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**An Bille Uchtála (Leasú), 2016**  
**Adoption (Amendment) Bill 2016**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**EXPLANATORY MEMORANDUM**

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**BACKGROUND AND PURPOSE OF BILL**

The primary purpose of the Adoption (Amendment) Bill 2016 is to give legislative effect to the Thirty-first Amendment of the Constitution (Children) Act 2012.

**31st Amendment of the Constitution:** The Bill amends the Adoption Act 2010 (the 2010 Act) to provide that married parents may place a child for adoption, on a voluntary basis, in circumstances where both parents place the child for adoption and where both parents consent to the making of the adoption order. The Bill also changes the criteria under which the High Court may, in a case of parental failure, make an order authorising the adoption of a child without parental consent. The revised criteria provide that where an application to adopt a child is made in respect of a child who is in the custody of and who has had a home with the applicants for a period of at least 18 months, and where that child's parents have failed in their parental duty towards that child for a continuous period of not less than 36 months, the High Court may dispense with parental consent and authorise the Adoption Authority to make an adoption order in respect of that child.

The Bill also provides that the best interests of the child are to be the paramount consideration in relation to any matter, application or proceedings under the 2010 Act and that the views of the child shall be ascertained by the Adoption Authority or by the court, as the case may be, and shall be given due weight, having regard to the age and maturity of the child.

**Civil partners and co-habiting couples:** Part 11 of the Children and Family Relationships Act 2015 amended the 2010 Act to provide for the adoption of a child by civil partners and cohabiting couples. Section 2 of the Adoption (Amendment) Bill repeals Part 11 of the 2015 Act. The provisions providing for the adoption of a child by civil partners and cohabiting couples are being provided for in the Adoption (Amendment) Bill by way of bringing forward the relevant sections (amended as necessary) from Part 11 of the 2015 Act into the Bill.

**Step parent adoption:** Provisions allowing for step parent adoption without the requirement for the other parent to adopt his or her own child are also included in the Bill.

## **SECTIONS OF BILL**

### **Section 1. Definition**

*Section 1* provides that “Principal Act” means the Adoption Act 2010.

### **Section 2. Repeals**

*Section 2* provides for the repeal of sections 24 and 45 of the Adoption Act 2010 and for the repeal of Part 11 of the Children and Family Relationships Act 2015.

**Repeal of section 24 of 2010 Act:** Section 23 of the Adoption Act 2010 provides that an adoption order may not be made if a child is more than 7 years of age. Section 24 of the 2010 Act provided for an exception to that age requirement whereby an adoption order may be made where a child is older than 7 years if the Authority is satisfied that it is desirable to do so in the particular circumstances, and provides that due consideration must be given to the wishes of the child, having regard to his or her age and understanding. Section 12 of the Adoption (Amendment) Bill amends section 23 of the 2010 Act to provide that an adoption order may be made where the child is, at the date of the making of the adoption order, less than 18 years of age. As a consequence of the amendment to section 23, the exceptional circumstances provided for in section 24 of the 2010 Act are no longer applicable and section 24 of the 2010 Act is therefore being repealed by this Bill.

**Repeal of section 45 of 2010 Act:** Section 2 of the Adoption (Amendment) Bill repeals section 45 of the Adoption Act 2010. Section 45 provides for adoption in circumstances where the child’s adopters were deceased. The retention of section 45 could be interpreted as creating a restriction on re-adoption. The policy intention in repealing section 45 is to clarify that an adopted child is eligible for adoption in the same way as any other child.

**Repeal of Part 11 of Children and Family Relationships Act 2015:** Section 2 of the Adoption (Amendment) Bill repeals Part 11 (comprising sections 101-134) of the 2015 Bill. Sections 103, 110, 115, 118-119 and 132-133 of the 2015 Act are brought forward without amendment into the Bill. Sections 101-102, 104 and 109 have been repealed and sections 105-108, 111-114, 116-117, 120-131, and 134 have been amended and brought forward into the Adoption (Amendment) Bill. The repeal of Part 11 of the 2015 Act removes the definition of ‘second female parent’ from the Adoption Act 2010. The bringing forward of the relevant sections (amended as required) from Part 11 of the 2015 Act into the Adoption (Amendment) Bill ensures that provisions allowing for the adoption of a child by civil partners or cohabiting couples are encompassed in primary adoption legislation.

### **Section 3. Amendment of section 3 of Adoption Act 2010**

*Section 3* of the 2010 Act provides for definitions of words and terms used in that Act.

*Section 102* of the Children and Family Relationships Act 2015 amends section 3 of the 2010 Act to provide for the insertion of certain definitions into the 2010 Act including ‘civil partner’, ‘cohabitant’, ‘cohabitating couple’, ‘donor-conceived child’, ‘father’ and ‘second female parent’; and substitutes new definitions into the 2010 Act for ‘parent’ and ‘guardian’. Section 102 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 3* of the Adoption (Amendment) Bill amends section 3 of the 2010 Act to provide for the insertion of certain definitions including ‘civil partner’, ‘cohabitating couple’, ‘donor-conceived child’, ‘relevant non-

guardian' and 'step parent' and for the substitution of new definitions for 'parent' and 'guardian' and the deletion of the definition of 'orphan'.

#### **Section 4. Amendment of section 4 of Adoption Act 2010**

*Section 4* of the 2010 Act deals with references to the making of arrangements for adoptions.

*Section 103* of the Children and Family Relationships Act 2015 amended section 4 of the 2010 Act to provide that the term 'birth parents' is replaced by 'parents' in each place that it occurs in section 4(k) of the 2010 Act. Section 103 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward, without amendment, into section 4 of that Bill.

*Section 4* of the Adoption (Amendment) Bill amends section 4 of the 2010 Act to provide that the term 'birth parents' is replaced by 'parents' in each place that it occurs in the section.

#### **Section 5. Visits and enquiries pertaining to adoptions**

*Section 12* of the Adoption Act 2010 provides that the Adoption Authority and the Child and Family Agency may authorise a member or employee to visit the homes of the child, the guardian of the child, the applicants for an adoption order or for the recognition of an intercountry adoption and the person having custody of the child for the purpose of an adoption and to make enquiries on the Authority's behalf.

*Section 105* of the Children and Family Relationships Act 2015 amends section 12(2) of the 2010 Act by replacing 'mother or father' in subsection (2) with the term 'parent'. Section 105 of the 2015 Act is repealed by section 2 of the Bill.

*Section 5* of the Adoption (Amendment) Bill provides for the substitution of section 12 of the 2010 Act with a new section which restates section 12(1) and deletes section 12(2) of the 2010 Act. Section 12(2) had excluded the mother and father of the child from the definition of 'guardian' in that section.

#### **Section 6. Amendment of section 16 of Adoption Act 2010**

*Section 16* of the 2010 Act provides that the father of a child may give written notice to the Authority, before or after the birth, of his wish to be consulted in relation to the placement of the child for adoption, or in relation to an application for an adoption order by the mother or a relative of the child.

*Section 106* of the Children and Family Relationships Act 2015 amended section 16 of the 2010 Act to provide that the father or second female parent of a child may give written notice to the Authority, before or after the birth, of his or her wish to be consulted in relation to the placement of the child for adoption, or in relation to an application for an adoption order by the mother or a relative of the child. Section 106 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 6* of the Adoption (Amendment) Bill amends section 16 of the 2010 Act to substitute a new subsection (1) to replace the term 'father' with 'relevant non-guardian' (as defined in section 3 of the Bill). Section 16 of the 2010 Act is further amended to provide that a 'relevant non-guardian' may give notice of his or her wish to be consulted in relation to an application for an adoption order by a mother, step parent or relative of a child.

### **Section 7. Pre-placement consultation procedure**

*Section 17* of the 2010 Act provides that the Authority shall provide the accredited body with a copy of any notice received from the father advising that the father wishes to be consulted in relation to a proposed placement of a child for adoption or in relation to an application for an adoption order. The section also provides that the accredited body, before placing the child for adoption, shall take such steps as are reasonably practicable to consult the father and to explain the legal implications and procedures for adoption. If the father has no objection to the placement, the child may be placed for adoption. If the father objects to the proposed placement, the accredited body shall defer the placement for a period of not less than 21 days for the purpose of affording the father an opportunity to make an application to court under section 6A or 11(4) of the Guardianship of Infants Act 1964. If such proceedings are commenced, the child shall not be placed for adoption until such proceedings are concluded. Section 17 also provides that where an accredited body has not received notice of an application to court within the deferral period or any indication from the father within 21 days after informing him of the proposed placement, it may place the child for adoption.

*Section 107* of the Children and Family Relationships Act 2015 amended section 17 of the 2010 Act to provide that a second female parent is to be consulted about the proposed placement of a child for adoption in the same manner as had been provided for in the 2010 Act for the father of the child. Section 107 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 7* of the Adoption (Amendment) Bill substitutes a new section for section 17 of the 2010 Act to replace the term 'father' with 'relevant non-guardian' (as defined in section 3 of the Bill). The term 'relevant non-guardian' includes those fathers and other persons with whom consultation is required prior to the placement of a child for adoption.

### **Section 8. Circumstances where no pre-placement consultation**

*Section 18* of the 2010 Act provides that an accredited body shall notify the Authority if it is unable to consult the father of a child for the purposes of section 17(2). It also provides that the Authority may authorise an accredited body to place the child for adoption if it is satisfied that the body has taken reasonable steps to consult the father of the child. The accredited body may then place the child for adoption provided that it has not been contacted by the father in the meantime indicating that he objects to the placement. It is also provided that where the Authority is satisfied that it is inappropriate for the accredited body to contact the father in respect of the placement of the child, the Authority may, after first obtaining the approval of the High Court, authorise the accredited body to place the child for adoption.

This section also provides that where the father's identity is not made known to the accredited body and the mother fails to reveal the father's identity, the mother will be counselled in an attempt to obtain her cooperation by indicating to her that the adoption may be delayed, the possibility of the father contesting the adoption, that the absence of information regarding the medical, genetic and social background of the father may be detrimental to the welfare of the child and such other matters as the accredited body considers appropriate. Following such counselling, the section provides that the Authority shall be provided with a written report and if satisfied that the accredited body has taken such steps as are reasonably practicable to obtain the cooperation of the mother, and that there is no other practical way of ascertaining the father's identity, the Authority may, after first obtaining the approval of the High Court, authorise the accredited body to

place the child for adoption. It is also provided that the Authority may, after first obtaining the approval of the High Court, authorise the placement of a child for adoption if it has been provided with a statutory declaration by the mother of the child stating that she is unable to identify the father.

*Section 108* of the Children and Family Relationships Act 2015 amended section 18 of the 2010 Act to replace ‘father’ with ‘father or second female parent’ to ensure that where appropriate the provisions of this section are applicable in respect of a second female parent. Section 108 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 8* of the Adoption (Amendment) Bill substitutes a new section for section 18 of the 2010 Act to replace the term ‘father’ with ‘relevant non-guardian’ (as defined in section 3). This section sets out the circumstances wherein the Authority may, with the approval of the High Court, authorise the placing of a child for adoption and dispense with the requirement for consultation with the child’s ‘relevant non-guardian’. The term ‘relevant non-guardian’ includes those fathers and other persons with whom consultation is required prior to the placement of a child for adoption.

### **Section 9. Best interests of child and views of child**

*Section 19* of the 2010 Act provides that in any matter, application or proceedings before any court, or the Authority relating to adoption, the welfare of the child is the first and paramount consideration.

*Section 9* of the Adoption (Amendment) Bill amends section 19 of the 2010 Act by substituting a new section 19 to reflect Article 42A of the Constitution and to provide that in any matter, application or proceedings under the 2010 Act before the Adoption Authority or any court, the Authority or the court, as the case may be, shall regard the best interest of the child as the paramount consideration in the resolution of such matter, application or proceedings. The section also provides that in the resolution of any matter, application or proceedings referred to in the section, the Authority or court, as the case may be, shall, in respect of any child who is capable of forming his or her own views, ascertain the child’s views and such views shall be given due weight having regard to the age and maturity of the child.

### **Section 10. Amendment of section 20 of Adoption Act 2010**

*Section 20* of the 2010 Act provides that the Authority may make an adoption order or recognise an intercountry adoption effected in another state, and that, where the applicants are a married couple the order shall be for the adoption of the child by them jointly. The section also provides that the Authority, when making an adoption order, must take into account the relevant declaration of eligibility and suitability and the assessment report and recommendation of the Child and Family Agency. The making of a decision whether to refuse or to make an adoption order may be adjourned by the Authority.

*Section 110* of the Children and Family Relationships Act 2015 amended section 20 of the 2010 Act to enable the Adoption Authority to make an adoption order in respect of civil partners or a couple who have been cohabiting for over 3 years, if they have been assessed as eligible and suitable to adopt. It also provides for an intercountry adoption undertaken outside the State to be recognised where the adopting couple are civil partners or cohabitants who have cohabited together for over 3 years. Section 110 of the 2015 Act is repealed by section 2 of the Bill and its provisions brought forward, without amendment, into section 10 of the Bill.

*Section 10* of the Adoption (Amendment) Bill amends section 20 of the 2010 Act to enable the Adoption Authority to make an adoption order in

respect of civil partners or a couple who have been cohabiting for over 3 years, if they have been assessed as eligible and suitable to adopt. It also provides for an intercountry adoption undertaken outside the State to be recognised where the adopting couple are civil partners or cohabitants who have cohabited together for over 3 years.

#### **Section 11. Amendment of section 21 of Adoption Act 2010**

*Section 21* of the 2010 Act provides that the applicant(s) for an adoption order or for the recognition of an intercountry adoption may discontinue the application for an adoption order without liability for costs.

*Section 111* of the Children and Family Relationships Act 2015 amended section 21 of the 2010 Act to replace the term ‘birth parent’ with ‘parent’. Section 111 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 11* of the Adoption (Amendment) Bill amends section 21 of the 2010 Act by substituting a new subsection (2) to provide that the Child and Family Agency shall give notice of discontinuance of adoption proceedings to the Authority, to any adoption committee concerned, to the mother or guardian and to every relevant non-guardian of a child.

#### **Section 12. Children who may be adopted**

*Section 23* of the 2010 Act provides that the Authority shall not make an adoption order unless the child resides in the State, is not more than 7 years old and is an orphan or is born of parents not married to each other. The section also provides that an adoption order shall not be made in respect of a child unless the child has been in the care of the applicants for the prescribed period of time (if any such period has been prescribed).

*Section 12* of the Adoption (Amendment) Bill amends section 23 of the 2010 Act by the substitution of a new section for section 23 to provide for eligibility for adoption for any child residing in the State who is under the age of 18 years and who has been in the care of the applicants for the prescribed period (if any such period has been prescribed). The section also deletes the reference to the eligibility for adoption in respect of a child who is an ‘orphan’ or who is ‘born of parents not married to each other’. The section also provides that a step parent may adopt a child where that child has had a home with the child’s parent and step parent for a continuous period of not less than 2 years at the date of the application for the adoption order (see definition of step parent at section 3 of Bill).

#### **Section 13. Consultations with relevant non-guardians of child**

*Section 30* of the 2010 Act provides that the Authority shall take such steps as are reasonably practicable to ensure that the father of the child is consulted in relation to the adoption. Where the Authority is satisfied because of the nature of the relationship between the birth parents or the circumstances of the conception of the child that it would be inappropriate to consult the father, the section provides that the Authority may, after first obtaining the approval of the High Court, make the adoption order without consulting the father. The section also provides that the Authority shall counsel the mother if the mother refuses to identify the father to the Authority indicating to her that the adoption may be delayed or contested at a later date and that the absence of information about the medical genetic and social background of the father may be detrimental to the welfare of the child. Where the mother continues to refuse to reveal the father’s identity or provides the Authority with a statutory declaration that she is unable to identify the father of the child, the section provides that the Authority may, after first obtaining the approval of the High Court, make the adoption

order if the Authority has no other practical way of ascertaining the father's identity.

*Section 112* of the Children and Family Relationships Act 2015 amended section 30 of the 2010 Act to provide for a second female parent, where applicable, to be consulted on the same basis as a father where an application is made to adopt a child. Section 112 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 13* of the Adoption (Amendment) Bill amends section 30 of the 2010 Act by substituting a new section for section 30 of the 2010 Act to replace the term 'father' with 'relevant non-guardian' (as defined in section 3). The term 'relevant non-guardian' describes those fathers and other persons with whom consultation is required under this section.

#### **Section 14. High Court may give custody of child to prospective adopters and authorise dispensing with consent to adoption**

*Section 31* of the 2010 Act provides that where an application for an adoption order has been made and a person whose consent is necessary and who has agreed to the placing of the child concerned for adoption either fails or refuses to give consent, or withdraws a consent already given, the applicant(s) may apply to the High Court for an order giving custody of the child to the applicant(s) for such period as the Court may determine and authorising the Authority to dispense with the consent to the making of an adoption order in favour of the applicant(s).

*Section 14* of the Adoption (Amendment) Bill amends section 31 of the 2010 Act by substituting a new section 31 to provide that in circumstances where a child has been placed with prospective adopter(s) and, where prior to the final adoption order being made, a person whose consent to the making of the adoption order is necessary, fails or refuses to give consent, or withdraws a consent already given, the applicant(s) may apply to the High Court for an order giving custody of the child to the applicant(s) for such period as the Court may determine and authorising the Authority to dispense with the consent to the making of an adoption order in favour of the applicant(s). In these circumstances, the section provides that the High Court shall have regard to the relationship between the child and the applicants; the relationship between the child and his or her mother or guardian and the efforts made by any of those persons to develop or maintain such a relationship and any proposed arrangements of either the applicants and the mother or guardian for the future care of the child. The section also provides that the High Court shall, in so far as is practicable, give due weight to the views of the child, having regard to the age and maturity of that child.

#### **Section 15. Religion**

*Section 32* of the 2010 Act provides that an adoption order shall not be made in any case in which the child, the applicant or applicants, and the child's mother (if the child is born of parents not married to each other) or parents are not all of the same religion unless every person whose consent is required to the making of the adoption order, knows, when consenting, the religion of the applicant(s).

*Section 113* of the Children and Family Relationships Act 2015 amended section 32 of the 2010 Act to provide that an adoption order shall not be made in any case in which the child, the applicant or applicants, and the child's parents or mother (if the child is born of parents not married to each other or is the child of parents who are not civil partners of each other) are not all of the same religion unless every person whose consent to the making

of the adoption order is required, knows, when consenting, the religion of the applicant or each of the applicants if they are a married couple, a couple who are civil partners of each other or a cohabiting couple. Section 113 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 15* of the Adoption (Amendment) Bill amends section 32 of the 2010 Act by substituting a new section 32 to provide that the Authority shall not make an adoption order in circumstances where the child, the applicant or applicants for an adoption order and every person whose consent to the adoption is required under section 26 of the 2010 Act are not all of the same religion (if of any religion) unless every person whose consent is required to that adoption, knows, when so consenting, the religion (if any) of the applicant or applicants.

#### **Section 16. Amendment of section 33 of Adoption Act 2010**

*Section 33* of the 2010 Act provides that the Authority shall not make an adoption order, or recognise an adoption effected in another state, unless the applicant, or if the applicants are a married couple living together, each of them, has attained the age of 21 years or where the applicants are a married couple and one of them is the mother or father or a relative of the child and either of them has attained the age of 21 years. Notwithstanding the foregoing, the section provides that the Authority may make an adoption order in favour of an applicant in particular circumstances where this is desirable and in the best interests of the child.

The section also provides that the Authority shall not make an order in favour of more than one person or recognise such an adoption effected in another state unless the applicants are a married couple living together.

Where the applicant for an adoption order is married, the section provides that the Authority shall not make an adoption order or recognise an adoption effected in another state, without the consent of the applicant's spouse, unless the couple are living apart under a decree of judicial separation or similar such decree granted under another jurisdiction, a deed of separation or where the spouse has deserted the applicant or the applicant has separated from the spouse with just cause and is living apart. Applicants must be habitually resident in the State before the Authority can make an adoption order but the Authority, for the purposes of an intercountry adoption effected in this State, may make an order if applicants are resident in another contracting state or a state with which this State has a bilateral agreement or a state that has an arrangement with the State as referred to in section 81. The Authority shall issue policy guidelines respecting the circumstances in which an adoption order in favour of a single applicant, who is not the mother or father or relative of the child, may be made.

*Section 114* of the Children and Family Relationships Act 2015 amended section 33 of the 2010 Act to enable a civil partnered couple or a cohabiting couple who have lived together for over 3 years to be eligible for an adoption order to be made by the Authority or for an intercountry adoption effected outside this State to be recognised by the Authority. Section 114 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 16* of the Adoption (Amendment) Bill amends section 33 of the 2010 Act in subsections (1),(4),(5) and (6) and inserts new subsections (3A) and (3B) to provide that a couple who are civil partners of each other (as defined in section 3), a cohabiting couple (as defined in section 3) and a step parent of a child (as defined in section 3) are included in the categories of persons eligible to apply for an adoption order or for the recognition of an adoption order effected outside the State.

### **Section 17. Amendment of section 34 of Adoption Act 2010**

*Section 34* of the 2010 Act provides that the Authority shall not make an adoption order or recognise an adoption order effected in another state, unless it is satisfied that the applicant or applicants are suitable to have parental rights and duties in respect of the child, are of good moral character and in good health, and of an age to have a reasonable expectation of being capable throughout the child's childhood to promote the development and well-being of the child, and have adequate financial means to support the child. The section also provides that the applicant or applicants should be given appropriate information, advice and counselling concerning adoption.

*Section 115* of the Children and Family Relationships Act 2015 amended section 34 of the 2010 Act to provide that a couple who are civil partners of each other and a cohabiting couple are included in the categories of persons, whose suitability for an adoption order or for the recognition of an adoption order effected outside the State must be satisfactory to the Adoption Authority prior to the making by the Authority of an adoption order or the recognition of an adoption effected outside the State. Section 115 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward, without amendment, into section 17 of that Bill.

*Section 17* of the Adoption (Amendment) Bill amends section 34 of the 2010 Act to bring forward the provisions of section 115 of the 2015 Act into the Bill to provide that a couple who are civil partners of each other (as defined in section 3) and a cohabiting couple (as defined in section 3) are included in the categories of persons, whose suitability for an adoption order or for the recognition of an adoption order effected outside the State must be satisfactory to the Adoption Authority prior to the making by the Authority of an adoption order or the recognition of an adoption effected outside the State.

### **Section 18. Amendment of section 37 of Adoption Act 2010**

*Section 37* of the 2010 Act provides that any person(s) habitually resident within the State may apply to the Child and Family Agency to carry out an assessment of eligibility and suitability and for the issuance by the Authority of a declaration of eligibility and suitability. The section also provides that the Child and Family Agency, or an accredited body on its behalf, shall provide information and counselling, carry out the appropriate assessment and prepare a report that conforms to paragraph (1) of Article 15 of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 (the Hague Convention).

*Section 116* of the Children and Family Relationships Act 2015 amended section 37 of the 2010 Act to enable a civil partnered couple or a cohabiting couple to apply jointly for a declaration of eligibility and suitability to adopt a child. Section 116 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 18* of the Adoption (Amendment) Bill amends section 37 of the Adoption Act 2010 to provide that a couple who are civil partners of each other (as defined in section 3) and a cohabiting couple (as defined in section 3) and a step parent (as defined in section 3) are included in the categories of persons who may apply to the Child and Family Agency for an assessment of eligibility and suitability and for the issuance by the Adoption Authority of a declaration of eligibility and suitability in accordance with that assessment.

### **Section 19. Amendment of section 38 of Adoption Act 2010**

*Section 38* of the 2010 Act provides that the applicant(s) for an assessment of eligibility and suitability and for the issuance of a declaration of eligibility and suitability under section 37(1) may discontinue the application, without liability for any costs.

*Section 117* of the Children and Family Relationships Act 2015 amended section 38 of the 2010 Act to replace the term ‘birth parents of the child’ with ‘each parent of the child’. *Section 117* of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 19* of the Adoption (Amendment) Bill amends section 38 of the 2010 Act by substituting a new subsection for subsection (2) to provide that the Child and Family Agency shall give notice of the discontinuance of an application for assessment under section 37(1) to the Authority, to the adoption committee concerned, to the mother or guardian of the child and to every relevant non-guardian of the child.

### **Section 20. Amendment of section 40 of Adoption Act 2010**

*Section 40* of the 2010 Act provides that the Authority may issue a declaration of eligibility and suitability if it is satisfied that the applicant or applicants are suitable persons to have parental rights and duties and fall within the classes of persons in whose favour an adoption order may be made. Under this section, the Authority may also include in the declaration a statement relating to the age or health status of a child whom it considers the applicant(s) are suited to adopt.

*Section 118* of the Children and Family Relationships Act 2015 amended section 40 of the 2010 Act to provide that a couple who are civil partners of each other and a cohabiting couple are included in the categories of persons in whose favour the Authority may issue a declaration of eligibility and suitability. *Section 118* of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward, without amendment, into section 20 of that Bill.

*Section 20* of the Adoption (Amendment) Bill amends section 40 of the 2010 Act by providing that a couple who are civil partners of each other and a cohabiting couple are included in the categories of persons in whose favour the Authority may issue a declaration of eligibility and suitability.

### **Section 21. Amendment of section 41 of Adoption Act 2010**

*Section 41* of the 2010 Act provides that a declaration of eligibility and suitability expires after 24 months, but that it may be extended for a further period of not more than 12 months. The section also provides that the Authority may reconsider the declaration upon new information becoming available and may amend it by attaching specific conditions to it or withdraw the declaration if the making of an adoption order or the recognition of an adoption would not be proper until the proceedings are concluded. On the reconsideration of a declaration of eligibility and suitability, applicants are given an opportunity to be heard.

*Section 119* of the Children and Family Relationships Act 2015 amended section 41 of the 2010 Act to provide that a couple who are civil partners of each other and a cohabiting couple are included in the categories of persons in whose favour the Authority may extend the time period of the declaration of eligibility and suitability for an adoption order or for the recognition of an intercountry adoption effected outside the State and from whom the Authority may hear concerning new information or a change in relevant circumstances in this regard. *Section 119* of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward, without amendment, into section 21 of that Bill.

*Section 21* of the Bill amends section 41 of the 2010 Act by restating the provisions of section 119 of the 2015 Act to provide that a couple who are civil partners of each other (as defined in section 3) and a cohabiting couple (as defined in section 3) are included in the categories of persons in whose favour the Authority may extend the time period of the declaration of eligibility and suitability and from whom the Authority may hear concerning new information or a change in relevant circumstances in this regard.

#### **Section 22. Amendment of section 43 of Adoption Act 2010**

*Section 43* of the 2010 Act provides for specified persons to be entitled to be heard on an application for an adoption order and that those persons may be represented by counsel/solicitor and that proceedings may be in private. If there are custody proceedings before the courts, no adoption order may be made until the proceedings have been disposed of.

*Section 120* of the Children and Family Relationships Act 2015 amended section 43 of the 2010 Act to provide for a second female parent or any guardian to be added to the categories of persons entitled to be heard in relation to an application for an adoption order. Section 120 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 22* of the Adoption (Amendment) Bill amends section 43 of the 2010 Act to provide that a 'relevant non-guardian' (as defined in section 3) is included in the category of persons entitled to be heard by the Authority on the application for an adoption order.

#### **Section 23. Amendment of section 54 of Adoption Act 2010**

*Section 54* of the 2010 Act provides that applicants, in whose favour the Authority has made a declaration under section 53(1), may request the Child and Family Agency to apply to the High Court for an order under this section, or the applicants may apply to the High Court for such an order if the Child and Family Agency has not done so within three months. The section also provides for the High Court to authorise the Authority to make an adoption order if the court is satisfied that, having due regard for the rights of the persons concerned, such an authorisation would be in the best interests of the child and also if it has been shown to the satisfaction of the High Court that the parents of the child have failed in their duty towards the child and also that it is likely that such failure will continue without interruption until the child attains the age of 18 years and such failure constitutes abandonment. The section provides that the child, at the time of application, must have been in the custody of the applicants for a continuous period of not less than 12 months. The High Court, having regard to the age and understanding of the child, shall give his or her wishes due consideration. Proceedings under this section shall be heard in private.

*Section 23* of the Adoption (Amendment) Bill amends section 54 of the 2010 Act to provide for revised criteria under which the High Court may authorise the making of an adoption order without parental consent where a child's parents have failed in their duty towards that child. The revised criteria are that the child must be in the custody of, and have a home with, the applicants for a continuous period of not less than 18 months and that the High Court shall be satisfied that the parents of the child have failed in their duty towards that child for a period of 36 months and that there is no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare.

#### **Section 24. Parental rights and duties**

*Section 58* of the 2010 Act provides that when an adoption order is made or where an adoption effected outside the State is recognised under this Act, the child concerned shall be considered as the child of the adopters and the birth parents or guardian shall lose all parental rights and be freed from all parental duties with respect to the child (unless the pre-existing legal parent-child relationship is not terminated – such as may arise in an intercountry adoption).

*Section 121* of the Children and Family Relationships Act 2015 amended section 58 of the 2010 Act to provide that where a civil partnered couple or a cohabiting couple jointly adopt a child, each member of the couple and the child will have all the rights and duties of parents and children in relation to each other. It also provides that a female second parent who places a child for adoption will be freed from such parental rights and duties on the same basis as a father in this situation. Section 121 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 24* of the Adoption (Amendment) Bill amends section 58 of the 2010 Act by substituting a new section 58 to provide that an adopted child shall be considered, with regard to the rights and duties of parents and children in relation to each other, as the child of the adopter or adopters and that the child's mother, guardian or relevant non-guardian (as defined in section 3) shall lose all parental rights and be freed from parental duties in respect of the child.

#### **Section 25. Effect of adoption where adopter is step parent of child**

*Section 25* of the Bill inserts a new section 58A in the 2010 Act to provide that a child's mother, guardian or relevant non-guardian (as defined in section 3) shall not lose all parental rights in respect of his or her child when that child is adopted by a step parent (and where such mother or guardian is a spouse, civil partner or cohabitant of the adopter) (see definition of step parent in section 3). The section provides that a child who is adopted by his or her step parent, shall, upon the making of an adoption order, be regarded as the child of that step parent and the step parent's spouse, civil partner or cohabitant shall retain all parental rights in respect of that child.

#### **Section 26. Amendment of section 59 of Adoption Act 2010**

*Section 59* of the 2010 Act provides that the validity of an adoption order is not affected by the subsequent marriage of the child's birth parents unless the child has been adopted by one of his or her birth parents and their subsequent marriage to each other legitimates the child. In that case, the Legitimacy Act 1931 applies and the adoption order ceases to be in force.

*Section 122* of the Children and Family Relationships Act 2015 amended section 59 of the 2010 Act to substitute the term 'parents' for 'birth parents' in the section. Section 122 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 26* of the Adoption (Amendment) Bill amends section 59 of the 2010 Act to replace the term 'birth parents' with 'parents' and to clarify that the reference to parents in section 59 is a reference to a child's birth parents only.

#### **Section 27. Amendment of section 60 of Adoption Act 2010**

*Section 60* of the 2010 Act provides that where an adopted person or an adopter dies intestate, his or her property shall devolve as if the adopted person were the child of the adopters born to them in lawful wedlock and not the child of any other person. The section also provides that in any disposition of property, including by will, after the date of the adoption order, a reference to the child or children of the adopter or adopters shall

be read as including a reference to the adopted person. A reference in any disposition of real or personal property made, whether by instrument *inter vivos* or by will (including codicil), made after the date of the adoption order or the recognition of an intercountry adoption effected outside the State to the child or children of the birth parents after the date of the adoption order shall be read as not including a reference to the adopted person. The section also provides that any reference in any disposition of real or personal property made, whether by instrument *inter vivos* or by will (including codicil), made after the date of the adoption order or the recognition of an intercountry adoption effected outside the State to a person related to the adopted person in any degree shall be read as a reference to the person who would be related if the adopted person was the child, born in lawful wedlock, of the adopters. For the purposes of the devolution of any property or where an adopter or adopted child dies intestate, an adopted person shall be deemed to be related to any other child (whether adopted or not) of both spouses as brother or sister of the whole blood and in any other case as a brother or sister of the half-blood. The section also provides that a disposition made by will or codicil executed before the date of the adoption order shall not be treated as made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.

*Section 123* of the Children and Family Relationships Act 2015 amended section 60 of the 2010 Act to apply the provisions regarding property rights and stamp duty on conveyances or transfers of land to a situation in which a child has been adopted jointly by a civil partnered couple or cohabiting couple who have lived together for 3 years. Section 123 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 27* of the Adoption (Amendment) Bill amends section 60 of the 2010 Act to provide that for the purposes of this section, an adopted person is to be regarded as the child of his or her adopter and not the child of his or her pre-adoption parents. The section provides that references to adopters who are a couple includes adopters who were married to each other, civil partners of each other or a cohabiting couple at the time the adoption order concerned was made but who are no longer married to each other, civil partners of each other or living together as a cohabiting couple, as the case may be at the time of the disposition of the property concerned.

#### **Section 28. Stamp duty on land**

*Section 61* of the 2010 Act provides that for the purposes of stamp duties chargeable on conveyances or transfers of land, an adopted person shall be considered as the child of the adopter or adopters born to him, her or them in lawful wedlock.

*Section 124* of the Children and Family Relationships Act 2015 amended section 61 of the 2010 Act to provide that references to adopters who are a couple includes adopters who were married to each other, civil partners of each other or a cohabiting couple at the time the adoption order concerned was made but who are no longer married to each other, civil partners of each other or living together as a cohabiting couple, as the case may be, at the time of the disposition of the property concerned. Section 124 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 28* of the Adoption (Amendment) Bill amends section 61 of the 2010 Act by substituting a new section for section 61 to provide that, subject to section 58A of the 2010 Act, for the purposes of stamp duty chargeable on conveyances or transfers of land, an adopted person is regarded as the child of his or her adopter or adopters and not the child of any other person.

### **Section 29. Amendment of section 62 of Adoption Act 2010**

*Section 62* of the 2010 Act provides that any affiliation order in respect of a child and any agreement whereby the birth father of the child has undertaken to make payments specifically for the benefit of the child shall cease to have effect at the date of the adoption order.

*Section 125* of the Children and Family Relationships Act 2015 amended section 62 of the 2010 Act to provide that the term 'birth parent' is replaced with 'parent' in each place that it occurs. Section 125 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward into section 29 of that Bill.

*Section 29* of the Bill amends section 62 of the 2010 Act to provide that the term 'birth parent' is replaced with 'parent' in each place that it occurs.

### **Section 30. Amendment of section 68 of Adoption Act 2010**

*Section 68* of the 2010 Act provides that the Authority may make an adoption order where the child is transferred to the State and placed, in accordance with the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 (the Hague Convention) and the 2010 Act, with prospective adopters, provided that the requirements of this Act in relation to consent are met in full, or where consent was necessary and has not been given, and a High Court order has been made under section 31(3)(b) authorising the Authority to dispense with consent as described in that provision or in a case where the High Court has, by order under section 54, authorised the Authority to make an adoption order in relation to the child.

*Section 126* of the Children and Family Relationships Act 2015 amended section 68 of the 2010 Act to replace the reference to 'birth parent' with 'parent'. Section 126 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 30* of the Adoption (Amendment) Bill amends section 68 of the Adoption Act 2010 to replace the term 'birth parent' with 'person' to provide for circumstances where a person other than a parent may be required to consent to the making of an adoption order.

### **Section 31. Amendment of section 69 of Adoption Act 2010**

*Section 69* of the 2010 Act provides for the Authority to make an adoption order for the conversion of adoptions in state of origin, where pre-existing legal parent-child relationships are not terminated, into adoptions which do have that effect, provided that the requirements of this Act in relation to consent are met in full, or where consent was necessary and has not been given, and a High Court order has been made under section 31(3) (b) authorising the Authority to dispense with consent as described in that provision or in a case where the High Court has, by order under section 54, authorised the Authority to make an adoption order in relation to the child.

*Section 127* of the Children and Family Relationships Act 2015 amended section 69 of the 2010 Act to replace the term 'birth parent' with 'parent' to provide for circumstances where a parent other than a 'birth parent' may be required to consent to the making of an adoption order. Section 127 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 31* of the Adoption (Amendment) Bill amends section 69 of the 2010 Act to provide that the term 'birth parent' is replaced with 'person' to provide for circumstances where a person other than a 'birth parent' may be required to consent to the making of an adoption order.

### **Section 32. Amendment of section 78 of Adoption Act 2010**

*Section 78* of the 2010 Act provides for the Authority to make an adoption order where the child is transferred to the State and placed, in accordance with a bilateral agreement and this Act, with prospective adopters provided that Article 4 of the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, 1993 (the Hague Convention) and the relevant provisions of the 2010 Act in relation to consent are met in full, or where consent was necessary and has not been given, and a High Court order has been made under section 31(3)(b) authorising the Authority to dispense with consent as described in that provision or in a case where the High Court has, by order under section 54, authorised the Authority to make an adoption order in relation to the child.

*Section 128* of the Children and Family Relationships Act 2015 amends section 78 of the 2010 Act to provide that the term ‘birth parent’ is replaced with ‘parent’ to provide for circumstances where a parent other than a ‘birth parent’ may be required to consent to the making of an adoption order. Section 128 is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 32* of the Adoption (Amendment) Bill amends section 78 of the Adoption Act 2010 to provide that the term ‘birth parent’ is replaced with ‘person’ to provide for circumstances where a person other than a ‘birth parent’ may be required to consent to the making of an adoption order.

### **Section 33. Amendment of section 79 of Adoption Act 2010**

*Section 79* of the 2010 Act provides for the Authority to make an adoption order for the purpose of the conversion of a bilateral agreement adoption where the pre-existing legal parent-child relationships are not terminated into adoptions which do have that effect. The requirements of the 2010 Act in relation to consent are to be met in full.

*Section 129* of the Children and Family Relationships Act 2015 amended section 79 of the 2010 Act to replace the term ‘birth parent’ with ‘parent’ to provide for circumstances where a parent other than a ‘birth parent’ may be required to consent to the making of an adoption order. Section 129 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 33* of the Adoption (Amendment) Bill amends section 79 of the 2010 Act to provide that the term ‘birth parent’ is replaced with ‘person’ to provide for circumstances where a person other than a ‘birth parent’ may be required to consent to the making of an adoption order.

### **Section 34. Amendment of section 84 of Adoption Act 2010**

*Section 84* of the 2010 Act provides for the continuation of the Adopted Children Register and that it will be kept and maintained by an t-Ard Chláraitheoir and sets out requirements in relation to the entries in the register. Each entry shall contain the particulars specified in Schedule 3.

*Section 34* of the Bill amends section 84 of the 2010 Act to provide for the entry of particulars in the Adopted Children Register that are appropriate in respect of the type of adoption concerned.

### **Section 35. Amendment of section 85 of Adoption Act 2010**

*Section 85* of the 2010 Act provides that an t-Ard Chláraitheoir shall keep an index to the Adopted Children Register which shall be available for persons to search and from which it shall be possible to obtain certified copies of entries for a fee. A copy of an entry shall omit particulars of a personal public service number.

*Section 35* of the Adoption (Amendment) Bill amends section 85 of the 2010 Act to provide that in the case of a subsequent adoption any reference to a previous adoption will be excluded in a copy or extract of the entry.

### **Section 36. Amendment of section 97 of Adoption Act 2010**

*Section 97* of the 2010 Act provides that the Authority, with the consent of the Minister, may make rules regarding its procedures and rules governing the consultation required to be carried out with the father of the child before adoption. The section provides that the Minister shall lay such rules before both Houses of the Oireachtas and that they may be annulled within 21 sitting days by resolution of either House, but without prejudice to the validity of anything previously done thereunder.

*Section 130* of the Children and Family Relationships Act 2015 amends section 97 of the 2010 Act to provide that the Authority, with the consent of the Minister, may make rules regarding its procedures and rules governing the consultation required to be carried out with the father of the child, a person who believes himself to be the father of the child and with a second female parent (as defined in section 102 of the 2015 Act) of the child. *Section 130* of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill.

*Section 36* of the Adoption (Amendment) Bill amends section 97 of the 2010 Act to provide that the term 'father' is replaced with 'relevant non-guardian' and the term 'second female parent' is deleted. The term 'relevant non-guardian' is defined in section 3 and includes certain fathers or other guardians (including a second female parent as defined in section 102 of the 2015 Act) with whom consultation is required.

### **Section 37. Amendment of section 125 of Adoption Act 2010**

*Section 125(1)* of the 2010 Act provides that no person shall make arrangements for the adoption of a child or take part in the management or control of a body which exists wholly or partly for the purpose of making arrangements for adoption. *Section 125(2)* provides that a person shall not give a child to another person for the purpose of having the child adopted unless that person is a parent of the child and the person who intends to adopt is a parent, relative or spouse of a parent of the child. *Sections 125(1)* and *125(2)* do not apply to the Child and Family Agency and accredited bodies (provided that the accredited body is registered to carry out such activities in the Register of Accredited Bodies). *Section 125(3)* provides that a person shall not receive a child for the purpose of adoption unless the person is a parent of the child, a relative of the child, the spouse of a parent or a person with whom the child is placed by an accredited body or the Child and Family Agency.

*Section 131* of the Children and Family Relationships Act 2015 amended section 125 of the 2010 Act to provide that a civil partner of a parent of a child and a cohabitant of a parent of a child (where the cohabitant and parent are a cohabiting couple) are included in the categories of persons who are not precluded from giving or receiving a child for adoption.

*Section 131* of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions are brought forward and restated in section 37 of that Bill.

*Section 37* of the Adoption (Amendment) Bill amends section 125 of the Adoption Act 2010 to provide that a civil partner of a parent of a child and a cohabitant of a parent of a child (where the cohabitant and parent are a cohabiting couple) are included in the categories of persons who are not precluded from giving or receiving a child for adoption.

### **Section 38. Amendment of section 144 of Adoption Act 2010**

*Section 144* of the 2010 Act provides for a prohibition against advertisements indicating that a person desires to have a child adopted, that a person desires to adopt a child and that a person (excluding the Authority, the Child and Family Agency or an accredited body) is willing to make arrangements for the adoption of a child.

*Section 132* of the Children and Family Relationships Act 2015 amended section 144 of the 2010 Act to clarify that the reference in the section to a ‘guardian’ is a reference to a ‘guardian’ as defined in the Guardianship of Infants Act 1964. Section 132 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward, without amendment, into section 38 of that Bill.

*Section 38* of the Adoption (Amendment) Bill amends section 144 of the 2010 Act to clarify that the reference in the section to a ‘guardian’ is a reference to a ‘guardian’ as defined in the Guardianship of Infants Act 1964.

### **Section 39. Amendment of section 145 of Adoption Act 2010**

*Section 145* of the 2010 Act provides that a person shall not give or receive any payment or reward in consideration of the adoption of a child or in consideration of the making of arrangements for the adoption of a child except in the case of an accredited body which may receive reasonable costs and expenses including reasonable fees paid as remuneration for professional services. The receipt of gifts of money, with the prior approval of the Authority, may be accepted. The section does not apply in respect of maintenance payments.

*Section 133* of the Children and Family Relationships Act 2015 amended section 145 of the 2010 Act to clarify that the reference in the section to a ‘guardian’ is a reference to a ‘guardian’ as defined in the Guardianship of Infants Act 1964. Section 133 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward, without amendment, into section 39 of that Bill.

*Section 39* of the Adoption (Amendment) Bill amends section 145 of the 2010 Act to clarify that the reference in the section to a ‘guardian’ is a reference to a ‘guardian’ as defined in the Guardianship of Infants Act 1964.

### **Section 40. Amendment of Schedule 3 of Adoption Act 2010**

Schedule 3 of the Adoption Act 2010 provides for the particulars to be entered in the Adopted Children Register.

*Section 134* of the Children and Family Relationships Act 2015 amended schedule 3 of the Adoption Act 2010 to provide that the term ‘marital status’ is replaced with the term ‘civil status’. Section 134 of the 2015 Act is repealed by section 2 of the Adoption (Amendment) Bill and its provisions brought forward into section 40 of that Bill.

*Section 40* amends Schedule 3 of the Adoption Act 2010 to provide that the term ‘marital status’ is replaced in the section with the term ‘civil status’ and that the schedule includes the required particulars for all adoptions.

### **Section 41. Short title and commencement**

*Section 41* is a standard provision setting out that the Bill shall come into operation on such day or days as the Minister for Children and Youth Affairs may appoint by order or orders, either generally or with reference to any particular purpose or provision and different days may be appointed for

different purposes or different provisions, and also provides for the repeal of Part 11 of the Children and Family Relationships Act 2015.