



Number 10 of 1998

ADOPTION ACT, 1998

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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 Act, 1988	1988, No. 30
Adoption Act, 1991	1991, No. 14
Adoption Acts, 1952 to 1991	
Children (Amendment) Act, 1957	1957, No. 28
Guardianship of Infants Act, 1964	1964, No. 7
Health Act, 1970	1970, No. 1
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
Status of Children Act, 1987	1987, No. 26



Number 10 of 1998

ADOPTION ACT, 1998

AN ACT TO AMEND AND EXTEND THE LAW RELATING
TO THE ADOPTION OF CHILDREN. [29th April, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Interpretation.

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

“the Act of 1991” means the Adoption Act, 1991.

2.—Section 3 of the Principal Act (as amended by section 4 of the Adoption Act, 1964 and section 6 of the Adoption Act, 1988) is hereby amended—

Amendment of
section 3
(definitions) of
Principal Act.

(a) by the insertion of the following definition before the definition of “adoption order”:

“‘adoption agency’ means a registered adoption society or a health board;”,

(b) by the insertion of the following definition after the definition of “interim order”:

“‘health board’ means a health board established under the Health Act, 1970;”,

(c) by the substitution of the following definition for the definition of “the Minister”:

“‘the Minister’ means the Minister for Health and Children;”,

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

“‘parent’, in respect of a child, means, unless the context otherwise requires, the mother or father or both of the child, whether or not they are married to one another;”,

and

(e) by the substitution of the following definition for the definition of “relative”:

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“‘relative’, in respect of a child, means a grandparent, brother, sister, uncle or aunt of the child, whether of the whole blood, of the half-blood or by affinity and includes the spouse of any such person, relationship to the child being traced through the mother or the father.”.

Rules.

3.—The Principal Act is hereby amended by the substitution of the following for section 5:

“5.—The Board, with the consent of the Minister, may make rules—

- (a) for the regulation of its procedure or for any matter referred to in this Act as prescribed, and
- (b) governing the consultation that is required by this Act to be carried out with the father or the 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 the child.

5A.—Every rule made by the Board under section 5 and every regulation made by the Minister under section 7C shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the rule or regulation is passed by either House within the next 21 days on which that House has sat after the rule or regulation is laid before it, the rule or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

Amendment (new Part IA) of Principal Act.

4.—The Principal Act is hereby amended by the insertion of the following after section 7:

“PART IA.

Placement for Adoption.

Interpretation.

7A.—In this Part, ‘father’, in respect of a child, means the father or the person who believes himself to be the father of the child.

Restriction on placing child for adoption.

7B.—Subject to sections 7E (3) (a) and 7F, an adoption agency shall not place a child for adoption unless the child has attained the age of four weeks.

Care of child pending placement.

7C.—(1) Where a child has been placed with a registered adoption society for adoption, the society may, in accordance with such regulations as the Minister may make respecting arrangements for the care of such children and for securing generally their welfare, arrange for appropriate care for the child, subject to the society’s control and supervision, pending the placement of the child for adoption.

(2) Section 2 of the Children (Amendment) Act, 1957, shall not apply to the making of an arrangement by a registered adoption society under subsection (1) or to a person undertaking the care of a child under such an arrangement.

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Right of father who wishes to be consulted.

7D.—(1) The father of a child may, by notice to the Board, advise the Board of his wish to be consulted in relation to—

- (a) a proposal by an adoption agency to place the child for adoption, or
- (b) an application by the mother or a relative of the child for an adoption order relating to the child.

(2) A notice under subsection (1) shall be in writing, be in such form and contain such information as is prescribed and may be given to the Board before the birth of the child concerned.

Pre-placement consultation procedure.

7E.—(1) Where an adoption agency proposes to place a child for adoption—

- (a) the agency shall, in writing, in a form approved by the Board, request the Board to provide it with a copy of any notice received by the Board from the father of the child under section 7D (1), and
- (b) the Board shall—
 - (i) as soon as practicable provide the notice, if any, to the agency, or
 - (ii) if at the time of the request it has not received such a notice, so inform the agency and thereafter, if it receives such a notice, forthwith provide it to the agency.

(2) Subject to this section and section 7F, where an adoption agency proposes to place a child for adoption and the identity of the father is known to the agency, the agency shall, before placing the child for adoption, take such steps as are reasonably practicable to consult the father for the purpose of—

- (a) informing him of the proposed placement,
- (b) explaining to him the legal implications of, and the procedures related to, adoption, and
- (c) ascertaining whether or not he objects to the proposed placement.

(3) Where the father indicates to the adoption agency that—

- (a) he has no objection to the placement, the agency may at any time thereafter place the child for adoption, or

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(b) he objects to the proposed placement of the child for adoption, the agency shall—

(i) notify the father and the mother in writing in the prescribed manner that it is deferring the placement for a period specified in the notice not being less than 21 days, commencing on the date of the notice, for the purpose of affording the father an opportunity to make an application to court under section 6A or section 11 (4) of the Guardianship of Infants Act, 1964 (as inserted by the Status of Children Act, 1987), and

(ii) defer the placement in accordance with the notification.

(4) Where an adoption agency receives a notice that an application referred to in subsection (3) (b) (i) has been made in respect of a child, the agency shall not place the child for adoption until the proceedings are concluded.

(5) Where an adoption agency has not received—

(a) a notice referred to in subsection (4) within the deferral period referred to in subsection (3) (b) (i), and

(b) any indication from the father under subsection (3) (a) or (b) within 21 days after informing the father under subsection (2) (a) of the proposed placement of the child,

the agency may, at any time thereafter at which it has not received a notice referred to in subsection (4), place the child for adoption.

(6) A party to an application referred to in subsection (3) (b) (i) may apply to the court for, and the court may grant, such order, including an order for substituted service or for abridging the time fixed by rules of court for taking any step or doing any act in the proceedings, as the court deems appropriate to expedite the proceedings on the application in the best interests of the child.

Where father not consulted.

7F.—(1) If an adoption agency is unable to consult the father of a child for the purposes of section 7E (2), it shall, in a form approved by the Board, notify the Board to that effect and the Board may, where it is satisfied that the agency has taken such steps as are reasonably practicable to consult the father, authorise the agency to, and

the agency at any time thereafter may, if it has not been contacted by the father indicating that he objects to the proposed placement, place the child for adoption. S.4

(2) Where, on an application by an adoption agency that proposes to place a child for adoption, the Board is satisfied that, having regard to the nature of the relationship between the father and mother or the circumstances of the conception of the child, it would be inappropriate for the agency to contact the father in respect of the placement of the child, the Board may authorise the agency to, and the agency at any time thereafter may, place the child for adoption.

(3) If the identity of the father of a child is unknown to an adoption agency and the mother refuses to reveal his identity, the agency—

(a) shall counsel the mother to attempt to obtain her co-operation, indicating to her—

(i) that the adoption may be delayed,

(ii) the possibility of the father contesting the adoption at some later date,

(iii) that the absence of information about the medical, genetic and social background of the father may be detrimental to the health, development or welfare of the child, and

(iv) such other matters as the agency deems are appropriate in the circumstances,

and

(b) shall, if the mother, after counselling, continues to refuse to reveal the identity of the father, furnish the Board with a written report of the counselling that the agency has provided.

(4) Where the Board receives a report pursuant to subsection (3) (b) and is satisfied that the adoption agency—

(a) has taken such steps as are reasonably practicable to obtain the co-operation of the mother, and

(b) has no other practical way of ascertaining the father's identity,

the Board may authorise the agency to, and the agency may, at any time thereafter at which it has not ascertained the father's identity, place the child for adoption.

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(5) Where the mother of a child provides an adoption agency with a statutory declaration stating that she is unable to identify the father, the agency may, at any time thereafter, place the child for adoption if it has no other practical way of ascertaining the father's identity.”.

Amendment of section 16 (hearing of applications) of Principal Act.

5.—Section 16 of the Principal Act (as amended by section 2 of the Adoption Act, 1964 and section 13 of the Adoption Act, 1974) is hereby amended by the substitution of the following for subsection (1):

“(1) The following persons are entitled to be heard on an application for an adoption order—

- (a) the applicant,
- (b) the child,
- (c) the mother of the child,
- (d) the father of the child or the person who believes himself to be the father,
- (e) the guardian of the child,
- (f) the person who immediately before the placing of the child for adoption had charge of or control over the child,
- (g) a relative of the child,
- (h) a representative of any registered adoption society or health board which is or has been at any time concerned with the child,
- (i) an officer of the Board,
- (j) any other person whom the Board, in its discretion, decides to hear.”.

Amendment (new section 19A) of Principal Act.

6.—The Principal Act is hereby amended by the insertion of the following after section 19:

“Post-placement consultation.

19A.—(1) This section—

- (a) applies in respect of the adoption of a child by a person who is not the father or the person who believes himself to be the father of the child (in this section referred to as the ‘father’), and
- (b) does not apply in respect of the adoption of a child where the placement of the child for adoption was arranged by an adoption agency.

(2) Subject to this section, on the receipt of an application for an adoption order, the Board shall take such steps as are reasonably practicable to

consult the father of the child in relation to the matter of the adoption. S.6

(3) Where the Board is satisfied that, having regard to the nature of the relationship between the father and mother or the circumstances of the conception of the child, it would be inappropriate for the Board to consult the father in respect of the adoption of the child, the Board may make the adoption order without consulting the father.

(4) If the identity of the father of a child is unknown to the Board and the mother refuses to reveal his identity, the Board—

(a) shall counsel the mother to attempt to obtain her co-operation, indicating to her—

(i) that the adoption may be delayed,

(ii) the possibility of the father contesting the adoption at some later date,

(iii) that the absence of information about the medical, genetic and social background of the father may be detrimental to the health, development or welfare of the child, and

(iv) such other matters as the Board deems are appropriate in the circumstances,

and

(b) may, if the mother, after counselling, continues to refuse to reveal the identity of the father, make the adoption order without consulting the father if it has no other practical way of ascertaining his identity.

(5) Where the mother of a child provides the Board with a statutory declaration stating that she is unable to identify the father, the Board may make the adoption order without consulting the father if it has no other practical way of ascertaining his identity.

(6) A health board shall, if so requested by the Board, assist the Board in carrying out its functions under this section.”.

7.—Section 34 of the Principal Act (as amended by section 6 of the Adoption Act, 1974) is hereby amended by the substitution of the following for subsections (4), (5) and (6):

Amendment of section 34 (restriction on making arrangements for adoption) of Principal Act.

“(4) No person shall give a child or cause a child to be given to any other person for the purpose of having the child adopted by a person unless—

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- (a) the first-mentioned person is a parent of the child, and
- (b) the person who intends to adopt the child is a relative of the child.

(4A) No person shall receive a child for the purpose of adopting the child unless the person is a relative of the child.

(4B) For the purposes of subsections (4) and (4A), ‘relative’ includes a parent and the spouse of a parent of a child.

(5) A person who contravenes subsection (4) or (4A) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding twelve months or to both.

(6) This section does not apply to—

- (a) an adoption agency, or
- (b) a person with whom a child is placed by an adoption agency.”.

False statements.

8.—The Principal Act is hereby amended by the substitution of the following for section 43:

“43.—A person who knowingly makes any false or misleading statement or furnishes any false or misleading information to the Board, an adoption agency or a person acting on behalf of either of them or aids or abets another person to do so shall be guilty of an offence and, without prejudice to any other penalty to which the person may be liable, shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding twelve months or to both.”.

Offences generally.

9.—The Principal Act is hereby amended by the insertion of the following after section 43:

“44.—(1) A person who contravenes or fails to comply with—

- (a) any rule made under section 5 or regulation made under section 7C, or
- (b) any provision of section 7B, 7E or 7F,

shall be guilty of an offence and, without prejudice to any other penalty to which the person may be liable, shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding twelve months or to both.

(2) Where an offence under subsection (1) is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent or approval of, or to have been attributable to any neglect on the part of, any person who, when the offence was committed, was director, member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body, that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

45.—Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under this Act may be instituted within twelve months from the date of the offence.”.

10.—Section 1 of the Act of 1991 is hereby amended—

Amendment of
section 1
(definitions) of Act
of 1991.

(a) in the definition of “foreign adoption”—

(i) by the substitution of the following for paragraph (a):

“(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 dispensed with was obtained or dispensed with under that law either—

(i) at the time the adoption was effected,
or

(ii) at a subsequent time when, if the adoption which was initially granted did not have the effect in that place of terminating a pre-existing legal parent-child relationship, it was converted into an adoption having that effect by virtue of such consent being obtained or dispensed with under that law (the date on which the adoption was initially granted being construed for the purposes of this Act as the time the adoption was effected),”

(ii) by the substitution of the following for paragraph (b):

“(b) the adoption has, for so long as it is in force, substantially the same legal effect as respects the guardianship of the child in the place where it was effected as an adoption effected by an adoption order,”

and

(iii) by the substitution of the following for paragraph (d):

“(d) the adoption was effected for the purpose of promoting the interests and welfare of the child,”

and

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

“‘place’ means a country (other than the State) 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;”.

Amendment of section 2 (foreign adoptions effected in place of domicile of adopters) of Act of 1991.

11.—(1) Section 2 of the Act of 1991 is hereby amended by the substitution of the following for subsection (2):

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

(2) *Subsection (1)* shall be deemed to have come into operation on the 30th day of May, 1991.

Where adopters' domicile or residence is elsewhere than place of effecting foreign adoption.

12.—(1) The Act of 1991 is hereby amended by the insertion of the following after section 4:

“4A.—A foreign adoption (whether effected before or after the commencement of this section) effected in a place in which neither of the adopters was domiciled, habitually resident or ordinarily resident on the date on which the adoption was effected, but not recognised under the law of the place in which either or both of the adopters were on that date domiciled, habitually resident or ordinarily resident, as the case may be, solely because the law of that place did not provide for the recognition of adoptions effected outside that place, shall be deemed, unless such deeming would be contrary to public policy, to have been effected by a valid adoption order made on that date or on such commencement, whichever is the later.”.

(2) *Subsection (1)* shall be deemed to have come into operation on the 30th day of May, 1991.

Amendment of section 5 (foreign adoptions where adopters ordinarily resident in State) of Act of 1991.

13.—(1) Section 5 of the Act of 1991 is hereby amended—

- (a) in subsection (1), by the substitution of “specified in section 2, 3, 4 or 4A of this Act” for “specified in section 2, 3 or 4 of this Act”, and
- (b) by the substitution of “1992” for “1991” in each place where it occurs in clauses (I) and (II) of subparagraph (iii) of subsection (1) and in subsection (2).

(2) *Subsection (1)* shall be deemed to have come into operation on the 30th day of May, 1991.

Amendment of section 6 (Register of Foreign Adoptions) of Act of 1991.

14.—(1) Section 6 of the Act of 1991 is hereby amended—

- (a) in subsection (2), by the substitution of the following for paragraph (a) (i):
 - “(i) the adoption is a foreign adoption to which any of sections 2 to 4A of this Act applies, or”,

and

- (b) by the deletion of subsection (6).

(2) *Subsection (1) (a)* shall be deemed to have come into operation on the 30th day of May, 1991.

Amendment of section 7 (directions of High Court in relation to entries in Register of Foreign Adoptions) of Act of 1991.

15.—Section 7 of the Act of 1991 is hereby amended—

- (a) in subsection (1), by the substitution of the following for paragraph (b):

“(b) subject to subsection (1A), direct the Board to procure the cancellation of the entry concerned in the Register, or” S.15

and

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

“(1A) The Court shall not give a direction under paragraph (b) of subsection (1) by reason of the fact that an adoption has been set aside, revoked, terminated, annulled or otherwise rendered void under and in accordance with the law of the place where it was effected unless the Court is satisfied that it would be in the best interests of the person who was the subject of the adoption.

(1B) Where the Court gives a direction under paragraph (b) of subsection (1), it may make such orders in respect of the person who was the subject of the adoption as appear to the Court to be necessary in the circumstances and in the best interests of the person, including orders relating to the guardianship, custody, maintenance and citizenship of the person, and any such order shall, notwithstanding anything in any other Act, apply and be carried out to the extent necessary to give effect to the order.”.

16.—Section 9 of the Act of 1991 is hereby amended by the insertion of the following after subsection (3)(b):

Amendment of section 9 (Proof of adoptions effected outside State) of Act of 1991.

“(3A) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the regulation is passed by either House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.”.

17.—Sections 2 to 9 of this Act shall come into operation on the day that is ninety days after the date of the passing of this Act. Commencement.

18.—(1) This Act may be cited as the Adoption Act, 1998.

Short title, collective citation and construction.

(2) The Adoption Acts, 1952 to 1991, and this Act—

(a) may be cited together as the Adoption Acts, 1952 to 1998, and

(b) shall be construed together as one Act.