



DÁIL ÉIREANN

AN BILLE UCHTÁLA 2009 ADOPTION BILL 2009

LEASUITHE COISTE COMMITTEE AMENDMENTS

DÁIL ÉIREANN

AN BILLE UCHTÁLA 2009 —ROGHCHOISTE

ADOPTION BILL 2009 —SELECT COMMITTEE

Leasuithe Amendments

SECTION 2

1. In page 13, after line 37, to insert the following subsection:

“(3) Nothing contained in this Act shall prevent any person or married couple who applied to the HSE to be assessed for an intercountry adoption prior to the 1st January 2009 and subsequently obtain a declaration of suitability to adopt from effecting such adoption and having such adoption recognised under the law applicable prior to the coming into operation of this Act.”.

—Alan Shatter.

SECTION 3

2. In page 15, subsection (1), line 12, after “years” to insert the following:

“and over 18 years who was in the care of a person or persons other than his or her biological parent or parents for a period of three years or more prior to attaining the age of 18 years”.

—Alan Shatter.

3. In page 15, subsection (1), line 32, after “was” to insert “ordinarily or”.

—Alan Shatter.

4. In page 16, subsection (1), between lines 1 and 2, to insert the following:

“(iii) is appointed to be a guardian of the child in accordance with the provisions of this Act.”.

—Alan Shatter.

5. In page 16, subsection (1), line 5, after “text” to insert “in the English language”.

—Jan O'Sullivan.

6. In page 16, subsection (1), line 30, after “Convention” to insert the following:

“and includes an adoption from a country other than one a party to the Hague Convention or a bilateral agreement if the Authority considers that the adoption can be effected from a third country in a manner compatible with this Act”.

—Jan O'Sullivan.

[SECTION 3]

7. In page 17, subsection (1), between lines 18 and 19, to insert the following:

“welfare” means the physical, emotional, social, intellectual, moral and religious welfare of the child.”.

—Alan Shatter.

SECTION 4

8. In page 18, between lines 2 and 3, to insert the following:

“(h) providing information, advice and counselling concerning adoption to a mother or guardian who proposes to place a child for adoption;”.

—An tAire Sláinte agus Leanaí.

9. In page 18, between lines 16 and 17, to insert the following subsection:

“(2) Nothing contained in this Act shall result in the furnishing of legal advice, assistance or representation about adoption or any adoption matter to any person being regarded as the making of arrangements for adoption.”.

—Alan Shatter.

SECTION 5

10. In page 19, between lines 2 and 3, to insert the following subsection:

“(2) Nothing contained in this Act shall result in any provider of travel services as being held to make arrangements for the adoption of a child.”.

—Alan Shatter.

SECTION 13

11. In page 20, between lines 8 and 9, to insert the following:

“(a) the birth of the child has been registered, and either the particulars of the father have been registered or the mother has sworn and furnished to the accredited body a statutory declaration that the father is unknown or missing, and cannot be traced using reasonable inquiries, unless the court permits placement notwithstanding a failure or refusal to swear such a statutory declaration,”.

—Jan O'Sullivan.

SECTION 14

12. In page 20, before section 14, to insert the following new section:

“Adoption from jurisdiction which permits an adoption otherwise than through a Central Authority.

14.—Where a jurisdiction permits adoption otherwise than through the Central Authority of that jurisdiction, the adoptive parent or parents may arrange for the carrying out of the adoption without the restriction of obtaining a referral from a Central Authority in the originating state but subject to the consent of the Authority and subject to the following—

(a) an attempt to carry out an inter-country adoption is not deemed to have commenced until the prospective adoptive parent or parents have been issued with a declaration;

[SECTION 14]

- (b) all formal documentation provided by the State during the process to identify the suitability of the adoptive parent or parents including a suitability report and clearance to provide the immigration of the child following the adoption process have been supplied to the originating state;
- (c) the legal process in the originating state has been conducted according to the law of that state and is consistent with this Act;
- (d) the adoptive child shall not be removed from the originating state before the completion of the legal adoptive process in the originating state;
- (e) all relevant documentation to demonstrate the appropriate carrying out of the procedure in the originating state shall be provided to the Authority;
- (f) documentation formally annotated from the legal entities of the originating state shall be accepted without recourse to further evidential proof unless such proof is required.”.

—Jan O’Sullivan.

13. In page 20, paragraph (a)(iv), line 28, to delete “and”.

—An tAire Sláinte agus Leanaí.

14. In page 20, paragraph (b), line 30, to delete “effect.” and substitute the following:

“effect, and

- (c) provide information, advice and counselling to the mother or guardian concerned.”.

—An tAire Sláinte agus Leanaí.

15. In page 20, between lines 30 and 31, to insert the following subsection:

“(2) Twelve months after the placement by an accredited body of a child for adoption with an adopter or adopters the agreement of the mother or guardian of the child to such placement shall be irrevocable.”.

—Alan Shatter.

SECTION 16

16. In page 21, before section 16, to insert the following new section:

“Rights of father where mother wishes to place child for adoption.

16.—(1) A child shall not be placed for adoption, nor may an application be made by the mother or a relative of the child for an adoption order, without the consent of the father or the court where the father is a guardian or is named on the child’s birth certificate.

(2) Where *subsection (1)* does not apply, the father may give notice to the Authority that he objects to the adoption of the child.”.

—Jan O’Sullivan.

Section opposed.

—Jan O’Sullivan.

[SECTION 18]

SECTION 18

17. In page 22, subsection (4), line 44, before “it” to insert “the father has committed an offence such that”.
- Jan O’Sullivan.
18. In page 23, subsection (4)(i), lines 1 and 2, to delete all words from and including “, after” in line 1 down to and including “Court,” in line 2.
- Alan Shatter.
19. In page 23, subsection (6)(b)(i), lines 31 and 32, to delete all words from and including “, after” in line 31 down to and including “Court,” in line 32.
- Alan Shatter.
20. In page 23, subsection (7)(a), lines 40 and 41, to delete all words from and including “, after” in line 40 down to and including “Court,” in line 41.
- Alan Shatter.

SECTION 19

21. In page 24, line 12, after “consideration” to insert the following:
- “, and it shall be presumed unless the contrary is shown that the welfare of the child is best promoted in the society of either or both of the child’s natural parents, if either or both of them wish to exercise that role”.
- Jan O’Sullivan.
22. In page 24, between lines 12 and 13, to insert the following subsection:
- “(2) In any matter, application or proceedings referred to in this section, such regard shall be had to the views, if any, of the child, as is appropriate having regard to the child’s age and understanding.”.
- Jan O’Sullivan.
23. In page 24, between lines 12 and 13, to insert the following subsection:
- “(2) In order to vindicate the welfare of the child referred to in this section, the State shall support the provision of comprehensive post adoption specialised services that respect the child’s best interests.”.
- Jan O’Sullivan.

SECTION 20

24. In page 24, between lines 25 and 26, to insert the following subsection:
- “(4) On the application of the spouse of a biological parent desiring to adopt a child to acquire the same rights and responsibilities with regard to the child as the biological parent.
- (a) The adoption order shall confer the same rights and responsibilities on the spouse as vest in the biological parent.
- (b) Shall not affect the rights and responsibilities of the biological parent.
- (c) Where the biological parent with whom the child does not permanently reside continues to have regular contact with the child, the Authority may make an order conferring guardianship rights and responsibilities on the applicant to so act jointly with the child’s existing guardian or guardians instead of making an adoption order.”.

[SECTION 20]

—Alan Shatter.

25. In page 25, between lines 4 and 5, to insert the following subsection:

“(7) In exercising its functions in relation to recognition of an adoption effected outside the State, the Authority shall insofar as possible recognise an adoption effected outside the State by a person who was ordinarily resident in the jurisdiction in which the adoption was effected at the time it was effected.”

—Jan O’Sullivan.

SECTION 21

26. In page 25, before section 21, to insert the following new section:

“Adoption from non-Hague and non-bilateral agreement countries.

21.—A person or couple who has or have prior to the commencement of this Part adopted a child from another country, may notwithstanding this Act conduct a second or subsequent adoption from that country within ten years of such commencement if the Authority is satisfied that the standards that are being or will be applied to the adoption accord with those of the Hague Convention.”

—Jan O’Sullivan.

27. In page 25, subsection (1), line 5, after “Executive” to insert “or other accredited body”.

—Alan Shatter.

28. In page 25, subsection (2), line 9, after “Executive” to insert “or other accredited body”.

—Alan Shatter.

SECTION 23

29. In page 25, subsection (1), lines 20 and 21, to delete paragraph (b).

—Alan Shatter.

SECTION 24

30. In page 25, lines 30 to 33, to delete subsection (1).

—Alan Shatter.

31. In page 25, subsection (2), line 36, to delete “understanding” and substitute “maturity”.

—Alan Shatter.

SECTION 25

32. In page 25, line 38, after “order” to insert “or guardianship order made by it”.

—Alan Shatter.

SECTION 26

33. In page 26, subsection (1), line 4, after “mother” to insert the following:

“, father (if named on the child’s birth certificate),”.

—Jan O’Sullivan.

[SECTION 26]

- 34.** In page 26, lines 25 and 26, to delete subsection (4) and substitute the following:

“(4) A consent may be withdrawn within 3 months of being given and shall be irrevocable thereafter.”.

—Alan Shatter.

SECTION 27

- 35.** In page 26, subsection (1)(a), to delete lines 31 and 32 and substitute the following:

“(i) that the consent may be withdrawn within 3 months of being given and is irrevocable thereafter.”.

—Alan Shatter.

SECTION 30

- 36.** In page 27, lines 39 and 40, to delete subsection (1).

—Alan Shatter.

- 37.** In page 28, subsection (4), line 11, before “it” to insert “the father has committed an offence such that”.

—Jan O’Sullivan.

- 38.** In page 28, subsection (4), lines 12 and 13, to delete all words from and including “, after” in line 12 down to and including “Court,” in line 13.

—Alan Shatter.

- 39.** In page 28, subsection (6), line 27, to delete “, after first obtaining the approval of the High Court.”.

—Alan Shatter.

SECTION 33

- 40.** In page 29, subsection (1), between lines 38 and 39, to insert the following:

“(b) the applicant is a spouse of the mother or father of the child.”.

—Alan Shatter.

SECTION 34

- 41.** In page 31, line 4, after “them” to insert the following:

“(or either of them, if a failure by one only of the married couple to comply with this section would not seriously threaten the welfare of the child)”.

—Jan O’Sullivan.

- 42.** In page 31, between lines 24 and 25, to insert the following subsection:

“(2) Where the application is by a natural parent or relative of the child, the Authority may decide to waive such of the provisions of this section as are unnecessary for the protection of the child’s welfare.”.

—Jan O’Sullivan.

[SECTION 35]

SECTION 35

43. In page 31, line 28, after “*section 37(1)*,” to insert the following:

“or to an accredited committee or body on behalf of the Executive”.

—Jan O'Sullivan.

SECTION 36

44. In page 31, subsection (3), line 40, after “Executive” to insert the following:

“but have special knowledge and experience related to the purposes of the committee”.

—An tAire Sláinte agus Leanaí.

45. In page 31, after line 40, to insert the following subsections:

“(4) The membership of an adoption committee shall not exceed 5 persons.

(5) Each adoption committee shall be comprised of at least one member who is:

(a) a senior social worker;

(b) a child psychologist;

(c) a child psychiatrist; and

(d) a person who has adopted a child at least three years before their participation in the activities of an adoption committee.”.

—Alan Shatter.

SECTION 37

46. In page 32, subsection (3), between lines 42 and 43, to insert the following:

“(d) submitting the assessment report prepared in accordance with *paragraph (c)* to the applicants for correction and/or clarification, which may be submitted by the applicants to the Health Service Executive within 6 weeks of the receipt of the assessment report.”.

—Alan Shatter.

47. In page 33, between lines 2 and 3, to insert the following subsection:

“(5) In referring the assessment report to an adoption committee in accordance with *subsection (4)*, the Health Service Executive shall send the original assessment report referred to in *subsection (3)(c)(ii)* of this section together with any corrections and/or clarification that have been submitted to the Health Service Executive in accordance with *subsection (3)(d)* of this section.”.

—Alan Shatter.

SECTION 39

48. In page 33, between lines 22 and 23, to insert the following subsection:

“(4) The applicants are entitled to have a personal or legal representative be in attendance at any meeting or other proceedings convened by the adoption committee, or any other authority, in carrying out its function in accordance with *subsection (1)* of this section.”.

—Alan Shatter.

[SECTION 42]

SECTION 42

49. In page 35, before section 42, to insert the following new section:

“42.—In the event that a recommendation by the Health Service Executive under *section 37* of this Act declines to recommend the issue of a declaration of eligibility and suitability in favour of the applicants and, the Authority, having considered that recommendation in accordance with *section 40(2)* of this Act, issues a declaration of eligibility and suitability, the Authority shall instruct the Health Service Executive to amend the recommendation issued under *section 37* to reflect the final decision of the Authority under *section 40* and the Health Service Executive shall comply with such instruction.”.

—Alan Shatter.

SECTION 46

50. In page 36, subsection (1)(b), line 41, after “oath” to insert “or affirmation”.

—Jan O'Sullivan.

51. In page 37, subsection (3)(b)(i), line 10, after “oath” to insert “or affirmation”.

—Jan O'Sullivan.

SECTION 51

52. In page 39, subsection (3), lines 3 and 4, to delete all words from and including “subject” in line 3 down to and including “1964” in line 4 and substitute the following:

“in accordance with the Guardianship of Children Acts 1964 to 1997”.

—Jan O'Sullivan.

SECTION 58

53. In page 46, before section 58, to insert the following new section:

“58.—Where prospective adopters agree to an open adoption and know or are introduced to the father and/or mother of the child the Adoption Authority may make an access order in respect of that child in favour of either the mother or father of the child or both of them to take effect immediately after the making of an adoption order.”.

—Alan Shatter.

54. In page 46, paragraph (b), line 18, after “duties” to insert the following:

“, apart from the right to apply to the Court for access in accordance with section 11B of the Guardianship of Infants Act 1964 (inserted by section 9 of the Children Act 1997), which section is hereby declared to apply to a natural parent of, or relative of, or person who acted *in loco parentis* in relation to, the child prior to the making of the adoption order”.

—Jan O'Sullivan.

SECTION 63

55. In page 48, subsection (2), lines 26 and 27, to delete all words from and including “that Act.” in line 26 down to and including “this Act.” in line 27 and substitute the following:

[SECTION 63]

“that Act—

- (a) if the persons who applied under the Adoption Act 1991 had been issued with a declaration of eligibility and suitability before that date, the adoption may proceed under this Act as if—
 - (i) it were commenced under this Act,
 - (ii) the persons had applied under section 37 of this Act, and
 - (iii) section 40(1)(b) of this Act read “in another contracting state or a state that, in the opinion of the Authority, applied standards regarding the adoption concerned that accord with those in the Hague Convention”,and
- (b) in any other case,

the adoption may proceed under this Act as if it were commenced under this Act.”.

—An tAire Sláinte agus Leanaí.

56. In page 48, between lines 27 and 28, to insert the following subsection:

“(3) The Authority may appoint an agent or agents to specified countries to ensure the appropriateness of proposed adoptions in the transitional period and may authorise an adoption from a country that has not ratified the Hague Convention where it is satisfied that the adoption is in the best interests of the child and—

- (a) the process is well advanced or a declaration has been received, or
- (b) the authorisation is to enable a person or couple to adopt a sibling for an adopted child of a similar cultural background.”.

—Jan O'Sullivan.

SECTION 73

57. In page 53, lines 8 to 10, to delete subsection (4).

—An tAire Sláinte agus Leanaí.

SECTION 86

58. In page 60, subsection (2), line 7, after “Authority” to insert the following:

“, which shall give consent to that information being given where the adopted person and the person placing the child for adoption have agreed through a tracing mechanism which shall be established by the Authority that the information can be given”.

—Jan O'Sullivan.

59. In page 60, between lines 7 and 8, to insert the following subsection:

“(3) A child shall be entitled to a copy of his or her birth certificate not later than his or her 18th birthday, and a natural parent shall be entitled to a copy of the adoption certificate in respect of his or her child not later than the child’s 18th birthday.”.

—Jan O'Sullivan.

60. In page 60, between lines 7 and 8, to insert the following subsection:

[SECTION 86]

“(3) Where in accordance with this Act and regulations thereunder an adopted person who is supplied with a copy of his or her birth certificate, he or she shall be supplied at the same time with a copy of the relevant entry in the Adopted Children Register.”.

—Jan O’Sullivan.

SECTION 90

61. In page 61, between lines 7 and 8, to insert the following subsection:

“(4) For the purposes of ensuring that every child the subject of a proposed entry in the Register of Intercountry Adoptions has appropriate access to support services, the adoptive parents shall notify the Health Services Executive of the presence of the child within the State, within such period as may be prescribed.”.

—Jan O’Sullivan.

SECTION 96

62. In page 65, subsection (1), between lines 10 and 11, to insert the following:

“(d) promoting the development of post adoption services;”.

—Jan O’Sullivan.

63. In page 65, subsection (1)(d), line 12, after “adoption” to insert “and post-adoption”.

—Jan O’Sullivan.

64. In page 65, subsection (1), between lines 12 and 13, to insert the following:

“(e) promoting the development of services to assist persons who were adopted and persons who have placed children for adoption to trace one another;”.

—Jan O’Sullivan.

SECTION 98

65. In page 66, subsection (3), lines 8 to 11, to delete paragraphs (a) and (b) and substitute the following:

“(a) two shall be adopted persons elected by such body or bodies as are, in the opinion of the Minister, representative of adopted persons;”.

—Jan O’Sullivan.

SECTION 99

66. In page 67, subsection (1), lines 36 and 37, to delete all words from and including “vacancy,” in line 36, down to and including “authority.” in line 37 and substitute “vacancy.”.

—Jan O’Sullivan.

67. In page 68, subsection (2), lines 3 and 4, to delete all words from and including “vacancy,” in line 3 down to and including “authority.” in line 4 and substitute “vacancy.”.

—Jan O’Sullivan.

[SECTION 103]

SECTION 103

68. In page 69, before section 103, but in Chapter 1, to insert the following new section:

“Disclosure of birth records of adopted children.

103.—(1) The Authority shall, on an application made in the prescribed manner by an adopted person who was placed for adoption subsequent to the coming into operation of the Act, a record of whose birth is kept by the Authority and who has attained the age of 18 years, supply to that person on payment of the prescribed fee (if any) such information as is necessary to enable that person to obtain a certified copy of the record of his birth.

(2) The Authority shall provide counselling for adopted persons who apply for information under *subsection (1)* and for the biological parents of such persons.”.

—Alan Shatter.

SECTION 105

69. In page 71, lines 23 to 28, to delete subsection (2).

—Jan O'Sullivan.

SECTION 119

70. In page 79, between lines 33 and 34, to insert the following subsection:

“(4) Reference to this section is inserted in Part I of the Third Schedule to the Freedom of Information Act 1997.”.

—Jan O'Sullivan.

SECTION 125

71. In page 83, between lines 14 and 15, to insert the following subsection:

“(6) Notwithstanding *subsection (1)(a)*, a person may carry out an activity described in *paragraph (g), (h)* or (h)* of *section 4* so long as that person is not also carrying out an activity described in *paragraphs (a) to (f), (i) or (j)* of that section or any of the activities described in *section 5*.”.

—An tAire Sláinte agus Leanaí.

[*This is the reference to the paragraph proposed to be inserted by amendment No. 8.]

SECTION 150

72. In page 93, between lines 13 and 14, to insert the following subsection:

“(3) Regulations may make provision for an entitlement to leave from employment for the purpose of travel by prospective adoptive parents in order to complete the intercountry pre-adoptive process.”.

—Jan O'Sullivan.

SECTION 151

73. In page 93, subsection (1), lines 16 and 17, to delete all words from and including “ensuring” in line 16 down to and including “bodies” in line 17 and substitute the following:

[SECTION 151]

“promoting the carrying out of the activities specified in sections 4 and 5 by accredited bodies”.

—Jan O’Sullivan.

SECTION 161

74. In page 98, before section 161, to insert the following new section:

“Amendment of section 46(1) of Freedom of Information Act 1997.

161.—The Freedom of Information Act 1997 is amended in section 46(1) (as amended by section 29 of the Freedom of Information (Amendment) Act 2003 and section 74 of the Safety, Health and Welfare at Work Act 2005), by inserting the following after paragraph (*dc*):

“(dd) a record held or created under the relevant statutory provisions by the Adoption Authority or an employee of the Authority, relating to or arising from the making of an adoption order or the recognition of an intercountry adoption effected outside the State, within the meaning of the *Adoption Act 2010*, (other than a record concerning any other functions of the Authority or the general administration of the Authority),”.

—An tAire Sláinte agus Leanaí.

SECTION 162

75. In page 98, before section 162, to insert the following new section:

“162.—Section 11B(1) of the Guardianship of Infants Act 1964 is amended by the insertion of the following:

“(c) is a spouse of a parent of the child,”.

—Alan Shatter.

TITLE

76. In page 13, line 14, to delete “SIGNED” and substitute “DONE”.

—Jan O’Sullivan.