

# Court of Appeal Referendum – proposed changes to the Constitution – Article 34

The proposal to amend the Constitution to allow for the establishment of the Court of Appeal and for other changes to the Courts system is set out in the Thirty-third Amendment of the Constitution (Court of Appeal) Bill 2013:

<http://www.oireachtas.ie/documents/bills28/bills/2013/7913/b79b13d.pdf>

The full text of the Constitution is available at: <http://www.irishstatutebook.ie/en/constitution/index.html>

The main changes are to Article 34 of the Constitution. If the referendum is passed, Article 34 will be amended in the following manner:

Article	Current Text	Amendment [changes highlighted]
Article 34	<p>The Courts</p> <p>1 Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.</p>	<p>The Courts</p> <p>1 Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.</p>
	<p>2 The Courts shall comprise Courts of First Instance and a Court of Final Appeal.</p>	<p>2 The Courts shall comprise:</p> <ul style="list-style-type: none"><li>i Courts of First Instance;</li><li>ii a Court of Appeal; and</li><li>iii a Court of Final Appeal.</li></ul>
	<p>3 1° The Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal.</p> <p>2° Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court.</p>	<p>3 1° The Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal.</p> <p>2° Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court, the Court of Appeal or the Supreme Court.</p>

Article	Current Text	Amendment [changes highlighted]
Article 34	<p>3° No Court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Article 26 of this Constitution, or to question the validity of a provision of a law where the corresponding provision in the Bill for such law shall have been referred to the Supreme Court by the President under the said Article 26.</p> <p>4° The Courts of First Instance shall also include Courts of local and limited jurisdiction with a right of appeal as determined by law.</p>	<p>3° No Court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Article 26 of this Constitution, or to question the validity of a provision of a law where the corresponding provision in the Bill for such law shall have been referred to the Supreme Court by the President under the said Article 26.</p> <p>4° The Courts of First Instance shall also include Courts of local and limited jurisdiction with a right of appeal as determined by law.</p>
		<p>4 1° The Court of Appeal shall—</p> <p>i save as otherwise provided by this Article, and</p> <p>ii with such exceptions and subject to such regulations as may be prescribed by law,</p> <p>have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law.</p> <p>2° No law shall be enacted excepting from the appellate jurisdiction of the Court of Appeal cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.</p> <p>3° The decision of the Court of Appeal shall be final and conclusive, save as otherwise provided by this Article.</p>

Article	Current Text	Amendment [changes highlighted]
Article 34	<p>4 1° The Court of Final Appeal shall be called the Supreme Court.</p> <p>2° The president of the Supreme Court shall be called the Chief Justice.</p> <p>3° The Supreme Court shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law.</p>	<p>[Article 34.4 is renumbered as 34.5]</p> <p>5 1° The Court of Final Appeal shall be called the Supreme Court.</p> <p>2° The president of the Supreme Court shall be called the Chief Justice.</p> <p>3° The Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the Court of Appeal if the Supreme Court is satisfied that—</p> <p>i the decision involves a matter of general public importance, or</p> <p>ii in the interests of justice it is necessary that there be an appeal to the Supreme Court.</p> <p>4° Notwithstanding section 4.1° hereof, the Supreme Court shall, subject to such regulations as may be prescribed by law, have appellate jurisdiction from a decision of the High Court if the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors:</p> <p>i the decision involves a matter of general public importance;</p> <p>ii the interests of justice.</p>
	<p>4° No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.</p>	<p>[Article 34.4.4° is renumbered as 34.5.5°]</p> <p>5° No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this Constitution.</p>

Article	Current Text	Amendment [changes highlighted]
Article 34	<p>5° The decision of the Supreme Court on a question as to the validity of a law having regard to the provisions of this Constitution shall be pronounced by such one of the judges of that Court as that Court shall direct, and no other opinion on such question, whether assenting or dissenting, shall be pronounced, nor shall the existence of any such other opinion be disclosed.</p> <p>6° The decision of the Supreme Court shall in all cases be final and conclusive.</p>	<p>[Article 34.4.5° is deleted]</p> <p>6° The decision of the Supreme Court shall in all cases be final and conclusive.</p>
	<p>5 1° Every person appointed a judge under this Constitution shall make and subscribe the following declaration: “In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice <i>(or as the case may be)</i> without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.”</p> <p>2° This declaration shall be made and subscribed by the Chief Justice in the presence of the President, and by each of the other judges of the Supreme Court, the judges of the High Court and the judges of every other Court in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court.</p> <p>3° The declaration shall be made and subscribed by every judge before entering upon his duties as such judge, and in any case not later than ten days after the date of his appointment or such later date as may be determined by the President.</p> <p>4° Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office.</p>	<p>[Article 34.5 is renumbered as 34.6]</p> <p>6 1° Every person appointed a judge under this Constitution shall make and subscribe the following declaration: “In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice <i>(or as the case may be)</i> without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me.”</p> <p>2° This declaration shall be made and subscribed by the Chief Justice in the presence of the President, and by each of the other judges of the Supreme Court, the judges of the Court of Appeal, the judges of the High Court and the judges of every other Court in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court.</p> <p>3° The declaration shall be made and subscribed by every judge before entering upon his duties as such judge, and in any case not later than ten days after the date of his appointment or such later date as may be determined by the President.</p> <p>4° Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office.</p>

# Court of Appeal Referendum – Other articles affected

The proposal to amend the Constitution to allow for the establishment of the Court of Appeal mainly involves amendments to <Article 34.> A small number of other amendments are also proposed. These are mainly concerned with

- ensuring that the judges of the Court of Appeal will have the same Constitutional protections as the judges of the Supreme Court and the High Court have at present and
- addressing certain other functions of the President of the Court of Appeal and the President of the High Court.

Article	Current Text	Amendment [changes highlighted]
Article 12	8 The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas, of Judges of the Supreme Court and of the High Court, and other public personages, the following declaration: ...	8 The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas <sup>1</sup> , of Judges of the Supreme Court, the Court of Appeal and of the High Court, and other public personages, the following declaration: ...
Article 14	2 2° The President of the High Court shall act as a member of the Commission in the place of the Chief Justice on any occasion on which the office of Chief Justice is vacant or on which the Chief Justice is unable to act.	2 2° The President of the Court of Appeal shall act as a member of the Commission in the place of the Chief Justice on any occasion on which the office of Chief Justice is vacant or on which the Chief Justice is unable to act.

<sup>1</sup>This article will be further changed if the Seanad referendum is passed <http://www.oireachtas.ie/documents/bills28/bills/2013/6313/b63a13d.pdf>

Article	Current Text	Amendment [changes highlighted]
<b>Article 31</b>	<p>2 The Council of State shall consist of the following members:</p> <ul style="list-style-type: none"> <li>i As ex-officio members: the Taoiseach, the Tánaiste, the Chief Justice, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney General.</li> <li>ii Every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Taoiseach, or the office of Chief Justice, or the office of President of the Executive Council of Saorstát Éireann.</li> <li>iii Such other persons, if any, as may be appointed by the President under this Article to be members of the Council of State.</li> </ul>	<p>2 The Council of State shall consist of the following members:</p> <ul style="list-style-type: none"> <li>i As ex-officio members: the Taoiseach, the Tánaiste, the Chief Justice, <b>the President of the Court of Appeal</b>, the President of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann<sup>2</sup>, and the Attorney General.</li> <li>ii Every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Taoiseach, or the office of Chief Justice, or the office of President of the Executive Council of Saorstát Éireann.</li> <li>iii Such other persons, if any, as may be appointed by the President under this Article to be members of the Council of State.</li> </ul>
<b>Article 35</b>	<p>1 The judges of the Supreme Court, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President.</p>	<p>1 The judges of the Supreme Court, <b>the Court of Appeal</b>, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President.</p>
<b>Article 35</b>	<p>4 1° A judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.</p>	<p>4 1° A judge of the Supreme Court, <b>the Court of Appeal</b>, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann<sup>3</sup> calling for his removal.</p>

<sup>2</sup> This article will be further changed if the Seanad referendum is passed <http://www.oireachtas.ie/documents/bills28/bills/2013/6313/b63a13d.pdf>

<sup>3</sup> This article will be further changed if the Seanad referendum is passed <http://www.oireachtas.ie/documents/bills28/bills/2013/6313/b63a13d.pdf>

Article	Current Text	Amendment [changes highlighted]
<b>Article 36</b>	<p>Subject to the foregoing provisions of this Constitution relating to the Courts, the following matters shall be regulated in accordance with law, that is to say:–</p> <ul style="list-style-type: none"> <li>i the number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges,</li> <li>ii the number of the judges of all other Courts, and their terms of appointment, and</li> <li>iii the constitution and organization of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure.</li> </ul>	<p>Subject to the foregoing provisions of this Constitution relating to the Courts, the following matters shall be regulated in accordance with law, that is to say:–</p> <ul style="list-style-type: none"> <li>i the number of judges of the Supreme Court, <b>of the Court of Appeal</b>, and of the High Court, the remuneration, age of retirement and pensions of such judges,</li> <li>ii the number of the judges of all other Courts, and their terms of appointment, and</li> <li>iii the constitution and organization of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure.</li> </ul>
<b>Article 40.4. 3°</b>	<p>4 3° Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it.</p>	<p>4 3° Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the <b>Court of Appeal</b> by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the <b>Court of Appeal</b> has determined the question so referred to it.</p>