



in which the reference is to a person or persons unless it is indicated that reference to some other person or persons is intended.

2.—(1) Where—

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

## AN BILLE UCHTÁLA (UIMH. 2), 1987

### ADOPTION (NO. 2) BILL, 1987

*Mar a leasáíodh i gCoiste*

*As amended in Committee*

#### ARRANGEMENT OF SECTIONS

##### Section

1. Definitions.
2. Adoption orders in respect of children the subject of orders under section 3 (1).
3. Orders by High Court authorising adoption of children whose parents have failed in their duty towards them.
4. Evidence to Court.
5. Court costs.
6. Amendment of section 3 of Principal Act.
7. Adaptation of sections 16, 20 and 24 of Principal Act.
8. Amendment of First Schedule to Principal Act.
9. Short title, collective citation and construction.

#### ACTS REFERRED TO

|                             |              |
|-----------------------------|--------------|
| Adoption Act, 1952          | 1952, No. 25 |
| Adoption Act, 1964          | 1964, No. 2  |
| Adoption Acts, 1952 to 1976 |              |
| Legitimacy Act, 1931        | 1931, No. 13 |

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

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

“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 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 25  
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 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 30  
Act unless it is indicated that reference to some other enactment is intended.

(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—

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

5 (a) an application is made by any persons (referred to subsequently in this subsection as “the applicants”) to the Board for an adoption order,

(b) but for this Act, the Board would not have power to make the order, and

10 (c) 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,

20 the Board 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.

(2) Where—

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

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

30 the Board, if so requested by the persons in whose favour the order was made, shall, notwithstanding anything in section 10 of the Principal Act, 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.

35 (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.

40 (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.

45 (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.

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

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—

(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)*,

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—

(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,

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

(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

(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

(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,

and



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

(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.

(4) The health board concerned shall be joined as a party to proceedings under subsection (1) (b).

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

(6) The functions conferred on a health board by section 2 (1) and subsection (1) of this section shall be functions of the chief executive officer and any deputy chief executive officer of the board.

(7) 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 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.

(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 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 at the hearing concerned.

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

(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, 5  
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. 10 15

Court costs.

5.—(1) The health board concerned shall—

(a) pay to the parents of the child concerned, in respect of any costs—

(i) that are incurred by them in relation to an application under *section 3 (1)* or an appeal to the Supreme Court against the making of, or the refusal to make, an order under the said *section 3 (1)*, 20

(ii) that are not paid by another party to the proceedings, and

(iii) in relation to which legal aid under any scheme for the provision of legal aid operated by or on behalf of the State has been refused, 25

either, as may be specified by the Court, the whole or a part so specified of those costs, as taxed by a Taxing Master of the High Court, or such amount as, in the opinion of the health board and those parents, would be equal to the amount, as may be specified as aforesaid, of those costs or of a part so specified of them if they were taxed as aforesaid, and 30

(b) if any costs of another party to the proceedings in relation to the application or, as the case may be, the appeal are ordered by the Court or the Supreme Court to be paid by those parents and legal aid in respect of them under any scheme for the provision of legal aid operated by or on behalf of the State has been refused, pay to that other party either, as may be specified by the Court, the whole or a part so specified of those costs, as taxed by a Taxing Master of the High Court, or such amount as, in the opinion of the health board and that other party, would be equal to the amount, as may be specified as aforesaid, of those costs or of a part so specified of them if they were taxed as aforesaid. 35 40 45

(2) Where, on an application under *paragraph (b) of section 3 (1)*—

(a) (i) the Court makes an order under *section 3 (1)* and either an appeal is not brought against the order or the order is affirmed by the Supreme Court on appeal, or 50



- (ii) the Court refuses to make an order under *section 3 (1)* but, following an appeal to the Supreme Court against the refusal, the order is made,

and

- 5 (b) legal aid for the persons bringing the application under any scheme operated by or on behalf of the State for the provision of legal aid has been refused,

the health board concerned shall pay to the persons bringing the application, in respect of any costs incurred by those persons in relation to the application or, as the case may be, the application and the appeal that are not paid by another party to the proceedings either, as may be specified by the Court, the whole or a part so specified of those costs, as taxed by a Taxing Master of the High Court, or such amount as, in the opinion of the health board and those persons, would be equal to the amount, as may be specified as aforesaid, of those costs or of a part so specified of them if they were taxed as aforesaid.

- 6.—(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”:

Amendment of  
section 3 of  
Principal Act.

“‘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.

- 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.

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

- (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.

- 8.—The First Schedule to the Principal Act is hereby amended by the substitution of the following paragraph for paragraph 14:

Amendment of  
First Schedule to  
Principal Act.

- 40 “14. The Board shall cause to be published in *Iris Oifigiúil* a notice in the prescribed form of every registration and cancellation of registration in the Adoption Societies Register.”.

- 9.—(1) This Act may be cited as the Adoption Act, 1988.

Short title,  
collective citation  
and construction.

- (2) The Acts and this Act may be cited together as the Adoption Acts, 1952 to 1988.

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



**BILLE***(mar a leasaíodh i gCoiste)**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.

*Ordaíodh ag Seanad Éireann a chlóbhualadh,*  
28 Aibreán, 1988

**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.

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**BILL***(as amended in Committee)**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.

*Ordered by Seanad Éireann to be printed,*  
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