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**Bille an Reifrinn agus na gCúirteanna (Leasú), 2015**  
**Referendum and Courts (Amendment) Bill 2015**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**Introduction**

It is right that when the people make a decision in a referendum to amend the Constitution that the change effected and the people's decision is not left in limbo for an extended period of time as a consequence of court challenges to the outcome of a referendum. It has become common practice that the decision of the majority in a referendum is challenged in the courts. It is in the public interest and in the interest of our democratic values and principles that such court challenges are fast-tracked and not unnecessarily prolonged. It is also in the public interest that there is absolute clarity as to when it is constitutionally correct that a Referendum Certificate be furnished by the Referendum Returning Officer to the President. There is a need for specific statutory provision to ensure that when leave is sought from the High Court to issue a Referendum Petition and that when such leave is granted, the court process is not unduly lengthy. For example, a court challenge mounted to the outcome of the Children's Rights Referendum which was ultimately dismissed by the Supreme Court delayed incorporation into the Constitution of the Children's Rights Amendment by almost 2½ years (Children's Rights Referendum polling date: 10 November 2012. Children's Rights Amendment incorporated into Constitution: 28 April 2015). It is also important to ensure that where the outcome of a referendum is challenged by way of petition that in the interest of justice and to ensure proper compliance with our laws, adequate time is provided to hear and determine any such challenge.

The basic law applicable to Referendum Petitions is contained in the Referendum Act 1994 which does not prescribe specific timeframes within which proceedings by way of a Referendum Petition should be both heard and determined by our courts. Until relatively recently, such proceedings having been dealt with by the High Court, could only be appealed to the Supreme Court. Following enactment of the Court of Appeal Act 2014, it is possible that Referendum Petition proceedings can be heard and determined in the High Court, on appeal to the Court of Appeal and then, ultimately, on further appeal to the Supreme Court. As a consequence, substantial time can elapse before the final outcome of such proceedings is known.

The Court of Appeal 2014, under which the Court of Appeal was established following the referendum held in October 2013, envisaged that there were circumstances in which appeals from the High Court could go directly to the Supreme Court, bypassing the Court of Appeal. It was envisaged when the legislation was first published as a draft Bill that

direct appeals from the High Court to the Supreme Court would arise on Referendum Petition proceedings. However, this did not occur with regard to applications for leave to issue Referendum Petitions after the Marriage Equality Referendum. Following the High Court declining leave to petition to 2 persons challenging the validity of that referendum's outcome, each appealed first to the Court of Appeal and, then, to the Supreme Court. Whilst the applications for leave to petition in those cases were dismissed, they highlighted a difficulty resulting from the enactment of the Court of Appeal Act 2014 which could in other circumstances substantially extend the length of time taken to finally determine the outcome of future petitions taken challenging the validity of future referendum results.

This Bill contains provisions to ensure that in the future the hearing and final determination of petitions taken challenging the outcome of a referendum is not unduly lengthy. It provides for the making of direct appeals from the High Court to the Supreme Court and removes from the Court of Appeal any jurisdiction to determine such appeals. It also prescribes strict timelines within which both applications for leave to petition and the hearing of petitions for which leave has been granted must be heard and determined. It further prescribes strict time provisions for the hearing of a case stated by the Supreme Court arising out of Referendum Petition proceedings and for the hearing and determination by the Supreme Court of any appeal on a substantive petition that comes before it. In addition, it prescribes that when an appeal is taken to the Supreme Court an automatic stay applies to the High Court Order. This is to ensure, pending the issue being determined by the Supreme Court, the decision of that court cannot be pre-empted by a Referendum Returning Officer furnishing to the President a Referendum Certificate which authorises his signing the Referendum Bill into law, an issue of difficulty recently highlighted by the Supreme Court. If enacted the Bill published should ensure that the period of delay experienced in there being a final outcome to the petition challenge taken to the Children's Rights Referendum result is not again repeated in the future and that the recent difficulty highlighted as a gap in the law by the Supreme Court is addressed.

## **Provisions of the Bill**

### *Section 1*

This is the definition section.

### *Section 2*

This section provides that where leave to present a Referendum Petition is refused by the High Court, any appeal against such refusal can only be made to the Supreme Court. It prescribes that such appeal must be lodged within 3 days following a refusal of leave and be heard and determined by the Supreme Court within 2 weeks. It also provides for an automatic stay to any order made by the High Court refusing leave to appeal. This provision is designed to address a concern recently expressed by the Supreme Court in respect of the difficulty that could arise should such stay not be granted, a Referendum Certificate certifying the outcome of a referendum be signed and as a consequence the Constitution be formally amended prior to such application being determined by the Supreme Court.

This section also prescribes that the hearing of a Referendum Petition by the High Court shall be completed no later than 6 weeks after the granting of leave to petition and that the High Court's judgement shall be delivered no later than 3 weeks thereafter. There is also express provision for the hearing and completion by the Supreme Court of any case stated by the High Court to it arising out of a Referendum Petition within 6 weeks of receipt of the case stated and for that Court to deliver judgement no later

than 3 weeks thereafter. 7 days are prescribed for the filing of a Notice of Appeal to the Supreme Court following the determination by the High Court of Referendum Petition proceedings. Provision is made for a stay on the Final Order of the High Court until expiration of the 7 days within which an appeal can be lodged or, where an appeal is lodged within the specified time, until the determination of the appeal by the Supreme Court.

*Section 3*

This section prescribes that the Court of Appeal shall have no function in relation to Referendum Petitions and that substantive appeals which are lodged in the Supreme Court shall be heard and completed within 6 weeks.

*Section 4*

This section details the title to the Bill.

*Deputy Alan Shatter*

*Meán Fómhair, 2015.*