

Report to the Oireachtas on the
Thirty-First Amendment of the
Constitution (Children) Bill 2012

October 2012

CONTENTS		Page
1.	Introduction	3
2.	Article 42A.1	6
3.	Article 42A.2	9
4.	Article 42A.3	12
5.	Article 42A.4	13
6.	Conclusion	17

1. Introduction

- 1.1. The Government published the Thirty-First Amendment of the Constitution (Children) Bill, 2012 on the 19th of September 2012. The Bill sets out a proposed amendment to the Constitution, repealing section 5 of the existing Article 42 and inserting a new Article 42A entitled “Children”.
- 1.2. Section 7 of the *Ombudsman for Children Act, 2002* provides that the Ombudsman for Children may advise Ministers of the Government on any matter relating to the rights and welfare of children, including the probable effect of proposals for legislation on children. Section 13 also provides that the Ombudsman for Children may submit reports to the Oireachtas on the performance of her functions as she sees fit.
- 1.3. In accordance with these statutory functions, the Ombudsman for Children has on four separate occasions provided advice to the Government and to the Oireachtas regarding proposals to amend the Constitution to give greater protection to the rights of the child.¹ The comments below on the Thirty-First Amendment of the Constitution (Children) Bill, 2012 have also been prepared in accordance with section 13 of the *Ombudsman for Children Act, 2002*.
- 1.4. In addition to these previous submissions, the Ombudsman for Children has engaged directly with successive Ministers for Children and Youth Affairs since November 2006 on the elements such an amendment to the Constitution should contain, as well as raising the matter with a number of Oireachtas committees.²
- 1.5. The wording contained in the Thirty-First Amendment of the Constitution (Children) Bill, 2012 represents a significant and positive step forward for children and families in Ireland. The Ombudsman for Children has been calling for an amendment to the Constitution to give greater protection to the rights of the child since its first year of operation. The central message of each submission made to the Government and to the Oireachtas on this issue has been the same: Ireland should enshrine key children’s rights principles in the Constitution in order to underpin a fundamental shift in our law, policy and practice regarding children. In particular, the Ombudsman for Children called for the inclusion of specific principles set out in the UN

¹ Ombudsman for Children’s Office, *Submission to the All-Party Oireachtas Committee on the Constitution* (OCO, 2005); *Advice on the Proposed Referendum on Children’s Rights* (OCO, 2006); *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (OCO, 2007); *Submission to the Joint Oireachtas Committee on the Constitutional Amendment on Children* (OCO, 2008). All submissions are available on the OCO’s website, www.oco.ie

² In addition to raising this matter with the All-Party Oireachtas Committee on the Constitution and the Joint Oireachtas Committee on the Constitutional Amendment on Children, the Ombudsman for Children raised it with the Joint Oireachtas Committee on Child Protection.

Convention on the Rights of the Child (UNCRC) in any such amendment to the Constitution.³

- 1.6. The constitutionalisation of principles derived from the UNCRC has also been recommended by international human rights monitoring mechanisms such as the UN Committee on the Rights of the Child and the Council of Europe Commissioner for Human Rights.⁴
- 1.7. Previous submissions made by the Ombudsman for Children's Office have set out in detail this Office's analysis of how these principles could be incorporated into our Constitution and the positive effect this would have on the realisation of children's rights. The comments below have not reproduced that analysis in detail; they have focused instead on the extent to which the Thirty-First Amendment of the Constitution (Children) Bill, 2012 reflects the recommendations made by the Ombudsman for Children in relation to constitutional change.
- 1.8. The proposed amendment will undoubtedly advance children's rights in Ireland. Although it does not incorporate the principles of the UNCRC to the extent recommended by this Office, it will provide a strong foundation for future incorporation of those principles in our law and policy. Achieving this potential will, however, require a concerted effort on the part of the Government and the Oireachtas to abide by Ireland's international obligations in this regard
- 1.9. The task of achieving consensus on a wording to amend the Constitution in this area is a complex one and the Ombudsman for Children's Office welcomes the Minister for Children and Youth Affairs' commitment to consulting stakeholders in relation to it. It was clear from the Ombudsman for Children's direct engagement with the Taoiseach in April 2012 in relation to the wording of the amendment and her subsequent meetings with the Minister for Children and Youth Affairs and the Tánaiste that the final shape of the amendment would be determined by a wide range of factors.
- 1.10. This is a new beginning and not the conclusion of advancing children's rights in Ireland; compliance with the UNCRC will remain an unfinished project. Bearing this in mind, the Government should consider what further actions need to be taken to ensure that the UNCRC permeates legislation and decision-making by public bodies regarding children. The momentum that has gathered behind the current proposal to amend the Constitution should be maintained beyond the referendum on the 10th of November.

³ See, for example, OCO, *Advice on the Proposed Referendum on Children's Rights* (2006), p. 14; and OCO, *Submission to the Joint Oireachtas Committee on the Constitutional Amendment on Children* (2008), p. 7

⁴ See UN Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of Ireland*, UN Doc. CRC/C/IRL/CO/2, (2006), paragraph 25; and Council of Europe Commissioner for Human Rights, *Report by the Commissioner for Human Rights on his Visit to Ireland CommDH(2008)9*, (2008), paragraph 44.

1.11. It is well known that a referendum on the rights of the child has been called for by many, and that it is long-awaited. The Ombudsman for Children's Office hopes that the best will be made of this very rare opportunity.

2. Article 42A.1

2.1. The proposed Article 42A.1 provides that:

“The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.”

2.2. The Ombudsman for Children’s Office previously recommended the inclusion of an express statement of children’s rights in the Constitution that would have the following elements and characteristics:

- An express statement of the rights of the child should be inserted in Article 40 of the Constitution.⁵ In the event that it was decided to include such a statement under another Article, the OCO recommended that the relevant provision should at a minimum provide protection equivalent to that set out in Article 40.3.1° by stating that such rights shall be vindicated and protected.⁶
- Such an express statement of rights should include certain principles derived from the UN Convention on the Rights of the Child, namely those relating to non-discrimination, the best interests of child, the right to family or appropriate alternative care, and the right of children to express views on matters that affect them.⁷

2.3. The decision to include a recognition and affirmation of children’s rights in an Article of the Constitution concerned exclusively with children is welcome. The obligation on the State to vindicate and protect the rights recognised and affirmed in Article 42A.1 is also welcome as it broadly mirrors the language of Article 40.3.1°. This element was absent from the Twenty-Eighth Amendment of the Constitution Bill, though it was included in the wording proposed by the Joint Oireachtas Committee on the Constitutional Amendment on Children in February 2010.⁸

2.4. The rights protected by the proposed Article 42A.1 are the “natural and imprescriptible” rights of the child. The Ombudsman for Children’s

⁵ OCO, *Advice on the Proposed Referendum on Children’s Rights* (2006), p. 14

⁶ OCO, *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), p. 12

⁷ OCO, *Advice on the Proposed Referendum on Children’s Rights* (2006), p. 14

⁸ See Article 42A.1 contained in the 28th Amendment of the Constitution Bill, 2007 and the proposed Article 42.1.2° in the final report of the Joint Oireachtas Committee on the Constitutional Amendment on Children (Houses of the Oireachtas, 2010), p. 11. It should be noted, however, that the wording of Article 42.1.2° proposed by the Joint Oireachtas Committee on the Constitutional Amendment on Children in 2010 included the right to have the welfare of the child regarded as the primary consideration, as well as an obligation on the State to vindicate and protect the rights of all children as far as practicable.

Office has previously explored the use of this formulation in the context of proposals to amend the Constitution.⁹ One of the reasons for recommending the inclusion of specific rights derived from the UN Convention on the Rights of the Child arose from the uncertainty regarding the precise scope and status of unenumerated rights.¹⁰

- 2.5. However, it must be acknowledged that the reference to the “natural and imprescriptible” rights in the proposed Article 42A.1 differs from the existing reference to such rights found in Article 42.5 in a number of respects. The latter, unlike the proposed Article 42A.1, is contained in a provision relating to the obligation on the State to supply the place of parents when they have failed in their duty to the child. In addition, it is not bound to any obligation on the State to protect and vindicate those rights. The blending of language from the current Article 42.5 and Article 40.3.1^o in a new, child-focused Article may serve to reinvigorate strains of jurisprudence that have demonstrated a willingness to deploy both of those provisions in a dynamic way in the interests of children.¹¹
- 2.6. Moreover, the remaining provisions of Article 42A must be considered in determining the probable effect of the obligation on the State to protect and vindicate the natural and imprescriptible rights of all children. Article 42A.1 specifically requires the State to provide for the protection of those rights “by its laws”. Article 42A.2, Article 42A.3 and Article 42A. 4 go on to require legislation relating to a range of different matters. It is arguable that the obligation to make provision by law for these matters is an aspect of the obligation under Article 42A.1 to respect and vindicate the natural and imprescriptible rights of children. It is hoped that such a view will prevail if and when the question arises before the Courts.¹²
- 2.7. Of the four provisions of the UN Convention on the Rights of the Child that this Office sought to have included in an express statement of children’s rights in the Constitution, three are to varying degrees addressed in subsequent provisions of the Thirty-First Amendment of the Constitution Bill; they are the best interests principle, respect for the views of the child, and the right to family or appropriate alternative care. One of the purposes of the proposed Article 42A.1 is to address

⁹ OCO, *Advice on the Proposed Referendum on Children’s Rights* (2006) pp. 6-7; and *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), p. 10-11

¹⁰ *Ibid*

¹¹ For a discussion of the dynamic interpretation of Art 40 vis-à-vis children, see U. Kilkelly, *Children’s Rights in Ireland: Law, Policy and Practice* (Tottel, 2008), pp. 62 – 65. In relation to Article 42.5 of the Constitution, see G. Hogan, and G. Whyte, *JM Kelly: the Irish Constitution*, 4th ed. (Butterworths, 2003), pp. 1926 – 28.

¹² Such a view is also supported by the fact that certain of the rights provided for under the proposed Article 42A – such as requiring that the best interests of children be the paramount consideration and children’s right to express views on matters that affect them – have already been identified as unenumerated rights of children under Article 40.3 of the Constitution. *Supra*, n. 11 at 63

the issue of non-discrimination, this being the fourth of the UNCRC principles mentioned above.

- 2.8. The Twenty-Eighth Amendment of the Constitution Bill 2007 provided that “the State acknowledges and affirms the natural and imprescriptible rights of all children”. One of the effects of this provision was to be the prohibition of discrimination between children. This Office queried whether the provision as formulated - making reference to “all” children - would achieve the desired result and clearly prohibit the discriminatory treatment of children, with particular reference to the marital status of their parents.¹³ The then Minister for Children indicated that the view of the Attorney General was that such discrimination would indeed be prohibited.¹⁴
- 2.9. Similar wording has been chosen in the proposed Article 42A.1 in relation to the scope of the provision; it too makes reference to recognising and affirming the natural and imprescriptible rights of all children. This Office understands that the current Government is also of the view that the effect of this will be to ensure that improper discrimination between children - including between children of marital and non-marital families – will be prohibited. This is therefore an important and welcome element of the provision.¹⁵

¹³ OCO, *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), pp. 9-12

¹⁴ *Ibid*

¹⁵ See the comments made by the Minister for Children and Youth Affairs in relation to the proposed Article 42A.1 during the Second Stage debate on the Thirty-First Amendment to the Constitution (Children) Bill, 2012, Tuesday 25 September 2012.

3. Article 42A.2

3.1. The proposed Article 42A.2.1° provides that:

“1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.”

3.2. In its previous comments on proposals to amend Article 42.5, the Ombudsman for Children’s Office addressed the duties of the State in relation to children who are not receiving adequate care and protection and sought the inclusion of the following elements in any such amendment:

- The orientation of this provision of the Constitution should move away from parental failure towards a positive duty on the State to support families.¹⁶
- Any intervention on the part of State authorities must satisfy the criterion of proportionality.¹⁷
- It should be clarified that children of marital families should not be left at a disadvantage vis-à-vis children of non-marital families in relation to the authority of the State to intervene, as appropriate, to safeguard their rights and welfare.¹⁸

3.3. The proposed Article 42A.2.1° has a number of distinct advantages over the current Article 42.5. Although the Thirty-First Amendment of the Constitution Bill does not include an express right to family care or appropriate alternative care, the inflection of Article 42A.2.1° is certainly towards a more child-centred and nuanced approach. This is evident in the move away from focusing on the reasons for parental failure to the impact on children of such failure.

3.4. The inclusion of the principle of proportionality is also positive and very significant. During this Office’s engagement with the Minister for Children in late 2006 regarding the wording of the Twenty-Eighth Amendment of the Constitution Bill, it recommended that the proposed

¹⁶ OCO, *Submission to the Joint Oireachtas Committee on the Constitutional Amendment on Children* (2008), pp. 19-22; and *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), pp. 12-15

¹⁷ *Ibid*

¹⁸ OCO, *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), pp.12-13

amendment include this principle.¹⁹ In the event, the change to Article 42.5 proposed at the time did not contain a requirement on the State to act in a proportionate manner²⁰, although the principle was restored to the wording proposed by the Joint Committee on the Constitutional Amendment on Children.²¹

- 3.5. Proportionality serves a dual purpose in this context: it necessarily implies that different levels of State intervention are comprehended by 42A.2.1° and State accountability is also enhanced by requiring that any such intervention go no further than is necessary in light of the situation at hand. It has become clear from the complaints examined by this Office in the area of health and social care that the difficulty very often faced by families is not over-zealous intervention on the part of the State but rather protracted inaction and a failure to provide adequate support at an appropriate time.²² This can lead to situations in which problems experienced by families become compounded and amplified to the point that parents are deemed to have failed in their duty. It is hoped that including a duty on the State to act in a proportionate manner will underpin efforts to enhance early intervention supports for families in difficulty.²³
- 3.6. As regards the potentially disparate treatment of children of marital and non-marital families, 42A.2.1° provides explicitly that the marital status of a child's parent will not be relevant for the purposes of determining whether action will be taken in accordance with this provision...
- 3.7. The proposed Article 42A.2.2° provides that:

“2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.”

¹⁹ OCO, *Advice on the Proposed Referendum on Children's Rights* (2006), p 18; and *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), p. 15

²⁰ See Article 42A.2.1° as set out in the Twenty-Eighth Amendment of the Constitution Bill, 2007

²¹ See the *Third Report of the Joint Oireachtas Committee on the Constitutional Amendment on Children*, p. 12

²² OCO, *Submission to the Joint Oireachtas Committee on the Constitutional Amendment on Children* (2008) p. 19-22

²³ In order to put beyond doubt the power of State authorities to take action falling short of supplying the place of parents, this Office previously recommended that the duty on the State should be to supply **or supplement** the role of parents in appropriate circumstances. The term “supplement” has not been included in the proposed amendment but this Office understands that the effect of this provision when read as a whole may be to encompass this principle. It should also be recalled that the principle of proportionality is well-established both in jurisprudence on interference with constitutionally protected rights (see, for example, *Heaney v. Ireland* [1994] 3 IR 593) and in the jurisprudence of the European Court of Human Rights. The latter has, of course, taken on greater significance in Ireland following the enactment of the *European Convention on Human Rights Act, 2003*.

- 3.8. The Ombudsman for Children's Office strongly supported previous proposals to provide that children of marital families could be adopted under less stringent circumstances than those provided for in the *Adoption Act 1988*, now set out in Part 7 of the *Adoption Act 2010*.²⁴ When it is deemed appropriate by the competent authorities – and especially when it is a course of action that is desired by a young person in long-term foster care – the possibility of adoption should not be effectively ruled out by virtue of the marital status of a child's birth parents. Such a distinction is arbitrary from the child's point of view and gives rise to concerns regarding Ireland's compliance with the relevant international human rights standards.²⁵ The inclusion of a provision to put beyond doubt the capacity of the Oireachtas to amend the *Adoption Act 2010* accordingly is a positive development.
- 3.9. The fact that the proposed 42A.2.2° mandates the enactment of relevant legislation rather than simply enabling it is also welcome.²⁶

²⁴ OCO, *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), pp. 15-16; see also OCO, *Advice of the Ombudsman for Children on the Adoption Bill 2009* (OCO, 2009)

²⁵ *Ibid*

²⁶ The Minister for Children and Youth Affairs published the General Scheme of the Adoption (Amendment) Bill 2012 on 20 September 2012 to give effect to this provision of the proposed amendment, and indeed to Article 42A.3.

4. Article 42A.3

4.1. The proposed Article 42A.3 states that:

“Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.”

4.2. The purpose of this section is to clarify that the inalienable nature of parental rights protected by Article 42 shall no longer preclude the possibility of voluntarily placing a child for adoption.

4.3. As with Article 42A.2. 2°, this is a welcome provision.

5. Article 42A.4

5.1. The proposed Article 42A.4 states that:

“1° Provision shall be made by law that in the resolution of all proceedings -

i) brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or

ii) concerning the adoption, guardianship or custody of, or access to, any child,

the best interests of the child shall be the paramount consideration.

2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.”

5.2. If the proposed amendment is adopted, the Constitution will for the first time provide for an expression of a child’s right to have his or her interests regarded as the paramount consideration and the right to express views on matters affecting him or her. This is a welcome development.

5.3. As noted above, the Ombudsman for Children’s Office previously recommended that the principles contained in Articles 3 and 12 of the UNCRC – a child’s rights to have his/her best interests regarded as a primary consideration and the right to express views on all matters that affect him/her respectively – be incorporated into the Constitution. As regards the nature of their inclusion, the OCO recommended that:

- Although a direct incorporation of the text of the UN Convention on the Rights of the Child was unnecessary, any such amendment to the Constitution should mirror the UNCRC as closely as possible. In particular, a limited approach to the scope of these principles should be avoided.²⁷

²⁷ OCO, *Report to the Oireachtas on the 28th Amendment of the Constitution Bill 2007* (2007), pp.16-18

- A direct articulation of those principles at a constitutional level is to be preferred to enabling provisions that would permit the Oireachtas to provide for them in primary legislation.²⁸ This Office recommended in 2007 - and maintained in its engagement with the Department of Children and Youth Affairs since then - that, if it were decided to use enabling provisions, those provisions should at a minimum read “provision shall be made by law...” rather than “provision may be made by law...”²⁹
- 5.4. Article 3 of the UNCRC provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The UN Committee on the Rights of the Child has specifically recommended that Ireland ensure the best interests principle is fully integrated into all legislation relevant to children, and that it also applies in all political, judicial and administrative decisions.³⁰
- 5.5. The scope of the provision made for the best interests principle in the proposed Article 42A.4.1° does not extend as far as Article 3 of the UNCRC. In particular, the former relates only to the resolution of proceedings concerning adoption, guardianship or custody of, or access to a child, and to proceedings brought by the State for the purpose of preventing the safety and welfare of any child from being prejudicially affected. Article 3 of the UNCRC contains no such qualification, nor does it distinguish between proceedings brought by the State and those initiated by other parties.
- 5.6. There will be no requirement to include the best interests principle in legislation that affects children directly but that does not provide for proceedings within the scope Article 42A.4.1°, such as the Immigration, Residence and Protection Bill 2010.³¹ This is problematic because this Office has observed instances where the law-making process in Ireland has not been sufficiently sensitive to the way in which legislation can affect children negatively, even if the purpose of the legislation is not to address issues relating primarily to children as such. This was the case with, for example, the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act*.³²

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ UN Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of Ireland*, UN Doc. CRC/C/IRL/CO/2, (2006), paragraph 23

³¹ For a comment on the inclusion of the best interests principle in this legislation, see OCO, *Advice on the Immigration, Residence and Protection Bill 2008* (OCO, 2008). It should be noted in this regard that the UNCRC does not require that in all instances the best interests of the child shall be **the** primary consideration; it requires in general that it is **a** primary consideration, which is to say one among other potentially competing interests.

³² OCO, *Advice on the Civil Partnership Bill 2009* (OCO, 2010).

- 5.7. A significant aspect of the State's obligations under Article 3 of the UNCRC from the point of view of this Office is its application to administrative authorities. As outlined in the Annual Reports of the Ombudsman for Children to the Houses of the Oireachtas and in other publications produced by this Office, the extent to which public bodies consider the interests of children and the impact of their decisions on young people and their families varies significantly.³³ In many cases, there is no attempt to take such considerations into account.
- 5.8. Although this Office previously stated clearly that it did not support the use of enabling provisions in proposals to amend the Constitution,³⁴ Article 42A.4 provides that provision shall be made by law to address the matters outlined in the Article, rather than stating that provision may be made by law. This will enhance the efficacy of Article 42A.4 and, as outlined above, it is hoped that this will also elevate the best interests principle and respect for the views of the child beyond the protection currently afforded to them in statute law.³⁵
- 5.9. Many of the points made above with respect to the best interests principle apply also to the manner in which Article 42A.4.2° provides for children's right to express their views on matters that affect them. Article 12 of the UNCRC requires States Parties to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The UN Committee on the Rights of the Child recommended in 2006 that Ireland strengthen its efforts to guarantee this right, including through constitutional provisions. The UN Committee reiterated that this encompasses children's right to be heard in any judicial or administrative proceedings affecting them.³⁶
- 5.10. For reasons similar to those set out at 5.5 – 5.8 above relating to the best interests principle, Article 42A.4.2° represents a limited application of children's right to express their views on all matters that affect them. Further differences between Article 12 of the UNCRC and the proposed wording include the potential scope for inhibiting the enjoyment of this right by stating that it shall be secured as far as practicable,³⁷ and requiring that the views of the child "shall be ascertained". With respect to the latter element, it should be borne in mind that although the UN Convention on the Rights of the Child guarantees children's right to express their views on all matters that affect them, it does not imply any obligation on young people to

³³ See generally the annual reports of the Ombudsman for Children to the Houses of the Oireachtas and U. Kilkelly, *Children's Rights Analysis of Investigations* (OCO/UCC: 2011).

³⁴ *Supra*, n. 28

³⁵ See paragraph 2.6 above..

³⁶ *Supra*, n. 4

³⁷ It is acknowledged, however, that this qualification is consistent with other provisions of the Constitution relating to fundamental rights.

exercise that right; they should be at liberty not to do so if they so wish.

- 5.11. Although the constitutionalisation of these principles would be the most effective way to address the recommendations of the UN Committee highlighted above, it is not the only way to do so. It is open to the Oireachtas to provide for them by means of primary legislation in areas regulated by law that have an impact on children.
- 5.12. It is hoped that the Oireachtas will adopt this approach as it examines legislation that comes before it in future. Indeed if it has occasion to consider existing legislation that could be enhanced from the point of view of compliance with the UN Convention, this would also be welcome.

6. Conclusion

- 6.1. The proposed amendment is a strong affirmation of children's rights and there has never been an opportunity for the people of Ireland to decide on whether to include such a range of provisions relating directly to the rights of the child in our Constitution.
- 6.2. As noted above, the publication of the Thirty-First Amendment of the Constitution Bill is the culmination of a long process that has involved consideration by the Oireachtas, by successive Governments, by various inquiries and investigations, and indeed by international human rights monitoring mechanisms. It must be acknowledged that producing a wording that would enjoy a broad consensus both within and outside the Houses of the Oireachtas is not a straightforward task. The Minister for Children and Youth Affairs is to be commended for her efforts in bringing this initiative to the point where, at last, the people of Ireland will have the opportunity to decide on whether or not to enhance the protection of the rights of the child in the Constitution.
- 6.3. The Ombudsman for Children's Office believes that this amendment will make a real difference to children in Ireland, most immediately those in long term foster care for whom existing barriers to adoption will be removed. How much of a difference the amendment will make in the long term will depend on the commitment of the Oireachtas and the Government to using and building on these provisions in the development of law and policy relating to children, and on the approach of the judiciary to the lines of jurisprudence that may emerge from it.
- 6.4. This Office has recommended a more maximal approach to incorporating principles from the UN Convention on the Rights of the Child into the Constitution. It remains of the view that such an approach would have ensured that the future shape of law reform and jurisprudence relating to children would be more closely aligned with Ireland's obligations under the Convention. However, compliance with those obligations can and should be brought about even in the absence of a more explicit incorporation of UNCRC principles in the Constitution. Indeed, nothing in the amendment precludes the possibility of giving further effect to the provisions of the UNCRC in law, including by extending such legislation to require administrative authorities to have due regard to the State's human rights obligations when carrying out their functions.
- 6.5. It is hoped that the proposed amendment will spur greater efforts to address the areas where Ireland is still not living up to its promise to children and young people and to ensure that their rights under the UNCRC are respected, protected and fulfilled.

- 6.6. If the amendment is accepted by the people of Ireland, the Ombudsman for Children's Office looks forward to carrying out its statutory functions in a changed environment more conducive to the advancement of children's rights, with a view to addressing the obstacles that will remain to the realisation of those rights.