

## Adoption Authority of Ireland

# Rules for hearings on adoption applications and applications to the High Court under section 30 and 54 of the Adoption Acts 2010 to 2017

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 22 November 2021.

## 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	<b>The Adoption Acts 2010 to 2017</b>
Adjourn	Postpone
Applicant	A person or people applying to adopt a child. An applicant must be habitually resident in Ireland. An applicant may be: <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></ul>

Term	explanation
	<ul style="list-style-type: none"> <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>
Application	An application for an adoption order
Authority	The Adoption Authority of Ireland acting through its Board
Child	Any person who is under 18
Declaration or Declaration of eligibility and suitability	<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>
Guardian	An adult who has legal rights and duties in relation to a child
Hearing	A formal meeting with people and organisations who have the right to give evidence and their opinion on an application for an adoption order
Non-adversarial	Seeking information in a way not designed to unsettle or cause conflict

Term	explanation
Required consent	Consent is permission or agreement. In adoption matters, it is a necessary approval given in writing by birth parents or guardians on an official consent form.
Relevant non-guardian	<p>Relevant non-guardians include:</p> <ul style="list-style-type: none"> <li>• a father of a child who is not a guardian of the child;</li> <li>• a person who has been appointed the guardian of a child but who has not been granted certain rights of guardianship;</li> <li>• a person appointed by the court to be a temporary guardian of a child; and</li> <li>• a parent of a donor-conceived child who is not a guardian of the child.</li> </ul>
Tusla	<p>The Child and Family Agency.</p> <p>In the Acts, Tusla is always called the Child and Family Agency.</p>

These rules are set out in the Acts. They are not a legal interpretation of the Acts.

Throughout the adoption process, the Adoption Authority is permitted by law to request information in writing and documentation from any relevant person or organisation. When it makes a request, the Adoption Authority must clearly say what information or documentation is required and what it will be used for.

The remainder of this document is divided into seven parts:

1. Holding a hearing
2. Consulting relevant non-guardians
3. Notifying a person whose consent is needed
4. Making an adoption order when High Court Authorisation is not required
5. The Authority shall not make an Adoption Order unless the Applicant (or Applicants) is an eligible Applicant under the Act.
6. Making an adoption order when required consent is not available
7. Completing an adoption order and considering change in relevant circumstances

# 1. Holding a hearing

## Before the hearing

The Adoption Authority will:

- review the application for an adoption order by the applicants; and
- consider if any more documents are needed from people entitled to be heard to help complete the review of the application. If there are, the Adoption Authority may tell these to give the Adoption Authority the documents by a specific date.

The Adoption Authority will:

- schedule one or more hearings to hear from all people entitled to be heard;
- hear evidence from any person that the Adoption Authority decides to hear; and
- write by registered post to all people who are entitled to be heard.

The letter about the hearing must include this information.

- The date, time and location of the hearing, which must be at least 21 days after the date of the letter
- The matter to be discussed
- Confirmation that the applicant:
  - has a right to be heard; and
  - may bring a legal representative or other representative that they pay for themselves
- That the applicant may submit documents, including written submissions, at least 14 days before the 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

Before scheduling a hearing, the Adoption Authority will consider whether it is appropriate to hold the hearing in private. It will also consider any request for a private hearing from a person who is entitled to be heard and applicable interested parties.

### **At the hearing**

At the hearing, the Adoption Authority will hear all evidence that is relevant to the application from the applicants and appropriate representatives of Tusla.

When it decides on an application, the Adoption Authority always places the best interests of the child first. The Adoption 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 circumstances affecting your child.

## **Notifying witnesses**

The Adoption Authority may:

- summon witnesses to attend a hearing;
- examine witnesses on oath; and
- require witnesses to produce any relevant documents that they might have.

A person or organisation who is summoned as a witness has legal obligations under the Acts. A summoned witness must:

- attend the hearing;
- produce any documents they have been asked for;
- take an oath; and
- make truthful statements.

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.

## **Conducting the hearing**

The secretariat of the Adoption Authority Board will make sure that the Board of the Adoption Authority get all documents and submissions that are relevant to the hearing before the hearing.

If one of the people or organisations that should attend the hearing are not there at the appointed time, the Authority will:

- take reasonable steps to confirm that a notice of the hearing was sent by registered post; and
- attempt to contact the absent person or organisation if possible.

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.

A stenographer may be at a hearing to make a written record of the hearing.

At the hearing, the Authority will not accept additional written or oral submissions **unless** they meet these two conditions.

- The submission supports natural justice, which is the requirement to be fair and just, **and**
- including the submission does not prejudice any part of the hearing. Prejudice is harm or injury that may result from an action.

The Authority may:

- ask any person or organisation attending the hearing any questions it thinks appropriate to clarify any points; **and**
- request to be given any other documents that it thinks are necessary to help make a decision.

Hearings are non-adversarial (non-confrontational). This means that the Authority will try to avoid cross-examining anyone attending a hearing. If cross-examination is required, the Authority and all other participants will observe the requirement to cross-examine in a non-adversarial way.

### **Adjourning a hearing**

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.

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.

## 2. Consulting relevant non-guardians

Any relevant non-guardian of a child may write to the Adoption Authority to say they want to be consulted about an application for an adoption order by the mother, step-parent or relative of the child. The relevant non-guardian must fill out Form F3. Before an accredited body can proceed with an adoption assessment, they must submit a Form F4 to the Adoption Authority to request a copy of any Form F3 received by the Adoption Authority from a relevant non-guardian.

The Adoption Authority may not have received any request from a relevant non-guardian when the accredited body submits Form F4. If the Authority receives a request from a relevant non-guardian any time after receiving Form F4, the Adoption Authority will give the accredited body a copy of it as soon as possible.

The Authority must take steps to ensure that every relevant non-guardian of the child is consulted about the proposed adoption **unless** the Authority is satisfied that:

- this is not possible because the identity of the father is unknown and the mother or guardian of the child will not or is unable to reveal the identity of the father; **or**
- this would be inappropriate because of the relationship between the relevant non-guardian and the mother of the child, or because of the way the child was conceived.

In these cases the Authority will apply to the High Court for approval to proceed with the adoption without consulting with the father.

When the Adoption Authority has selected a date for a hearing about a proposed adoption, the Adoption Authority must write by registered post to the relevant non-guardian. The letter must include this information.

- The date, time and location of the hearing, which must be at least 21 days after the date of the letter
- The matter to be discussed
- Confirmation that:
  - the relevant non-guardian has a right to be heard; and
  - they may bring a legal representative or other representation that they pay for themselves
- That the relevant non-guardian may submit documents, including written submissions, at least 14 days before the hearing and that:
  - any documents that a relevant non-guardian submits may be given to other people or organisations if the documents are relevant to their participation in the hearing; and
  - the relevant non-guardian is responsible for removing any personal or sensitive information from documents
- That the relevant non-guardian may consent in writing to the adoption and that they can change their mind and withdraw the consent at any time before the adoption order is made.

If an address for the relevant non-guardian is not available or the registered letter is not successfully delivered, the Adoption Authority will make reasonable attempts to locate the relevant non-guardian and make sure they receive the notice of the hearing.

If the relevant non-guardian has not contacted the Adoption Authority within the time provided or states they want to attend the hearing but does not attend the hearing, the Authority may proceed with the application for the adoption order without recourse to the High Court provided;

- it is satisfied that the relevant non-guardian was correctly notified;

- having made all reasonable efforts to consult the relevant non-guardian to ascertain their position regarding the adoption, it is unable to do so;
- the making of the order is in the best interests of the child.

The Adoption Authority may schedule an additional hearing to accommodate the relevant non-guardian. The Adoption Authority must send registered letters about this hearing in line with the rules in this section.

### **3. Notifying a person whose consent is required**

When the Adoption Authority has selected a date for a hearing about a proposed adoption, the Adoption Authority must write by registered post to any person whose consent is required.

The letter must include this information.

- The date, time and location of the hearing, which must be at least 21 days after the date of the letter
- The matter to be discussed
- Confirmation that:
  - the person whose consent is required has a right to be heard; and
  - the person may bring a legal representative or other representation that they pay for themselves
- That the person whose consent is required may submit documents, including written submissions, at least 14 days before the hearing and that:
  - any documents that a person whose consent is required submits may be given to other people or organisations if the documents are relevant to their participation in the hearing; and

- the person whose consent is required is responsible for removing any personal or sensitive information from documents
- That the person whose consent is required may consent in writing to the adoption and that they can change their mind and withdraw the consent at any time before the adoption order is made

#### **4. Making an adoption order when High Court authorisation is not required**

If all required consents are on record and all people and organisations who are required to be heard have been consulted, the Authority may proceed to make an adoption order if:

- it is satisfied that it has heard all the necessary evidence and considered all the required documents; **and**
- it is appropriate to make the adoption order.

#### **5. The Authority shall not make an Adoption Order unless the Applicant (or Applicants) is an eligible Applicant under the Act.**

An applicant may have been approved as eligible but become ineligible if there is a significant change in their circumstances. For example, they may now be divorced or their partner may have died.

#### **6. Making an adoption order when required consent is not available**

If a person whose consent is required does not respond to the Adoption Authority or if the person responds and refuses to give consent, then the Adoption Authority will

proceed with the application, scheduling and conducting any hearings as may be required, as specified above.

The Adoption Authority will hear from:

- Tusla;
- any person who wishes to be heard, and
- if possible, any person whose consent is required and has not given such consent.

The Adoption Authority will make sure that all evidence that is necessary to proceed with the adoption is in order except for the required consent.

The Adoption Authority will issue a declaration of eligibility and suitability confirming that the applicants are suitable and eligible to adopt and send a copy of this declaration to the applicants.

The Adoption Authority will:

- issue a certificate, called a Section 53 Declaration, stating that it will make the adoption order if the High Court authorises it to; and
- send a copy of the Section 53 Declaration to the appropriate contact in Tusla.

The Adoption Authority will postpone – adjourn – the adoption proceedings until Tusla or the applicants have applied to the High Court and those court proceedings have finished.

The Authority will wait for the service of proceedings (formal notice of a court hearing) by, or on behalf of, Tusla or the Applicants, filed under Section 54(2).

A representative of the Authority will then arrange to attend before the High Court on whatever days are necessary and present formal copies of the Declaration of Eligibility and Suitability and the Section 53 Declaration and other document(s) that are required by the High Court, and to answer any questions the judge might have. Representatives of Tusla and/or the applicants will also attend the court.

If a High Court order is granted to approve an adoption order, the Adoption Authority cannot make the adoption order until 28 days have passed after the High Court order is made. (This is a rule of the courts to allow time for someone to register an appeal to the court order.) The court order must also be ‘perfected’, which means it has been sealed by the High Court Registrar.

## **7. Completing an adoption order and considering changes in relevant circumstances**

As soon as possible after the High Court order has been perfected and the appeal period has passed, the Adoption Authority will meet to finalise the application for adoption.

The Adoption Authority must consider if the relevant circumstances of the applicants have changed since the section 53 certificate was issued.

If the Adoption Authority thinks it needs to, it may hold hearings about any change in circumstances. It will:

- invite persons entitled to be heard to attend a hearing, make submissions or both; and
- notify persons entitled to be heard according to rules 1, 2 and 3 in this document.

If the Adoption Authority decides not to complete the adoption application even though the High Court has authorised the adoption, the Adoption Authority must write to the people and organisations involved of the decision. In the letter, the Adoption Authority must include:

- the reasons for the decision; and
- references to relevant sections of the Acts.

If the Adoption Authority decides that there has not been a change in circumstances or that any change in the circumstances does not prevent it from making an adoption order, it will issue an adoption order.

People attending hearings are allowed to seek independent legal advice in all matters, and to be represented at the hearing. 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.