar uchtáil agus aird ar bharr leasa nó ar bharúlacha leanaí i gceist.

Provisions of the Bill

A new Article 42A is to be inserted as a new Article after Article 42.4.

The Bill provides for the repeal of Article 42.5 of the Constitution. Article 42.5 provides that the State may, in exceptional circumstances, by appropriate means supply the place of parents when those parents for physical or moral reasons have failed in their duty towards their child. The Bill re-words Article 42.5 and places it within the new Article 42A. In the revised language, the focus is on the safety and welfare of children which is not currently referenced in the existing Article 42.5.

Section 1 provides for the repeal of Article 42.5 of the Constitution and the insertion of a new Article 42A after Article 42.

Section 2 states that the amendment of the Constitution effected by this Act shall be called the Thirty-first Amendment of the Constitution and that the Act may be cited as the Thirty-first Amendment of the Constitution (Children) Act 2012.

Schedule

The Schedule contains the proposed text of the new Article 42A to be inserted after Article 42.

*Department of Children and Youth Affairs,
September, 2012.*

Forálacha an Bhille

Beidh Airteagal nua 42A le cur isteach mar Airteagal nua i ndiaidh Airteagal 42.4.

Déantar socrú leis an mBille chun Airteagal 42.5 den Bhunreacht a aisghairm. Déantar socrú le hAirteagal 42.5 go bhféadfaidh an Stát, i gcásanna neamhchoiteanna, le beart oiriúnach, ionad tuistí a ghlacadh nuair nach ndearna na tuistí sin, ar chúiseanna corpartha nó ar chúiseanna morálta, a ndualgais dá gclann. Leis an mBille, cuirtear focail eile ar Airteagal 42.5 agus suíonn sé é laistigh d'Airteagal nua 42A. Dírítear leis an bhfoclaíocht nua ar shábháilteacht agus ar leas leanaí, ar nithe iad nach dtagraítear dóibh faoi láthair in Airteagal láithreach 42.5.

Déantar socrú le *halt 1* chun Airteagal 42.5 den Bhunreacht a aisghairm agus chun Airteagal nua 42A a chur isteach i ndiaidh Airteagal 42.

Luaitear in *alt 2* gurb é an tAonú Leasú is Tríocha ar an mBunreacht a thabharfar ar an leasú ar an mBunreacht a dhéantar leis an Acht seo agus go bhféadfar an tAcht um an Aonú Leasú is Tríocha ar an mBunreacht (Leanaí), 2012 a ghairm den Acht.

An Sceideal

Leagtar amach sa Sceideal téacs beartaithe Airteagal nua 42A, a bheidh le cur isteach i ndiaidh Airteagal 42.

*Roinn An Leanaí agus Gnóthaí Óige,
Meán Fómhair, 2012.*