

## Rules about applying for, granting and removing declarations of eligibility and suitability

The Adoption Authority of Ireland was established as an independent regulatory body on 1 November 2010 following the enactment of the Adoption Act 2010.

The mission of the Adoption Authority is to make sure that adoption-related services meet the highest standards throughout the entire adoption process. In all activities, the best interests of children come first.

These rules support this mission. We will use these rules from 1 January 2018.

This document is not a legal interpretation of the adoption process and does not constitute legal advice. It is purely for information. If you have any questions about adoption, including eligibility, suitability and interpretation, please refer to a solicitor for legal advice.

### Terms used in these rules

Adoption is a life-changing process for everyone involved. It needs to be underpinned by a strong legal process to protect everyone's rights. It's important, therefore, that any information we provide is as clear as possible. These are some terms you need to know to understand this information sheet.

Term	Explanation
Acts	The Adoption Acts 2010 to 2017
Adjourn	Postpone

Term	Explanation
Applicant	<p>A person or people applying to adopt a child. An applicant must be habitually resident in Ireland. An applicant may be:</p> <ul style="list-style-type: none"> <li>• a step parent;</li> <li>• a married couple who are married to each other;</li> <li>• a couple who are civil partners of each other; or</li> <li>• a co-habiting couple, which means they live together but are not married or civil partners.</li> <li>• In certain circumstances, a single person.</li> </ul>
Authority	The Adoption Authority of Ireland acting through its Board
<p>Declaration or Declaration of eligibility and suitability</p>	<p>Legal permission granted to applicants by the Adoption Authority of Ireland to adopt in Ireland (domestic adoption) or abroad (intercountry adoption).</p> <p>The declaration of eligibility and suitability is a signed and sealed one-page document valid for two years with the possibility of a one-year extension. It also includes a recommendation of the child or children to be adopted. It is also known as a <b>Section 40</b> from the <b>Adoption Act 2010</b>.</p>
Non-adversarial	Seeking information in a way not designed to unsettle or cause conflict
Notice of discontinuance	A notice from Tusla that an adoption process will not continue.

<b>Term</b>	<b>Explanation</b>
Tusla	The Child and Family Agency.  In the Acts, Tusla is always called the Child and Family Agency.

This document is in seven parts:

1. Assessing an applicant for a declaration of eligibility and suitability
2. Issuing a declaration
3. Refusing to issue a declaration
4. Reconsidering a declaration
5. Holding an oral hearing
6. Conducting a hearing
7. Considering the best interests of the child

# 1. Assessing an applicant for a declaration of eligibility and suitability

These organisations are involved in assessing an application for a declaration of eligibility and suitability.

- Tusla
- An adoption committee (often known as the Local Adoption Committee)
- The Adoption Authority

## A. What Tusla will do

1. Before an applicant can adopt a child, they must apply to Tusla. Tusla will assess the applicant to make sure the applicant is eligible and suitable.
2. If Tusla is satisfied that the applicant is eligible and suitable, Tusla will prepare an assessment report and send it to an adoption committee.

## B. What an adoption committee will do

The adoption committee will review the assessment and decide if the applicant should get a declaration. The adoption committee will send their recommendation to the Authority.

## C. What the Adoption Authority will do

1. When the Adoption Authority gets the recommendation and the assessment report, it will review them as soon as possible.
2. If it needs to, before it makes a decision on a declaration, the Adoption Authority may ask relevant people and organisations to provide more information or documentation. The Adoption Authority will make it clear why it needs the information or documentation and what it will use it for. It may also ask to get the information or documentation before a certain date.

## 2. Issuing a declaration

- A. If the recommendation and assessment are positive, the Authority will make sure the applicant is eligible and suitable. It will then give the applicant a declaration.
- B. If it considers it appropriate, the Authority may include a statement in the declaration that recommends the age or state of health of the child that the applicant is suited to parent.
- C. If Tusla sends the Adoption Authority a notice of discontinuance, the Adoption Authority will stop the process and close the file. This can be done at any time before the adoption order is made.

## 3. Refusing to issue a declaration

- A. If the Adoption Authority is not satisfied that the applicant is eligible and suitable, it may decide that it will not issue a declaration. The Adoption Authority can decide this even if the recommendation from the adoption committee is positive.
- B. Before it can formally refuse to issue a declaration, the Adoption Authority must write to the applicant about the decision.

1. In the letter, the Adoption Authority must include:

- the reasons for the decision;
- references to the relevant section of the Acts;
- information about how the applicant can have an oral hearing to discuss the decision with the Adoption Authority; and
- information about how the applicant can write to the Adoption Authority to respond to the concerns of the Adoption Authority.

2. The letter must also give the applicant at least 21 days to respond so that the Adoption Authority knows that the applicant wants an oral hearing or the

chance to respond in writing before they issue their decision. Oral hearings are explained in section 5 below.

3. The Adoption Authority must send this letter by registered post.

**C.** When considering a declaration or reconsidering a declaration that has already been issued, the Authority will give the applicant a copy of all the documentation it has considered.

**D.** The Adoption Authority will formally decide to refuse to grant a declaration if:

1. an applicant does not respond in the specified time and the Adoption Authority is satisfied that the applicant has got the letter; or
2. it has conducted an oral hearing, considered the applicant's written submissions or both and is still not satisfied that the applicant should be granted a declaration.

**E.** When the Adoption Authority writes to the applicant with a formal decision to not issue a declaration, it must include:

1. the reasons for the decision; and
2. references to the relevant section of the Acts.

## **4. Reconsidering a declaration**

**A.** The Adoption Authority may need to reconsider a declaration that has already been given to an applicant. This can happen when:

1. the applicant has a declaration and the Authority has not yet made an adoption order or recognised an intercountry adoption in favour of the applicant, **and**
2. there is new information about the eligibility and suitability of the applicant or there has been a change in the applicant's circumstances that is relevant.

**B.** If the information makes it appropriate to amend or withdraw the declaration, the Adoption Authority must write to the applicant about the decision.

1. In the letter, the Adoption Authority must include:
  - a. the reasons for the decision;
  - b. references to the relevant section of the Acts;
  - c. information about how the applicant can have an oral hearing to discuss the decision with the Adoption Authority; and
  - d. information about how the applicant can write to the Adoption Authority to respond to the concerns of the Adoption Authority.
2. The letter must also give the applicant at least 21 days to let the Adoption Authority know that they want an oral hearing or the change to respond in writing. Oral hearings are explained in section 5 below.
3. If the applicant does not contact the Adoption Authority within the time provided and the Adoption Authority is satisfied that the applicant has got the letter, the Adoption Authority will do one of two things.
  - a. Amend the declaration by adding specific conditions including the condition that the Adoption Authority will reconsider the applicant's eligibility and suitability at an oral hearing. These conditions are particular to each applicant and can't be listed generally here; or
  - b. Withdraw the declaration if it would not be proper to make the adoption order or recognise the intercountry adoption.

In this case, the Adoption Authority must also write to the applicant and the adoption committee to explain the reasons for this decision.

4. If the Adoption Authority has held an oral hearing, considered the applicant's written submissions or both and still believes the declaration should be amended or withdrawn, the Adoption Authority will do one of two things.

- a. Amend the declaration with appropriate conditions; or
- b. Withdraw the declaration if it would not be proper to make the adoption order or recognise the intercountry adoption.

## 5. Holding an oral hearing

### A. Notifying the applicant and the adoption committee

1. When the Adoption Authority gets a request from an applicant for an oral hearing, the Adoption Authority must write by registered post to:
  - a. the applicant; and
  - b. the adoption committee.
2. The letter must include this information.
  - a. The date, time and location of the hearing, which must be at least 21 days after the date of the letter
  - b. The matter to be discussed
  - c. Confirmation that the applicant:
    - has a right to be heard; and
    - may bring a legal representative or other representative that they pay for themselves.
  - d. That the applicant may submit documents, including written submissions, at least 14 days before the oral hearing and that:
    - any documents that an applicant submits may be given to other people or organisations if the documents are relevant to their participation in the hearing; and
    - the applicant is responsible for removing any personal or sensitive information from documents.



## **B. Notifying witnesses**

1. The Authority may:
  - a. summon witnesses to attend a hearing;
  - b. examine witnesses on oath; and
  - c. require witnesses to produce relevant documents that they might have.
2. A person or organisation who is summoned as a witness has legal obligations under the Acts. A summoned witness must:
  - a. attend the oral hearing;
  - b. produce any documents they have been asked for;
  - c. take an oath (where you swear that the evidence provided is truthful);  
and
  - d. make truthful statements.
3. Making false or misleading statements is an offence under the Acts. If someone is summoned to an oral hearing and does not attend, they are also making an offence under the Acts. This could result in a fine, imprisonment or both.

## **6. Conducting the hearing**

- A.** The executive of the Authority (its staff) will make sure that the Board of the Authority gets all documents and submissions that are relevant to the hearing before the hearing.
- B.** The Authority will also give the applicant all documentation that will be considered at the hearing before the hearing and before written submissions are due.
- C.** If one of the people or organisations that should attend the hearing are not there at the appointed time, the Authority will:

1. take reasonable steps to confirm that a notice of the hearing was sent by registered post, and
  2. attempt to contact the absent party if possible.
- D.** After doing this, the Authority can decide whether or not it is appropriate to continue with the hearing without the person or organisation. If it is not, the Authority will postpone (adjourn) the hearing to a later date. When the Authority selects a new date, it will consider all of the circumstances of the application so it can select the most appropriate date.
- E.** A stenographer may be at an oral hearing to make a written record of the hearing.
- F.** At the hearing, the Authority will not accept additional written or oral submissions **unless** they meet these two conditions.
1. the submission supports natural justice, which is the requirement to be fair and just, **and**
  2. including the submission does not prejudice any part of the hearing. Prejudice is harm or injury that may result from an action.
- G.** The Authority may:
1. ask any person or organisation attending the hearing any questions it thinks appropriate to clarify any points; **and**
  2. request to be given any other documents that it thinks are necessary to help make a decision.
- H.** Oral hearings are non-adversarial. This means that the Authority will try to avoid cross-examining anyone attending a hearing. If cross-examination is needed, the Authority and all other participants will observe the requirement to cross-examine in a non-adversarial way.

## 7. Considering the best interests of the child

A. When it decides on an application, the Adoption Authority always places the best interests of the child first. The Authority will consider everything that is relevant to the child, including:

- the child's age and maturity;
- the physical, psychological and emotional needs of the child;
- the likely effect of adoption on the child;
- the child's views on his or her proposed adoption;
- the child's social, intellectual and educational needs;
- the child's upbringing and care;
- the child's relationship with his or her parent, guardian or relative as the case may be; and
- any other particular circumstances about the child concerned.

### B. Adjourning a hearing

1. The Authority may postpone – adjourn – a hearing even if the hearing has started. It can do this to get more information or consider issues that come up during the hearing.
2. In general, people and organisations taking part in the hearing cannot ask for the hearing to be postponed. If a person or organisation gives an exceptional reason for postponing the hearing and doing so is in line with natural justice, the Authority will consider a request to postpone the hearing.

You are allowed to seek independent legal advice in all matters, and to be represented before the Board. It is important to arrange for this as early as possible. The Adoption Authority cannot delay the adoption process without good reason if you have not tried to do so. Delay is not in the interests of the child.