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AN BILLE UCHTÁLA, 1990  
ADOPTION BILL, 1990

*athraithe ó  
changed from*

AN BILLE UM AITHEANTAS d'UCHTÁLACHA COIGRÍCHE, 1990  
RECOGNITION OF FOREIGN ADOPTIONS BILL, 1990

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*Mar a ritheadh ag dhá Theach an Oireachtais  
As passed by both Houses of the Oireachtas*

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ARRANGEMENT OF SECTIONS

Section

1. Definitions.
2. Foreign adoptions effected in place of domicile of adopters.
3. Foreign adoptions effected in place of habitual residence of adopters.
4. Foreign adoptions effected in place where adopters ordinarily resident.
5. Foreign adoptions where adopters ordinarily resident in State.
6. Register of Foreign Adoptions.
7. Directions of High Court in relation to entries in Register of Foreign Adoptions.
8. Assessments by health boards and registered adoption societies.
9. Proof of adoptions effected outside State.
10. Eligibility to be granted an adoption order.
11. Amendment of section 8 of Principal Act.
12. Short title, collective citation and construction.

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ACTS REFERRED TO

Adoption Act, 1952	1952, No. 25
Adoption Act, 1964	1964, No. 2
Adoption Act, 1974	1974, No. 24
Adoption Acts, 1952 to 1988	
Health Act, 1970	1970, No. 1



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AN BILLE UM AITHEANTAS d'UCHTÁLACHA COIGRÍCHE, 1990 5  
RECOGNITION OF FOREIGN ADOPTIONS BILL, 1990

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**BILL**

*entitled*

AN ACT TO PROVIDE FOR THE RECOGNITION OF CER- 10  
TAIN ADOPTIONS EFFECTED OUTSIDE THE STATE, TO AMEND AND EXTEND THE ADOPTION ACTS, 1952  
TO 1988, AND TO MAKE FURTHER PROVISION IN CON-  
NECTION WITH THE MATTERS AFORESAID.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- Definitions. 1.—In this Act— 15
- “adoption order” means an order under section 9 of the Principal Act;
- “the Board” means An Bord Uchtála;
- “health board” means a health board established under the Health Act, 1970; 20
- “the Court” means the High Court;
- “foreign adoption” means an adoption of a child who at the date on which the adoption was effected was under the age of 21 years or, if the adoption was effected after the commencement of this Act, 18 years, which was effected outside the State by a person or persons 25 under and in accordance with the law of the place where it was effected and in relation to which the following conditions are satisfied:
- (a) the consent to the adoption of every person whose consent to the adoption was, under the law of the place where the adoption was effected, required to be obtained or 30 dispensed with was obtained or dispensed with under that law,
- (b) the adoption has essentially the same legal effect as respects the termination and creation of parental rights and duties

with respect to the child in the place where it was effected as an adoption effected by an adoption order,

5 (c) the law of the place where the adoption was effected required an enquiry to be carried out, as far as was practicable, into the adopters, the child and the parents or guardian,

(d) the law of the place where the adoption was effected required the court or other authority or person by whom the adoption was effected, before doing so, to give due consideration to the interests and welfare of the child,

10 (e) the adopters have not received, made or given or caused to be made or given any payment or other reward (other than any payment reasonably and properly made in connection with the making of the arrangements for the adoption) in consideration of the adoption or agreed to do so,

15 and "adopter" and "adopted child" shall be construed accordingly;

"the Minister" means the Minister for Health;

20 "place" means a country or any of the following jurisdictions, that is to say, England and Wales, Scotland, Northern Ireland, the Isle of Man and the Channel Islands or, in relation to a country that has in matters of adoption two or more systems of law applying in different territorial units, any of the territorial units;

"the Principal Act" means the Adoption Act, 1952;

"the Register" means the Register of Foreign Adoptions established under *section 6* of this Act.

25 2.—(1) A foreign adoption (whether effected before or after the commencement of this Act) effected in, or recognised under the law of, a place in which either or both of the adopters were domiciled on the date on which the adoption was effected shall be deemed, unless such deeming would be contrary to public policy, to have been effected  
30 by a valid adoption order made on that date. Foreign adoptions effected in place of domicile of adopters.

(2) This section and *sections 3, 4* and *5* of this Act are in substitution for any rule of law providing for the recognition of adoptions effected outside the State.

35 3.—A foreign adoption (whether effected before or after the commencement of this Act) effected in, or recognised under the law of, a place in which either or both of the adopters were habitually resident on the date on which the adoption was effected shall be deemed, unless such deeming would be contrary to public policy, to have been effected by a valid adoption order made— Foreign adoptions effected in place of habitual residence of adopters.

40 (a) on that date, or

(b) on such commencement,

whichever is the later.

Foreign adoptions  
effected in place  
where adopters  
ordinarily resident.

4.—A foreign adoption (whether effected before or after the commencement of this Act) effected in, or recognised under the law of, a place in which either or both of the adopters were ordinarily resident for a period of not less than one year ending on the date on which the adoption was effected shall be deemed, unless such deeming would be contrary to public policy, to have been effected by a valid adoption order made— 5

(a) on that date, or

(b) on such commencement,

whichever is the later. 10

Foreign adoptions  
where adopters  
ordinarily resident  
in State.

5.—(1) A foreign adoption (whether effected before or after the commencement of this Act), other than an adoption specified in section 2, 3 or 4 of this Act, shall be deemed, unless such deeming would be contrary to public policy, to have been effected by a valid adoption order made— 15

(a) on the date on which the adoption was effected, or

(b) on such commencement,

whichever is the later, if, but only if—

(i) the adopters are persons coming within the classes of persons in whose favour an adoption order may, by virtue of section 10 of this Act, be made, 20

(ii) the adopters were ordinarily resident in the State on the date on which the adoption was effected, and

(iii) (I) in case the adoption was effected before the 1st day of April, 1991, the Board declares in writing that it is satisfied that the adopters are persons in whose favour an adoption order may, by virtue of the said section 10, be made, or 25

(II) in case the adoption was effected on or after the 1st day of April, 1991, the Board declares in writing before the date on which the adoption was effected— 30

(A) that it is satisfied that the adopters are persons coming within the classes of persons in whose favour an adoption order may, by virtue of the said section 10, be made, and 35

(B) that (having had regard to a report by the health board in whose functional area the adopters were ordinarily resident at the time of the assessment, or by a registered adoption society, of an assessment as respects the matters referred to in section 13 of the Principal Act in relation to the adopters carried out by the board or the society, as the case may be) it is satisfied in relation to the adopters as respects the matters referred to in the said section 13. 40 45

(2) Notwithstanding anything in subsection (1), where a foreign adoption was effected on or after the 1st day of April, 1991, and before the 1st day of July, 1991, and the Minister for Justice had

received a request in writing from the adopters before the said 1st day of April, 1991, for an assurance in writing addressed to them as to the admission to the State of a child the subject of a foreign adoption effected in their favour, the adoption shall be deemed,  
5 unless such deeming would be contrary to public policy, to have been effected by a valid adoption order made—

(a) on the date on which the adoption was effected, or

(b) on the commencement of this Act,

whichever is the later, if but only if—

10 (i) the Minister for Justice gave such an assurance as aforesaid,

(ii) the adopters are persons coming within the classes of persons in whose favour an adoption order may, by virtue of *section 10* of this Act, be made,

15 (iii) the adopters were ordinarily resident in the State on the date on which the adoption was effected, and

(iv) the Board declares in writing that it is satisfied that the adopters are persons coming within the classes of persons in whose favour an adoption order may, by virtue of the said *section 10*, be made.

20 (3) (a) The adopters or the adopted child in relation to a foreign adoption or any other person having an interest in the matter may apply to the Board for the making of a declaration under *paragraph (iii) (I) of subsection (1) or subsection (2) (iv) of this section* in relation to the adopters, and the Board shall, if it is satisfied that it is appropriate to do so having regard to the provisions of those  
25 subsections, make the declaration.

(b) A person or persons to whom the said *subsection (1)* applies and who has or have applied, or proposes or propose to  
30 apply, for the effecting in his or their favour of a foreign adoption may, before the adoption is effected, apply to the Board for the making of a declaration under *paragraph (iii) (II) of the said subsection (1)* in relation to the person or persons, and the Board shall, if it is satisfied that it is  
35 appropriate to do so having regard to the provisions of that subsection, make the declaration.

(c) A person making an application to the Board under this subsection shall furnish the Board with such information as it may reasonably require and the information shall be  
40 in such form (if any) as may be specified.

(d) A document purporting to be a copy, and to be certified by an officer of the Board to be a true copy, of such a declaration as aforesaid shall—

(i) be evidence of the facts stated therein, and

45 (ii) be issued by the Board to any person on application by him to the Board in that behalf.

(4) For the purposes of this section, a person in whose favour a foreign adoption was effected at any time before the commencement

of this Act and who was not a widow or the mother or father or a relative of the adopted child shall be deemed to be a person in whose favour an adoption order might, by virtue of *section 10* of this Act, have been made on the date on which the foreign adoption was effected.

5

(5) A declaration under *subsection (1) (iii) (II)* of this section shall be expressed to and shall apply only in relation to an adoption effected during the period of 12 months from the date of the making of the declaration or such longer period as, on application to it in that behalf by the persons concerned during the period of 12 months aforesaid, the Board, being satisfied that it is reasonable and proper to do so, endorses on the declaration.

10

Register of Foreign Adoptions.

6.—(1) The Board shall establish and maintain a register (to be known as the Register of Foreign Adoptions).

(2) (a) If, on application to the Board in that behalf, in relation to an adoption effected outside the State, being an application made by the person who was the subject of the adoption or a person by whom a person was adopted pursuant to the adoption or any other person having an interest in the matter, the Board is satisfied that—

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20

(i) the adoption is a foreign adoption to which *section 2, 3 or 4* of this Act applies, or

(ii) the adoption is a foreign adoption to which *section 5* of this Act applies,

then, unless (in a case to which *clause (II) of section 5 (1) (iii)* of this Act applies) the Board is satisfied that the relevant circumstances have so changed since the date of the declaration under that clause that it would not be proper, having regard to *section 13* of the Principal Act and *section 10* of this Act, an entry shall be made in the Register with respect to the adoption.

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30

(b) If the Court so directs under *section 7* of this Act, an entry shall be made in the Register concerning a specified foreign adoption.

(3) An entry in the Register shall be in such form and contain such particulars as may be prescribed by rules made under *section 5* of the Principal Act.

35

(4) A person making an application to the Board under this section shall furnish the Board with such information as the Board may reasonably require and the information shall be in such form (if any) as may be specified by the Board.

40

(5) An error in an entry in the Register may be corrected and, if the Court so directs, a specified correction shall be made in the Register.

(6) If the Board is satisfied that an adoption in relation to which there is an entry in the Register has been set aside, annulled or otherwise rendered void under and in accordance with the law of the place where it was effected or if the Court so directs under *section 7* of this Act in relation to an entry in the Register, the entry shall be cancelled.

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(7) A document purporting to be a copy, and to be certified by an officer of the Board to be a true copy, of an entry in the Register—

5 (a) shall be evidence of the fact that the adoption to which it relates is a foreign adoption and is deemed by this Act to have been effected by a valid adoption order made on the date specified in the copy, and

10 (b) shall be issued by the Board, to any person on application by him to it in that behalf and on payment by him to it of such fee as may be specified by the Board with the consent of the Minister,

and any requirement of the law for the production of a certificate of birth shall be satisfied by the production of such a document.

15 (8) Section 20 of the Principal Act shall apply to an application under *subsection (2)* of this section as it applies to an application for an adoption order with the modification that the Board shall refer any question in relation to public policy arising on such an application to the High Court for determination and with any other necessary modification.

20 7.—(1) If, on application to the Court in that behalf by a person who may make an application to the Board under *section 6 (2)* of this Act, the Court is satisfied that an entry should be made in the Register with respect to an adoption or that an entry in the Register with respect to an adoption should be cancelled or that a correction should be made in an entry in the Register, the Court may by order, as appropriate—

Directions of High Court in relation to entries in Register of Foreign Adoptions.

25 (a) direct the Board to procure the making of a specified entry in the Register,

(b) direct the Board to procure the cancellation of the entry concerned in the Register, or

30 (c) direct the Board to make a specified correction in the Register.

(2) If the Court refuses to give a direction under *paragraph (a)* of *subsection (1)* of this section or gives a direction under *paragraph (b)* of that subsection, the adoption concerned shall be deemed not to have been effected by a valid adoption order.

35 (3) (a) The Court may direct that notice of an application under the said *subsection (1)* shall be given by the person making the application to such other persons (including the Attorney General and the Board) as it may determine and may, of its own motion or on application to it in that behalf

40 by the person concerned or a party to the proceedings in relation to the application under the said *subsection (1)*, add any person as a party to those proceedings.

45 (b) The Attorney General, of his own motion or if so requested by the Court, may, without being added as party to proceedings in relation to an application under the said *subsection (1)*, make submissions to the Court in relation to the application.

(4) Proceedings under this section shall, if the Court so determines, be heard otherwise than in public.

Assessments by health boards and registered adoption societies.

8.—(1) Whenever a health board is so requested, for the purposes of *section 5 (1) (iii) (II)* of this Act, by a person or persons who is or are ordinarily resident in its functional area, it shall, as soon as practicable—

- (a) carry out an assessment of the person or persons as respects the matters referred to in *section 13* of the Principal Act and shall prepare a report in writing of the assessment and shall transmit the report to the Board, or 5
- (b) arrange for the carrying out of such an assessment and the preparation of such a report in relation thereto by a registered adoption society and shall transmit the report to the Board. 10

(2) Where—

- (a) at the request of a person or persons, for the purposes of the said *section 5 (1) (iii) (II)*, or 15
- (b) pursuant to an arrangement under *subsection (1)* of this section,

a registered adoption society carries out an assessment of a person or persons as respects the matters referred to in the said *section 13*, it shall prepare a report in writing of the assessment and shall transmit it, in a case to which *paragraph (a)* of this subsection relates, to the Board and, in a case to which *paragraph (b)* of this subsection relates, to the health board concerned. 20

(3) Upon the making of a declaration under the said *section 5 (1) (iii) (II)*, a copy of the report concerned under *subsection (1)* or (2) of this section shall be made available by the Board to the person or persons who are the subject of the declaration and to any person in the place where the adoption concerned is proposed to be effected having an interest in the matter. 25

(4) The functions of a health board under *subsection (1)* of this section shall be functions of the chief executive officer of the board or a person acting as deputy chief executive officer of the board in accordance with *section 13* of the Health Act, 1970. 30

Proof of adoptions effected outside State.

9.—(1) (a) A document, duly authenticated, which purports to be a copy of the document by which an adoption outside the State was effected shall without further proof be deemed to be a true copy of the document unless the contrary is shown and shall be admissible as evidence of the adoption. 35

(b) Documents, duly authenticated, which purport to be copies of the documents by which an adoption outside the State was effected shall without further proof be deemed to be true copies of the documents unless the contrary is shown and shall be admissible as evidence of the adoption. 40 45

(2) A document purporting to be a copy of a document or of one of the documents by which an adoption outside the State is effected shall, for the purposes of this section, be regarded as being duly authenticated if it purports—

(a) to bear the seal of the court or other authority or the person 50

or persons by which or by whom it was issued or executed,  
or

(b) to be certified—

5 (i) by a person in his capacity as a judge or officer of that court or in his capacity as that authority or as a member or officer of that authority, or

(ii) by the person or persons by whom it was issued or executed.

10 (3) (a) The Minister may by regulations make provision in relation to the proof of adoptions effected outside the State and the regulations may make different provision as respects different places and different classes of adoptions.

15 (b) Provisions of regulations under this subsection may be in addition to or in substitution for the provisions of subsections (1) and (2) of this section and may amend those provisions.

(4) Where an adoption is effected in a place outside the State, it shall be presumed, until the contrary is shown, that it was effected under and in accordance with the law of that place.

20 10.—(1) Subject to subsection (2) of this section, an adoption order shall not be made unless— Eligibility to be granted an adoption order.

(a) the applicants are a married couple who are living together,  
or

25 (b) the applicant is the mother or father or a relative of the child,  
or

(c) the applicant is a widow or a widower.

30 (2) Notwithstanding subsection (1) of this section, where the Board is satisfied that, in the particular circumstances of the case, it is desirable, an adoption order may be made in favour of an applicant who is not a person specified in paragraph (b) or (c) of subsection (1) of this section.

(3) Subject to subsection (1) (a) of this section, an adoption order shall not be made for the adoption of a child by more than one person.

35 (4) An adoption order shall not be made for the adoption of a child by an applicant who is married without the consent of the spouse of the applicant (which shall be given in such manner as may be determined by the Board) unless—

(a) the couple are living apart under—

(i) a decree of divorce *a mensa et thoro*, or

40 (ii) a decree of judicial separation, or

(iii) a deed of separation,

or

(b) the spouse has deserted the applicant or conduct on the part of the spouse results in the applicant, with just cause, leaving and living separately and apart from him.

(5) An adoption order shall not be made unless—

(a) the applicant and, if the applicants are a married couple, each of them has attained the age of 21 years, or 5

(b) 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.

(6) An adoption order shall not be made unless the applicant or the applicants is or are ordinarily resident in the State and has or have been so resident during the year ending on the date of the order. 10

(7) Section 11 of the Principal Act, section 5 of the Adoption Act, 1964, and section 5 of the Adoption Act, 1974, are hereby repealed.

Amendment of section 8 of Principal Act.

11.—(1) Section 8 of the Principal Act is hereby amended by the substitution of the following subsections for subsections (2) and (5): 15

“(2) The Board shall consist of a chairman and 8 ordinary members.

(5) The Board may act notwithstanding the existence of one or more vacancies in its membership.”. 20

(2) Notwithstanding paragraph 2 (1) of the First Schedule to the Principal Act, the two persons first appointed, by virtue of the amendment of section 8 of the Principal Act effected by this section, to be members of the Board shall be appointed for such period ending on the 29th day of January, 1993, as the Government may determine. 25

Short title, collective citation and construction.

12.—(1) This Act may be cited as the Adoption Act, 1991.

(2) The Adoption Acts, 1952 to 1988, and this Act may be cited together as the Adoption Acts, 1952 to 1991.

(3) The Adoption Acts, 1952 to 1988, and this Act shall be construed together as one. 30

An adoption order shall not be made unless—

AN BILLE UCHTÁLA, 1990

*athraithe ó*

AN BILLE UM AITHEANTAS d'UCHTÁLACHA  
COIGRÍCHE, 1990

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## BILLE

*dá ngairtear*

Acht do dhéanamh socrú chun aitheantas a thabhairt d'uchtálacha áirithe a dhéantar lasmuigh den Stát, do leasú agus do leathnú na nAchtanna Uchtála, 1952 go 1988, agus do dhéanamh socrú breise i ndáil leis na nithe réamhráite.

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*Ritheadh ag dhá Theach an Oireachtais,  
21 Bealtaine, 1991*

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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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ADOPTION BILL, 1990

*changed from*

RECOGNITION OF FOREIGN ADOPTIONS BILL, 1990

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## BILL

*entitled*

An Act to provide for the recognition of certain adoptions effected outside the State, to amend and extend the Adoption Acts, 1952 to 1988, and to make further provision in connection with the matters aforesaid.

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*Passed by both Houses of the Oireachtas,  
21st May, 1991*

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