

Regulatory Impact Assessment
Adoption (Amendment) Bill April 2016

Contents

1. Summary	2
2. Policy Issues to be addressed:.....	2
2.1. Amendment of the Constitution (Children)	2
2.2 Adoption following parental failure.....	3
2.3 Eligibility for adoption.....	4
2.4 Adoption following a previous adoption	4
2.5 Step parent adoption	4
2.6 Children and Family Relationship Act 2015 – Part 11	4
3. Identification of Policy Options.....	5
Option 1 - Do nothing	5
Option 2 - Legislate	5
4. Analysis of Costs	7
5. Enforcement and Compliance.....	8
6. Review	9
7. Publication	9

1. Summary

Summary of Regulatory Impact Statement (RIA)	
Department/Office: Department of Children and Youth Affairs	Title of Legislation Adoption (Amendment) Bill
Stage: Text of Bill	Date: 21 st April 2016
Contact for enquires: Noreen Leahy	Telephone: 01 6473028

2. Policy Issues to be addressed:

2.1. Amendment of the Constitution (Children)

The Thirty-First Amendment of the Constitution (Children) Act 2012 inserting Article 42A into the Constitution was signed into law on 28th April 2015. The Adoption (Amendment) Bill amends the Adoption Act 2010 to make provision by law to reflect Article 42A.

Article 42A of the Constitution relates to adoption as follows:

- *Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.*
- *Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.*
- *Provision shall be made by law that in the resolution of all proceedings - brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.*
- *Provision shall be made by law for securing, as far as practicable, that in all proceedings in respect of any child who is capable of forming his or her own*

views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

2.2 Adoption following parental failure

Where children are in the custody of prospective adopters and there is on-going parental failure by their parents the Adoption Act 2010 provides for the adoption of children including children of marriage in accordance with a High Court order.

However, in such applications to the High Court it has to be proven that the parental failure would continue until the child reached 18 years of age and amounted to a total abandonment of the child. The Court also has to be satisfied that the child was in the custody of the applicants for a minimum period of 12 months immediately preceding the making of the application.

Tusla, the Child and Family Agency has advised, as of December 2015, there were 4,100 children and young people in general foster care, with a further 1,832 in foster care with relatives. While the existing provision primarily focuses on children placed in long term foster care, it affects a number of categories of children for whom adoption may be in their best interests:

- A child placed in foster care, who has limited or negligible contact from the natural parents but “sufficient” contact to guard against a claim of abandonment of parental rights and duties.
- A child, one of whose natural parents has died and the other wishes to adopt the child jointly with a new spouse.
- A child in circumstances where a parent may be struck down by a long-term illness or a disability (clearly rendering the parent incapable of caring for the child) and the parent desires that the child be placed for adoption.

A context where the failure of duty must be complete, final and without any indication of a resumption is considered to be wholly insufficient as regards legislating for the impact or

potential impact on the child. The policy imperative is to ensure that the best interests test, allowing a child of marriage to be adopted, be suitably weighted so that the Court can consider these interests as the paramount consideration notwithstanding the valid rights of parents under the Constitution and the special protection afforded to the family.

2.3 Eligibility for adoption

The Adoption Act 2010 provides that a child must be an orphan, or born of parents not married to each other to be eligible for adoption. It is intended that the proposed legislation would provide that “any child” would be eligible for adoption which is consistent with Article 42A. The retention of these provisions as is, place a restriction on the adoption of a child.

2.4 Adoption following a previous adoption

Section 45 of the Adoption Act 2010 provides for re adoption where a child’s adoptive parents have died. It is intended that the proposed legislation would provide that “any child” would be eligible for adoption which is consistent with Article 42A. The retention of section 45 could be interpreted as creating a restriction on the adoption of a child who was previously adopted.

2.5 Step parent adoption

Step parent adoption is not specifically provided for in the Adoption Act 2010. Currently, a step parent may apply to adopt the child jointly with the child’s parent but the child’s parent is required to relinquish his/her parental rights in the adoption process, and both the step parent and the parent become adoptive parents. Therefore the child’s parent is required to adopt his/her own child jointly with the step parent under the current adoption regime.

2.6 Children and Family Relationship Act 2015 – Part 11

Part 11 of the Children and Family Relationships Act 2015 amends the Adoption Act 2010 to provide for cohabiting couples and civil partners to be eligible to adopt jointly on the same basis as married couples. Following an examination of the Children and Family

Relationships Act 2015, some difficulties in commencing Part 11 as drafted, arose. These difficulties are to be resolved by repealing Part 11 of the Children and Family Relationships Act 2015 and bringing forward the amendments required in the Adoption (Amendment) Bill, to provide for a coherent adoption process for married couples, civil partnered and cohabiting couples.

3. Identification of Policy Options

Option 1 - Do nothing

The Thirty-First Amendment of the Constitution (Children) Act 2012 inserting Article 42A into the Constitution was signed into law on 28th April 2015. If the Department does nothing it will have failed to have given legislative effect to this amendment.

Currently a step parent may apply to adopt the child jointly with the child's parent but the child's parent is required to relinquish his/her parental rights in the adoption process. Both the step parent and the parent become adoptive parents. If the Department does not legislate specifically for step parent adoption then a parent will continue to be required to adopt his/her own child jointly with the step parent of the child.

There are some difficulties in commencing Part 11 as drafted of the Children and Family Relationships Act 2015, as drafted. Therefore if the Department does not repeal Part 11 and bring forward the amendments required it cannot be commenced.

Doing nothing is not a viable option.

Option 2 - Legislate

There is no option other than to bring forward legislation to amend the Adoption Act 2010 (the 2010 Act) to give legislative effect to the 31st Amendment to the Constitution (Children) Act 2012 which was signed into law on 28th April 2015. The primary purpose of the Adoption (Amendment) Bill is to amend the Adoption Act 2010 to provide for

- the adoption of any child, irrespective of the marital status of his or her parents, in circumstances where both parents have placed the child for adoption and where both parents consent to the making of the adoption order;
- a change in the criteria under which the High Court may, in a case of parental failure, make an order authorising the adoption of a child without parental consent; and for
- the best interests of the child to be the paramount consideration in relation to any matter, application or proceedings under the Adoption Act 2010; and, in that regard for the views of the child to be ascertained by the Adoption Authority or by the court and for those views to be given due weight, having regard to the age and maturity of the child.

The Adoption (Amendment) Bill also provides for the adoption of any child. Therefore the retention of section 45 could be interpreted as creating a restriction on the adoption of a child who has previously been adopted. This is inconsistent with the policy intent of the Bill. It is necessary to repeal section 45.

The Bill also provides for the adoption of a child solely by his or her step parent (where the other parent is the spouse or partner of the proposed adopter). The provisions regarding step parent adoption will provide where a child is to be adopted by his/her step parent, the parent who is placing the child for adoption will not lose all parental rights and be freed from all parental duties in relation to his or her child as a result of the adoption process. He/ she will not be required to adopt his or her own child.

A “step parent” is a spouse in a married couple, or a partner in a couple who are civil partners of each other, or a partner in a cohabiting couple, for a period of not less than three years. The child must have a home with the parent and the step parent for a continuous period of not less than 2 years. The Adoption Authority will have discretion in relation to the 2 years qualifying period to be exercised in the best interest of the child.

4. Analysis of Costs

It is not anticipated that there will be additional costs to the Exchequer. In considering cost implications it must be appreciated that the purpose of the amendments are to provide greater flexibility under adoption law to secure the best interests of children. Accordingly, it is not the purpose of the legislation to drive further adoptions, per se, rather to ensure an appropriate balance is accorded to the needs and interests of the child in those cases where adoption is the most feasible way forward.

There are a number of children in foster care, who will become eligible to be adopted on foot of the enactment of this legislation. However, it cannot be presumed that adoption will be appropriate in all of these cases as consideration must be given to the wishes of the individual child, the wishes of the foster carers and on-going involvement by birth parents. No increased costs are anticipated and there is some potential for savings due to a decrease in the number of children remaining in long-term foster care. However, it is noted there is provision for the foster care allowance to be retained and such cases will therefore be cost neutral.

The proposals for step parent adoption are not expected to result in any additional costs to the Exchequer. Currently, any person can apply to Tusla for an assessment of eligibility and suitability to adopt and it would not be possible to establish if any potential increase is directly related to the new provisions for adoption in the Bill. It is anticipated that any additional costs arising from any increase in assessments, will be offset by a reduction in time and resources required to undertake an assessment for step parent adoptions. In these assessments, currently both the existing parent and the step parent must apply for an assessment of eligibility and suitability, whereas only the step parent will be required to apply following enactment of this legislation.

In considering possible savings over the longer term, the reforms in the area of abandonment have the potential to afford greater ease to those carers who choose to adopt a child in their care thus reducing costs to the State. The application of less onerous criteria for the authorisation of adoptions by the High Court may result in proceedings that are less complex and demanding of time, thereby having a positive impact on legal costs arising.

It is considered that the introduction of the legislation should have a mainly neutral effect on social work resources. Consequent to the amending legislation it is anticipated that, in the case of individual children in foster care, there may be some refocusing of social work efforts on the possibility of adoption as a more immediate or feasible prospect. However, additional expenditure on training and communications support may be necessary at the initial stages in anticipation of increased enquiries, about the implications of the legislation, particularly from parents whose children are in long term care.

5. Enforcement and Compliance

Central Government and its agencies, most notably Tusla, the Child and Family Agency, share responsibility for promoting child safety and welfare. The Department of Children and Youth Affairs has a responsibility to develop the legislative and policy framework under which the child protection and welfare services are delivered and reviewed.

Primary responsibility for the implementation and enforcement of the Adoption Act 2010 lies with the Adoption Authority of Ireland which is responsible for registering and regulating accredited bodies, for granting declarations of eligibility and suitability to prospective adopters and making adoption orders.

Part 12 Chapter 3 of the Adoption Act 2010 sets out a range of mechanisms whereby the Adoption Authority of Ireland is accountable to the Minister for Children and Youth Affairs.

As regards Tusla, the Child and Family Agency's involvement in the adoption process, Part 4 Chapter 4 of the Adoption Act 2010 requires Tusla to establish Adoption Committees and prescribes their functions to include advising and assisting the Authority in the performance of its functions under the Act.

Part 15 Chapter 2 of the Adoption Act 2010 details the offences and penalties under the legislation for breach of and failure to abide by the provisions of the Act.

The Adoption Act 2010 also provides for the accountability of the Adoption Authority of Ireland to the Public Accounts and Oireachtas Committees.

It is also to be acknowledged that sustained or persistent failures of enforcement are unlikely to occur due to the ease with which failures could result in judicial action and the resulting costs which would be incurred by the State. For example, failing to lawfully obtain or dispense with the consent of a parent prior to their child being adopted could lead to legal action and the subsequent adoption being declared invalid.

6. Review

The functions of the Adoption Authority of Ireland include the following:

- at the request of the Minister, providing general advice to him or her about adoption matters; and
- undertaking or assisting research projects or activities relating to adoption services.

These provisions provide sufficient scope for the Minister or the Adoption Authority of Ireland to cause a review of the operation and impact of the amending legislation after it has been in effect for a sufficient period of time.

7. Publication

This RIA will be published on the Department of Children and Youth Affairs website in conjunction with the Adoption (Amendment) Bill.

Adoption Policy Unit

21st April 2016