



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

Mar a ritheadh ag Dáil Éireann

As passed by Dáil Éireann



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SCHEDULE

PARTICULARS OF ADOPTIONS TO BE ENTERED IN ADOPTED CHILDREN REGISTER

ACTS REFERRED TO

Adoption Act 2010 (No. 21)

Children and Family Relationships Act 2015 (No. 9)

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Guardianship of Infants Act 1964 (No. 7)



**AN BILLE UCHTÁLA (LEASÚ), 2016
ADOPTION (AMENDMENT) BILL 2016**

Bill

entitled

An Act to amend and extend the law in relation to the adoption of children; and, for that purpose, to amend the Adoption Act 2010; to provide for the repeal of Part 11 of the Children and Family Relationships Act 2015; and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act— 10
- “Principal Act” means the Adoption Act 2010.

Repeals

2. (1) Section 24 of the Principal Act is repealed.
- (2) Part 11 of the Children and Family Relationships Act 2015 is repealed.

Amendment of section 3 of Principal Act 15

3. Section 3(1) of the Principal Act is amended—

(a) by the insertion of the following definitions:

“ ‘Act of 1964’ means the Guardianship of Infants Act 1964;

‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; 20

‘civil partner’ shall be construed in accordance with section 3 of the Act of 2010;

‘cohabitant’ shall be construed in accordance with section 172(1) of the Act of 2010;

‘cohabiting couple’ means 2 adults who are cohabitants of each other and who have been living together as cohabitants for a continuous period of not less than 3 years; 25

‘donor-conceived child’ has the same meaning as it has in Part 2 of the Children and Family Relationships Act 2015;

‘father’, in relation to a child, includes a man who is, under section 5 of the Children and Family Relationships Act 2015, a parent of the child where that child is a donor-conceived child;

‘relevant non-guardian’ means, in relation to a child—

- (a) a father of the child who is not a guardian of the child pursuant to the Act of 1964, 5
- (b) a parent of the child under section 5 of the Children and Family Relationships Act 2015 who is not a guardian pursuant to the Act of 1964,
- (c) a person who is appointed as a guardian of the child pursuant to section 6C of the Act of 1964 where subsection (9) of that section applies to that appointment but in respect of which the court has not made an order that the person enjoys the rights and responsibilities specified in subsection (11)(f) of that section, or 10
- (d) a person appointed by the court to be a temporary guardian of the child under section 6E of the Act of 1964; 15

‘step parent’ has the meaning assigned to it by section 37;”,

- (b) by the substitution of the following definition for the definition of “parent”:

“ ‘parent’ means, in relation to a child—

- (a) the mother or father of the child, or 20
- (b) a woman (other than the mother) who is, under section 5 of the Children and Family Relationships Act 2015, a parent of the child where that child is a donor-conceived child,

and includes an adopter of the child;”,

- (c) by the substitution, in the definition of “guardian”, of the following paragraph for paragraph (a): 25

“(a) is a guardian of the child pursuant to the Act of 1964, other than a guardian appointed—

- (i) under section 6C of that Act where subsection (9) of that section applies to that appointment but the court has not made an order that that person enjoys the rights and responsibilities specified in subsection (11)(f) of that section, or 30

(ii) under section 6E of that Act, or”,

- (d) in the definition of “relative”, by the substitution of “relationship to the child being traced through a parent of that child” for “relationship to the child being traced through the mother or father”, and 35

- (e) by the deletion of the definition of “orphan”.

Amendment of section 4 of Principal Act

- 4. Section 4 of the Principal Act is amended by the substitution, in paragraph (k), of

“parents” for “birth parents” in each place that it occurs.

Visits and enquiries pertaining to adoptions

5. The Principal Act is amended by the substitution of the following section for section 12:

“12. The Authority may authorise a member or employee of the Authority or of the Child and Family Agency to— 5

(a) visit the homes of the child, the guardians of the child, the applicants for an adoption order or the recognition of an intercountry adoption effected outside the State and the person having custody of the child for the purposes of an adoption, and

(b) make enquiries on behalf of the Authority.” 10

Amendment of section 16 of Principal Act

6. Section 16 of the Principal Act is amended by the substitution of the following subsection for subsection (1):

“(1) A relevant non-guardian of a child, by notice to the Authority, may advise the Authority of his or her wish to be consulted in relation to— 15

(a) a proposal by an accredited body to place the child for adoption, or

(b) an application by the mother, step parent or relative of the child for an adoption order in respect of the child.”

Pre-placement consultation procedure

7. The Principal Act is amended by the substitution of the following section for section 17: 20

“17. (1) Where an accredited body proposes to place a child for adoption—

(a) the accredited body shall request the Authority in writing and in a form and manner approved by the Authority to provide the body with a copy of any notice received by the Authority under section 16(1) from a relevant non-guardian of that child, and 25

(b) the Authority shall—

(i) as soon as practicable, provide the notice (if any) to the accredited body, or

(ii) where at the time of the request under paragraph (a), it has not received any notice, so inform the accredited body and afterwards, if the Authority so receives a notice under section 16(1), provide the notice forthwith to the accredited body. 30

(2) Subject to this section and section 18, where an accredited body proposes to place a child for adoption, the accredited body shall, before placing the child for adoption, take such steps as are reasonably practicable, to consult any relevant non-guardian for the purposes of— 35

(a) informing him or her of the proposed adoption,

- (b) explaining to him or her the legal implications of, and the procedures related to, adoption, and
 - (c) ascertaining whether or not he or she objects to the proposed adoption.
- (3) Where— 5
- (a) each relevant non-guardian of a child indicates to the accredited body that he or she has no objection to the proposed placement of the child concerned for adoption, the accredited body may at any time thereafter, place the child for adoption, or
 - (b) any relevant non-guardian objects to the proposed placement of the child for adoption, the accredited body shall— 10
 - (i) notify in writing in the prescribed manner each of the parents, guardians and relevant non-guardians of the child, informing them that it is deferring the placement for such period (in this section referred to as the ‘deferral period’) as is specified in the notice, being a period of not less than 21 days, commencing on the date of the notice, for the purpose of affording the relevant non-guardian an opportunity to make an application to court under the Act of 1964, and 15
 - (ii) defer the placement in accordance with the notification. 20
- (4) Where an accredited body receives a notice that an application to court referred to in subsection (3)(b)(i) has been made in relation to a child, the accredited body shall not place the child for adoption until the proceedings are concluded.
- (5) Where an accredited body has not received— 25
- (a) a notice referred to in subsection (4) within the deferral period, and
 - (b) any indication from a relevant non-guardian under paragraph (a) or (b) of subsection (3) within 21 days of informing the person of the proposed placement of the child, as to whether or not he or she has any objection to the proposed placement, 30
- the accredited body may, at any time thereafter, place the child for adoption unless it receives a notice under subsection (4).
- (6) A person who is a party to an application referred to in subsection (3) (b)(i) may apply to court for, and the court, where it is in the best interests of the child, may grant, such order as it considers appropriate to expedite the proceedings, which order may include, but shall not be limited to an order— 35
- (a) for substituted service, or
 - (b) abridging the time fixed by rules of court for taking any step or doing any act in the proceedings.”. 40

Circumstances where no pre-placement consultation

8. The Principal Act is amended by the substitution of the following section for section 18:

- “18. (1) If an accredited body is unable to consult a relevant non-guardian of a child for the purposes of section 17(2), the accredited body shall in a form and manner approved by the Authority, notify the Authority to that effect. 5
- (2) The Authority may, if satisfied that the accredited body has taken such steps as are reasonably practicable to consult any relevant non-guardian, authorise the accredited body to place the child for adoption.
- (3) At any time after being so authorised under subsection (2) the accredited body may place the child for adoption, but only if the accredited body has not been contacted by a relevant non-guardian indicating that he or she objects to the placement. 10
- (4) Where upon application to it by an accredited body that proposes to place a child for adoption, the Authority is satisfied that, having regard to— 15
- (a) the nature of the relationship between the relevant non-guardian and the person who proposes or persons who propose to place the child for adoption, or
- (b) other than in a case where the relevant non-guardian of the child is a person referred to in paragraph (b), (c) or (d) of the definition of ‘relevant non-guardian’, the circumstances of the conception of the child, 20
- it is inappropriate for the accredited body to contact the relevant non-guardian in respect of the placement of the child concerned— 25
- (i) the Authority may, after obtaining the approval of the High Court, authorise the accredited body to place the child for adoption, and
- (ii) the accredited body may, at any time after being so authorised, place the child for adoption.
- (5) If the identity of the father, referred to in paragraph (a) of the definition of ‘relevant non-guardian’ (in this section referred to as ‘that father’), is unknown to an accredited body and the mother or guardian will not disclose the identity of that father, the accredited body shall— 30
- (a) counsel the mother or guardian concerned in order to attempt to obtain his or her or their, as the case may be, co-operation, advising such person or persons— 35
- (i) that the adoption may be delayed,
- (ii) the possibility of that father of the child contesting the adoption at some later date,
- (iii) that the absence of information about the medical, genetic and social background of the child may be detrimental to the health, development or welfare of that child, and 40

- (iv) such other matters as the accredited body considers appropriate in the circumstances,
 - and
 - (b) where the mother or guardian concerned, after counselling, will not disclose the identity of that father, furnish the Authority with a written report of the counselling that the accredited body has so provided. 5
- (6) Where the Authority receives a written report referred to in subsection (5)(b), and is satisfied that the accredited body—
- (a) has taken such steps as are reasonably practicable to obtain the co-operation of the mother or guardian, and 10
 - (b) has no other practical way of ascertaining that father’s identity, then—
 - (i) the Authority may, after first obtaining the approval of the High Court, authorise the accredited body to place the child for adoption, and 15
 - (ii) the accredited body may, at any time after being so authorised, if it has not ascertained the identity of that father, place the child for adoption.
- (7) Where the mother or guardian of a child provides or provide, as the case may be, an accredited body with a statutory declaration stating that he or she or they, as the case may be, is or are unable to identify that father, then— 20
- (a) the Authority may, after first obtaining the approval of the High Court, authorise the accredited body to place the child for adoption, and 25
 - (b) the accredited body may, at any time thereafter, place the child for adoption, if the accredited body has not any other practical way of ascertaining that father’s identity.”.

Best interests of child and views of child

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9. The Principal Act is amended by the substitution of the following section for section 19:

“19. (1) In any matter, application or proceedings under this Act which is, or are, before—

(a) the Authority, or

(b) any court,

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the Authority or the court, as the case may be, shall regard the best interests of the child as the paramount consideration in the resolution of such matter, application or proceedings.

(2) In determining for the purposes of subsection (1) what is in the best interests of the child, the Authority or the court, as the case may be,

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shall have regard to all of the factors or circumstances that it considers relevant to the child who is the subject of the matter, application or proceedings concerned including—

- (a) the child's age and maturity,
 - (b) the physical, psychological and emotional needs of the child, 5
 - (c) the likely effect of adoption on the child,
 - (d) the child's views on his or her proposed adoption,
 - (e) the child's social, intellectual and educational needs,
 - (f) the child's upbringing and care,
 - (g) the child's relationship with his or her parent, guardian or relative, 10
as the case may be, and
 - (h) any other particular circumstances pertaining to the child concerned.
- (3) In so far as practicable, in relation to any matter, application or proceedings referred to in subsection (1), in respect of any child who is capable of forming his or her own views, the Authority or the court, as the case may be, shall ascertain those views and such views shall be given due weight having regard to the age and maturity of the child. 15
- (4) Without prejudice to the generality of subsection (3), the Minister may make regulations prescribing the procedures by which the Authority or the court, as the case may be, shall, in so far as practicable, determine how best, having regard to the age and maturity of the child, to ascertain and give due weight to the views of the child in any matter, application or proceedings, and, without prejudice to the generality of the foregoing, such regulations may— 20 25
- (a) make provision for the procedures that are to apply to enable a child to present his or her views in person or in writing to the Authority or the court, as the case may be,
 - (b) make provision for the procedures that are to apply to enable a child to nominate an appropriate person to present the child's views orally or in writing to the Authority or the court, as the case may be, 30
 - (c) prescribe as appropriate persons—
 - (i) a class or classes of persons who, in the opinion of the Minister having regard to the functions to be performed by members of such class or classes of persons under this section, are suitable to be appropriate persons for the purposes of such functions, or 35
 - (ii) a class or classes of persons who, in the opinion of the Minister having considered the qualifications, training and expertise of such class or classes of persons by reference to the functions to be performed by members of such class or classes of persons 40

under this section, are suitable to be appropriate persons for the purposes of such functions,

- (d) make provision for the procedures that are to apply in respect of any consultation by the Authority or the court, as the case may be, with a child or an appropriate person, 5
 - (e) make provision for the consultation by the Child and Family Agency with a child for the purpose of ascertaining his or her views and for the procedures relating thereto, including procedures relating to the preparation and submission of any written reports arising from such consultation to the Authority or the court, as the case may be, 10
 - (f) prescribe the standards to be applied by an appropriate person to the performance by the person of his or her functions under this section,
 - (g) prescribe the allowable expenses that may be charged by an appropriate person referred to in paragraph (c)(i) and the fees and allowable expenses that may be charged by an appropriate person referred to in paragraph (c)(ii), 15
 - (h) make provision for such other matters as the Minister considers necessary to ensure that appropriate persons are capable of performing their functions under this section. 20
- (5) Regulations under this section may—
- (a) make different provision in relation to—
 - (i) children of different ages and maturity, or
 - (ii) different classes of appropriate persons, 25and
 - (b) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (6) In determining for the purposes of subsection (3) how the child's views shall be ascertained and heard, and how such views shall be given due weight having regard to the age and maturity of the child, the Authority or the court, as the case may be, shall have regard to regulations made by the Minister under subsection (4).". 30

Amendment of section 20 of Principal Act

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10. Section 20 of the Principal Act is amended by the substitution of “a married couple, a couple who are civil partners of each other or a cohabiting couple” for “a married couple” in each place that it occurs.

Amendment of section 21 of Principal Act

11. Section 21 of the Principal Act is amended by the substitution of the following subsection for subsection (2):

“(2) The Child and Family Agency shall, as soon as practicable after receipt of notice under subsection (1), give notice of the discontinuance to— 5

- (a) the Authority,
- (b) any adoption committee concerned,
- (c) the mother and any other guardians of the child, and
- (d) each relevant non-guardian of the child.”. 10

Children who may be adopted

12. The Principal Act is amended by the substitution of the following section for section 23:

“23. (1) The Authority shall not make an adoption order in respect of a child unless—

(a) the child— 15

- (i) resides in the State, and
 - (ii) is, at the date of the making of the adoption order, less than 18 years of age,
- and

(b) the child has— 20

- (i) in a case where the applicant is a step parent of the child, a home with the child’s parent and that step parent, for a continuous period of not less than 2 years at the date of the application for the adoption order, or
- (ii) in any other case, been in the care of the applicants for the prescribed period (if any). 25

(2) The Authority, having regard to the particular circumstances of the case, may make an adoption order in respect of a child notwithstanding that the child has not—

(a) in a case where the applicant is a step parent of the child, a home with the child’s parent and that step parent, for a continuous period of not less than 2 years at the date of the application for the adoption order, or 30

(b) in any other case, been in the care of the applicants for the prescribed period under subsection (1)(b)(ii).” 35

Consultations with relevant non-guardians of child

13. The Principal Act is amended by the substitution of the following section for section 30:

- “30.** (1) In this section ‘father’, in relation to a child, includes a person who believes himself to be the father of the child.
- (2) Subject to this section, on the receipt of an application for an adoption order, the Authority shall take such steps as are reasonably practicable to ensure that every relevant non-guardian of the child is consulted in relation to the adoption. 5
- (3) Where the Authority is satisfied that, having regard to—
- (a) the nature of the relationship between the relevant non-guardian of a child and the mother or guardian of the child, or
- (b) other than in a case where the relevant non-guardian of the child is a person referred to in paragraph (b), (c) or (d) of the definition of ‘relevant non-guardian’, the circumstances of the conception of the child, 10
- it would be inappropriate for the Authority to consult the relevant non-guardian in respect of the adoption of that child, the Authority may, after first obtaining the approval of the High Court, make the adoption order without consulting the relevant non-guardian concerned. 15
- (4) If the identity of the father referred to in paragraph (a) of the definition of ‘relevant non-guardian’ (in this section referred to as ‘that father’), is unknown to the Authority and the mother or guardian of the child will not or is unable to disclose the identity of that father, the Authority shall counsel the mother or guardian of the child, indicating— 20
- (a) that the adoption may be delayed,
- (b) the possibility of that father of the child contesting the adoption at some later date, 25
- (c) that the absence of information about the medical, genetic and social background of the child may be detrimental to the health, development or welfare of the child, and
- (d) such other matters as the Authority considers appropriate in the circumstances. 30
- (5) After counselling the mother or guardian of the child under subsection (4), the Authority may, after first obtaining the approval of the High Court, make the adoption order without consulting that father if—
- (a) the mother or guardian of the child either refuses to reveal the identity of that father of the child, or provides the Authority with a statutory declaration that he or she is unable to identify that father, and 35
- (b) the Authority has no other practical means of ascertaining the identity of that father. 40

- (6) The Child and Family Agency or an accredited body, at the Authority’s request, shall assist in carrying out the Authority’s functions under this section.
- (7) An application for approval under this section shall be heard in private.”.

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High Court may give custody of child to prospective adopters and authorise dispensing with consent to adoption

14. The Principal Act is amended by the substitution of the following section for section 31:

- “31. (1) In this section ‘applicants’ means the person or persons referred to in subsection (2)(a). 10
- (2) Where—
- (a) a person has or persons have applied for an adoption order, and
 - (b) a person whose consent to the making of the adoption order is necessary under section 26, and who has agreed to the placing of the child concerned for adoption either— 15
 - (i) fails, neglects or refuses to give his or her consent to the adoption, or
 - (ii) having previously consented to the adoption, withdraws his or her consent,
- the applicants for the adoption order may apply to the High Court 20 for an order under subsection (3).
- (3) Subject to subsections (4) and (5), the High Court may make an order—
- (a) giving custody of the child to the applicants for a specified period, and 25
 - (b) authorising the Authority to dispense with the consent of any person whose consent to the making of the adoption order is necessary under section 26 to the adoption of the child by the applicants, with the adoption to be effected by an adoption order made during that specified period of custody. 30
- (4) In considering any application under subsection (2), the High Court shall—
- (a) have regard to the following:
 - (i) the relationship between the applicants and the child who is the subject of the application; 35
 - (ii) the relationship between the child and his or her mother or guardian, as the case may be, and the efforts made by any of those persons to develop or maintain a relationship with the child;

- (iii) the proposed arrangements of the applicants and the mother or guardian or other person whose consent to the making of the adoption order is necessary under section 26, as the case may be, for the future care of the child;
 - (iv) the rights, whether under the Constitution or otherwise, of the persons concerned (including the natural and imprescriptible rights of the child); 5
 - (v) any other matter which the Court considers relevant to the application, 10
- and
- (b) in so far as is practicable, in a case where the child concerned is capable of forming his or her own views, give due weight to the views of that child, having regard to the age and maturity of the child, 15
- and, in the resolution of any such application, the best interests of the child shall be the paramount consideration. 15
- (5) If a person whose consent is necessary under section 26 is a ward of court, his or her consent shall not be dispensed with, pursuant to an order under this section, except with the sanction of the court which granted the order for wardship. 20
 - (6) Proceedings under this section shall be heard in private.”.

Religion

15. The Principal Act is amended by the substitution of the following section for section 32:

“32. Notwithstanding section 20, in a case where—

- (a) the applicant or applicants, as the case may be, 25
- (b) the child, and
- (c) every person whose consent to the making of an adoption order is necessary under section 26,

are not all of the same religion (if of any religion), the Authority shall not make an adoption order unless every person whose consent to the making of an adoption order is necessary under section 26 knows, when so consenting, the religion (if any) of the applicant or each of the applicants, as the case may be.”. 30

Amendment of section 33 of Principal Act

16. Section 33 of the Principal Act is amended— 35

(a) in subsection (1)(a)—

- (i) by the insertion of the following subparagraphs after subparagraph (i):

- “(ia) the applicants are civil partners of each other who are living together,
 - (ib) the applicants are a cohabiting couple,”,
 - (ii) by the substitution of the following subparagraph for subparagraph (ii):
 - “(ii) the applicant is a parent, step parent or relative of the child, or”, 5
- and
- (b) by the insertion of the following subsections after subsection (3):
 - “(3A) Where an applicant—
 - (a) for an adoption order, or
 - (b) for the recognition of an intercountry adoption effected outside the State, other than an applicant who is a person referred to in paragraph (a) or (c) of section 90(3),
 - is a civil partner of another person who is not an applicant, the Authority shall not make the adoption order, or recognise the intercountry adoption effected outside the State, without the consent of that applicant’s civil partner, given in the manner determined by the Authority unless— 15
 - (i) the applicant and the applicant’s civil partner are living apart under a separation agreement,
 - (ii) the civil partner has deserted the applicant, or 20
 - (iii) conduct on the part of the civil partner results in the applicant, with just cause, leaving the civil partner and living separately and apart from him or her.
 - (3B) Where an applicant—
 - (a) for an adoption order, or 25
 - (b) for the recognition of an intercountry adoption effected outside the State, other than an applicant who is a person referred to in paragraph (a) or (c) of section 90(3),
 - is a cohabitant of another person who is not an applicant, the Authority shall not make the adoption order, or recognise the intercountry adoption effected outside the State, without the consent of that other person given in the manner determined by the Authority.” 30
- (c) in subsection (4)—
 - (i) in paragraph (a), by the substitution of “a married couple, a couple who are civil partners of each other or a cohabiting couple” for “a married couple”, 35
 - (ii) in paragraph (b):
 - (I) by the substitution of “a married couple, a couple who are civil partners of each other or a cohabiting couple” for “a married couple”, and

(II) by the substitution of “a parent” for “the mother or father”,

(d) in subsection (5), by the substitution of “a married couple living together, a couple who are civil partners of each other living together or a cohabiting couple” for “a married couple living together”, and

(e) in subsection (6), by the substitution of “a married couple living together, a couple who are civil partners of each other living together or a cohabiting couple” for “a married couple living together”. 5

Amendment of section 34 of Principal Act

17. Section 34 of the Principal Act is amended by the substitution of “a married couple living together, a couple who are civil partners of each other living together or a cohabiting couple” for “a married couple living together”. 10

Amendment of section 37 of Principal Act

18. Section 37 of the Principal Act is amended—

(a) in subsection (1), by the substitution of “A person habitually resident in the State, a step parent, a married couple married to each other, a couple who are civil partners of each other or a cohabiting couple” for “A person habitually resident in the State, or a married couple married to each other”, and 15

(b) by the insertion of the following subsections after subsection (4):

“(5) A person may make an application for an adoption order in respect of a child where, at the date of the application— 20

(a) the person is—

(i) a spouse of a parent of the child,

(ii) a civil partner of a parent of the child, or

(iii) a cohabitant in a cohabiting couple where the other cohabitant is a parent of the child, 25

and

(b) the child, in respect of whom the adoption order is sought, has a home with the child’s parent and that person (in this Act referred to as a ‘step parent’), for a continuous period of not less than 2 years.

(6) The Authority, having regard to the particular circumstances of the case may accept an application for an adoption order in respect of a child notwithstanding that the child has not a home with the child’s parent and that step parent, for a continuous period of not less than 2 years at the date of the application.”. 30

Amendment of section 38 of Principal Act

19. Section 38 of the Principal Act is amended by the substitution of the following subsection for subsection (2): 35

“(2) The Child and Family Agency shall, as soon as practicable after receipt of notice under subsection (1), give notice of the discontinuance to—

- (a) the Authority,
- (b) any adoption committee concerned,
- (c) the mother and any other guardian of the child, and
- (d) each relevant non-guardian of the child.”.

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Amendment of section 40 of Principal Act

20. Section 40 of the Principal Act is amended—

- (a) in subsection (1), by the substitution of “a person, a married couple married to each other, a couple who are civil partners of each other or a cohabiting couple” for “a person or a married couple married to each other”, 10
- (b) in subsection (2), by the substitution of “a married couple living together, a couple who are civil partners of each other living together or a cohabiting couple” for “a married couple living together” in each place that it occurs, and 15
- (c) in subsection (4), by the substitution of “the person, married couple, civil partners or cohabiting couple” for “the person or married couple”.

Amendment of section 41 of Principal Act

21. Section 41 of the Principal Act is amended by the substitution of “person, married couple, civil partners or cohabiting couple” for “person or married couple” in each place that it occurs. 20

Amendment of section 43 of Principal Act

22. Section 43(1) of the Principal Act is amended by—

- (a) the insertion of the following paragraph after paragraph (d):

“(da) any other relevant non-guardian of the child;”,

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and

- (b) the substitution of the following paragraph for paragraph (e):

“(e) any guardian of the child;”.

Further adoption

23. The Principal Act is amended by the substitution of the following section for section 45: 30

“**45.** Where a child, in respect of whom an adoption order is in force or an intercountry adoption effected outside the State that has been recognised, is further placed for adoption—

- (a) a further adoption order may be made in respect of the child, and

- (b) for the purposes of the order, the child concerned shall be taken to be the lawful child of the adopter or adopters in whose favour the first-mentioned adoption order or intercountry adoption effected outside the State was made or recognised, as the case may be.”.

Amendment of section 54 of Principal Act

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24. (1) Section 54 of the Principal Act is amended—

(a) by the substitution of the following subsection for subsection (2):

“(2) On an application being made under paragraph (a) or (b) of subsection (1), the High Court by order may authorise the Authority to make an adoption order in relation to the child in favour of the applicants and to dispense with the consent of any person whose consent is necessary to the making of the adoption order.”,

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(b) by the insertion of the following subsection after subsection (2):

“(2A) Before making an order under subsection (2), the High Court shall be satisfied that—

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(a) for a continuous period of not less than 36 months immediately preceding the time of the making of the application, the parents of the child to whom the declaration under section 53(1) relates, have failed in their duty towards the child to such extent that the safety or welfare of the child is likely to be prejudicially affected,

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(b) 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,

(c) the 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,

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

(e) the child—

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

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(ii) for a continuous period of not less than 18 months immediately preceding that time, has been in the custody of and has had a home with the applicants,

and

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(f) that the adoption of the child by the applicants is a proportionate means by which to supply the place of the parents.”,

and

(c) by the substitution of the following subsection for subsection (3):

- “(3) In considering an application for an order under subsection (2), the High Court shall—
- (a) have regard to the following:
 - (i) the rights, whether under the Constitution or otherwise, of the persons concerned (including the natural and imprescriptible rights of the child);
 - (ii) any other matter which the High Court considers relevant to the application,

and
 - (b) in so far as is practicable, in a case where the child concerned is capable of forming his or her own views, give due weight to the views of that child, having regard to the age and maturity of the child,
- and, in the resolution of any such application, the best interests of the child shall be the paramount consideration.”.
- (2) *Subsection (1)* shall not apply to an application made under subsection (1) of section 54 of the Principal Act before the commencement of this section but not determined before such commencement, and that section shall continue to apply as if *subsection (1)* had not been enacted.

Parental rights and duties

25. The Principal Act is amended by the substitution of the following section for section 58:
- “58. Subject to section 58A, upon an adoption order being made, or the recognition under this Act of an intercountry adoption effected outside the State—
- (a) the child concerned 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
 - (b) with respect to the child—
 - (i) the mother or guardian of the child, and
 - (ii) every relevant non-guardian of the child,
- shall, subject to section 57, lose all parental rights and be freed from all parental duties in respect of the child.”.

Effect of adoption where adopter is step parent of child

26. The Principal Act is amended by the insertion of the following section after section 58:
- “58A. (1) Section 58 shall not apply where the adopter of a child is a step parent of the child and, in that case, upon an adoption order being made—

- (a) the child concerned shall be considered, with regard to the rights and duties of parents and children in relation to each other, as the child of—
 - (i) the adopter and the adopter’s spouse,
 - (ii) the adopter and the adopter’s civil partner, or 5
 - (iii) the adopter and the adopter’s co-habitant,
 and
- (b) with respect to the child—
 - (i) the mother or guardian, unless such mother or guardian is a person referred to in subparagraph (i), (ii) or (iii) of paragraph (a), and 10
 - (ii) every relevant non-guardian of the child,
 shall, subject to section 57, lose all parental rights and shall be freed from all parental duties in respect of that child.
- (2) Nothing in this section shall operate to affect the legal parent-child relationship of a person, being a mother or guardian secondly referred to in paragraph (b)(i), with regard to his or her child, who is the subject of the adoption order referred to in subsection (1).” 15

Amendment of section 59 of Principal Act

- 27.** Section 59 of the Principal Act is amended— 20
- (a) in subsection (1), by the substitution of “those parents” for “the child’s birth parents”, and
 - (b) in subsection (2), by the substitution of “parents referred to in subsection (1)” for “birth parents”.

Amendment of section 60 of Principal Act

- 28.** Section 60 of the Principal Act is amended— 25
- (a) in subsection (2)—
 - (i) by the substitution of “adopter or adopters” for “adopters” in each place that it occurs,
 - (ii) by the substitution of the following paragraph for paragraph (a): 30

“(a) the child of the adopter or adopters”,

and
 - (iii) by the substitution of the following paragraph for paragraph (b):

“(b) subject to section 58A, not the child of any other person.”,
 - (b) in subsection (3)— 35

- (i) by the substitution, in paragraph (b) of “parent or parents” for “birth parent or parents”,
- (ii) by the substitution of the following paragraph for paragraph (c):
 - “(c) any reference (whether express or implied) to a person related to the adopted person in any degree shall be read, unless the contrary intention appears, as a reference to the person who would be related to the adopted person in that degree if the adopted person were—
 - (i) the child of the adopter or adopters, and
 - (ii) subject to section 58A, not the child of any other person.”
- (c) in subsection (4), by the substitution of the following subparagraph for subparagraph (i):
 - “(i) where the adopters are a couple, within the meaning of subsection (7) and the other person is the child or adopted child of that couple, both persons, as brother or sister of the whole blood, and”,
- (d) by the substitution of the following subsection for subsection (7):
 - “(7) In this section references to adopters who are a couple means adopters who are—
 - (a) married to each other,
 - (b) civil partners of each other, or
 - (c) a cohabiting couple,
 as the case may be, and any such references shall be construed as including references to adopters who were married to each other, civil partners of each other or living together as a cohabiting couple, as the case may be, at the time the adoption order concerned was made or the intercountry adoption effected outside the State concerned was recognised, as the case may be, 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.”.

Stamp duty on land

29. The Principal Act is amended by the substitution of the following section for section 61:

“**61.** For the purposes of the stamp duties chargeable on conveyances or transfers of land, an adopted person, shall, subject to section 58A, be regarded as the child of the adopter or adopters and not the child of any other person.”.

Amendment of section 62 of Principal Act

30. Section 62 of the Principal Act is amended by the substitution of “a parent” for “the birth

parent” in each place that it occurs.

Amendment of section 68 of Principal Act

31. Section 68(2) of the Principal Act is amended, in paragraph (b), by the substitution of “where the consent of a person is necessary” for “where the consent of a birth parent of the child is necessary”. 5

Amendment of section 69 of Principal Act

32. Section 69(2) of the Principal Act is amended, in paragraph (b), by the substitution of “where the consent of a person is necessary” for “where the consent of a birth parent of the child is necessary”.

Amendment of section 78 of Principal Act

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33. Section 78(2) is amended, in paragraph (b), by the substitution of “where the consent of a person is necessary” for “where the consent of a birth parent of the child is necessary”.

Amendment of section 79 of Principal Act

34. Section 79(2) is amended, in paragraph (b), by the substitution of “where the consent of a person is necessary” for “where the consent of a birth parent is necessary”. 15

Amendment of section 84 of Principal Act

35. Section 84 of the Principal Act is amended, in subsection (3), by the substitution of “particulars, appropriate to the adoption concerned,” for “particulars”.

Amendment of section 85 of Principal Act

36. Section 85 of the Principal Act is amended by the substitution of the following subsection for subsection (4): 20

“(4) A copy of an entry or an extract thereof, referred to in subsection (2)(b) or (3)(b) shall omit any reference to or particulars of—

(a) a personal public service number, and

(b) any previous adoption,

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and ‘true copy’ in those aforementioned provisions shall be construed accordingly.”.

Amendment of section 97 of Principal Act

37. Section 97 of the Principal Act is amended, in subsection (1), by the substitution of the following paragraph for paragraph (b): 30

“(b) governing the consultation that is required by this Act to be carried out with a relevant non-guardian (which shall include a person who believes himself to be the father) of a child before the child is

placed for adoption or before an adoption order is made in respect of that child.”.

Amendment of section 125 of Principal Act

38. Section 125 of the Principal Act is amended—

(a) in subsection (2) by the substitution of the following paragraph for paragraph (b): 5

“(b) the person who intends to adopt the child is—

- (i) a parent of the child,
- (ii) a relative of the child,
- (iii) the spouse of the parent of a child,
- (iv) the civil partner of the parent of a child, or 10
- (v) the cohabitant of a parent of the child, where the cohabitant and that parent are a cohabiting couple.”,

and

(b) by the substitution of the following subsection for subsection (3):

“(3) A person shall not receive a child for the purpose of adopting the child unless the person is— 15

- (a) a parent of the child,
- (b) a relative of the child,
- (c) the spouse of a parent of the child,
- (d) the civil partner of a parent of the child, 20
- (e) the cohabitant of a parent of the child where the cohabitant and that parent are a cohabiting couple, or
- (f) a person with whom a child is placed by an accredited body or the Child and Family Agency.”.

Amendment of section 144 of Principal Act

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39. Section 144 of the Principal Act is amended—

(a) by the designation of the section as subsection (1), and

(b) by the insertion of the following subsection after subsection (1):

“(2) In this section ‘guardian’ includes any guardian of a child who stands appointed under the Act of 1964.”. 30

Amendment of section 145 of Principal Act

40. Section 145 of the Principal Act is amended by the insertion of the following subsection after subsection (5):

“(6) In this section ‘guardian’ includes any guardian of a child who stands appointed under the Act of 1964.”.

Amendment of Principal Act

41. The Principal Act is amended by the substitution of the text set out in the Schedule for Schedule 3 to that Act. 5

Short title and commencement

42. (1) This Act may be cited as the Adoption (Amendment) Act 2016.
- (2) This Act 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 so appointed for different purposes or different provisions, and for the repeal of different provisions of Part 11 of the Children and Family Relationships Act 2015 effected by *section 2*. 10

SCHEDULE

Section 41

PARTICULARS OF ADOPTIONS TO BE ENTERED IN ADOPTED CHILDREN REGISTER

“SCHEDULE 3

PARTICULARS OF ADOPTIONS TO BE ENTERED IN ADOPTED CHILDREN REGISTER

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1. Information about the child.

(1) Personal public service number of child.

(2) Date and country of birth of child.

(3) Sex of child.

(4) Forename(s) and surname of child.

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2. Information about the person who is (i) married to or (ii) in a civil partnership with or (iii) cohabiting with the adopter (if any).

(1) Forename(s), surname, birth surname, address and occupation.

(2) Former surname(s) (if any).

(3) Date of birth.

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(4) Civil status.

(5) Personal public service number.

3. Information about the adopter or adopters.

(1) Forename(s), surname, birth surname, address and occupation.

(2) Former surname(s) (if any).

20

- (3) Date of birth.
 - (4) Civil status.
 - (5) Personal public service number.
4. Information about previous adoption (if any).
- (1) Date of previous adoption. 5
 - (2) Country of previous adoption.
 - (3) Reference number from relevant adoption register.
5. Other information.
- (1) Date of adoption order.
 - (2) Date of registration. 10
 - (3) Signature of an tArd-Chláraitheoir or an officer of an tArd-Chláraitheoir duly authorised by him or her.”.

An Bille Uchtála (Leasú), 2016

BILLE

(mar a ritheadh ag Dáil Éireann)

dá ngairtear

Acht do leasú agus do leathnú an dlí i ndáil le leanaí a uchtáil; agus, chun na críche sin, do leasú an Achta Uchtála, 2010; do dhéanamh socrú chun Cuid 11 den Acht um Leanaí agus Cónais Teaghlaigh, 2015 a aisghairm; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

Ritheadh ag Dáil Éireann,

30 Samhain, 2016

Adoption (Amendment) Bill 2016

BILL

(as passed by Dáil Éireann)

entitled

An Act to amend and extend the law in relation to the adoption of children; and, for that purpose, to amend the Adoption Act 2010; to provide for the repeal of Part 11 of the Children and Family Relationships Act 2015; and to provide for related matters.

Passed by Dáil Éireann,

30th November, 2016

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