



Northern Ireland  
Assembly

# Research and Information Service Research Paper

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## **Adoption**

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This research paper outlines the adoption process in Northern Ireland, the legislative framework and the profile of children mostly likely to be adopted today. Statistical information is presented regarding the number of adoptions and the average length of time the adoption process can take. In addition, adoption legislation from England and Wales, Scotland and the Republic of Ireland is also considered.

## Key Points

- Adoption is the legal transferring of a child from one family to another. It 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 possible.
- Adoption proceedings fall under 3 categories: 1) placement, 2) step-parent/relative, and 3) intercountry adoption (i.e. those from other jurisdictions). In the UK, intercountry adoption is the least common form of adoption. It also incurs considerable costs to the adopter(s).
- Adoption in Northern Ireland is complex and time consuming. It will only be considered if it is in the best interests of the child. Interests of other stakeholders in the adoption process are diverse and sometimes fundamentally opposed.
- The profile of children available for adoption has changed radically in the last 50 years when infants were previously relinquished by unmarried mothers to childless couples. Today, most UK children requiring adoption are from the care system. These children are more likely to have suffered abuse, neglect or trauma in the past.
- The current legal framework governing adoption is set under the Adoption (Northern Ireland) Order 1987. However it has been deemed out-dated and in need of reform.
- New adoption legislation has been enacted in Scotland, England and Wales. Amongst other provisions, unmarried couples and same sex couples are eligible to adopt jointly.
- Like Northern Ireland, the Republic of Ireland does not permit same sex or unmarried couples to adopt jointly. Only one person in an unmarried relationship can adopt.
- 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.' Cases where consent is contested by parents/guardians are expensive and can exacerbate delays in the adoption process.
- There is a shortage of potential adopters. Due to the complex needs of many children, the time taken to recruit suitable adopters and the legal process, long waits for a new family are incurred. The average waiting time for a child in care who has a 'best interest proposal for adoption' is over 2 years. This is much longer than in England or Wales.
- Once an Adoption Order is granted, all legal rights with the birth family are severed and parental rights and responsibilities are conferred on the new adoptive family.
- The number of adoptions is decreasing: 106 adoption orders were granted between April 2010 and March 2011 in NI health trusts. Of these, 62 were "placement adoptions" (mostly children from the care system), 23 step-parent/relative, and 21 intercountry adoptions.
- In 2006, the DHSSPS completed a two year review of adoption entitled 'Adopting the Future'. The DHSSPS have since developed draft proposals for inclusion in a new Adoption and Children Bill which was agreed by the Executive in May 2010.
- Some examples of the proposals include: more consistent and child-centred standards of service, reducing delays, independent review and regulation, enhanced support for adopters, and improved planning - especially for children in the care system.

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# 1. Background to Adoption

Adoption is the legal transferring of a child from one family to another.<sup>1</sup>

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.<sup>2</sup> 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,<sup>3</sup> society has a duty to provide them where appropriate, with a permanent alternative home.<sup>4</sup> Adopting a child is a life-long commitment, and one way of providing a child with permanence in a family environment when living with their own family is no longer viable.

## 1.1 Brief History (UK)

Before adoption law was introduced, adoption was considered an informal, private arrangement, which sought to provide a home to an orphaned or illegitimate child.<sup>5</sup> Public pressure called for recognition of a law concerning adoption to improve the welfare of children. In 1926 the *Adoption Act* in England and Wales was introduced. Similar legislation was developed in the *Adoption of Children Act (NI) 1929*.<sup>6</sup>

After the Second World War, there was a significant rise in unmarried mothers, particularly from middle classes, giving up illegitimate babies for adoption. Adoption became a suitable option to what was deemed a 'social problem' for unmarried mothers, whilst at the same time, meeting the needs of childless couples.

In 1950, the *Adoption of Children Act (NI)* was amended to provide the basic foundations of the adoption service. This was at a time when Britain witnessed huge social and attitudinal changes regarding the notion of the nuclear family unit.<sup>7</sup> An increase in the number of abortions led to a rapid decline in the number of illegitimate babies available for adoption.<sup>8</sup> 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 use of birth control methods resulted in fewer babies becoming available.

Adoption practices then began to shift towards children in the care of local authorities, as many of these children had spent a lifetime in care or foster homes without a

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<sup>1</sup> DHSSPS (2006) *Adopting the Future*, page 17

<sup>2</sup> United Nations Convention on the Rights of the Child (1989) Article 20 Available online at:

[www.dcsf.gov.uk/everychildmatters/strategy/strategyandgovernance/uncrc/unitednationsarticles/uncrcarticles/](http://www.dcsf.gov.uk/everychildmatters/strategy/strategyandgovernance/uncrc/unitednationsarticles/uncrcarticles/)

<sup>3</sup> 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.

<sup>4</sup> Department of Health, Social Services and Public Safety: *Adoption*, available online at:

[www.dhsspsni.gov.uk/index/hss/child\\_care/adoption.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/adoption.htm)

<sup>5</sup> History shows that many cultures had various motives for adopting a child. For example, landowners without children would adopt as a means to provide heirs to their property. Others adopted children as servants.

<sup>6</sup> See Bridge, C. & Swindells, H. (2003) *Adoption: The Modern Law*, Chapter 1.

<sup>7</sup> Increases in divorce, cohabitation and remarriage also impacted on parenting arrangements and people's motives for adoption.

<sup>8</sup> 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.

permanent home. ‘Permanency planning’ was introduced which encouraged local authorities to secure a long-term, stable future for looked after children in the care system. In 1969 a review of adoption law in England and Wales was undertaken<sup>9</sup> which led to the Adoption Act (1976).<sup>10</sup> Recommendations included more openness in the process and a duty on local authorities to regulate adoption services. The review also described the adoption process as a ‘total legal transplant’ which, via an adoption order, would enable the adopted child to have the same rights as any child born to the adoptive family.

## 2. Adoption in Northern Ireland

The adoption of children in Northern Ireland is a complex and time consuming process (see Appendix 1). At present, unmarried children under the age of 18 who are no longer considered able to live on a permanent basis with their birth parents, are eligible for adoption. The main stakeholders in the 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 involved - such as health trusts, social services, and voluntary and legal representatives. The interests of the stakeholders are diverse and sometimes fundamentally opposed to each other.

### 2.1 Legislation

The current legal framework governing adoption in Northern Ireland is set out in primary legislation in The Adoption (Northern Ireland) Order 1987.<sup>11,12</sup> Other relevant legislation includes The Children (Northern Ireland) Order 1995. A number of other related subordinate pieces of legislation have also been developed.<sup>13</sup>

Given society’s modern values and needs, new forms of practice, and the unnecessary delays associated with the current process - such as care planning and court proceedings, the Adoption (NI) Order has become out-dated and in need of reform.<sup>14</sup> It also lags behind recent legislative changes in adoption law in other UK jurisdictions (see section 7 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.<sup>15</sup>

<sup>9</sup> Report of the Departmental Committee on the Adoption of Children, 1972, Cmnd. 5107

<sup>10</sup> Due to its staggered implementation, it came into effect in 1988.

<sup>11</sup> The 1987 Order was largely based on the Adoption Act (1976) which 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.

<sup>12</sup> Legislation.gov.uk website. The NI Adoption Order (1987) <http://www.legislation.gov.uk/nisi/1987/2203/contents/made>

<sup>13</sup> Further guidance is available online at: [www.dhsspsni.gov.uk/index/hss/child\\_care/adoption/adoption\\_guidance\\_and\\_regulations.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/adoption/adoption_guidance_and_regulations.htm). Website accessed 21.9.11

<sup>14</sup> DHSSPS (2006) Adopting the Future, p9. Available online: [www.dhsspsni.gov.uk/adopting\\_the\\_future\\_16-6-06pdf.pdf](http://www.dhsspsni.gov.uk/adopting_the_future_16-6-06pdf.pdf)

<sup>15</sup> Such as The Human Rights Act 1998, obligations under Section 75 of the Northern Ireland Act 1998 and developments in case law.

## 2.2 Types of adoption proceedings

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.<sup>16</sup> Adoption proceedings are classed as follows:

- '**placement adoptions**' – applicants who have been approved to adopt and had a child placed for adoption (most children are from the care system);
- '**step-parent adoptions**' – the birth parent and step-parent apply to adopt the birth parents' child by acquiring full parental responsibility;
- '**intercountry adoptions**' – adopting a child from another country.

## 2.3 Profile of children

The profile of children available for adoption has radically changed from 50 years ago when babies were relinquished by unmarried mothers. Adoption has now moved towards a permanence option for children who cannot be cared for by their parents. In the interim, many children are taken into care in order to protect them from significant harm.<sup>17</sup>

*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.*<sup>18</sup>

[Adopting the Future, Chapter 3]

Literature also suggests that looked after children awaiting adoption are also more likely to:

- suffer from developmental complications caused by drug/alcohol misuse by the mother during pregnancy;
- have a disability and/or behavioural difficulties and a statement of special educational needs;

During their time in care, permanence for looked after children is provided predominantly through placements with foster parents.<sup>19</sup> Other alternatives include

<sup>16</sup> Further information available online from Northern Ireland Citizens Advice Bureau: Adoption [www.advicefinder.net/](http://www.advicefinder.net/) Section 2.

<sup>17</sup> "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.

<sup>18</sup> DHSSPS (2006) *Adopting the Future*, p9. Available online: [www.dhsspsni.gov.uk/adopting\\_the\\_future\\_16-6-06pdf.pdf](http://www.dhsspsni.gov.uk/adopting_the_future_16-6-06pdf.pdf)

<sup>19</sup> 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.

residential care settings or living with other family members<sup>20</sup> until the child can return home. "Placement adoption" offers legally binding permanence for looked after children who are unable to return home.

## 2.4 DHSSPS Adoption Review

In light of the law in Northern Ireland and the changing needs of those involved in the adoption process, the Department of Health, Social Services and Public Safety (DHSSPS) completed a two year review of adoption entitled 'Adopting the Future' (2006).<sup>21</sup> A public consultation with stakeholders was also completed.

The review proposed to modernise adoption legislation; ensuring the child was placed at the centre of the adoption process; that consistent standards of service are introduced; and that delays in the adoption process are reduced. Examples of proposed measures include:

- introducing statutory timescales for court proceedings;
- replacing 'freeing orders' with a new pre-adoption 'placement order';
- revising 'dispensing of consent' arrangements;
- introducing a 'special guardianship' option aimed at children where adoption is not the most suitable option;
- issuing new guidance on accessing/disclosing information for those involved in the adoption process, and making adoption information on birth certificates more discreet;
- enhancing training for practitioners;
- providing an independent review mechanism for applicants who are not deemed suitable as adopters;
- providing suitable adoption support services to all families involved, and;
- developing a more consistent and efficient intercountry adoption service.

Proposals also included more controversial aspects in terms of the eligibility criteria, for example, enabling both civil partners and unmarried couples to adopt jointly, thus widening the pool of potential adopters (at present, only one person in an unmarried heterosexual or same sex couple can adopt). However, in the consultation response, 95% of respondents objected to this proposal.<sup>22</sup>

In spite of the proposals, legislative reform has yet to occur. The DHSSPS have since developed draft proposals for inclusion in a new Adoption and Children Bill. This was agreed by the Executive in May 2010. However it did not progress during the last mandate partly because of the substantial length, complexity and timeframe required to implement the Bill.<sup>23</sup>

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<sup>20</sup> For example, kinship care

<sup>21</sup> 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.

<sup>22</sup> DHSSPS 'Adopting the Future' Summary and analysis of responses, page 35.

<sup>23</sup> 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.

### 3. Current Eligibility Criteria

Eligibility for those considering adoption in Northern Ireland is as follows:

- Single persons (male or female) over the age of 21 can adopt;<sup>24 25</sup>
- Married couples can adopt. These couples are required to make a joint application. Civil partners are currently not eligible to apply jointly;<sup>26</sup>
- For unmarried cohabitating couples, only **one** may apply to adopt; the other partner may apply for a Residence Order.<sup>27</sup> **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.<sup>28</sup> 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 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;
- Those who already have their own child/children can 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. A new alternative measure has been introduced that a step-parent can gain parental responsibility for their partner's child by order of the court or if both birth parents agree;<sup>29</sup>
- Applicants are required to be domiciled in a part of the UK, Channel Islands of Isle of Man. Those living abroad who still have domicile in the UK may apply to adopt;<sup>30</sup>
- 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.

At present, some aspects of the eligibility criteria in the existing legislation are being challenged by the Northern Ireland Human Rights Commission by way of a judicial review.

<sup>24</sup> 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.

<sup>25</sup> 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.

<sup>26</sup> As per the Adoption Regional Policy and Procedures (2010) Section 5.2.11 "Those living within a formal civil relationship and co-habiting couples are not eligible to make a joint application to adopt". A supplement has been added advising that a House of Lords Judgement (2008) found it was unlawful to reject a couple solely on the grounds that they are unmarried.

<sup>27</sup> 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, unless there are exceptional circumstances.

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

<sup>29</sup> This has the advantage of not removing parental responsibility from the other birth parent and does not legally separate the other birth parent's family. This new measure also applies to civil partners. Further information is available at: [www.nidirect.gov.uk/index/information-and-services/parents/adoption-fostering-and-children-in-care/adoption/relative-or-stepchild-adoption.htm](http://www.nidirect.gov.uk/index/information-and-services/parents/adoption-fostering-and-children-in-care/adoption/relative-or-stepchild-adoption.htm)

<sup>30</sup> 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.

### 3.1 Parental/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’ and concerns 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. Subsequently parental responsibility for the child is relinquished to the adoption agency (or Trust).<sup>31</sup> Parents of the child are permitted to place 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. Difficult issues arise, especially in relation to parental contact with the child and issues around human rights.<sup>32,33</sup> 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).<sup>34</sup> 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.

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 ensure that the child’s feelings are known.<sup>35</sup>

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).<sup>36</sup>

The granting of freeing orders has been criticised for being resource intensive, and can result in greater delays in the adoption process.<sup>37</sup> Advocates suggest that the current law should be updated to replace freeing orders with “placement orders” (as is proposed in the new draft Bill). These orders provide a more effective balance of the competing interests, and seek to establish a clearer focus on the child’s welfare and their rights, without necessarily extinguishing all parental responsibility before and adoption order is made.

<sup>31</sup> This automatically extinguishes parental responsibility from the child, before an Adoption Order is made.

<sup>32</sup> DHSSPS Adopting the Future page 23. UNCRC Article 9: Childs right to live with parents unless contrary to their best interests. Right to contact if separated from parents

<sup>33</sup> Ibid UNCRC Article 9: Childs right to live with parents unless contrary to their best interests. Right to contact if separated from parents

<sup>34</sup> 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.

<sup>35</sup> The Adoption (NI) Order 1987 (Article 66)

<sup>36</sup> O’Halloran, K, (2006) The Politics of Adoption; Chapter 2: The changing face of adoption in the UK, p52

<sup>37</sup> Kelly, G. & McSherry, D (2001) Freeing Order Processes in Northern Ireland -painfully slow. *Adoption and Fostering* Vol. 25 No 2.

### 3.2 Waiting lists

Due to the complex needs of many children, coupled with a shortage of prospective adopters, long waits for a new family are often 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 are suffering trauma from past experiences. There is also considerable pressure on social work professionals to demonstrate proportionality when struggling with the tensions between existing legislation and the demands of today's social and legal frameworks, and this itself can lead to significant delays in the process. Although timeframes vary for each individual case, the adoption process – for both domestic and intercountry can be lengthy. A number of factors impact on the length of time an adoption can take; for example, the assessment and matching process, dispensing of consent, and the time required bringing a case to court.

## 4. Adoption Application Process

Prospective adopters make contact with an adoption agency (that is, HSC Trusts or voluntary agencies).<sup>38</sup> There is no fee for being assessed in the UK unless the child is being adopted from abroad. Applicants undertake a home study assessment completed by agency social workers which includes visits, criminal and medical health checks and references.<sup>39</sup> 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. In turn both age<sup>40</sup> and health<sup>41</sup> of prospective adopters are taken into account. There is no legal requirement for applicants to be employed or have a defined income level, and depending on circumstances, financial support is available.<sup>42</sup> Agencies will want to assure themselves that applicants have sufficient income and are able to manage their finances.<sup>43</sup>

Assessment papers are then submitted for consideration to an adoption panel. If approved, adoption agencies will have their own policies in addition to the eligibility criteria to match adopter(s) with a child. Where possible, agencies will try to place siblings together. Once a suitable match is found, the child is placed with the applicant(s) for a probationary period.<sup>44</sup>

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, **an 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

<sup>38</sup> Adoption agencies are inspected and approved by the Department for Health, Social Services and Public Safety (DHSSPS).

<sup>39</sup> NI Direct: The adoption process and where to get support. [www.nidirect.gov.uk/index/information-and-services/parents/adoption-fostering-and-children-in-care/adoption/the-adoption-process-and-where-to-get-support.htm](http://www.nidirect.gov.uk/index/information-and-services/parents/adoption-fostering-and-children-in-care/adoption/the-adoption-process-and-where-to-get-support.htm)

<sup>40</sup> There is no upper age limit

<sup>41</sup> 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.

<sup>42</sup> Further information is available at: [www.baaf.org.uk/info/financial/ni.shtml](http://www.baaf.org.uk/info/financial/ni.shtml)

<sup>43</sup> Adoption allowances may be available, depending on individual circumstances.

<sup>44</sup> The applicant becomes a foster carer for the child within this timeframe

cannot be reversed. The child becomes a full member of the adoptive family; a new birth certificate is issued, and the child assumes the adoptive parents surname and the same rights and privilege, including the right of inheritance, as if they were born into that family.<sup>45</sup> Where appropriate, arrangements are put in place to enable the child to maintain contact with members of their birth family.<sup>46</sup>

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

- if the child is being adopted by relatives<sup>47</sup> 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/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 generally quicker than the full adoption assessment process.

## 5. 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. With the decreasing numbers of babies available for adoption in the UK, many childless couples turn 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;
- 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;<sup>48</sup> and
- The adopter has been assessed as eligible and suitable to adopt from overseas by an adoption agency.<sup>49</sup>

The Adoption (Intercountry Aspects) Act (NI) 2001 provides the legislative basis for the regulation of intercountry adoption in Northern Ireland.<sup>50</sup> Intercountry adoption can be expensive<sup>51</sup> and legally complex in terms of immigration, international law and individual state laws.

In Europe, the number of intercountry adoptions has been falling since 2004,<sup>52</sup> however in Northern Ireland, the number of intercountry adoptions has increased over the last number of years. Yet in comparison with other parts of the UK, Northern Ireland has

<sup>45</sup> DHSSPS website [www.dhsspsni.gov.uk/index/hss/child\\_care/adoption.htm](http://www.dhsspsni.gov.uk/index/hss/child_care/adoption.htm) Website accessed 28.9.11

<sup>46</sup> Modern practices does not automatically preclude direct or indirect contact with birth families

<sup>47</sup> For example grandparent, brother, sister, aunt or uncle of the child, whether of full blood, half blood or affinity (relationships which result from marriage).

<sup>48</sup> 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.

<sup>49</sup> Department for Children, Schools and Families available online at: [www.dcsf.gov.uk/intercountryadoption/](http://www.dcsf.gov.uk/intercountryadoption/)

<sup>50</sup> Additional legislation and guidance has also been developed

<sup>51</sup> 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.

<sup>52</sup> Selman, P. (2010) Intercountry adoption in Europe 1998-2008 In: *Adoption and Fostering Journal*, Vol 34 p19.

much fewer intercountry adoptions; around 70 children were adopted in this way between 2004 and 2009.<sup>53</sup> The most common countries that children originated from included Thailand (28), China (13), Russia (11), and Guatemala (6).

In 1993, the Hague Intercountry Adoption Convention was established as a system of co-operation between countries in order to prevent abduction and child trafficking. Under the Convention, the DHSSPS is charged with specific responsibilities surrounding the implementation of the Convention. This applies to children being adopted into and out of, Northern Ireland.

The time it takes for intercountry adoption varies and averages around 3 years.<sup>54</sup> Applicants for intercountry adoption undertake a home study assessment which is completed by a social worker.<sup>55</sup> Single applicants may adopt under Northern Ireland law, although the status abroad varies between countries. Once vetting checks are complete, assessment documentation is submitted to the DHSSPS and applicants 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.<sup>56</sup>

## 6. Adoption: Statistics

Since the 1930's, over 20,000 registered adoptions have been recorded in Northern Ireland.<sup>57</sup> The number of adoptions in Northern Ireland has fallen significantly from a peak of 554 in 1970, to less than 150 per annum between 2003 and 2007.<sup>58</sup> This trend, although on a larger scale, is reflected in other UK jurisdictions.<sup>59</sup>

- In November 2009, **74 married couples and 8 individuals** in Northern Ireland had been approved as adopters and were awaiting placement of a child.<sup>60</sup>
- Data obtained from each Trust (figure 1) shows that between April 2010 and March 2011, **106** Adoption Orders were granted. The majority of adoption orders granted relate to placement adoptions (62) many of which will be children from the care system, followed by step-parent applications (23) and intercountry adoptions (21).

<sup>53</sup> Information reported was provided by the Health and Social Care Trusts and has not been validated by the DHSSPS.

<sup>54</sup> International Adoption Guide <http://www.internationaladoptionguide.co.uk/before-you-adopt/how-long-does-adoption-take.html>

<sup>55</sup> Most Trusts charge around £3,000 for this assessment.

<sup>56</sup> Sharma, K. *Intercountry Adoption in Northern Ireland* in Adoption and Fostering, Spring 2008

<sup>57</sup> Adopt Website: available online at: [http://www.adoptni.com/index\\_files/Page470.htm](http://www.adoptni.com/index_files/Page470.htm)

<sup>58</sup> British Association for Adoption and Fostering: <http://www.baaf.org.uk/info/stats/ni.shtml>

<sup>59</sup> 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.

<sup>60</sup> 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?

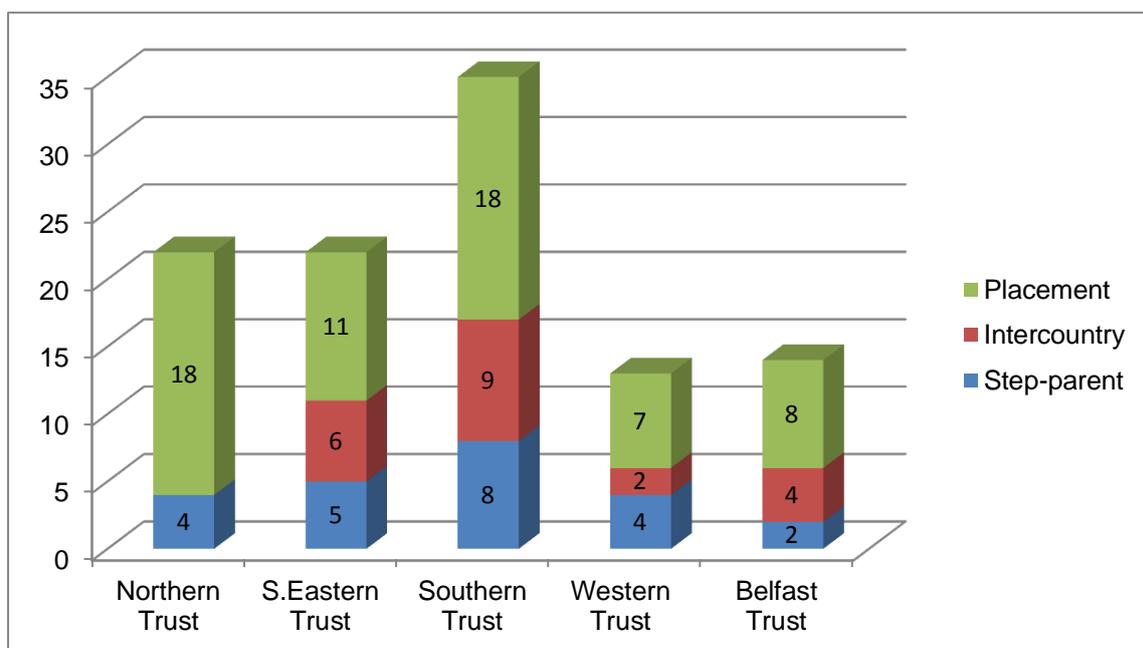


Figure 1 Details of adoption orders granted by Trust area (1 April 2010-March 2011)

The DHSSPS also funds an adoption database called ARIS (Adoption Regional Information System), operated by the British Association for Adoption and Fostering (BAAF). ARIS shares information relating to adoption that was previously held by Trusts on a single database. In turn, the system enables earlier matches between children and prospective families.<sup>61</sup>

## 6.1 Children Adopted from Care

As previously discussed, the majority of children adopted today in NI are 'looked after' children who are adopted from the care system.<sup>62</sup> Once the child has a best interest decision (a plan for adoption)<sup>63</sup> it can be a considerable length of time before freeing proceedings are completed.<sup>64</sup> 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.<sup>65</sup>

Recent data from the Department shows that in March 2010 there were 2,606 children in local authority care in Northern Ireland.<sup>66,67</sup> Around 1,700 of these children looked after by Trusts are living with foster carers.<sup>68</sup>

<sup>61</sup> Further information on the ARIS system is available at [www.ni-aris.org.uk/about-us](http://www.ni-aris.org.uk/about-us). Website accessed 28.9.11

<sup>62</sup> 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.

<sup>63</sup> 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.

<sup>64</sup> 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.

<sup>65</sup> Irish News November 5, 2007. Children wait as long as four years to be adopted. Suzanne McGonagle

<sup>66</sup> AD1 Survey: 'Adoption of Looked After Children in Northern Ireland (2007/08) Available online at:

[http://www.dhsspsni.gov.uk/first\\_release\\_tables\\_2010\\_final.pdf](http://www.dhsspsni.gov.uk/first_release_tables_2010_final.pdf) Website accessed 28.6.2010

<sup>67</sup> Data available from <http://www.adoptionuk.org/information/103152/factsandfigs/#2> Website accessed 28.6.2010

<sup>68</sup> Health and social care website: Fostering in Northern Ireland <http://www.fostering.hscni.net/>

It is important to acknowledge that adoption will not be suitable for all of these children; some will return to their original homes or find alternative care arrangements, nevertheless, the number of adoptions for this group remains low. Data shows that:

- During 2009/10, **50** looked after children were adopted (a small number in comparison with the overall number of children in care needing permanent homes);<sup>69</sup>
- Between 2008 and 2010, the percentage of looked after children adopted from care dropped from 2.7% to 2.0%;
- In 2010, the average age of children adopted from care was 4 years 8 months;
- The average duration from the Trust 'best interest proposal' to adoption was 2 years 4 months.

## 6.2 Adoption Timeframe: Looked After Children

Slightly earlier data from 2008 (in Table 1) shows the number of looked after children adopted from care in the UK. As can be seen, children in Northern Ireland experience longer waiting times on average than England or Wales. Children in 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 available elsewhere that have made the adoption process more accessible and less time consuming.

Jurisdiction	Number of children in care (08/09)	Number and % of looked after children adopted 2008	In 2008, the average duration from the Trust 'best interest proposal' to adoption	Average age of adoption for looked after children 2008
<b>N.Ireland</b>	2,433	64 <b>(2.5%)</b>	2 yrs 5 months	4 yrs 11 months
<b>England</b>	60,900	3,200 <b>(5.2%)</b>	1 yr 7 months	3 yrs 11 months
<b>Wales</b>	4,705	212 <b>(4.5%)</b>	1 yr 7 months	3 yrs 3 months
<b>Scotland</b>	15,288	147 <b>(&lt; 1%)</b>	NOT AVAILABLE	NOT AVAILABLE

Table 1 Adoption of looked after children in the UK (2008)

## 7. Adoption in Nearby Jurisdictions

The application process for prospective adopters in Scotland, England, and Wales is similar to that in Northern Ireland. However, the legislation in those jurisdictions and the Republic of Ireland has been updated recently. This section considers the legislation elsewhere and, where possible, also provides descriptive data concerning the number of adoptions taking place.

### 7.1 England and Wales: Legislation

In December 2000 the Government published a White Paper, *Adoption: A New Approach*.<sup>70</sup> This built on the proposals of the Prime Minister's Adoption Review, which was published for consultation the same year.<sup>71</sup> The paper included a commitment to

<sup>69</sup> [http://www.adoptionuk.org/information/103152/e\\_factsandfigs/](http://www.adoptionuk.org/information/103152/e_factsandfigs/) Website accessed 28.6.2010

<sup>70</sup> Adoption - a new approach; Cm 5017, Department of Health, December 2000.

<sup>71</sup> Prime Minister's Review: Adoption. Performance and Innovation Unit, July 2000.

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.<sup>72</sup> 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 relevant provisions of the Children Act (1989);
- 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;<sup>73</sup>
- implements measures on intercountry adoption, including a statutory framework for the suspension of adoptions from specific countries where concerns about adoptive practices 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;
- 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.

## 7.2 English and Welsh Statistics

Table 2 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 4,550 in 2010.

<sup>72</sup> [www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/childrenincare/adoption/childrenact2002/act2002](http://www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/childrenincare/adoption/childrenact2002/act2002)

<sup>73</sup> Both partners must be at least 21

Year	Children Adopted	Males	Females
<b>2010</b>	<b>4,550</b>	2,302	2,248
2009	4,725	2,392	2,333
2008	5,065	2,522	2,543
1998	4,382	2,213	2,169
1988	7,390	3,675	3,513
1978	12,121	6,259	5,862
1974	22,502	11,503	10,999

Table 2. Adoption Orders England and Wales (1974-2008)<sup>74</sup>

- 80% of children adopted in 2010 were born outside marriage<sup>75</sup>
- Almost 60% of children adopted in 2010 were aged between one and four years

### 7.3 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.*”<sup>76</sup> 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 jointly;
- Unmarried couples are able to adopt jointly;
- A new ‘permanence order’ was 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;
- 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

<sup>74</sup> Office of National Statistics <http://www.ons.gov.uk/ons/rel/vsob1/adoptions-in-england-and-wales/2010/historic-adoption-tables.xls> Website accessed 28.9.11

<sup>75</sup> [www.statistics.gov.uk/pdfdir/adop0711.pdf](http://www.statistics.gov.uk/pdfdir/adop0711.pdf) Website accessed 28.9.11

<sup>76</sup> Further information is available online at [www.baaf.org.uk/info/lpp/law/scotland.shtml](http://www.baaf.org.uk/info/lpp/law/scotland.shtml) Website accessed 28.9.11

directly affected by an adoption (child, parents and adoptive parents) have a right to adoption support services, which include services provided before/after an adoption order is made.

## 7.4 Scottish Statistics

During 2008, **418** adoptions were recorded by the Registrar General.<sup>77</sup> There are approximately 11,000 children in the care of local authorities.

- 67% were adopted by non-relatives of the child;
- 28% were adopted by a step-parent;
- 3.6% were adopted by other relation(s); 1% by grandparent(s);
- 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.

## 7.5 Republic of Ireland

Since the law relating to adoption in the Republic of Ireland (ROI) was introduced in 1952, the Adoption Act has been amended several times - most recently in 2010.<sup>78</sup> The 2010 Act deals with both domestic and intercountry adoption and the regulation of adoptive practices. An independent statutory body, known as the Adoption Authority can grant adoption orders. It also regulates adoption practices and adoption agencies.<sup>79</sup> In the ROI, the law permits the adoption of:

- (a) orphans;
- (b) children born outside marriage, including in certain circumstances, children whose natural parents subsequently marry each other. However, in **exceptional circumstances** a child can be adopted whether born inside or outside marriage, where it is established in court proceedings that the parents *had, for physical or moral reasons, failed in their duties towards the child.*

Those that are eligible to adopt include: married couples, a married person living alone, a single person (sole applicant), a widower, or a blood relative. Unmarried and same sex couples are not permitted to adopt jointly.<sup>80</sup> However for couples in either homosexual or heterosexual relationships, only one individual may adopt as a single applicant. The partner would have no legal rights in relation to the child.<sup>81</sup>

Interestingly ROI had more intercountry adoptions (200) than domestic adoptions during 2010 (189). Domestic adoption cases are typically step-parent adoptions. In

<sup>77</sup> Scottish Statistics available online at: [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](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) Website accessed 28.9.11

<sup>78</sup> Adoption Act 2010 (Ireland) Irish Statute Book <http://www.irishstatutebook.ie/pdf/2010/en.act.2010.0021.PDF>

<sup>79</sup> Citizens information website. [http://www.citizensinformation.ie/en/birth\\_family\\_relationships/adoption\\_and\\_fostering/adopting\\_a\\_child.html](http://www.citizensinformation.ie/en/birth_family_relationships/adoption_and_fostering/adopting_a_child.html) Website accessed 26.9.2011

<sup>80</sup> Health Service Executive website "Adoption" [http://www.hse.ie/eng/services/Find\\_a\\_Service/Children\\_and\\_Family\\_Services/Adoption\\_and\\_Tracing/Adoption/](http://www.hse.ie/eng/services/Find_a_Service/Children_and_Family_Services/Adoption_and_Tracing/Adoption/) Website accessed 26.9.2011

<sup>81</sup> Personal written correspondence with Liam Preston, Intercountry Adoption Unit, Adoption Authority Ireland on 28.9.11

the ROI, intercountry adoption takes on average 4 years to complete, whereas domestic adoption timeframes varies depending on the consent of the birth father.<sup>82</sup>

## 8. Conclusion

Despite the growing number of children in need of permanent homes, the number of children being adopted 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 in the UK has evolved from a service where illegitimate children were given up to childless couples, to a permanence option for children, many of whom are in the care system. Unlike neighbouring jurisdictions, Northern Ireland has yet to update its adoption legislation. Proposals to modernise the law were presented in the DHSSPS 'Adopting the Future' review in 2006 and proposals for a draft Bill were agreed by the Executive in 2010. It is anticipated that the legislation will create a more supportive and efficient service, whilst at the same time, placing the needs of the child at the centre of the process.

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<sup>82</sup> Personal written correspondence with Liam Preston, Intercountry Adoption Unit, Adoption Authority Ireland on 27.9.11

# Appendix 1

