

Divorce Referendum: Why the Children's Rights Alliance is supporting a YES vote

What is the referendum about?

On 24 May 2019, you will be asked to vote on two amendments to the Irish Constitution relating to divorce. The first amendment relates to the time period couples must be living apart before divorcing and the second relates to the recognition of foreign divorces. There will be one question on the ballot paper covering both amendments. A Yes vote means that you accept both amendments.

What happens now when a couple want to divorce?

At the moment, the court can only grant a divorce if the couple have lived apart from one another for at least four out of the preceding five years. This required time period is stipulated in Article 41.3.2.i of the Irish Constitution. The referendum proposes to remove this condition.

How will the referendum change the time requirement if it passes?

A **YES VOTE** would mean that it will no longer be a constitutional requirement for a person, applying for a divorce, to have lived apart from their spouse for four out of the last five years. If the referendum passes, the Government intends to introduce legislation that would reduce the statutory time period for living apart to two of the preceding three years.

What does the Constitution say about foreign divorces?

Article 41.3.3 of the Constitution prohibits couples who have a foreign divorce that is not recognised under Irish law, from remarrying during the lifetime of the other party to the marriage. At the moment, different recognition rules apply depending on where and when the foreign divorce was obtained.

How will the provision on foreign divorces change if the referendum passes?

The main change will be that the Constitution will explicitly recognise the power of the Oireachtas to legislate for the recognition of foreign divorces. The Oireachtas already has this power and recognises some foreign divorces but currently different rules apply depending on the country where a divorce was granted. The Minister for Justice and Equality wants to legislate to make it more consistent and fair and the Government will be guided by proposals from the Law Reform Commission when introducing new legislation.

What will happen to the provision on foreign divorces if the referendum doesn't pass?

The situation will remain the same. A **NO VOTE** means that only people who have obtained a foreign divorce that is currently recognised under Irish law will be able to remarry in Ireland.

How is divorce relevant for children?

The impact of protracted divorce proceedings and conflict on children: Divorce is a shock for children and can have devastating consequences if proceedings are protracted and parents are in conflict with each other. Separation can be the best solution for families where parents have irreconcilable differences rather than children continuing to live in an atmosphere of conflict and where there are clear relationship difficulties between parents. Research using the Growing up in Ireland data for children aged nine published in 2010 showed the negative impact of marital conflict on children as they have worse outcomes when they stayed in that environment than children whose parents separate and divorce. The research shows that in the event of divorce, if parents are able to be constructive and to come up with solutions together, the children are less likely to suffer adversely. At the

same time, it is the view of the Children's Rights Alliance, if proceedings are protracted, it makes a situation where the parents are in conflict with each other worse.

The lack of certainty for children: The long lead-in period to divorce means that children and families live with a lot of uncertainty. Inevitably, once commenced, the divorce process will take a number of years to finalise even after the four-year period has passed. To resolve practical issues like custody and finances, couples often have to first opt for judicial separation which they can get within one year. A reduced waiting period for divorce would mean that a couple would not have to rely on a two-stage process. In some parts of rural Ireland, a divorce can take up to six years – four years before parties can divorce and a further two years of legal proceedings. Waiting times to access civil legal aid can be up to 11 months in some parts of the country which could add another year to this delay.

It's also worth noting that children perceive time differently to adults and four years is a very long time in the life of a child. A year-long custody battle may seem much longer to a 10 year old child than it does to their parents. Legal issues relating to children should be urgently addressed to provide them with certainty in their lives and particularly where the impact of proceedings could have irreversible and long-lasting consequences for them.

Financial implications: Separation and divorce proceedings can be very costly. Even for people who qualify for civil legal aid – they have an annual disposable income of €18,000 or less and disposable assets of less than €100,000 – ancillary costs can all accumulate. They can mount to even higher levels when a case is not heard by the court on the day it is listed as people may have to miss work and incur travel and subsistence costs.

In addition, because couples often find themselves having to engage in separation as well as divorce proceedings as they wait for the four year waiting period to expire, this can mean a duplication of legal expenses. The reality for a large number of families is that the costs accumulated during the course of judicial separation, and then divorce proceedings, have a significant financial impact – ultimately leaving less money to provide for children.

Foreign Divorces: The rules pertaining to the recognition of foreign divorces as they currently stand has led to further uncertainty for children. The introduction of domestic divorce in Ireland led to fewer Irish couples seeking foreign divorces but for those who obtained foreign divorces before the change to the constitution, or if Irish law does not currently recognise the foreign divorce because of where it was granted, there is still uncertainty. Where a couple plans to remarry where at least one of them has been divorced in another country, the recognition of their second marriage is dependent upon the recognition of that foreign divorce meaning that for some children their parents may not be able to be remarry or they are not recognised as a married couple. The proposed constitutional amendment would allow the Government to take action to rectify this problem.

Why does the Children's Rights Alliance support a Yes vote in the Divorce Referendum?

The Children's Rights Alliance believes that the constitutional provision requiring divorce applicants to have lived apart for a lengthy period of four years is not in the best interests of children. It often leads to protracted and drawn-out proceedings where children are in the middle and left in situations where their parents are in conflict. This can take a toll on their health and their physical and emotional well-being even long after their parents have split up. Reducing the time period for divorce is the fair thing to do.

The Alliance has joined a coalition of NGOs supporting the Divorce Referendum. More details of the NGO coalition can be found [here](#).