

Why a Right to Housing?

**Submission to the Housing Commission's
Public Consultation on a Referendum on
Housing in Ireland**



August 2022

Threshold welcomes this opportunity to make a submission to the Commission in respect of a referendum on housing. Threshold is unequivocally of the opinion that this should be a referendum to insert a standalone right to housing in the Constitution. Given the pressing nature of this issue, Threshold recommends that a timeline for a referendum on the right to housing is set out by the Commission, and that it takes place within six months of the Commission making its report to Government.

In this submission Threshold will firstly outline why such a referendum to amend the Constitution should be called, and secondly, set out the form such an amendment should take, closing with a few words on the meaning of “adequate housing”.

Why a referendum on the Right to Housing is needed

The Constitution of Ireland sets out the rules and principles by which the Irish state is governed. Or in simple terms, it directs the Government on how to run the country. It contains the values and the beliefs of the people. It shapes all policy and legislation.

Without a right to housing in the Constitution, there is no duty on the Government to ensure all people have access to adequate housing. By holding a referendum to insert a right to housing in the Constitution, the people of Ireland would be given the opportunity to send a message to the Government about its role in ensuring access to housing. This role would entail taking the necessary, progressive steps of institutional reform to ensure access to secure, affordable and suitable homes for all.

If the people of Ireland vote to insert such a right, then the current Government, and all future Governments, will be obliged to use this as the basis for their decision making when it comes to housing policy and legislation. Such a change to the Constitution would set out the role of the Government as duty holder in this regard, a duty which cannot be set aside and one for which they can be held accountable.

In this way, housing can no longer be used as a “political football” or be subject to personal interests or ideological concerns. The right to housing would become a catalyst for change. This should bring about a consistent approach to housing policy and greater long-term planning, moving the system away from the boom-bust cycles of provision which have become the norm.

Access to adequate housing is the basis from which one can realise all their other rights. Without a right to home, citizens can only be considered marginal rights holders. A right to housing would provide a solid floor of protection, below which no one should fall; home is a fundamental element of human dignity and must be protected.

Form of the Constitutional Amendment

Threshold is a member of Home for Good, a coalition of organisations and individuals who believe that constitutional change is an essential underpinning for any programme to tackle our housing and homelessness crises. Working in collaboration, with the input and expertise of legal experts, Home for Good has not only advocated for a referendum to

insert a right to housing in the Irish constitution, but also has devised a form of words for this amendment.

The proposed wording contains two elements:

- i. A directly enforceable right
- ii. The placement of a positive duty on the State to vindicate this right within its resources.

These elements are in keeping with international law, for example Article 11 of the International Covenant on Economic Social and Cultural Rights, ratified by Ireland in 1989 and Articles 27(1) and 27(3) of the Convention on the Rights of the Child, ratified by Ireland in 1992.

Alongside our colleagues in Home for Good, Threshold recommends the insertion of a stand-alone and directly enforceable right to housing in the Constitution, to take the below form.

Proposed wording from Home for Good

Housing

Article 43A

1 The State recognises, and shall vindicate, the right of all persons to have access to adequate housing.

2 The State shall, through legislative and other measures, provide for the realisation of this right within its available resources.

A directly enforceable right

If the State were to unreasonably fail in its obligations in respect of housing, the amendment would empower the courts to review such failure and to grant appropriate remedies. Experience, in respect of other Constitutional rights, indicate that the courts would be unlikely to intervene in this way. However, experience also shows that litigation may be one mechanism available to compel the State to remedy situations where the State has been neglectful in its duties.

The placement of a positive duty on the State to vindicate this right within its resources

The provision of housing ultimately depends on the availability and allocation of resources. The amendment can oblige the State to use a share of existing resources for a particular purpose. It cannot generate additional resources and it will not guarantee everyone a house, never mind a “free” house. The right provides for generalised access to housing, to an appropriate standard, which is not the same as a right to a house.

We recommend including an express recognition of the need for the State to vindicate this right within its available resources, to ensure clear understanding of the State’s

obligations. This is the approach envisaged under international law, which recommends that a State realise the right of every individual, in the shortest possible time, in accordance with the maximum available resources.

Stand-Alone Right

We propose that this be a stand-alone right, of equal value to the right to private property to bring about balance to the Constitution. This is deeply significant as Article 43.2 of the Constitution allows the Government to regulate private property according to the principles of social justice. However, these principles have not been sufficient to allow those providing legal advice to policy makers to endorse housing policies that would infringe on or regulate private property.

A stand-alone right would resolve this tension, by allowing the right to private property and that to housing to be balanced against each other. The express recognition of the right to housing would open up policy discussions and considerations more widely, to devise and implement solutions to our housing and homeless crises. It would become the touchstone against which all action or inaction by the State would be measured.

The Meaning of “Adequate Housing”

The term “adequate housing” is of significance and consequence. It is an international Human Rights term with specific meaning. It is not a subjective term, to be left open to interpretation by the Government of the day.

The United Nations Committee on Economic, Social and Cultural Rights set out the key characteristics of adequate housing¹. They are:

- Legal security of tenure
- Availability of services, materials, facilities and infrastructure,
- Affordability
- Habitability
- Accessibility
- Location – in a location which allows access to employment options, healthcare services, schools, childcare centres and other social facilities
- Cultural adequacy.

It is for these reasons that the amendment to introduce a right to housing must include the term “adequate housing”.

Conclusion

A referendum to insert a right to housing into the Constitution will give the people of Ireland the opportunity to instruct the Government on its role in ensuring access to

¹ OHCHR and the right to adequate housing
<https://www.ohchr.org/en/housing#:~:text=The%20UN%20Committee%20on%20Economic,people%20are%20not%20adequately%20housed.>

housing. This would require the Government to take necessary, progressive steps of institutional reform to ensure access to secure, affordable and suitable homes for all.

The insertion of such a right would set out the role of the Government as duty holder in this regard, a duty which cannot be set aside and one for which they can be held accountable.

The right must be enforceable, ensuring that Governments are held accountable and can be brought to task for failure to vindicate the right.

The right must explicitly recognise the State has an obligation to vindicate this right within its resources.

The right needs to be a stand-alone right to bring balance to Constitution, giving it equal value to the right to private property.

Finally, the amendment must be to insert a right to “adequate housing”. Adequate housing is an international human rights term, which is not subject to interpretation. The United Nations have set out what is meant by “adequate housing”.