



AN BILLE UCHTÁLA (UIMH. 2), 1987
ADOPTION (NO. 2) BILL, 1987

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

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ACTS REFERRED TO

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Adoption orders in respect of children the subject of orders under *section 3 (1)*.

Orders by High Court authorising adoption of children whose parents have failed in their duty towards them.



AN BILLE UCHTÁLA (UIMH. 2), 1987
ADOPTION (NO. 2) BILL, 1987

BILL

entitled

AN ACT TO PROVIDE, IN EXCEPTIONAL CASES, WHERE 5
THE PARENTS FOR PHYSICAL OR MORAL REASONS
HAVE FAILED IN THEIR DUTY TOWARDS THEIR CHIL-
DREN, FOR THE SUPPLYING, BY THE ADOPTION OF
THE CHILDREN, OF THE PLACE OF THE PARENTS
AND FOR THAT PURPOSE AND OTHER PURPOSES TO 10
AMEND AND EXTEND THE ADOPTION ACTS, 1952 TO
1976.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

1.—(1) In this Act—

“the Act of 1964” means the Adoption Act, 1964; 15

“the Acts” means the Adoption Acts, 1952 to 1976;

“the Board” means An Bord Uchtála;

“adoption order” means an order under section 9 of the Principal Act;

“the Court” means the High Court; 20

“guardian”, in relation to a child, means a person appointed, accord-
ing to law, to be the guardian of his person by deed or will or by a
court of competent jurisdiction;

“parents” includes a surviving parent and, in the case of a child in
respect of whom an adoption order is in force, means the adopters or 25
the adopter or the surviving adopter under the order;

“the Principal Act” means the Adoption Act, 1952.

(2) References in this Act to persons in whose favour the Board
has made a declaration under *section 2 (1)* or to persons applying for
an adoption order are, in the case of such a declaration in favour of 30
one person or such an application by one person, references to that
person.

(3) (a) A reference in this Act to a section is to a section of this
Act unless it is indicated that reference to some other
enactment is intended. 35

(b) A reference in this Act to a subsection or paragraph is a
reference to the subsection or paragraph of the provision

in which the reference occurs unless it is indicated that reference to some other provision is intended.

2.—(1) Where, on an application by any persons (referred to subsequently in this subsection as “the applicants”) to the Board for an adoption order, the Board (having heard the health board in whose functional area the applicants ordinarily reside, any persons specified in paragraphs (a) to (h) of section 16 (1) (as adapted by this Act) of the Principal Act who wish to be heard and any other person whom the Board, in its discretion, decides to hear) is satisfied that, if an order under section 3 (1) in relation to the child to whom the application for the adoption order relates were made in favour of the applicants, it would be proper, having regard to the Acts and this Act, to make the adoption order, it shall adjourn the application and declare that, if the order is made under section 3 (1), it will, subject to subsection (2), make the adoption order.

Adoption orders in respect of children the subject of orders under section 3 (1).

(2) Where—

(a) an order is made under section 3 (1),
and

(b) an appeal against the order is not brought or the order is confirmed on appeal by the Supreme Court,

the Board, if so requested by the persons in whose favour the order was made, shall, unless it is satisfied that the relevant circumstances have so changed since the date of the making of the declaration under subsection (1) in relation to the matter that it would not be proper, having regard to the Acts and this Act, to do so, make an adoption order in relation to the child to whom the order under section 3 (1) relates in favour of the persons aforesaid.

(3) Section 14 of the Principal Act, the proviso to paragraph (a) of section 2 (1) of the Act of 1964 and paragraph (b) of the said section 2 (1) do not apply to an adoption order made by the Board by virtue of this section.

(4) Section 17 of the Principal Act does not apply in relation to an application for the making of an adoption order by virtue of this section.

(5) Where an adoption order is made by virtue of this section in respect of a child in respect of whom a previous adoption order has been made, the child shall be taken, for the purposes of the first-mentioned order, to be the lawful child of the adopters under the said previous order.

3.—(1) Where persons in whose favour the Board has made a declaration under section 2 (1) (referred to subsequently in this subsection as “the applicants”) request the health board in whose functional area they ordinarily reside to apply to the Court for an order under this section—

Orders by High Court authorising adoption of children whose parents have failed in their duty towards them.

(a) if the health board considers it proper to do so and an application therefor in accordance with paragraph (b) of this subsection has not been made by the applicants, the health board may apply to the Court for the order, and

(b) if, within the period of 3 months from the day on which the request was given to the health board, the health board either—

(i) by notice in writing given to the applicants, declines to accede to the request, or

(ii) does not give the applicants a notice under *sub-paragraph (i)* of this paragraph in relation to the request but does not make an application for the order under *paragraph (a)*, 5

the applicants may apply to the Court for the order,

and, if an application under *paragraph (a)* or *(b)* of this subsection is made and it is shown to the satisfaction of the Court—

(I) that— 10

(A) for a continuous period of not less than 12 months immediately preceding the time of the making of the application, the parents of the child to whom the declaration under *section 2 (1)* relates, for physical or moral reasons, have failed in their duty towards the child, 15

(B) it is likely that such failure will continue without interruption until the child attains the age of 18 years, 20

(C) such failure constitutes an abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect to the child, and 25

(D) by reason of such failure, the State, as guardian of the common good, should supply the place of the parents,

(II) that the child—

(A) at the time of the making of the application, is in the custody of and has a home with the applicants, and 30

(B) for a continuous period of not less than 12 months immediately preceding that time, has been in the custody of and has had a home with the applicants, 35

and

(III) that the adoption of the child by the applicants is an appropriate means by which to supply the place of the parents, 40

the Court may, if it so thinks fit and is satisfied, having had due regard for the rights, whether under the Constitution or otherwise, of the persons concerned (including the natural and imprescriptible rights of the child), that it would be in the best interests of the child to do so, make an order authorising the Board to make an adoption order in relation to the child in favour of the applicants. 45

(2) Before making an order under *subsection (1)*, the Court shall, in so far as is practicable, give due consideration, having regard to his age and understanding to the wishes of the child concerned.

(3) The Court may, of its own motion or on the application of any party to proceedings under *subsection (1)*, make an order adding such other persons as the Court thinks fit as parties to the proceedings.

5 (4) The health board concerned shall be joined as a party to proceedings under *paragraph (b) of subsection (1)* and where, pursuant to an application under the said *paragraph (b)*, the Court makes an order under *subsection (1)*, it shall also, if free legal aid in relation to the application is not provided by or on behalf of the State for the persons bringing the application, make an order for the payment by
10 the health board concerned either of the costs, as taxed by a Taxing Master of the Court, of those persons in relation to the application or of such amount as, in the opinion of those persons and the health board, is equal to the amount of those costs as taxed as aforesaid.

15 (5) In any case where costs are incurred by the parents of the child concerned in relation to an application under *subsection (1)* and free legal aid is not provided by or on behalf of the State for those parents in relation to the application, the Court shall make an order for the payment by the health board concerned either of those costs, as taxed by a Taxing Master of the Court, or of such amount as, in the opinion
20 of the parents and the health board, is equal to the amount of those costs as taxed as aforesaid.

(6) Proceedings under this section shall be heard otherwise than in public.

25 (7) The functions conferred on a health board by *subsection (1)* shall be functions of the chief executive officer of the health board.

(8) A request to a health board under *subsection (1)* may be given to the board by handing it, or sending it by prepaid post, to an officer of the board at premises of the board and the request shall be deemed, for the purposes of *paragraph (b) of that subsection*, to be given to
30 the board on the day on which it is so handed or posted.

4.—(1) Subject to the provisions of this section, the Court shall not make an order under *section 3 (1)* without having heard the parents of the child concerned and any other persons who, in the opinion of the Court, ought to be heard by it. Evidence to Court.

35 (2) Where the parents concerned (or either of them), having been requested to give evidence to the Court at the hearing of an application for an order under *section 3 (1)*, fail or refuse to do so, the Court may, if it so thinks fit, notwithstanding the absence of the evidence of the parents or, as the case may be, of either of them, make the
40 order.

(3) Where the parents concerned (or either of them) fail to respond to such a request as aforesaid, the failure may be taken by the Court, for the purposes of *subsection (2)*, to be a failure by the parents or, as the case may be, by either of them to give evidence to the Court
45 at the hearing concerned.

(4) Notwithstanding *subsection (1)*, where the Court is satisfied—

50 (a) that the identity of the parents concerned (or of either of them) is not known to the persons applying for an order under *section 3 (1)* and is not known to the Board and that all appropriate measures have been taken to ascertain that identity, or

(b) that the whereabouts of the parents concerned (or of either of them) at the time of the making of the application for such order, and their whereabouts during the period of 12 months immediately preceding such time, are not known to the parties making the application and are not known to the Board and that all appropriate measures have been taken to ascertain those whereabouts, the Court may, if it so thinks fit, notwithstanding the absence of the evidence of the parents concerned or, as the case may be, of either of them, make the order.

(5) Notwithstanding *subsection (1)*, where the Court is satisfied that the parents concerned (or either of them) are incapable by reason of mental infirmity of giving reliable evidence to the Court, the Court may dispense with their evidence or that of either of them, as the case may be, on the hearing of an application for an order under *section 3 (1)* and may, if it so thinks fit, notwithstanding the absence of such evidence, make the order.

Amendment of section 3 of Principal Act.

5.—(1) Subject to *subsection (2)*, section 3 of the Principal Act is hereby amended by the substitution of the following definition for the definition of “child”:

“ ‘child’ means (save where the context otherwise requires) any person who is under the age of 18 years;”.

(2) Notwithstanding *subsection (1)*, the Acts shall apply and have effect in relation to any person whatsoever who is under the age of 21 years and as respects whom an application for an adoption order was made and was not determined before the commencement of this Act as if *subsection (1)* had not been enacted.

Amendment of section 10 of Principal Act.

6.—Section 10 of the Principal Act is hereby amended by the substitution of the following paragraph for paragraph (c):

“(c) is either—

(i) illegitimate or an orphan, or

(ii) a child in relation to whom an order under *section 3 (1)* of the *Adoption Act, 1987*, is in force in favour of the persons applying for the adoption order.”.

Adaptation of sections 16, 20 and 24 of Principal Act.

7.—(1) References in sections 16, 20 and 24 of the Principal Act to the mother of a child shall, for the purposes of *section 2* in so far as it applies to a child of married parents (other than a child in respect of whom an adoption order is in force), be construed as including references to the father of the child.

(2) References in the said sections 16, 20 and 24 to the mother of a child shall, for the purposes of *section 2* in so far as it applies to a child in respect of whom an adoption order is in force, be construed as references to the adopters or the adopter or the surviving adopter under the order.

(3) In *subsection (1)* “child of married parents” means a child—

(i) whose parents were married to each other at the time of his birth or at some time during the period of 10 months preceding his birth, or

- (ii) who has been rendered legitimate by virtue of section 1 of the Legitimacy Act, 1931, or
- (iii) who is recognised by virtue of section 8 of the Legitimacy Act, 1931, as legitimated, or
- 5 (iv) who is otherwise treated in law as a legitimate child or a legitimated child.

8.—(1) This Act may be cited as the Adoption Act, 1987.

Short title,
collective citation
and construction.

(2) The Acts and this Act may be cited together as the Adoption Acts, 1952 to 1987.

10 (3) The Acts and this Act shall be construed together as one.

2. The Bill has staffing implications for Departments of State, State bodies or health boards. The processing of applications through the High Court will give rise to some expenditure on legal costs, which it is not proposed to quantify at this stage. The Minister for Health is satisfied that any such expenditure will be more than offset by savings resulting from the freeing for adoption of children, most of whom would otherwise have to be maintained at State expense in foster care or residential care for the duration of their childhood.

The present adoption laws

3. The adoption of children is governed by the Adoption Acts, 1952-1976. Under these statutes an adoption order can be made only in respect of a child who:

- (iii) is illegitimate but legitimated by the marriage of his parents after birth but whose birth has not been registered.

The child's mother or guardian or any person having control of him must consent to his adoption. Two consents are involved. There must be an initial consent to placing the child for adoption. This is an essential legal requirement in all cases before the adoption procedure can begin. The second and final consent must be given after the child has been matched with the prospective adoptive parents and before the Adoption Board can make an adoption order. This latter consent is given by the child's mother or guardian or any person having control of him.

Printed by the Stationery Office
LONDON: Her Majesty's Stationery Office, 25 Abchurch Lane, E.C. 4A
DUBLIN: Stationery Office, 100 Upper Mount Street, Dublin 2

BILLE*(mar a tionscnaíodh)**dá ngairtear*

Acht do dhéanamh socrú, i ndálaí eisceachtúla, i gcás na tuismitheoirí a bheith, ar chúiseanna fisiciúla nó morálta, tar éis mainneachtain ina ndualgas i leith a leanaí, chun ionad na dtuismitheoirí a líonadh trí na leanaí a uchtáil, agus chun na críche sin agus chun críocha eile do leasú agus do leathnú na nAchtanna Uchtála, 1952 go 1976.

BILL*(as initiated)**entitled*

An Act to provide, in exceptional cases, where the parents for physical or moral reasons have failed in their duty towards their children, for the supplying, by the adoption of the children, of the place of the parents and for that purpose and other purposes to amend and extend the Adoption Acts, 1952 to 1976.

(2) Notwithstanding subsection (1), the Acts shall apply and have effect in relation to any person whatsoever who is under the age of 21 years and as respects whom an application for an adoption order was made and was not determined before the commencement of this Act as if subsection (1) had not been enacted.

6.—Section 10 of the Principal Act is hereby amended by the substitution of the following paragraph for paragraph (c):

"(c) is either—

*An Seanadóir Micheál Ó Lonagáin a thíolaic,
15 Meitheamh, 1987*

*Presented by Senator Mick Lanigan,
15th June, 1987*

(ii) a child in relation to whom an order under section 3 (1) of the Adoption Act, 1987, is in force in favour of the persons applying for the adoption order."

Adaptation of sections 16, 20 and 24 of Principal Act.

7.—References in sections 16, 20 and 24 of the Principal Act to the mother of a child shall, for the purposes of section 2 in so far as it applies to a child of married parents (other than a child in respect of whom an adoption order is in force), be construed as including references to the father of the child.

(2) References in the said sections 16, 20 and 24 to the mother of

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais, Teach Sun Alliance, Sráid Theach Laighean, Baile Átha Cliath 2, nó trí aon díoltóir leabhar.

Clóbhualte ag CAHILL PRINTERS LIMITED.

DUBLIN:
PUBLISHED BY THE STATIONERY OFFICE

To be purchased through any bookseller, or directly from the Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2.

Printed by CAHILL PRINTERS LIMITED.