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Overview of Adoption

1. Introduction

The briefing paper provides an overview of the adoption process and illustrates how adoption procedures have evolved in the context of the modern family unit. The complexities associated with the various stakeholders in the process and the legislation pertaining to Northern Ireland and other UK jurisdictions are considered. Statistical information relating to the number of children adopted each year and the waiting times experienced by children and prospective families in the adoption process are also presented.

2. Background

Every child has the right to belong to a family. This principle is enshrined in the United Nations Convention on the Rights of the Child (1989) which was ratified in the UK in 1991.¹ In terms of creating stability, the government is committed to helping children remain with their families in all but the most exceptional circumstances. In situations where children cannot live with their birth families,² society has a duty to provide them

¹ United Nations Convention on the Rights of the Child (1989) Article 20 Available online at: <http://www.dcsf.gov.uk/everychildmatters/strategy/strategyandgovernance/uncrc/unitednationsarticles/uncrcarticles/>

² Circumstances may include: if a new mother is unable to care for her newborn child; if a child is subject to Care Order; if a child is removed for safety and well being purposes by social services; reconstituted family circumstances (for example, birth parents have divorced and one of the birth parents, together with the new partner, wishes to adopt the child); or if both parents are deceased.

where appropriate, with a permanent alternative home.³ Adoption is a life-long commitment, and one way of providing a child with permanence in a family environment when living with their family is no longer viable.

The main stakeholders in the adoption process include the child, the natural parent(s)/guardian(s) or local authorities, and the prospective adoptive parents. There are also a number of other bodies such as health trusts, social services, voluntary organisations and representatives from the legal profession involved in the process.

2.1 History of Adoption

Before the introduction of adoption law, adoption was considered an informal, private course of action, which in most cases, sought to provide a home to an orphaned, abandoned or illegitimate child.⁴ Nevertheless, prospective parents wishing to bring up a child as if it were their own, lacked the legal rights to prevent the child's natural parents 'reclaiming' the child back at a later time. Coupled with this, public pressure calling for recognition of a law concerning adoption developed as part of the general movement which sought to improve the welfare of children. This was achieved with the introduction of the Adoption Act (1926) in England and Wales which was mirrored in the Adoption of Children Act (NI) 1929.⁵ The advent of adoption law meant that parental responsibility would irrevocably and exclusively be vested in the adopter(s) "as though the adopted child was a child born to the adopter in lawful wedlock".⁶

After the Second World War, there was a significant rise in the number of unmarried mothers, particularly from the middle classes, giving up illegitimate babies for adoption. At this time, only 10% of children adopted came from the care system. Adoption increasingly became the suitable option to what was considered a 'social problem' for unmarried mothers, whilst at the same time, meeting the needs of childless married couples. "Closed" adoptive practices as they were often referred to, sought to keep the identity of the adoptive and the natural parents anonymous. The adoptive child would not have any contact with its biological parents or any knowledge that it was adopted.

The Adoption of Children Act (NI) was amended in 1950 to provide the basic foundations of what became the adoption service. At this time, Britain witnessed huge social and attitudinal changes regarding the notion of the nuclear family unit. With the advent of the 1960s, revised attitudes towards illegitimacy and an increase in the number of abortions⁷ led to a rapid decline in the number of illegitimate babies

³ Department of Health, Social Services and Public Safety: Adoption, available online at: http://www.dhsspsni.gov.uk/index/hss/child_care/adoption.htm

⁴ History shows that many cultures had various motives for adopting a child. For example, landowners without children would adopt as a means to provide as heirs to their property. Others adopted children as servants. Likewise kinship (or step parent) existed as a means to strengthen the extended family.

⁵ See Bridge, C. & Swindells, H. (2003) Adoption: The Modern Law, Chapter 1 Adoption - The historical perspective, p5.

⁶ Tomlin Report of the Child Adoption Committee (1924-5) Cmd 2401 para 11.

⁷ Between 1970-1988, there was an increase from 185 to 1,815 abortions carried out in England on women with an address in Northern Ireland.

available for adoption. Likewise unmarried mothers no longer faced negative social stigma. The introduction of welfare benefits for one-parent families also meant that it was financially viable for them to keep their child. Moreover, greater availability of birth control methods resulted in fewer babies becoming available for adoption, despite the continued demand for children from childless couples.

It was then that adoption practices shifted towards older children in the care of local authorities, sparked by the realisation that many of these children had spent a lifetime in care or foster placements without the stability of a permanent home.⁸ Adoption grew into a professional service offered by local authority agencies with a view to 'permanency planning' which encouraged authorities to secure a long-term, stable future for looked after children in the care system.

Concomitantly, increases in divorce, cohabitation and remarriage also impacted on parenting arrangements and people's motives for adoption, most notably regarding legitimate children. For example, step-parent adoptions following a remarriage became more commonplace, but, according to the law as it stood, this caused concern because family ties with one side of a child's original birth family would be severed. Depending on circumstances, severing relationships in this way (typically the father would lose parental responsibility for the child) was deemed to have a detrimental impact on children whose loyalties had remained with both natural parents.

As society and practices changed, the law also required reform. In 1969, the Houghton Committee was established to undertake a review of adoption law, policy and practice in England and Wales.⁹ Their recommendations were consolidated within the Adoption Act (1976) which, due to its staggered implementation, only came into effect in 1988. Amongst other aspects, recommendations included placing a duty on local authorities to provide regulated adoption services which facilitated both the placement of children and the assessment of prospective adopters. The review also described the adoption process as a 'total legal transplant' which, via an adoption order, would enable the child to have the same rights as any natural child of the adoptive family. This was thought to be of psychological benefit to the child by increasing their sense of belonging. Within the 1976 Act, greater openness in the adoption process also meant that adopted children searching for their original identity were able to obtain their birth certificate on reaching 18 years of age.

3. Adoption in Northern Ireland

The process of adopting a child from within Northern Ireland is outlined in Appendix 1. At present, unmarried children under the age of eighteen, who are no longer considered able to live on a permanent basis with their birth parents, are eligible for adoption. However, the profile of children available for adoption has radically changed

⁸ Ibid p30

⁹ Report of the Departmental Committee on the Adoption of Children, 1972, Cmnd. 5107

from that of 50 years ago when babies were relinquished by unmarried mothers. Adoption has moved towards a permanence option for children who cannot be cared for by their parents. Many of these children are taken into the care system in order to protect them from significant harm.¹⁰ The changes regarding the nature of adoption are reflected below:

There are very few healthy babies who need adoption in Northern Ireland today. These children are no longer 'given up' for adoption by parents with whom they will have no contact. They are more usually slightly older children in the care system, often with health or emotional difficulties incurred through a background of abuse or neglect. They generally know their birth families and it is important in many cases that they continue to have some degree of contact with them....The life outcomes for children who spend long periods in care are extremely poor compared to their peers outside the care system. Despite the evidence to suggest the success of adoption in providing secure families for children, the numbers of children adopted from care remain low.¹¹

[Adopting the Future, Chapter 3]

During their time in care, permanence can be provided in many forms such as placement with foster parents, in residential care settings or with other family members until they can return home. Adoption offers the most legal permanence for children who are unable to return home.

Looked after children awaiting adoption are also more likely to be:

- suffering developmental complications caused by drug/alcohol misuse by their mother during pregnancy
- those with a statement of special educational needs
- older children
- sibling groups
- disabled children
- children with behavioural difficulties.

Due to the complex needs of many of these children, coupled with a shortage of willing prospective adopters, long waits for a new family are incurred. This brings a number of further challenges in terms of recruitment, suitability, and training of prospective adopters that can best meet the support needs of the child, many of whom will be suffering trauma from past experiences. There is also considerable pressure on social work professionals to demonstrate proportionality when struggling with the tensions between the existing legislation and the demands of today's social and legal frameworks, and this itself can lead to significant delays in the adoption process.

¹⁰“Looked after” is the term used in the *Children Act (1989)* to describe all children who are the subject of a care order, or who are provided with accommodation on a voluntary basis for more than 24 hours.

¹¹ DHSSPS (2006) *Adopting the Future*, p9. Available online: www.dhsspsni.gov.uk/adopting_the_future_16-6-06pdf.pdf

As in other jurisdictions, adoption is considered a complex and time consuming process. Unlike fostering,¹² adoption is a permanent and legally binding arrangement that transfers a child from one family to another. Moreover, the rights and interests of the stakeholders involved in adoption are not only diverse but also often fundamentally opposed. As the adoption process affects the welfare of the rest of the child's life, it will only be considered if it is in the **best interests** of the child and secondly, where there is no better practicable alternative.¹³ Adoption proceedings generally fall under three main categories namely:

1. '**placement adoptions**' – applicants who have been approved to adopt and had a child placed for adoption;
2. '**step-parent adoptions**' – when a birth parent and a step-parent apply to adopt the birth parents' child by acquiring full parental responsibility;
3. '**intercountry adoptions**' – applicants wishing to adopt a child from another jurisdiction.

3.1 Legislation

The current legal framework governing adoption in Northern Ireland is set out in primary legislation in The Adoption (Northern Ireland) Order 1987.¹⁴ Other relevant legislation includes The Children (Northern Ireland) Order 1995 and a number of other related subordinate pieces of legislation have also been developed.¹⁵ Given society's modern values and needs, new forms of practice, and the unnecessary delays associated with the current adoption process - such as care planning and court proceedings, the Adoption (NI) Order has become somewhat outdated and in need of reform.¹⁶ It also lags behind recent legislative changes in adoption law in other UK jurisdictions (see section 5 of this paper). Furthermore, there is an increasing need to align adoption law with the Children's Order, particularly regarding the voice of the child, and a number of other human rights statutes.¹⁷

3.2 Review of Adoption

¹² Fostering differs from adoption as the child's birth parents or the local authority will retain legal responsibility. Fostering is a temporary, short-term or long term placement. Often children will return home once the issues that caused them to come into foster care have been resolved. Fostering is also considered a means to adoption.

¹³ Further information is available online from Northern Ireland Citizens Advice Bureau: Adoption <http://www.advicefinder.net/> Section 2.

¹⁴ The 1987 Order was largely based on the Adoption Act (1976) gives effect to the recommendations of the Report of the Children and Young Persons Review Group on the Adoption of Children in Northern Ireland (1982) which, at that time sought to bring adoption law and practice into parity with the rest of the UK.

¹⁵ Further guidance is available online at: http://www.dhsspsni.gov.uk/index/hss/child_care/adoption/adoption_guidance_and_regulations.htm

¹⁶ DHSSPS (2006) *Adopting the Future*, p9. Available online: http://www.dhsspsni.gov.uk/adopting_the_future_16-6-06pdf.pdf

¹⁷ Such as The Human Rights Act 1998, obligations under Section 75 of the Northern Ireland Act 1998 and developments in case law.

In light of the law in Northern Ireland, the Department of Health, Social Services and Public Safety (DHSSPS) completed a two year review of adoption which included consultation with stakeholders entitled 'Adopting the Future' (2006).¹⁸ This review proposed to modernise adoption legislation in order to enhance current practices. Proposals included providing consistent standards of service, reducing delays, and enabling civil partners and unmarried couples to adopt; thus serving to widen the pool of potential adopters. However, despite the proposals, legislative reform of The Adoption (NI) Order has yet to occur. The Department Health, Social Services and Public Safety (DHSSPS) have since developed draft proposals for inclusion in a new Adoption and Children Bill which was agreed by the Executive in May 2010. Given the lifetime of the current Assembly, the Health Minister is assessing how to proceed with adoption law reform considering the substantial length, complexity, and timeframe required to implement the Bill.¹⁹

3.3 Who can adopt in Northern Ireland?

With the exception of minimum age, a couple's marital status and certain criminal convictions, few legal restrictions exist in terms of who is eligible to adopt.²⁰ Key parameters for those considering adoption in Northern Ireland are as follows:

- At present single persons (male or female) over the age of 21 can adopt;²¹
- Married couples can adopt. These couples are required to make a joint application. Civil partners are currently not eligible to apply;
- For unmarried cohabitating couples, only **one** of them may apply to adopt. The other partner may apply for a Residence Order.²² This applies to both heterosexual and lesbian/gay couples. The first reported case of cohabitating lesbians adopting a child in NI was in 2004 when an adoption order and a shared residence order were granted.²³ However, the law in NI regarding unmarried cohabitating couples has been deemed unsatisfactory and unequal for practical and legal reasons, considering the increasing number of unmarried couples who live together as partners in an enduring family relationship. This is true for example, in the unfortunate event that the adoptive parent dies;
- People who are divorced can apply to adopt;

¹⁸ A review called "Adopting Best Care" was also carried out in 2002 by the Department's Social Services Inspectorate to assess the extent to which adoption services met statutory requirements and reflected good standards of practice.

¹⁹ NI Assembly question AQW6727/10. Mr T. Clarke asked the Minister of Health, Social Services and Public Safety for an update on his Department's new adoption legislation. Available online at: <http://www.niassembly.gov.uk/qanda/2007mandate/writtenans/2009/100604.htm>

²⁰ NI Citizens Advice Bureau, available online: Adoption <http://www.advicefinder.net/> Sections 14-29.

²¹ As a matter of policy, agencies rarely accept a sole applicant for babies or very young children, other than in cases of ethnic minority groups.

²² A Residence Order is a court order which gives parental responsibility to a person and also states who a child should live with. This expires when the child is 16 years of age.

²³ O'Halloran, K. (2004) Legal Notes Northern Ireland. *Adoption and Fostering*, Volume 28, Number 2, pp81-84.

- Applicants must be 21 years of age or over²⁴ and there is no upper age limit;
- People who already have their own child/children can apply to adopt other children;
- A step-parent can apply to adopt his/her spouse's child. However, unlike the rest of the UK, in Northern Ireland the birth parent has to apply to adopt his or her own child via a joint application with the step-parent;
- Applicants are required to be domiciled in a part of the UK, Channel Islands or Isle of Man. An applicant living abroad who still has domicile in the United Kingdom may be able to adopt;²⁵
- A person (or family member) convicted of, or cautioned about specified offences involving children will not be eligible to adopt;
- Individuals cannot be on the local adoption register at the same time as the intercountry adoption register.

3.4 Prospective Adopters

In addition to the aforementioned criteria, individual adoption agencies will have their own policies and standards to enable them to match the needs of each child with their potential adopter(s). Where possible, most adoption agencies will try to place siblings together for adoption. These agencies are required to make a thorough assessment and to recruit adoptive parents who have the time, health and energy to meet the demands of raising the child as they grow into adulthood. Both age and health (including health risks and life-style factors)²⁶ of prospective adopters are taken into consideration during the assessment stage of the application process (see section 2.6 of this paper). There is no legal requirement for applicants to be employed or to have a defined income level, and depending on circumstances, financial support is available.²⁷ Moreover, as a matter of policy, agencies will want to assure themselves that applicants have sufficient income and are able to manage their finances appropriately.²⁸

3.5 Parent/Guardian Consent

Before a child can be adopted, those with existing responsibilities for the child must willingly give their consent to relinquish their child for adoption. This is known as 'freeing a child for adoption' under Article 17 of The Adoption (NI) Order. When this occurs with consent, the court will make an order declaring the child is eligible (or free) to be adopted and subsequently parental responsibility for the child is relinquished to the adoption agency. Parents of the child are permitted to place (where consent for

²⁴ The legal position is that if the applicants are a married couple and one is the mother or father of the child, the parent must be aged at least 18 years of age and her/his spouse at least 21.

²⁵ In this case, the child must be living with the intending adopters for a specific timeframe and, if adopted, the family must remain in the UK for a specified period.

²⁶ Adoption agencies have a duty to consider the effects of smoking on children in their care and may have to restrict smokers in the age and type of child who may be placed with them. This is predominantly applicable to babies and young children, or those who have heart, chest or asthma-related conditions.

²⁷ Further information is available at : <http://www.baaf.org.uk/info/financial/ni.shtml>

²⁸ Adoption allowances may be available, depending on individual circumstances.

adoption has been given) a condition that the child will be brought up in a specific religious persuasion. In circumstances where the court dispenses with consent, no such condition may be placed by the parents.

Cases of parents contesting a freeing order are frequent, highly complex and expensive. Should the child be considered to be at risk of harm or neglect or, if the parents are deemed incapable of giving consent, or are unable to be found, the adoption agency can apply to place a child for adoption with or without the birth parents agreement and apply directly to the court for a freeing order (under Article 18).²⁹ If granted, the Trust becomes legally responsible for the child. The Trust will again consider the religious background of the child within the context of best interests; however this is not a prerequisite for a particular placement.

The granting of freeing orders has been criticised for being resource intensive, which in turn can result in greater delays in the adoption process.³⁰ Under adoption proceedings a court shall appoint a Guardian Ad Litem (GAL) whose main remit is to represent and safeguard the interests of the child before the court and to make sure that the child's feelings are known.³¹ Advocates suggest that the current law should be updated to replace freeing orders with "placement orders" similar to that of England and Wales.³² These provide a more effective balance of the competing interests, and seek to establish a clearer focus on the child's welfare and their rights.

There is no legal requirement that children are placed with parents of the same race as themselves, and this has not been a common issue to date in Northern Ireland. Other UK jurisdictions are required to have regard "so far as is practicable" to any wishes of the parents/guardian as to the child's religious and cultural upbringing as per the 2005 statutory guidance on the Adoption and Children Act (2002).³³

3.6 Adoption Application Process

Applications from prospective adopters are processed via a series of stages. Initial contact by the applicant(s) is made with HSC Trusts or an approved voluntary adoption agency.³⁴ There is no fee for being assessed and approved as an adoptive parent in the UK unless the assessment request is for a child being adopted from abroad. Applicants undertake a home study assessment completed by agency social workers which includes a number of visits, additional criminal and medical health checks and references. Once complete, their assessment papers are submitted for consideration

²⁹ Freeing children for adoption is provided for in Articles 17 and 18 of the Adoption (NI) Order 1987. The effect of the freeing order is to give the adoption agency parental responsibility for the child.

³⁰ Kelly, G. & McSherry, D (2001) Freeing Order Processes in Northern Ireland -painfully slow. *Adoption and Fostering* Vol. 25 No 2.

³¹ The Adoption (NI) Order 1987 (Article 66)

³² A placement order is a court order authorising a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority.

³³ O'Halloran, K, (2006) *The Politics of Adoption*; Chapter 2: The changing face of adoption in the UK, p52

³⁴ Adoption agencies are inspected and approved by the Department for Health, Social Services and Public Safety (DHSSPS).

to an adoption panel from the agency. It is the responsibility of the adoption agency to ensure that only those who are suitable to adopt are approved to do so.

The adoption panel will consider a report on the application and recommend to the agency whether or not the applicant(s) should be approved as adopters. If this is in favour of the application, the agency uses its eligibility criteria to match applicant(s) with a child. Once a suitable match is found, the child is placed with the applicant(s) for a probationary period.³⁵ At least 13 weeks after placement with the child, a court hearing is arranged to assess whether an adoption order will be granted. If this occurs, the adoption order severs all legal rights with the birth family and confers parental rights and responsibilities on the new adoptive family. This is a permanent court order which cannot be reversed. The adopted child becomes a full member of the adoptive family; a new birth certificate is issued and the child automatically assumes the adoptive parents surname and the same rights and privilege, including the right of inheritance, as if they were born into that family.³⁶ Where appropriate, bespoke arrangements are put in place for the child in terms of maintaining contact with members of their birth family.³⁷

In some instances a child may be adopted without having to proceed through an adoption agency. Examples can include:

- if the child is being adopted by relatives³⁸ with whom s/he has been living continuously for at least 13 weeks before the Adoption Order is made;
- if the child is being adopted by a step-parent together with one of her/his birth parents.

In these circumstances, the court will ask the Trust or agency to provide a report on the family, the child and the birth parents to aid the court in making a decision. These types of cases are quicker than the full adoption assessment process.

3.7 Intercountry Adoption

A large number of children abroad, especially those falling victim to disasters, poverty, and war are also in need of a permanent home. Adopting children from another country (intercountry adoption) became recognised in the post-War years of the 1940s, and was welcomed by the UK on humanitarian grounds. With the decreasing numbers of healthy babies available for adoption in the UK, many childless couples turned to this type of adoption. The Government permits intercountry adoption to proceed where:

- The child cannot be cared for in any suitable manner in their own country;

³⁵ The applicant becomes a foster carer for the child within this timeframe (or may have already been living with the family in a foster placement)

³⁶ http://www.dhsspsni.gov.uk/index/hss/child_care/adoption.htm

³⁷ Modern practices does not automatically preclude direct or indirect contact with birth families

³⁸ For example grandparent, brother, sister, aunt or uncle of the child, whether of full blood, half blood or affinity (relationships which result from marriage).

- The adoption would be in the best interests of the child and with respect to the child's fundamental rights as recognised in international law;³⁹ and
- The adopter has been assessed as eligible and suitable to adopt from overseas by an adoption agency.⁴⁰

The Adoption (Intercountry Aspects) Act (NI) 2001 (the 2001 Act) provides the legislative basis for the regulation of intercountry adoption in Northern Ireland. Additional legislation and guidance concerning intercountry adoption for Northern Ireland are set out in:

- The Adoption of Children from Overseas Regulations (NI) 2002;
- The Intercountry Adoption (Hague Convention) Regulations (NI) 2003;
- The Departmental guidance document - Implementing the Adoption (Intercountry Aspects) Act (NI) 2001: a summary of the regulations and procedures (DHSSPS, 2003).

At present intercountry adoption can be difficult to achieve; expensive⁴¹ and legally complex in terms of immigration, international law and individual state laws. The number of intercountry adoptions recorded worldwide has been falling since 2004.⁴² Likewise not all countries permit this type of adoption. In comparison with other parts of the UK, Northern Ireland has much fewer intercountry adoptions.

Many children adopted via intercountry adoption have been victims of corrupt adoption practices. In 1993, the Hague Intercountry Adoption Convention was established to protect the best interests of these children and to produce a system of co-operation between countries to prevent abduction and child trafficking. Under the Convention, the DHSSPS is a Central Authority and is charged with specific responsibilities surrounding the implementation of the Convention, both where Northern Ireland is receiving children from abroad and where children from Northern Ireland are adopted overseas.

Intercountry adoptions are classified under the following headings:

- 1) Convention Countries: Adoption from a Hague Convention country⁴³ results in recognition of the adoption in the UK and British citizenship for the child.
- 2) Designated List Countries⁴⁴ results in recognition of the adoption in the UK but does not automatically grant of British citizenship and a specific application for this is required.

³⁹ The 1993 Hague Convention on the Protection of Children and Co-operation aims to establish an international system of co-operation to prevent the abduction of, the sale of, and illegal traffic in children. It enables countries to absorb its Articles within their own substantive law. The Convention requires that no profit is made from the adoption process. The Convention is underpinned by the UN Convention on the Rights of the Child.

⁴⁰ Department for Children, Schools and Families available online at: <http://www.dcsf.gov.uk/intercountryadoption/>

⁴¹ Fees include for example: home study assessment and report, court and notary fees in Northern Ireland and in the child's country, translation fees where required, visits to the child's country.

⁴² Selman, P. (2010) Intercountry adoption in Europe 1998-2008 In: *Adoption and Fostering Journal*, Vol 34 pp19.

⁴³ At present there are over 55 countries on this list.

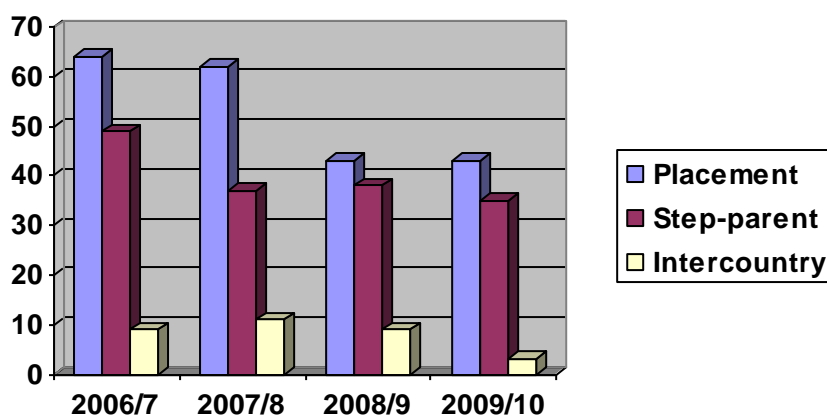
⁴⁴ This is a list of countries that are named on the Adoption (Designation of Overseas Adoptions) Order 1973.

3) Others: Adoptions from non-Convention or non-Designated List countries are not recognised under UK law. The adopter is required to apply for an adoption order in a UK court on return to the UK. This confers British citizenship on the child if the adopter is a British citizen.

Local applicants of intercountry adoption undertake a home study assessment which is completed by a social worker. Single applicants may adopt under Northern Ireland law, although the status abroad varies between individual countries. Once vetting checks are complete, their assessment report and associated documentation are submitted to the DHSSPS. Applicants also undergo intercountry adoption preparation training. If approved, a Certificate of Eligibility is issued and the report is sent to a relevant overseas authority for the matching process to begin. Visits to the child in their country of origin are also expected as part of the process. When the adoption is complete, a structured post-adoption support plan for each child and their family is put in place by the Trust.⁴⁵

4. Adoption: Statistics (NI)

Since the 1930's, over 20,000 registered adoptions have been recorded in Northern Ireland.⁴⁶ The number of adoptions in Northern Ireland has fallen significantly from a peak of 554 in 1970, to less than 150 per annum in 2003-2007.⁴⁷ This trend, although on a larger scale, is reflected in other UK jurisdictions.⁴⁸ In 2009, **101 adoptions** were recorded by the General Register Office for Northern Ireland. Figure 1 shows the decreasing trend concerning the number of adoption proceeding appointments (placement, step-parent and intercountry) in Northern Ireland from 2006/7-2009/10 as recorded by the Northern Ireland Guardian Ad Litem Agency.⁴⁹



⁴⁵ Sharma, K. *Intercountry Adoption in Northern Ireland* in *Adoption and Fostering*, Spring 2008

⁴⁶ Adopt Website: available online at: http://www.adoptni.com/index_files/Page470.htm

⁴⁷ British Association for Adoption and Fostering: <http://www.baaf.org.uk/info/stats/ni.shtml>

⁴⁸ Longer term trends based on the date of entry in the Adopted Children Register show that the number of adoptions in England and Wales fell rapidly during the 1970s (there were 21,495 adoptions in 1971) and continued to fall steadily over the 1980s, 1990s to the present.

⁴⁹ Available online at <http://www.nigala.hscni.net/> Under the Children (NI) Order 1995, a guardian ad litem is appointed to safeguard the interests of children who are the subject of Court proceedings.

Figure 1 Adoption Proceeding Appointments in NI 2006/7-2009/10

As can be seen from Figure 1, the majority of adoption proceeding appointments relate to placement adoptions, followed by step-parent applications. Placement adoption is more likely to involve children who have become looked after by social services, and for whom family re-unification is not possible. The fewest adoptions relate to intercountry applications. Approximately 70 children were adopted from other jurisdictions to Northern Ireland via the intercountry adoption process between 2004-2009.⁵⁰ The most common countries that children originated from include Thailand (28), China (13), Russia (11), and Guatemala (6).

4.1 Approved Parents Awaiting Placement

In November 2009, **74 married couples and 8 individuals** in Northern Ireland had been approved as adopters and were awaiting placement of a child.⁵¹

4.2 Timeframes

Although timeframes vary for each individual case, the adoption process in Northern Ireland takes on average, around two and a half years to complete, compared with one and a half years in the rest of the UK. The length of time taken can be determined by a number of factors such as the assessment and matching process, dispensing of consent, and the time necessary to bring a case to court.

4.3 Children Awaiting Placement

The DHSSPS does not hold figures on the number of local children waiting to be adopted by each HSC Trust and there is no statutory requirement to do so. However, the Department has been working with the British Association for Adoption and Fostering (BAAF) to establish and maintain a database known as the Adoption Regional Information System (ARIS) which is being piloted locally. The purpose of ARIS is to centralise the information relating to adoption, previously held by Trusts, on one database in order to facilitate earlier matches between children and prospective families.⁵²

For the purposes of this research paper, each HSC Trust was asked to submit adoption figures for the period April 2009-April 2010. Two Trusts responded and this data is presented below.

⁵⁰ Information reported was provided by the Health and Social Care Trusts and has not been validated by the DHSSPS.

⁵¹ NI Assembly question AQW 2602/10. Mr Wells to ask Health Minister: How many couples and individuals had been approved and were waiting for an adoption placement in Northern Ireland?

⁵² Northern Ireland Executive, 24 June 2010. Health Minister supports launch of new adoption information database. Available online at <http://www.northernireland.gov.uk/news-dhssps-24062010->

Belfast HSC Trust

- During the period 1 April 2009 - 31 March 2010 **16** children were adopted; 2 of these were intercountry adoptions.
- The average time between the decision regarding adoption and the granting of an adoption order was 2 years 10 months.
- Adoption has been deemed in the best interest of 32 children, but agreement to their adoption is unavailable at present. Adoption placements have been identified for 13 of the 32 children. Of the 20 children remaining there are six sibling groups.

Western HSC Trust

- During the period 1 April 2009 - 31 March 2010, **14** adoption orders were granted (7 family/step-parent, 3 inter-country and 4 placement).
- Family or step-parent adoption had an average waiting time of 11 months. The average wait for intercountry adoption was 2 years 2 months, whilst placement adoption for those in the care system took on average 2 years 8 months from the “best interests” decision as described in section 4.4 below.

4.4 Children Adopted from Care

As previously discussed, the majority of children adopted in Northern Ireland today are looked after children.⁵³ Once the child has a best interest decision supporting adoption as their care plan,⁵⁴ it can be quite a considerable time before freeing proceedings are completed.⁵⁵ However, many freeing orders are contested by parents, thus adding to the delay. Critics have suggested that this prolonged wait can lead to uncertainty and have a negative impact on the children’s psychological and developmental well-being.⁵⁶

Between 1999 and 2005, at least 500 looked after children have been adopted in Northern Ireland, however numbers vary greatly year on year.⁵⁷ Recent data from the Department pertaining to the ‘Adoption of Looked After Children in Northern Ireland

⁵³ The term 'looked after' was introduced by the Children Act in 1989 and refers to children who are subject to care orders and those who are accommodated. Many will have been affected by distressing experiences such as abuse. Others may be in care because of the illness/death of a parent.

⁵⁴ Where adoption is identified as an option for a particular child, the adoption agency’s adoption panel will make a recommendation on whether adoption is in a child’s best interests. The agency decision-maker will decide whether to approve the plan.

⁵⁵ Where adoption is identified from an early stage, it is possible to consolidate applications for care and freeing proceedings into one case, with a view to speeding up the process.

⁵⁶ Irish News November 5, 2007. Children wait as long as four years to be adopted. Suzanne McGonagle

⁵⁷ DHSSPS (2006) Adopting the Future, p24

(2007/8)⁵⁸ shows that in March 2008 there were 2,433 children in local authority care in Northern Ireland. It is important to acknowledge that adoption will not be suitable for all of these children; some children will return to their original homes or find alternative care arrangements, nevertheless, the number of adoptions for this group remains low as highlighted below:

- During 2008, 64 looked after children were adopted (a small number in comparison with the total number of children in care needing permanent homes);⁵⁹
- Between 2006-8, the total percentage of looked after children adopted from care increased slightly from 2.2% to 2.7%;
- 61% (39) of the children were adopted by foster carers;
- In 2007/08, the average age of children adopted from care was 4 years 11 months. 59% (38) of children adopted were under 4 years old 41% (26) were aged 5 and over.

4.5 Adoption Timeframe: Looked After Children

Data concerning looked after children is contrasted with those in nearby jurisdictions as shown in Table 1.⁶⁰

The number of looked after children adopted in 2008 from Northern Ireland is much smaller than England, Wales or Scotland. In addition, children on the waiting list in Northern Ireland experience longer waiting times than either England or Wales. On average, children adopted from Northern Ireland are also slightly older at the point of adoption than those in neighbouring jurisdictions. This is in part due to the updated legislative measures in the other jurisdictions that have made the adoption process more accessible and less time consuming.

| Jurisdiction | No. of children in care (08/09) | Number of looked after children adopted 2008 | From last entry into care, the average length of time for a child to be adopted in 2008 | In 2008, the average duration from the Trust 'best interest proposal' to adoption | Average age of adoption for looked after children 2008 |
|-------------------------|---------------------------------|--|---|---|--|
| Northern Ireland | 2,433 | 64 | 3 yrs 6 months | 2 yrs 5 months | 4 yrs 11 months |
| England | 60,900 | 3,200 | 2 yrs 7 months | 1 yr 7 months | 3 yrs 11 months |
| Wales | 4,705 | 212 | 2 yrs 5 months | 1 yr 7 months | 3 yrs 3 months |
| Scotland | 15,288 | 147 | NOT AVAILABLE | NOT AVAILABLE | NOT AVAILABLE |

Table 1 Comparison with UK jurisdictions regarding looked after children 2008

⁵⁸ AD1 Survey: 'Adoption of Looked After Children in Northern Ireland (2007/08) Available online at: http://www.dhsspsni.gov.uk/ad1_statistical_bulletin_2008_final.pdf

⁵⁹ http://www.adoptionuk.org/information/103152/e_factsandfigs/ Website accessed 28.6.2010

⁶⁰ Data taken from correspondence dated 29.1.10 from Health Minister, Michael McGimpsey to the Committee for Health, Social Services, and Public Safety (NI Assembly) in response to question: What are the comparative waiting lists for adoption in the rest of the UK?

In England, the British government has set a target that 95 per cent of children should be placed with a family within 12 months of a decision being taken that adoption is in their best interests.⁶¹ There are no similar targets in Northern Ireland. As Table 2 below suggests, 45% (29) of children adopted from care in Northern Ireland were placed for adoption within 12 months of the best interest decision, 32% less than the corresponding figure for England.

| | Northern Ireland | England |
|--|------------------|---------|
| Placed <i>within</i> 12 months of best interest decision | 45% | 77% |
| Placed over 12 months of best interest decision | 55% | 23% |

Table 2. Placements achieved in context of best interest decision NI/England 2008⁶²

5. Adoption in other parts of Great Britain

The application process for prospective adopters in Scotland, England and Wales is similar to that in Northern Ireland. This section considers the updated legislation in these jurisdictions and also provides descriptive data concerning the number of adoptions taking place.

5.1 England and Wales: Legislation

In December 2000 the Government published a White Paper, *Adoption: A New Approach*.⁶³ This White Paper built on the proposals of the Prime Minister's Adoption Review, which were published for consultation in July 2000.⁶⁴ The paper included a commitment to introduce new adoption legislation, to promote greater use of adoption, to stop the "drift" of children in care, to improve the performance of the adoption service, and to put children at the centre of the process. In 2001, following a number of amendments and contentious moral deliberations between Ministers, an Adoption and Children Bill in excess of 100 clauses was introduced. Subsequently, the Adoption and Children Act (2002) was fully implemented in 2006, replacing the Adoption Act (1976) of England and Wales.⁶⁵ The new legislation:

- places the needs of children and the rest of their lives at the centre of the adoption process by aligning adoption law with the relevant provisions of the Children Act (1989);

⁶¹ Ibid

⁶² http://www.dhsspsni.gov.uk/ad1_statistical_bulletin_2008_final.pdf page 9

⁶³ Adoption - a new approach; Cm 5017, Department of Health, December 2000).

⁶⁴ Prime Minister's Review: Adoption. Performance and Innovation Unit, July 2000.

⁶⁵ <http://www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/childrenincare/adoption/childrenact2002/act2002/>

- provides for adoption orders to be made in favour of single people, married couples and, for the first time, unmarried couples (including same sex partners) who can apply jointly;⁶⁶
- implements measures on intercountry adoption, including a statutory framework for the suspension of adoptions from specific countries where concerns about practices in connection with the adoption of children exist;
- introduces Special Guardianship orders to provide permanence for children who are unable to return to their birth families. This private law order remains in force until the child becomes 18. It is applicable in instances where the relationship between the child and their carer would benefit from greater legal security, but where adoption is not suitable (for example, older children who do not wish to be legally separated from their birth family);
- reduces harmful delays in the adoption process through an Adoption and Children Act Register to suggest links between children and approved adopters, and through measures requiring courts to draw up timetables for adoption cases;
- places a duty on local authorities to arrange advocacy services for looked after children and young people leaving care in the context of complaints;
- places restrictions on arranging adoptions and advertising children for adoption, other than through adoption agencies;
- requires adoption support agencies to have a role in assisting adopted adults to obtain information about their adoption and to facilitate contact between them and their birth relatives.

5.1.2 English and Welsh Statistics

There are currently 4,000 children waiting to be placed in adoptive families in England and Wales.⁶⁷ Over half of the children referred need to be placed with their siblings and approximately 30% are from black and minority ethnic backgrounds.⁶⁸ During 2008, there were 80 adoptions by gay couples in England and Wales.⁶⁹ Table 3 contains information derived from the Adopted Children Register and contains the particulars of every adoption order made by a court in England and Wales since 1974. As can be seen from the table, the number of adoptions has decreased significantly from 22,052 in 1974 to 5,065 in 2008.

⁶⁶ Both partners must be at least 21

⁶⁷ <http://www.adoptionregister.org.uk/files/adopt/guidance.pdf> Page 1

⁶⁸ <http://www.adoptionregister.org.uk/files/annualreport08.pdf> Page 3

⁶⁹ www.heraldsotland.com/news/home-news/new-legislation-sees-gay-scottish-couples-win-right-to-adopt-children-1.921121

| Year | Children Adopted | Males | Females |
|-------------------|------------------|--------|---------|
| 2008 | 5,065 | 2,522 | 2,543 |
| 1998 ⁸ | 4,386 | 2,214 | 2,172 |
| 1988 | 7,390 | 3,675 | 3,620 |
| 1978 | 12,121 | 6,259 | 5,862 |
| 1974 | 22,502 | 11,503 | 10,999 |

Table 3. Adoption Orders England and Wales (1974-2008)⁷⁰

5.2. Scotland: Legislation

An extensive overhaul of Scottish Adoption legislation led to The Adoption and Children (Scotland) Bill which was introduced by the Scottish Executive as part of the legislative programme for 2005. It received Royal Assent on 15th January 2007. The Act is based on the work of the Adoption Policy Review Group which undertook a four year review and consultation process, the main findings of which are published in “Better Choices for Our Children” (2005). Its objective was to “*improve, modernise and extend adoption in Scotland and to provide greater stability for children who cannot live with their original families.*”⁷¹ In total, 107 recommendations were made to improve the legal framework of the Adoption (Scotland) Act 1978. Several new provisions were introduced including:

- Same sex couples are able to adopt;
- Unmarried couples are able to adopt jointly;
- A new permanence order is introduced for children who cannot live with their families. This replaces freeing orders and allows parental rights and responsibilities relating to residence and guidance to pass to the local authority and other relevant parental rights and responsibilities to be granted to appropriate people, including the child’s parents. A permanence order can be sought with or without a measure granting authority for the child to be adopted, depending on the needs of the child. This order also provides flexibility to be able to adapt to a child’s changing circumstances; and
- A regulation-making power allowing the Scottish Ministers to set a national system of care allowances. Local authorities have a duty to provide a range of adoption services, the meaning of which may be expanded by secondary legislation. People directly affected by an adoption (child, parents and adoptive parents) have a right to adoption support services, which include services provided before and after an adoption order is made.

⁷⁰ England and Wales data available online at

⁷¹ Further information is available online at www.baaf.org.uk/info/lpp/law/scotland.shtml

5.2.1 Scottish Statistics

During 2008, **418** adoptions were recorded by the Registrar General.⁷² There are approximately 11,000 children in the care of local authorities.

- 67 per cent were adopted by non-relatives of the child;
- 28 per cent were adopted by a step-parent;
- 3.6% were adopted by other relation(s);
- 0.9% were adopted by grandparent(s);
- 14 per cent of total adoptions were aged under 2, and nearly all of these were adoptions by non-relatives;
- By contrast, only 13 per cent of the 85 adoptions of children aged 10 or over were by non-relatives;
- There is anecdotal information regarding the number of gay adoptions. As the numbers are extremely low, agencies fear that children may become easily identified, therefore this information has not been released.

6. Concluding Summary

Despite the growing number of children, especially those in the care system in need of permanent homes, the number of children being adopted in the UK is decreasing. Adoption is a highly complex area of family law which involves multiple stakeholders, often with competing interests. Together with changing attitudes and social norms, the adoption process has evolved from a service for childless couples and relinquished infants, to a permanence option for children who cannot be cared for by their parents, whatever the reason. Unlike nearby jurisdictions, Northern Ireland has yet to modernise its adoption legislation. Proposals to amend the current law were presented in the DHSSPS 'Adopting the Future' review in 2006. These plans aim to provide a more accessible, supportive and efficient service for all stakeholders concerned whilst placing the needs of the child at the very centre of the process.

⁷² Scottish Statistics available online at: <http://www.gro-scotland.gov.uk/files2/stats/scotlands-population-2008-the-registrar-generals-annual-review-of-demographic-trends-154th-edition/scotlands-population-2008-the-register-generals-annual-review-154th-edition.pdf>

Appendix 1

