



Adoption Rights Alliance

REGAINING IDENTITIES, HISTORY AND RIGHTS FOR ADOPTED PEOPLE

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Submission to
Joint Oireachtas Committee
on Health and Children
on the
Proposed 2009 Adoption Bill

Background/About Adoption Rights Alliance

Adoption Rights Alliance is a group of people affected by adoption who have come together to ensure that the Irish government enshrines the rights of the adopted child and Ireland's 50,000 adult adopted people in the proposed 2009 Adoption Bill.

In 2003, along with other people affected by and interested in adoption, a group of adult adopted people took part in an extensive adoption legislation consultation process arranged by Brian Lenihan TD, the then Junior Minister with responsibility for children. The consultation process was designed to gather the wishes of adopted people on the important subject of post-adoption rights and services; an area almost completely ignored by the primary 1952 legislation. Hundreds of submissions were made and the overwhelming message was for state funded and state run search and reunion services and for new legislation enshrining the rights of adopted people to obtain their birth certificates and to trace natural family members.

The proposed 2009 Bill sponsored by Minister Barry Andrews at the Department of Health and Children completely ignores post adoption rights and services and reduces adoption from a "life-long event" to a base contractual process and does not include provision for adopted people to know that they are adopted!

The legislation has merely shoehorned the provisions of the Hague Convention concerning intercountry adoption into the old 1952 statute and adopted people continue to be denied access to their family histories, birth certificates and early hospital and/or care records. Equally disturbing is that there is zero provision for post-adoption support services for families who have recently adopted.

On June 12th 2009 the Irish government pledged to cherish all the children of the state equally but the 2009 Adoption Bill, a bald Charter for Adoption under the stewardship of Minister Barry Andrews, allows 57 year old statute to continue discrimination against 50,000+ adopted people and their families.

Adoption Bill 2009 General Comments

- The Bill completely lacks the sense that adoption is a measure of last resort and fails to understand that adoption is a permanent solution to resolvable circumstances – i.e. poverty. The proposed 2009 Adoption Bill retains at its core the exploitative nature of the 1952 Domestic Adoption Act but it seeks to extend its remit to the removal of impoverished overseas children from their natural families – albeit in a sanitized fashion. Evidence of this is the replacement of the phrase Adoption Agency with the bland “accredited body”, which denies all reference to adoption.
- The bill upholds the existing discriminatory statute (i.e. the 1952 Adoption Act) in apportioning diminished rights to non-marital children with regard to their origins. For this reason alone it should fall.
- There is absolutely no mention of tracing and information services in the Bill!
- The right of an adopted person to know they are adopted is not covered in the Bill
- The right of an adopted person to access his/her birth certificate is not covered in the Bill
- The National Adoption Contact Preference Register (NACPR) has been given no statutory basis in the Adoption Bill 2009
- Apart from the Hague Convention which is an appendix to the Bill, absolutely no mention is made to the rights of the child, yet parental rights are mentioned a number of times and fathers’ rights and religion are highlighted in entire sections.
- Adopted people must be represented on the Adoption Authority to safeguard the rights of adopted people
- The Bill allows vested interests (prospective adoptive parents, overseas intermediaries) to present information on a child’s background and identity without any onus on the Adoption Authority to verify the authenticity of that information.
- The Bill does not preclude the Adoption Authority from pursuing bi-lateral agreements – the dangers of which were highlighted in recent revelations about Vietnamese adoptions. The Irish Government should seek to implement a high water mark standard with regard to foreign adoptions and only transact with countries, which have fully implemented Hague.
- Given the opportunities to traffic children illegally into the country, Immigration Services should work closely with the Adoption Authority to ensure that all children adopted from overseas are registered at the point of the entry and avoid the risk of persons posing as prospective adopters taking advantage of lax regulations.
- The absence of Freedom of Information provision is disturbing given that the most recent corporate plan (2004-2007) published by the Adoption Board expressly laid out their key principles regarding “accountability, rule of law, transparency and citizen participation”.
- Language – as previously acknowledged by the Adoption Board the term “natural” mother/father is preferred over “birth” mother/father

Adoption Bill 2009 Amendments

Section 4

(References to making arrangements for adoption.)

Comments

We believe it is in the best interests of the child for the amendment below to be upheld.

Amendments

In page 17, between lines 39 and 40, to insert the following:

“(e) providing information, advice and counselling to a birth parent wishing to consider placing a child for adoption;”.

At Report Stage (Put, declared lost)

In page 18, between lines 5 and 6, to insert the following:

“(j) providing post placement support, advice and counselling to birth and adoptive parents;”.

At Report Stage (Put, declared lost)

Section 5

“5.—In addition but without prejudice to section 4, in this Act, references to making arrangements for the adoption of a child shall be read in relation to an intercountry adoption as including references to the following activities:

(c) providing assistance to prospective adopters habitually resident in the State in relation to any legal matter that arises in the child’s state of origin and relates to the effecting of the adoption in that state or to the release of the child from that state for the purpose of adoption in the State;”

Comments

Prospective adopters are given legal assistance, yet no guardian ad litem is provided for the child.

Amendments

“(h) providing a guardian ad litem for the child who is about to be adopted.”

Section 13

“13.—An accredited body shall not place a child for adoption unless—

(a) the child has attained the age of 6 weeks,

(b) it does so only for adoption purposes under this Act, and 10

(c) it does so in accordance with this Act and the Hague Convention,

in particular with Article 17 (which relates to when the state of origin may entrust a child to prospective adopters)."

Amendment (Put at Committee & Report Stage)

"(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,".

At Committee Stage (withdrawn, by leave), At Report Stage (put, declared lost)

Section 14

(Explanation to mother or guardian as to effect of adoption)

Comments

- Much is made of the explanation to the mother in terms of how the adoption will affect her rights, but nothing is mentioned regarding how the adoption will affect the rights of the child, nor is any mention made of any obligation the mother has in terms of medical information at the very least.
- The amendment below was submitted at Committee Stage, was put and declared lost. It was included at Report Stage, but not moved. Given the level of coercion that we know has happened in the past we believe that this amendment is essential.

Amendments (Committee Stage)

*In page 20, paragraph (b), line 30, after "effect" to insert the following:
"stating that she has been fully counselled as to the effect of her decision, that she understands the effect of her decision and that she has made her decision freely".*

At Committee Stage (Put, declared lost)

Section 16

(Right of father who wishes to be consulted.)

Comments

It is good to see that some fathers' rights are enshrined in this legislation yet there is no corresponding regard to a child's right to know their natural father.

Section 17

"(2) Subject to this section and section 18, where an accredited body proposes to place a child for adoption, the accredited body, before placing the child for adoption, shall 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.”*

Comments

Hague states:

“Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,”

The Adoption Board should have legally binding guarantees that the extended family of the child has been approached about raising the child before overseas adoption was considered.

Amendments

“(7) Subject to this section and section 18, where an accredited body proposes to place a child for adoption, the accredited body, before placing the child for adoption, shall take such steps as are reasonably practicable to consult the extended family of the child for the purpose of—

- (a) informing them of the proposed placement,*
- (b) ascertaining whether they are willing to raise the child.”*

Section 18

“(5) If the identity of the father of a child is unknown to an accredited body and the mother refuses to reveal the father’s identity,”

Comments

Natural mothers must be obliged to identify the child’s father on the child’s birth certificate before an adoption may proceed. This is the only measure which will safeguard the child’s basic human right of knowing their family of origin.

Amendments

“18 If the identity of the father of a child is unknown to an accredited body and the mother refuses to reveal the father’s identity , the accredited body

- (a) shall counsel the mother in order to attempt to obtain her co-operation, indicating to her -*
- (i) that the adoption will not proceed,*

Section 19

“19.—In any matter, application or proceedings before—

- (a) the Authority, or*
- (b) any court,*

relating to the question of the arrangements for the adoption of a child, for the making of an adoption order or for the recognition of an intercountry adoption outside the State, the Authority or the court, in deciding that question, shall regard the welfare of the child as the first and paramount consideration.”

Comments

The amendment below was put at Committee Stage where it was withdrawn by leave and again at Report Stage where it was put and declared lost. We wish to remind the Committee of Hague’s principle that wherever possible the child should be kept with his/her family of origin and it is essential to enshrine this principle in the 2009 Adoption Bill. By losing this amendment, the bill is at odds with Minister Andrew’s own statements Launch of the Adoption Bill 2009 – 23-01-09 “A core principle of the Hague Convention is that intercountry adoption should be child centred. That is in all stages of the process the child’s interests must be paramount.”

Amendments

*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”.*

At Committee Stage (withdrawn, by leave), At Report Stage (put and lost)

Section 19 (2nd Senate Amendment)

Comments

The amendment below was put at Committee Stage, but withdrawn. We are aware of a large number of cases where the lack of medical information has caused huge problems (in many cases, life threatening) for adopted people, their children and grandchildren. It is imperative for the rights of the adopted person that this amendment should be upheld.

Amendments

*In page 24, between lines 12 and 13, to insert the following subsection:
“(2) It shall be the duty of the Authority to obtain, where possible, the medical records of the natural parents of adopted children and to make such records duly available to the adopted children or their guardians through the HSE.”.*

At Committee Stage (withdrawn, by leave)

Section 20

20.—(1) *On the application of a person, or persons if they are a married couple, desiring to adopt a child, the Authority may make an adoption order for the adoption of the child by the applicant or applicants, as the case may be.*

Comments

The amendment below was included at Report Stage but not moved because the senators weren't present. We believe it is unquestionably in the best interests of the child to reintroduce this amendment .

Amendments

*In page 24, line 19, after “be.” to insert the following:
“The Authority may attach to the adoption order, conditions in regard to access arrangements in respect of maintaining meaningful contacts for the child.”.*

Section 26

“26.—(1) The Authority shall not make an adoption order without the consent of every person, being the child’s mother or guardian or other person having charge of or control over the child, unless the Authority dispenses with the consent—

(b) in accordance with an authorisation of the High Court by order under this section, if—

*(i) the person whose consent is necessary is not a ward of court, and
(ii) the High Court is satisfied that the person is incapable by reason of mental infirmity of giving consent or cannot be found,”*

Comments

- The excuse of “incapable by reason of mental infirmity” was misused in the past to remove children from the care of their mothers. A guardian ad-litem must be appointed for a mentally incapacitated natural mother whose consent is being dispensed with.
- The possibility of the extended natural family raising the child must also be fully considered.

Amendments

(b) (iii) the extended natural family of the child is unwilling to raise him/her

Section 30

“(5) If the identity of the father of a child is unknown to the Authority and the mother refuses or is unable to reveal the father’s identity, the Authority shall counsel the mother,”

Comments/Amendments

See above, Section 18

Section 31

Comments

The amendments below were submitted at Committee and Report Stage. We have experience of many cases where so-called “open” adoption arrangements (unbinding) have failed and contact has dwindled over the years resulting in some cases to the removal of the child overseas. We believe it is in the best interests of the child to uphold this amendment.

Committee Stage

In page 28, before section 31, to insert the following new section:

“31.—(1) In this section, “a contact order” means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other.

(2) Where the father is consulted under section 30 (3) of this Act, the Court may make a contact order in favour of the father, on such terms as the Court may see fit.”

Committee Stage (Withdrawn by leave), Report Stage (Withdrawn by leave)

Section 32

Comments

It is incredible that children’s rights nor Tracing & Reunion are not mentioned in the entire Bill yet religion is deemed worthy of an entire section.

Section 33

“33.—(1) The Authority shall not make an adoption order, or recognise an intercountry adoption effected outside the State, unless—

(c) the applicant, notwithstanding that he or she does not fall within paragraph (b), satisfies the Authority that, in the particular circumstances, the adoption is desirable and in the best interests of the child.”

Comments

- The Bill proposes to allow prospective adopters to adjudicate whether the adoption is in the best interests of the child. With all due respect to prospective adopters, even with the best of intentions, they must be regarded as biased.
- Independent scrutiny of this evidence is absolutely necessary, especially given what happened in the Tristan Dowse case.
- What happens if the adoption is found to be unacceptable, especially when the child has already been brought into Ireland to live?

Amendments

Replace

“(c) the applicant, ..., satisfies the Authority that, ...the adoption is desirable and in the best interests of the child.”

with

“(c) the Health Service Executive carrying out an assessment of eligibility and suitability in relation to the applicants , satisfies the Authority that in the particular circumstances, the adoption is desirable and in the best interests of the child.”

Section 36

“36.—(1) The Health Service Executive shall establish one or more adoption committees.

(2) The functions of an adoption committee are—

(a) to advise and assist the Authority in the performance of its functions under this Act and section 6 of the Child Care Act 1991, and

(b) to make recommendations to the Authority under section 39 concerning the issuance to applicants of declarations of eligibility and suitability.”

Comments

We believe that it is imperative that adopted people should be represented on these committees, in order to represent the views of the child. Hitherto, adopted people have not been represented on any Health Board committee or at the Adoption Board.

Section 43

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

Comments

We believe that it is absolutely essential that a guardian ad litem should be present to represent the interests of the child.

Amendments

“(k) A guardian ad litem, to represent the interests of the child”

Section 44

“44.—(1) In circumstances in which it is lawful to make an adoption order, the Authority, on application for such an order, may—

(a) adjourn the application for the adoption order, and

(b) make an interim order,

giving custody of the child to the applicant for a probationary period not exceeding 2 years.”

Comments

We believe this section is dangerously ambiguous. We seek clarification of what circumstances would be considered appropriate to grant a probationary period of custody? We believe this may create instability for the child and that there is the potential for a repeat of the “Baby Ann” case.

Section 44 (Senate Amendments)

(2) The Authority may attach, to the interim order, conditions in regard to the maintenance, education and supervision of the welfare of the child.

Comments

The amendment below was unsuccessfully submitted at Report Stage in the Seanad. We believe that it is in the best interests of the child to uphold this amendment.

Amendments

In page 36, to delete lines 21 to 23 and substitute the following:

“(2) The Authority may attach, to the interim order, conditions in regard to the maintenance, education and welfare of the child and in regard to access arrangements in respect of maintaining meaningful contacts for the child.”

At Report Stage (Withdrawn by leave)

Section 45

“45.—Where a child’s adopters have died—

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

(b) for the purposes of the order, the child shall be taken to be the lawful child of the deceased adopters.”

Comments

We believe that this section is too loose and concerns itself solely with the technicality of a child being re-adoptable, paying no attention whatsoever to the child’s welfare.

Amendments

“(c) where the child is to be re-adopted outside the original adoptive family, every effort shall be made to ensure that the paperwork concerning the natural family and original adoptive family are clearly and efficiently maintained so as to guarantee that any future search and reunion efforts are without complication.

(d) where the child is to be re-adopted outside the original adoptive family, every effort shall be made to give the natural family the option of raising the child”

Section 46

“46.—(1) For the purposes of any proceedings before it under this Act, the Authority may—

- (a) summon witnesses to attend before it,*
- (b) examine on oath the witnesses attending before it,”*

Comments

Any person summoned to attend a proceeding of the Adoption Authority should be afforded legal representation at the cost of the Adoption Authority. Historically, hearings involving adopted people have been highly adversarial and bullying in nature. Merely stating that the Authority should aim to hold hearings in a non-adversarial way (Section 96, 4) is not adequate and does not go far enough.

Section 51

(3) However, if the court decides, in accordance with subsection (2), to determine the question of the custody of the child, the court shall do so subject to section 3 of the Guardianship of Infants Act 1964.

Comments

The amendment below was unsuccessfully put at Report Stage. Although Minister Barry Andrews stated that it was implicit that the child’s welfare was paramount we believe that the amendment should be upheld.

Amendments

“(3) However, if the court decides to determine the question of the custody of the child, the court shall do so having regard for the welfare of the child as the first and paramount consideration.”.

Section 58

“58.—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 adopters born to them in lawful wedlock, and

(b) with respect to the child, the mother or guardian of the child, and the child’s father, shall, subject to section 57, lose all parental rights and be freed from all parental duties.”

Comments

- Differentiating between marital and non-marital children is discriminatory. References to “lawful wedlock “ should be removed.
- All loss of parental rights and duties should be made with regard to the best interests of the child. Adopted people believe that natural parents should retain an obligation to provide information on the adopted person’s family of origin as a minimum.

Amendments

In (b) replace the word “freed” with “lose” all parental rights and duties”.

And add

“with the exception of the duty to provide family or medical information to the adopted person”

Section 70

“70.—A child may be transferred from the State to another contracting state for the purpose of adoption in that state in accordance with the Hague Convention, but such a transfer may take place only—“

Comments

It is difficult to imagine a circumstance where it could be justified, in this day and age, for a child to be removed from Ireland for (a non-family) adoption.

Section 73

“73.—(1) The Authority, with the prior consent of the Minister and having regard for the principles of the Hague Convention, may enter into discussions with any non-contracting state concerning the possibility of the Government entering into a bilateral agreement with that state.”

Comments

- If another state isn’t signed up to Hague, it is difficult to see how they can comply with any bilateral agreement signed up to in the spirit of Hague as they are not party to Hague usually for good reason.
- The phrase “having regard for the principles of the Hague Convention” is too loose – in all other instances where Hague is referred to in the Bill, the phrase “in accordance with the Hague Convention” – why is it changed in this case?
- It begs the question as to why we should ratify Hague if we also intend to pursue bi-lateral agreements and continue a two tier system.

Amendments

“73.—(1) The Authority, may not enter into discussions with any non-contracting state.”

Section 80

“80.—A child may be transferred from the State to a non-contracting state for the purpose of adoption in that state in accordance with a bilateral agreement, but such a transfer may take place only in accordance with the agreement,”

Comments

As bad as it may seem to have a child removed from Ireland to a contracting state it is inconceivable to remove a child to a non-Hague country and we believe this section should be removed completely.

Section 82

“82.—(1) Where a child enters the State for the first time after his or her adoption by adopters habitually resident in the State, they shall notify the Health Service Executive and the Authority of the child’s entry as soon as practicable and, in any event, not later than 3 months after the date of entry.”

Comments

- What are the consequences of registration following the three month deadline?
- We believe there is a case for Immigration Services to notify the Adoption Authority of such children entering the state but the onus on the Authority to ensure that prompt registration occurs.
- We are also aware of adoptions that have broken down and therefore there needs to be a register of failed/dissolved adoptions:
 - so that if the couple tries to adopt again, the Authority is aware of it, as this surely needs to be considered in terms of the couple’s eligibility
 - for research purposes, which would prove valuable to the Authority in assessing future adoptions

Amendments

“(3) Any previously unregistered children shall be registered not later than 3 months from the enactment of this Bill.

(4) Where an adoption has broken down and the child returned to the country of origin

- (i) the adoptive parents shall inform the Authority of the dissolution of the adoption and the circumstances surrounding it not less than 3 months after the return of the child and-*
- (ii) the Authority shall maintain a register of dissolved intercountry adoptions, including the circumstances surrounding such dissolutions”*

Section 84

“(4) If the date of the adopted child’s birth is unknown—

(a) the Authority shall determine the probable date of birth, and

(b) that date shall be entered in the Adopted Children Register as the adopted child's date of birth."

Comments

It is unthinkable that no provision has been made to flag in the register the fact that the date of birth is not the actual date of birth but is merely one approximated by the Authority. Such disregard for data integrity will severely impact the chances of a successful outcome by an adopted person and/or natural parents who may be tracing in the future.

Amendments

"(c) the Authority shall make note in the Adopted Children's Register and the Index to the Adopted Children's Register that the date of birth has been approximated.

(d) the adoptive parents of the child and the Authority shall ensure that the child is made aware of the status of his/her date of birth."

Section 85

"(3) Subject to subsection (4), an tArd-Chlaraitheoir shall, on application by a person to him or her in that behalf in writing and—

(a) on payment to him or her of the prescribed fee, search the Adopted Children Register and the index to that Register,"

Comments

Currently, the index to the Adopted Children's register is a publicly available source and is open to public inspection at the GRO on payment of a fee. Such unfettered access was guaranteed by former Minister for Children Brian Lenihan in 2003. If the above section represents a diminution of this right, it must be amended.

1952 Act

Section 22, paragraph (9) reads

"An tArd-Chláráitheoir shall keep at his office an index to the register; and persons shall be entitled to search that index and to have a certified copy of an entry in the register or of items contained in the entry on the same terms and conditions in all respects as to fees and otherwise as are applicable under the Births and Deaths Registration Acts, 1863 to 1952, or any other enactment in respect of the register of births; and such fees shall be collected and disposed of in the same manner as fees payable under the said recited Acts."

Amendment

Insert

"persons shall be entitled to search that index and to have a certified copy of an entry in the register or of items contained in the entry on the same terms and conditions in all respects as to fees and otherwise as are applicable under the Births and Deaths Registration Acts, 1863 to 1952, or any other enactment in respect of the register of births; and such fees shall be collected and disposed of in the same manner as fees payable under the said recited Acts."

after

"on payment of the prescribed fee"

Section 86

(Separate index of connections between Adopted Children Register and register of births.)

Comments

It is unthinkable that the State would seek to prevent consenting adults from releasing data to one another. This is indicative of the secrecy and lies, which continue to cloud adoption and makes adopted people highly suspicious of the legislators' motives. In our opinion, this could leave the legislation open to a legal challenge.

Amendments

*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 to be established by the Authority that the information can be given".*

Committee Stage (Withdrawn by leave) Report Stage (Put & declared lost)

Section 88

(Privacy of adoption records)

Comments

It beggars belief that 6 years on from an extensive government consultation process where adopted people, natural parents, adoptive parents and social workers overwhelmingly called for the opening up of adoption records that Minister Andrews has retained the 57 year old requirement for adopted people to go to the High Court to obtain family information.

This flies in the face of best international practice and reveals the Department of Health as alarmingly retrograde and unaware of trends that have been enjoyed by adopted people in the UK for the last 36 years.

Section 89

"89.—(1) The Minister for Social and Family Affairs may, following consultation with the Minister, by regulations under this Act, provide for the issue by an tArd-Chlaí raitheoir, as respects any entry in the Adopted Children Register, of a certificate of such particulars contained in the entry as may be specified in the regulations.

(2) A certificate referred to in subsection (1) may not disclose that the person to whom the certificate relates is an adopted person."

Comments

- The extract from the Adopted Children's Register, which is used by adopted people in lieu of a birth cert must not purport to be a birth cert and it should clearly state that it reflects details of the person's adoption. To pretend otherwise will facilitate those adoptive parents who do not wish to disclose that their child is adopted.

- We believe that if Minister Andrew’s department continues to pursue policies, which actively prevent adopted people from knowing they are adopted, the legislation will be subject to legal challenge.

Amendments

Delete section 2 in its entirety.

Section 90

(Register of Intercountry Adoptions)

“(3) The following persons may apply to the Authority to enter particulars of an intercountry adoption effected outside the State in the register of intercountry adoptions:

- (a) the adopted person;*
- (b) a person by whom the adopted person was adopted;*
- (c) any other person having an interest in the matter.”*

Comments

- Adopted people fail to understand why there is no Index to the Register of Intercountry Adoptions as exists for Domestic Adoptions. The lack of such an index only serves to thwart the efforts of an overseas natural mother who may wish to trace her child.

Section 90 (Senate Amendments)

Comments

The amendment below was unsuccessfully proposed at the Seanad. We understand that the motivation behind it was to help with tracing enquiries and it is only fair and sensible to uphold the amendment.

Amendments

In page 61, after line 44, to insert the following:

“(12) (a) An tArd-Chlaraitheoir shall keep an index to make traceable the connection between each entry in the Register of Foreign Adoptions and identifying information regarding the child’s original identity, including country of birth.

(b) The index kept under paragraph (a) shall not be open to public inspection, and no information from that index shall be given to any person except by order of a court or of the Authority.”

At Report Stage (Withdrawn, by leave)

Section 93

“93.—(1) Documents, duly authenticated, that purport to be copies of the documents by which an intercountry adoption effected outside the State was made—

*(a) are deemed without further proof to be true copies of the documents unless the contrary is shown, and
(b) are admissible as evidence of the adoption.”*

Comments

- Given the level of corruption in intercountry adoption, this sort of blind trust is outrageous. What does “duly authenticated” mean?
- Why would an adoptive parent not hold and be able to present original documents?

Section 96

“96.—(1) Without prejudice to the functions assigned to the Authority under this Act or any other enactment, the functions of the Authority include the following:

(f) maintaining the register of accredited bodies; and”

Comments

- Maintaining an A4 list of accredited bodies, diminishes the true role of the Adoption Authority, which is to ensure that all Adoption Agencies operate within the Authority’s standardised framework (which we understand some adoption agencies are refusing to work to in 2009)
- A principle function of the Authority should be to ensure all adoptions are ethical and legal
- A principle function of the Authority should be to facilitate the provision of a National Adoption Information and Tracing Service to adopted people and natural parents (i.e. place NAITS on a statutory footing).

Amendments

“(f) maintaining the register of accredited bodies and ensuring they operate within the standards of the Standardised Framework for the Provision of a National Information and Tracing Service

(h) facilitating a National Adoption Information and Tracing Service”

Section 96 (Amendments put in Senate)

Comments

The first amendment below was proposed at Committee and Report Stage, where it was declared lost. We find it alarming that the amendments below were not upheld and we urge the committee to address this matter.

Amendments

*In page 65, subsection (1), between lines 10 and 11, to insert the following:
“(d) promoting the development of post adoption services;”.*

Committee Stage (Withdrawn by leave) Report Stage (Declared lost)

*In page 65, to delete lines 11 and 12 and substitute the following:
“(d) undertaking or assisting in research projects and activities relating to adoption and post adoption services;”.*

Report Stage (Not moved)

*In page 65, 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;”.*

Report Stage (Not moved)

*In page 65, between lines 17 and 18, to insert the following:
“(h) promoting the development of intermediary, information and tracing services for birth families and adopted persons.”.*

Report Stage (Put, declared lost)

Section 98

“98.—(1) The Authority shall consist of 7 members, being the chairperson, the deputy chairperson and 5 ordinary members, appointed by the Minister in accordance with this section.”

Comments

It is unthinkable that after decades of adoptive parents' representation on the Adoption Board, that provision is not now being made to ensure that adopted people and natural parents are represented. In subsection 4, the subject of gender balance is given consideration, yet adequate representation of people most affected by adoption is not given even the slightest consideration.

We are highly offended that after many years of direct involvement with previous Ministers for Children and the Adoption Board – where we gave freely of our time and experience - that no official from either department has seen fit to make this recommendation themselves; such crass oversight reinforces the widely held view amongst adopted people that the Irish government has a backward agenda with regard to Post Adoption issues.

We strongly endorse the amendments cited below and we make our own further suggestion below.

Report Stage Amendments Already Submitted

80. *In page 66, between lines 19 and 20, to insert the following:
“(f) a person who has been the subject of a domestic adoption who shall be over 21 years at the time of their appointment to the Authority, and
(g) a person who has been the subject of an inter-country adoption who shall be over 21 years at the time of their appointment to the Authority.”.*
—Senators Frances Fitzgerald, Maurice Cummins

81. *In page 66, between lines 19 and 20, to insert the following:*

“(f) one shall be a person with direct personal experience of adoption, namely an adopted person over the age of 18 years, a birth parent, an adoptive parent.”.
—Senators David Norris, Ivana Bacik .

In page 66, subsection (3), between lines 19 and 20, to insert the following:

*“(f) a person who has been the subject of a domestic adoption who shall be over 21 years at the time of their appointment to the Authority, and
(g) a person who has been the subject of an inter-country adoption who shall be over 21 years at the time of their appointment to the Authority.”.*
—Senator Frances Fitzgerald

Committee Stage (Deemed out of order) Report Stage (Deemed out of order)

Further Suggested Amendment

“98.—(1) The Authority shall consist of 10 members, being the chairperson, the deputy chairperson, 5 ordinary members and 3 members with direct experience in adoption as described in subsections f-h of this section; all of whom shall be appointed by the Minister in accordance with this section.....

*(f) one shall be an adopted person over the age of 18 years
(g) one shall be a natural parent
(h) one shall be an adoptive parent”*

Section 101

(Committees of Authority)

Comments

It is important that the voice of adopted people should always be heard by the Authority and therefore it would be prudent to ensure that adopted people are represented on Committees of the Authority.

Amendments

“(5) At least one committee established by the Authority shall be made up of or include adopted people and natural parents and shall have the purpose of reporting to the Authority concerning matters involving accredited bodies and other issues.”

Section 112

(Code of Governance)

Comments

There is no mention of Freedom of Information in the Bill at all. Given the past practices of the Adoption Board it would be prudent to ensure that the new Authority should be covered under the Freedom of Information Act. The absence of such provision is disturbing given that the most recent corporate plan (2004-2007) published by the Adoption Board

expressly laid out their key principles regarding “accountability, rule of law, transparency and citizen participation”. If the Authority intends to deviate from these principles we were not informed.

Amendments

“(e) The activities of the Authority shall be covered under the Freedom of Information Act 1997, notwithstanding the provisions of Section 119.”

Section 117

Comments

- Provision should be made to ensure that the Authority’s Annual Report depicts a fair and accurate picture of its activities and matters concerning adoptions in Ireland.
- There is a lack of adequate information concerning intercountry adoptions, therefore it would be prudent to include a breakdown of intercountry adoptions, including whether they were Hague or non-Hague adoptions.
- Provision should be made to include statistics concerning complaints received about the Adoption Authority and about accredited bodies.

Amendments

“(j) a breakdown of intercountry adoptions, detailing whether they were with contracting or non contracting states

(k) statistics detailing the number and nature of complaints received by the Authority about the Authority

(l) statistics detailing the number and nature of complaints received by the Authority about accredited bodies”

Section 119

(Prohibition against unauthorised disclosure of confidential information.)

Comments

Care needs to be taken to ensure that adoption agencies do not abuse or misinterpret the meaning of this section.

Amendments

“(4) Diligence and discretion should be applied by employees of the Authority in the enforcement of this section to ensure it complies with the principles outlined in the standards of the Standardised Framework for the Provision of a National Information and Tracing Service.”

Section 126

“126.—(1) The Adoption Societies Register kept under section 35 of the Adoption Act 1952 by An Bord Uchtala is continued in being and, on and after the establishment day, is to be—

- (a) known as the register of accredited bodies, and*
- (b) kept and maintained under this Act by the Authority. “*

Comments

It is outrageous that those Adoption Societies currently registered should transfer without question to the Register of Accredited Bodies. This is an ideal opportunity to ensure that adoption agencies comply with best practice and only those agencies deemed to pass stringent standards should have their registration continued.

Amendments

“(5) Adoption agencies previously registered on the Adoption Societies Register shall not be registered on the register of accredited bodies without submitting a detailed application as prescribed in section 127 and subject to the provisions of section 130.”

Section 130

“130.—The Authority may cancel the registration of an accredited body in respect of any or all of the activities for which it is registered if—

- (a) there are grounds on which the Authority would be entitled or required to refuse an application for the registration of the accredited body,*
- (b) it appears to the Authority that this Act is not, or the regulations under section 151 are not, being complied with by the accredited body, or*
- (c) an offence under this Act is committed by the accredited body or by any person acting on its behalf.”*

Comments

- Does (a) mean they can refuse to register the agencies during the automatic transfer of the Register of Adoption Societies to the register of accredited bodies?
- The whole section needs to be tightened up with concrete reasons for cancellation of registration.
- A concrete list of offences must be published including but not limited to those listed under Amendments below, e.g. the facilitation of illegal adoptions (e.g. Saint Patrick’s Guild; Sacred Heart Bessboro); the filing of false birth records (where the adoptive parents are registered as the natural parents of the adopted child); the provision of false information to an adopted person or natural parent making an enquiry (e.g. Saint Patrick’s Guild, Sacred Heart Bessboro); the refusal or inability to provide an adequate Search & Reunion service i.e. waiting lists of up to 3 three years are wholly unacceptable.

Amendments

“(d) persistent non-compliance with the Standardised Framework for the Provision of a National Information and Tracing Service occurs.

(e) the facilitation of illegal adoptions

(f) the filing of false birth records (where the adoptive parents are registered as the natural parents of the adopted child)

(g) The provision of false information to an adopted person, natural parent, adoptive parent or sibling making an enquiry

(h) The refusal or inability to provide an adequate Search & Reunion service “

Section 145

“145.—(1) A person who is—

(a) an adopter,

(b) a prospective adopter,

(c) a parent, or

(d) a guardian,

of a child shall not receive or agree to receive, in consideration of the adoption of the child, any payment or other reward.

(2) A person shall not make or give, or agree to make or give, any—

(a) payment, or

(b) other reward, the receipt of which is prohibited by subsection (1).

(3) A person shall not—

(a) receive, make or give any payment or other reward, or

(b) agree to receive, make or give any payment or other reward, in consideration of making arrangements for the adoption of a child.

(4) Subsections (2) and (3) do not apply to accredited bodies in respect of—

(a) reasonable costs and expenses related to their functions, including reasonable fees paid as remuneration for professional services, and

(b) the receipt of gifts of money with the prior approval of the Authority.

(5) This section does not apply in respect of payments made for the maintenance of a child referred to in subsection (1). “

Comments

With the level of corruption involved in intercountry adoption it would be foolish to not put safeguards in place to at least try to minimise the inappropriate payment of so-called fees for the adoption of children.

Amendments

“(6) If an inappropriate payment is found to be made in respect of an adoption, an adoption order shall not be made and a full investigation into the circumstances surrounding the adoption shall be opened. The matter shall be reported to the Gardaí and in the case of an intercountry adoption, the relevant authority in the state of origin.”

Birth Certificate Amendment

At the oral submission, we would be happy to discuss the provisions enjoyed by UK adopted people since 1973.