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Assembly

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## Adoption: Northern Ireland

### 1 Introduction

This paper provides an overview of the adoption process and the profile of children currently placed for adoption. Statistical information relating to adoption, as well as the waiting times experienced by children and prospective families are presented. The paper also considers the legislative context for adoption, and what progress has been made towards the introduction of the much-awaited Adoption and Children (Northern Ireland) Bill.

### 2. What is Adoption?

Before adoption law was introduced, adoption was considered an informal, private arrangement to enable orphans or children born out of wedlock to become part of a family. Over many decades, together with changing attitudes and social norms,<sup>1</sup> the adoption process has evolved into a permanence option<sup>2</sup> for pre-school age and older children who can no longer be cared for by their parents. Today, adoption is the legal

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<sup>1</sup> For example, greater use of birth control and abortion resulted in fewer babies becoming available. Likewise unmarried mothers no longer faced negative social stigma. The introduction of welfare benefits for one-parent families also meant that there was more financial support available for unmarried mothers.

<sup>2</sup> "Permanence" is a core childcare policy and has been defined as "a framework of emotional, physical and legal conditions that gives a child a sense of security, continuity, commitment and identity." See <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> p6.

process by which a child or group of siblings who cannot be brought up within their birth family become full, permanent, and legal members of a new family.<sup>3</sup>

Most children adopted in Northern Ireland at present come from the care system. Many have been removed from their families to protect them from significant harm (such as abuse, neglect, or trauma).<sup>4</sup> In some cases, the child's parents may be absent or unable to cope due to disability or illness.<sup>5</sup> A very small number of children are also adopted from other jurisdictions.

## 2.1 Types of adoption

Three main types of adoption exist at present as is shown in Table 1.

Type of adoption	Description
Domestic or Placement Adoption	This applies to children resident in the UK and involves the adoption of a child from local care arrangements via foster or kinship care approved adopters.
Step-parent Adoption	A step-parent already taking responsibility for the daily care of a stepchild may seek to share legal responsibility via adoption with the child's parent (their partner). <sup>6</sup>
Intercountry Adoption	This concerns the adoption of a child from other jurisdictions. This is undertaken via the Regional Intercountry Adoption Assessment Service (RIAAS). Different legal requirements or restrictions may be in place for intercountry adoption compared to domestic adoption.

Table 1. Main types of adoption in place at present<sup>7</sup>

## 3. Stability, permanence, and types of care

In terms of creating stability for families, the government states that it is committed to helping children remain with their families in all but the most exceptional circumstances. Statutory agencies, such as Health and Social Care (HSC) Trusts have a duty to make all reasonable efforts to promote the upbringing of children with their birth parents.<sup>8</sup> When this is not possible, the government is responsible for placing these children in alternative forms of care.<sup>9</sup>

When a child enters care, Trusts have a duty to seek a home for them with their extended family in the first instance if practicable. Being placed with wider family or

<sup>3</sup> HSC Northern Ireland Adoption and Foster Care website <https://adoptionandfostercare.hscni.net/adoption/>

<sup>4</sup> Department of Health (NI) Equality Screening, Disability Duties and Human Rights Assessment Template: Adoption and Children Bill [https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting\\_documents/EQUALITY%20SCREENING%20%20DRAFT%20ADOPTION%20AND%20CHILDREN%20BILL%202016.pdf](https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting_documents/EQUALITY%20SCREENING%20%20DRAFT%20ADOPTION%20AND%20CHILDREN%20BILL%202016.pdf) p12.

<sup>5</sup> Department of Health (NI) Looked after children <https://www.health-ni.gov.uk/articles/looked-after-children>

<sup>6</sup> A step-parent can also achieve parental responsibility for their partner's child if both birth parents agree, or by a court order. See <https://www.nidirect.gov.uk/articles/relative-or-stepchild-adoption> for further information.

<sup>7</sup> HSC NI Adoption and Foster Care. Types of Adoption <https://adoptionandfostercare.hscni.net/adoption/types-of-adoption/>

<sup>8</sup> <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> p7.

<sup>9</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-lac-strategy.pdf> p8.

friends, known as kinship care, is deemed important to help the child maintain important connections and to offer permanency to children by keeping them close to their own communities and families. There are two main types of kinship care - formal and informal. Typically, formal kinship care concerns fostering arrangements and the involvement of social services. However, most kinship arrangements are informal, that is, privately agreed between parents and relatives/friends, with no legal involvement from the State.

Children who cannot be placed with family or friends may be placed in alternative forms of care until it is decided if a more appropriate option for achieving permanence (such as adoption) is possible.<sup>10,11,12</sup> Alternative care can include, for example placements in foster care, residential homes,<sup>13</sup> supported accommodation, secure care, or with parents (for example, if a Care Order or Residence Order is in place).<sup>14</sup> These children become known as a 'looked after child'. This is the legal term applied to children placed by HSC Trusts in alternative forms of care. As a Corporate Parent,<sup>15</sup> Trusts are responsible for safeguarding and promoting the child's wellbeing and welfare.<sup>16</sup>

Adoption may not be a suitable option for every looked after child, but where adoption is decided as the plan going forward (known as a best interest decision), Trusts must follow a range of statutory processes. This is because adoption is one of the most serious interventions that a court can make in a family's life; the outcome of which irrevocably severs the legal relationship between the birth parents and their child.

#### 4. Who can adopt?

A wide range of stakeholders are typically involved in the adoption process. They include the child, their birth parents, guardians, prospective adoptive parents, local authorities (Health Trusts and social services, or international authorities if adoption is via intercountry), and voluntary and legal representatives.

<sup>10</sup> Department of Health (NI) Adoption <https://www.health-ni.gov.uk/topics/social-services/adoption>

<sup>11</sup> In addition to adoption, it is also possible for children to leave care to live with a family member or former foster carer outside of state care arrangements.

<sup>12</sup> See NI Direct: Care Order <https://www.nidirect.gov.uk/articles/care-orders#:~:text=A%20care%20order%20can%20be,the%20court%20discharges%20the%20order>.

<sup>13</sup> At present, there are 48 children's residential homes in Northern Ireland. <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-19-20.pdf> p42.

<sup>14</sup> Courts in NI can make orders with respect to children in family proceedings under Article 8 of the 1995 Order such as residence, contact, prohibited steps and specific issue. According to the Department of Health (NI) *Placed with parent* refers to children for whom a Care Order exists and who are placed with their parents, a person who is not a parent but who has parental responsibility for the child or where a child is in care and there was a Residence Order in force with respect to them immediately before the Care Order was made, and who are placed with a person in whose favour the residence order was made.

<sup>15</sup> This means that the Trust as a corporate entity must have the same goals for the child or young person as a parent and act for the child or young person as a parent would be reasonably expected to act. The HSC Trust assumes moral as well as legal responsibility for enabling looked after children and young people in its care to experience happy and fulfilling lives. In the case of voluntary agreements the Corporate Parent role is undertaken with the appropriate approval of the parents.

<sup>16</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-lac-strategy.pdf> p9.

#### 4.1 Eligibility for adoption: the child

For a child to be eligible for adoption, they must be under 18 years of age and unable to return to live with their birth parents. They cannot have been married or in a civil partnership at the time of adoption.<sup>17</sup>

#### 4.2 Eligibility: prospective adoptive parents

Adoption is a lifelong commitment which requires serious thought and preparation by prospective adopters. At the time of writing, anyone who is over 21 years of age can adopt. They can be:

- Married and unmarried couples
- Heterosexual or LGBT people
- Single people
- People with or without their own children
- People with disabilities
- People from any religious or ethnic background.<sup>18</sup>

Following a decision in 2013 in relation to a discrimination case brought about by Northern Ireland Human Rights Commission against the Department of Health (NI), unmarried heterosexual couples, same sex couples, and couples in civil partnerships are now able to adopt, thus bringing Northern Ireland's law into line with the rest of the UK.<sup>19</sup> This has also widened the pool of prospective adopters. Despite the range of potential adopters, in 2018 the Health and Social Care Board suggested that there had been fewer adoption queries and lower applications in some Health and Social Care Trust areas.<sup>20</sup>

### 5. Key legislation

The key legal framework relevant to adoption is the Adoption (NI) Order, 1987<sup>21</sup> and the main legislation governing the care and protection of children living in Northern Ireland is the Children (NI) Order 1995.<sup>22</sup> These frameworks are supported by a range of legislative provisions and regulations relating to the adoption process including:

- the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 adoption (Hague Convention) Act (Northern Ireland) 1969
- the Adoption Agencies Regulations (Northern Ireland) 1989
- Adoption Allowances Regulations (Northern Ireland) 1996

<sup>17</sup> NI Direct website: Adopting a child <https://www.nidirect.gov.uk/articles/adopting-child>

<sup>18</sup> Adoption and Foster Care website. Who can adopt? <https://adoptionandfostercare.hscni.net/adoption/who-can-adopt/>

<sup>19</sup> See NI Human Rights Commission website <https://nihrc.org/news/detail/supreme-court-refuses-appeal-on-adoption-law> and court judgement: available online at: <https://www.judiciaryni.uk/sites/judiciary/files/decisions/Northern%20Ireland%20Human%20Rights%20Commission%E2%80%99s%20Application.pdf>

<sup>20</sup> Health and Social Care Board website: Adoption Changes lives (2018) <http://www.hscboard.hscni.net/adoption-changes-lives/>

<sup>21</sup> The Adoption (Northern Ireland) Order 1987 <https://www.legislation.gov.uk/nisi/1987/2203/contents/made>

<sup>22</sup> Legislation.gov.uk website <https://www.legislation.gov.uk/nisi/1995/755/contents/made>

- the Adoption of Children from Overseas Regulations (Northern Ireland) 2002
- the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003
- the Registration of Foreign Adoptions Regulations (Northern Ireland) 2003 the Adoption of Children from Overseas and Intercountry Adoption (Hague Convention) (Amendment) Regulations (Northern Ireland) 2006
- the Voluntary Adoption Agencies Regulations (Northern Ireland) 2010<sup>23</sup>

In addition, there are several international conventions linked to child welfare which are also relevant to the adoption process, for example:

- The United Nations Convention on the rights of the child (UNCRC)
- The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention).

Since the 1987 Adoption Order was enacted, the law has been further developed and amended on several occasions. Whilst a complete overview is not within the scope of this briefing paper, guidance on the legislation and regulations are detailed in the HSC Adoption Regional Policy and Procedures (2017).<sup>24</sup>

### 5.1 What does an Adoption Order do?

In Northern Ireland, an Adoption Order makes provision to:

- enable a statutory duty to be placed on the Health and Social Care Board (and HSC Trusts) to provide an adoption service;
- place certain restrictions on arranging adoptions and placing children for adoption;
- enable children to be freed for adoption with or without parental agreement;
- provide for the care and protection of children awaiting adoption;
- provide for the status of adopted children; and the registration of Adoption Orders;
- enable adopted adults to obtain access to their birth records; and
- enable the introduction of schemes for the payment of allowances to adopters and prospective adopters in certain circumstances.<sup>25</sup>

## 6. The adoption process

Adoption agencies can be HSC Trusts or voluntary adoption agencies.<sup>26</sup> All adoption agencies have a duty to establish and maintain a service or arrange for the provision of a service that covers both domestic and inter-country adoption. The Regional Intercountry Adoption Assessment Service (RIASS) is responsible for intercountry adoption services on behalf of HSC Trusts.<sup>27</sup>

<sup>23</sup> Department of Health (NI) <https://www.health-ni.gov.uk/articles/adoption-legislation>

<sup>24</sup> See Adoption: Regional Policy and Procedures <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> p14-22

<sup>25</sup> Adoption: Regional Policy and Procedures <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> p10.

<sup>26</sup> Such as such as Family Care Adoption Services and Adoption Routes.

<sup>27</sup> NI Direct website Introduction to intercountry adoption <https://www.nidirect.gov.uk/articles/introduction-intercountry-adoption>

Part of the remit of an adoption agency is to assess prospective adopters. Adoption agencies are required to comply with the Adoption Agencies Regulations (Northern Ireland) 1989 when considering if a person is suitable to be an adoptive parent.<sup>28</sup> As part of the application process, a set of criminal and medical checks are conducted and references are sought.<sup>29</sup> A detailed assessment process (home study) is also undertaken by a social worker on behalf of the agency with the prospective adopters.<sup>30</sup> Training and preparation courses also form part of the process, as well as opportunities to consider the effects of trauma, loss and neglect on the child and on family life.<sup>31</sup>

The assessment process aims to recruit adoptive parents who have the time, health and energy to meet the demands of raising the child.<sup>32</sup> This is a rigorous process. There is no legal requirement for applicants to be employed or have a defined income level, and depending on circumstances, financial support and employment leave may be available.<sup>33</sup>

Applications for adoption are considered by an agency's adoption panel.<sup>34</sup> The Agency will decide whether it considers adoption to be in the best interests of a child and whether an application should be made to free the child for adoption, after taking account of the recommendation(s) of the Adoption Panel.

Where possible, adoption agencies will try to place siblings together. They can also refer children who have a plan for adoption to 'ARIS', the Adoption Regional Information System. ARIS is a regional database which can facilitate the matching of prospective adopters with children waiting to be adopted.<sup>35</sup>

In some instances, a child may be adopted without having to proceed through an adoption agency. These are known as non-agency placements. This could include for example, if the child is being adopted by relatives,<sup>36</sup> by a step-parent - together with one of their birth parents, or through a private fostering arrangement. In these cases, the court will ask the Trust/agency to provide a report on the family, the child and the birth parents, in order to aid the court in making a decision. In general, non-agency placements are said to be quicker than the full adoption assessment process.<sup>37</sup>

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<sup>28</sup> See under Regulation 8 of the Adoption Agencies Regulations (Northern Ireland) 1989.

<sup>29</sup> See <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> pp34-38

<sup>30</sup> See <https://adoptionandfostercare.hscni.net/adoption/the-adoptive-process/>

<sup>31</sup> See for example <https://adoptionandfostercare.hscni.net/trainingandsupport/online-training/>

<sup>32</sup> NI Direct website. The adoption process and where to get support:

<https://www.nidirect.gov.uk/articles/adoption-process-and-where-get-support>

<sup>33</sup> <https://www.nibusinessinfo.co.uk/content/adoption-leave-and-pay> and <https://www.nidirect.gov.uk/articles/adoption-leave-uk-adoptions-and-surrogacy>

<sup>34</sup> See <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> Chapter 6 for further information.

<sup>35</sup> HSC website ARIS <http://online.hscni.net/wp-content/uploads/2015/09/ARIS-Info-Adopters-2.pdf>

<sup>36</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>37</sup> See <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> pp34-38 Chapter 8 for further information..

## 6.1 Adoption Pathways

There are four main care pathways for prospective adopters.<sup>38</sup> These include:

1. The traditional route, where a child is placed with *approved adopters* for the purpose of adoption.
2. When the child's care plan (developed by the HSC Trust and parents/child) changes to adoption, foster and/or kinship foster carers can seek to become approved adopters for the fostered child to enable them to provide permanence.<sup>39</sup>
3. Another option is through *concurrent care*. This is where a fostered child may be adopted by his or her carers. However, social services also work with the child's birth parents to assess if the child can return to their care. Birth parents have opportunities to engage with services to demonstrate their parenting capacity. If the child cannot return safely to their birth family (and pending the approval of the courts), the child can be adopted by their concurrent carers.
4. *Dual approved carers*. Like concurrent carers, dual approved carers are approved as both foster carers and adopters. They accept a child on a fostering basis after a Trust has agreed that the care plan for the child is adoption. This is before the courts decide whether to free the child for adoption. Both concurrent and dual approved pathways can reduce the time it takes for an Adoption Order, and enable quicker permanency and stability for the child.

## 6.2 Tensions between rights

The interests of stakeholders in the adoption process are often diverse or opposed to each other. Conflicting tensions arise between the rights of birth parents (the respect for family life) and the best interests of the child (known as paramountcy). Difficult issues also arise in relation to parental contact with the child.<sup>40</sup> Under adoption proceedings, a court shall appoint a Guardian Ad Litem - an independent social worker 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>41</sup>

Freeing a child for adoption means that the courts can decide if the child is free (or eligible) to be adopted with or without parental agreement. The latter dispenses the need for parental consent. As only a minority of children in care are adopted with their

<sup>38</sup> Further information is available at: The Department of Health (NI) and NISRA (2020). Information Analysis Directorate: Children Adopted from Care in Northern Ireland 2019/20

<https://www.health-ni.gov.uk/news/publication-children-adopted-care-northern-ireland-201920>

<sup>39</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/cacni-19-20.pdf> p18.

<sup>40</sup> UNCRC Article 9: Child's right to live with parents unless contrary to their best interests. Right to contact if separated from parents. See also NI Direct support for birth parents <https://www.nidirect.gov.uk/articles/support-birth-parents>

<sup>41</sup> The Adoption (NI) Order 1987 (Article 66)

birth parents' consent,<sup>42</sup> this often leads to highly contested, protracted, and costly court cases.<sup>43</sup> When an Order to free a child is granted, parental responsibility transfers from the birth parents to an adoption agency.<sup>44</sup>

Following a formal placement for adoption, prospective adoptive parents can apply to the Courts for an Adoption Order to be made.<sup>45</sup> However birth parents have the right to make their agreement to adoption conditional on the child being brought up in a particular religious persuasion.<sup>46</sup>

### 6.3 Granting an Adoption Order

Once an Adoption Order has been granted, the State relinquishes its corporate parental responsibility for a looked after child to the adoptive parents,<sup>47</sup> severs all legal ties with the child's birth parents and gives rights and responsibilities to the adoptive parents. The child becomes a full member of their new family, taking on their surname and having the same rights as if they had been born into the family.<sup>48</sup> If deemed appropriate, Courts may also determine if the adopted child should have either direct or indirect contact with birth parents or other members of the birth family. Therefore, while the legal relationship with the birth family stops when the child is adopted, there may still be some level of contact.<sup>49</sup>

### 6.4 Intercountry 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>50</sup> and
- The adopter has been assessed as eligible and suitable to adopt from overseas by an adoption agency.<sup>51</sup>

<sup>42</sup> See MacDonald, M. and McLoughlin, P. (2016). Paramourty, family rights and contested adoption: does contact with birth relatives balance the scales? *Child Care in Practice*, 22(4), 401-407. Available online at

[https://pureadmin.qub.ac.uk/ws/portalfiles/portal/65541007/paramourty\\_family\\_rights\\_contested\\_adoption\\_CCIPfinal.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/65541007/paramourty_family_rights_contested_adoption_CCIPfinal.pdf)

<sup>43</sup> NI Assembly Official Report: Committee for Health. Adoption and Children Bill: Departmental Briefing (2011)

<http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2011-2012/november-2011/adoption-and-children-bill-departmental-briefing/>

<sup>44</sup> NILGALA website. Freeing for adoption <https://nigala.hscni.net/wp-content/uploads/2020/08/Freeing-for-Adoption.pdf>

<sup>45</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/cacni-19-20.pdf> p6.

<sup>46</sup> Article 16 of the Adoption (Northern Ireland) Order 1987 <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> p31.

<sup>47</sup> [https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting\\_documents/EQUALITY%20SCREENING%20%20DRAFT%20ADOPTION%20AND%20CHILDREN%20BILL%202016.pdf](https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting_documents/EQUALITY%20SCREENING%20%20DRAFT%20ADOPTION%20AND%20CHILDREN%20BILL%202016.pdf) p8.

<sup>48</sup> Ibid <https://www.health-ni.gov.uk/sites/default/files/consultations/health/Young%20Persons%20Version%20of%20Adoption%20and%20Children%20Bill%20Consultation.PDF>

<sup>49</sup> <http://www.hscboard.hscni.net/download/PUBLICATIONS/policies-protocols-and-guidelines/Adoption-Regional-Policy-and-Procedures-2017-Amended-Section-10-August-2019.pdf> p29.

<sup>50</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>51</sup> Department for Children, Schools and Families available online at: [www.dcsf.gov.uk/intercountryadoption/](http://www.dcsf.gov.uk/intercountryadoption/)

The Adoption (Intercountry Aspects) Act (NI) 2001 provides the legislative basis for the regulation of intercountry adoption in Northern Ireland.<sup>52</sup> Intercountry adoption can be expensive<sup>53</sup> and legally complex in terms of immigration, international law and individual state laws.

Prospective intercountry adopters also undergo a similar assessment process to domestic adoption applicants. According to the Northern Health and Social Care Trust,

*“the assessment which is presented to the Adoption Panel is the same as the assessment for adoption within UK, with the addition of cultural issues; however once approved by the respective Adoption Panel the assessment then must pass through to the Department of Health and then be accepted by the applicants’ country of choice.”*

The approximate cost for the assessment to the prospective intercountry adopters is approximately £5,367, and this is the same fee for all countries. Notwithstanding this, further costs are also incurred - such as flights, accommodation, legal costs, and the regulations to be followed, for example, the translation of documents.<sup>54</sup> This can potentially amount to many more thousands of pounds.

The Northern HSC Trust indicates that there is no expectation that intercountry adopters visit the child’s country before a placement is identified, although most prospective adopters do. Nevertheless, prospective adopters would be expected to travel to the country when a child is identified. The total time it takes for intercountry adoption varies, but the average duration is around 3 years.

## 7. Data on the number of adoptions in Northern Ireland

At present, data on the number of adoptions is collected in several ways:

- The total number of adoptions in Northern Ireland is reported on an annual basis by NISRA – the Northern Ireland Statistics and Research Agency.<sup>55</sup> This data is presented as an overall adoption figure.
- Statistics on the number of looked after children adopted from the care system is reported by the Department of Health (NI). This data is reported on a year-end basis (from 1 April-31 March); therefore, figures do not align exactly with NISRA’s annually reported data.
- The number of intercountry adoptions is recorded by the Northern HSC Trust. As it is not publicly available, this information was sought by the author via Freedom of Information, and is presented in section 7.5.

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<sup>52</sup> Additional legislation and guidance have also been developed

<sup>53</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>54</sup> Personal correspondence with author and Northern HSC Trust. Response received 11 June 2021.

<sup>55</sup> NISRA website <https://www.nisra.gov.uk/>

Given the disparate nature of the data, a more detailed description regarding each dataset is presented below.

## 7.1 NISRA adoption data

The total number of adoptions is recorded by NISRA in their Registrar General Annual Report.<sup>56</sup> Data shows that during the 1960s and 1970s, many more children were adopted when compared to the number of adoptions occurring today. For example, in 1970, 554 children were adopted.<sup>57</sup>

For illustrative purposes, Figure 1 shows the number of adoptions reported in Northern Ireland between 2000 and 2019.<sup>58</sup> Figures range between 100 and 200 adoptions per year, with the highest number recorded in the timeframe in 2002 (174 adoptions). In 2019, 125 adoptions were reported, which is an increase on the previous two years.

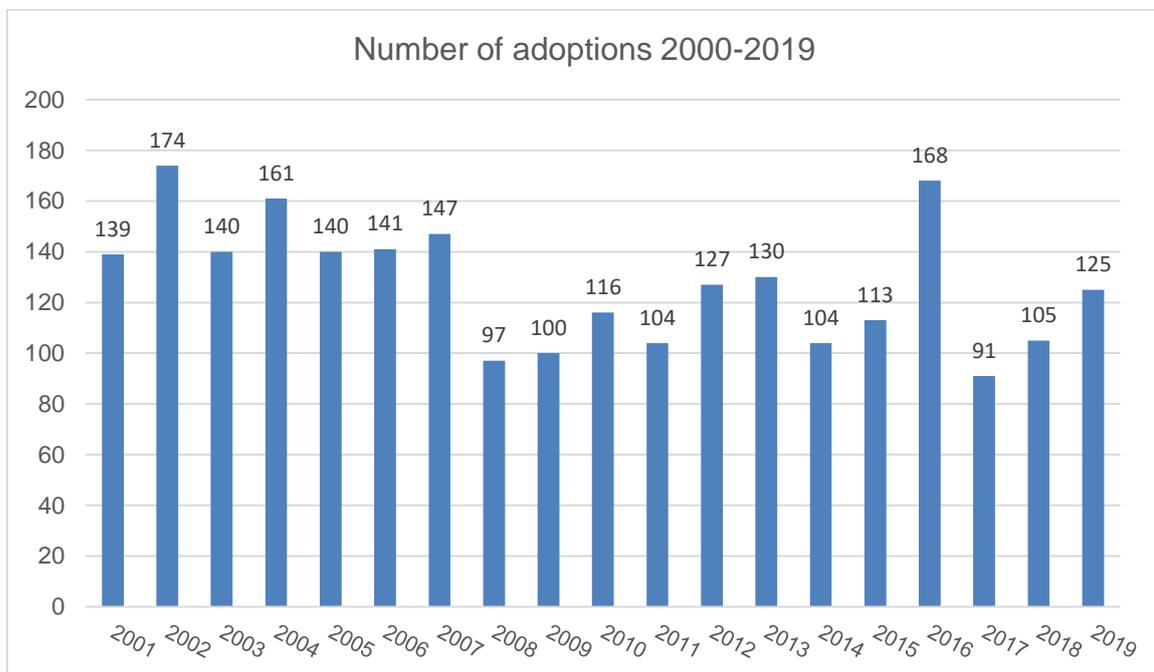


Figure 1. Number of adoptions Northern Ireland 2000-2019<sup>59</sup>

## 7.2 Adoption data for looked after children (Department of Health, NI)

Regarding looked after children, data shows that since 2010 there has been a 30% increase in the number of looked after children in Northern Ireland. In March 2020, 3,383 children were in the care of local authorities.<sup>60</sup> The increase in numbers of children entering care is complex and may be due to a number of factors - such as

<sup>56</sup> As cited in Department of Health (NI) and NISRA (2020) Information Analysis Directorate: Children Adopted from Care in Northern Ireland 2019/20 <https://www.health-ni.gov.uk/sites/default/files/publications/health/cacni-19-20.pdf>

<sup>57</sup> NISRA Adoption Statistics <https://www.nisra.gov.uk/publications/adoption-statistics>

<sup>58</sup> For a list dating back further (from 1931), please see <https://www.nisra.gov.uk/publications/adoption-statistics>

<sup>59</sup> Overall figure for adoption registrations from the General Register Office (NI) includes intercountry adoptions - carried out under article 23 of the Hague Convention.

<sup>60</sup> Department of Health (NI) and NISRA 2020 Information Analysis Directorate: Children's Social Care Statistics for Northern Ireland 2019/20 <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-19-20.pdf>

greater awareness of child protection issues leading to greater number of referrals, deprivation (some 43% of looked after children come from the most deprived areas), and mental health issues relating to the parents.<sup>61</sup>

Looked after children are particularly vulnerable and may have complex support needs like mental or behavioural problems, physical health issues or disabilities. Children in care can also experience different care journeys; some will stay in care briefly during a crisis before returning home, whereas others spend a large part of their childhood in care or have periods of re-entering care. Others stay in care until a permanent alternative - such as adoption, is granted.

While some looked after children will experience successful outcomes, as a group, their life outcomes - like health and education tend to fall significantly below that of the general population.<sup>62</sup> A joint strategy published by the Department of Health and the Department of Education (Northern Ireland) in 2021 acknowledges this and seeks to improve the wellbeing and life outcomes of looked after children.<sup>63</sup>

Figures for 2019/20 show that the majority of looked after children were placed in a family care environment, with 79% in foster care (with 40% in kinship and 39% in non-kinship<sup>64</sup> foster care), 10% placed with parents, 6% in residential settings and 5% in other placement settings.<sup>65</sup> Of the total, 21% had been looked after for less than a year, whereas 30% had been looked after for five years or longer.<sup>66</sup> One in three children entering care were over 12 years of age.<sup>67</sup>

The latest available data for children discharged from care (which also indicates the number of children adopted) is reported in Figure 2. As can be seen, of the 746 children discharged from care in 2019/20, only 12% were adopted.<sup>68</sup> 50% returned to live with their parents or other family members (13%).

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<sup>61</sup> BBC News NI February 2019 Number of children in care at record high in NI <https://www.bbc.co.uk/news/uk-northern-ireland-47234047>

<sup>62</sup> NI Assembly Question AQ 895/16-21 posed by Mr Barry McElduff (SF - West Tyrone) To ask the Minister of Health to outline what work her Department is undertaking to support looked-after children. Answered by Minister for Health on 16/01/2017.

<sup>63</sup> Departments of Health and Education (NI) (2021) A life deserved - "Caring" for children and young people in Northern Ireland. <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-lac-strategy.pdf> p8

<sup>64</sup> Care provided to a child or young person with caregivers who have no biological link and/or previous connection to the child.

<sup>65</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-19-20.pdf> p27.

<sup>66</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-19-20.pdf> p27.

<sup>67</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-lac-strategy.pdf> p14

<sup>68</sup> Department of Health (NI) and NISRA (2020). Information Analysis Directorate: Children's Social Care Statistics for Northern Ireland 2019/20 <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-19-20.pdf> p27.

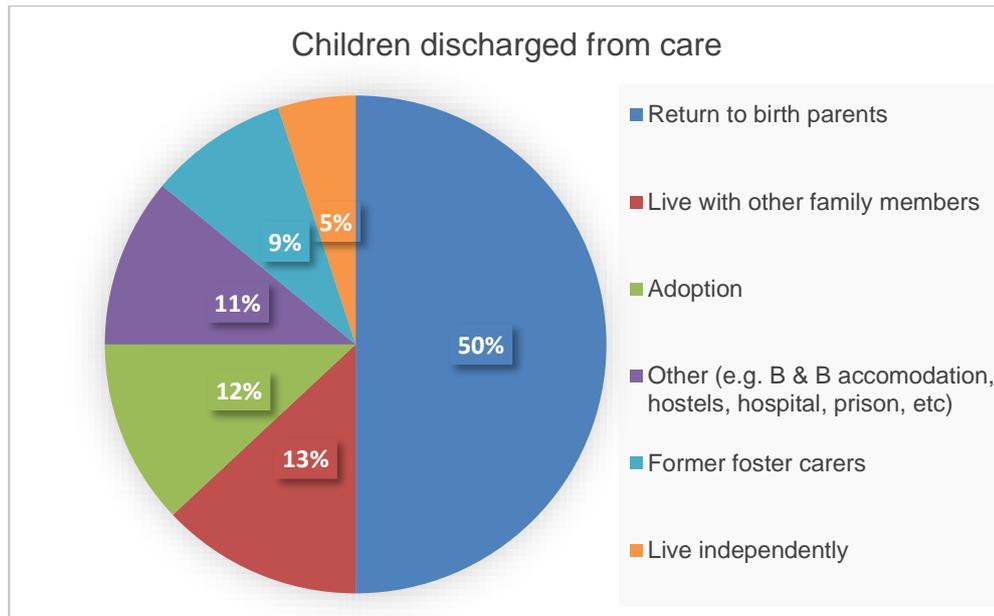


Figure 2. Destination of children discharged from care: year ending 31 March 2020<sup>69</sup>

### 7.3 Profile of children adopted from care in 2019/20

A breakdown of figures regarding children adopted from care for the year 2019/20 shows that:

- 111 children were adopted from care. Of these:
  - 45% were adopted by concurrent carers
  - 26% were adopted by dual approved carers
  - 15% were adopted by former foster carers
  - 14% were adopted by adopters only<sup>70</sup>
- 84% of the adopters were married couples or different sex unmarried couples, 10% were same sex couples, and 6% were single female adopters.
- The average age of children at the time of adoption was 4 years 2 months. In general, children adopted from care in Northern Ireland were older and had spent longer time in care than that of children adopted from care in England and Wales.
- Most children (98%) were of white ethnic background.
- 62% were adopted as a single child and 38% were adopted as part of a sibling group. It should also be noted that sibling groups who need to be adopted together tend to wait longer, as recruiting families who are able to adopt a sibling group is more challenging.
- 11% had special needs or a disability.
- From the child's last entry into care, the average length of time for a child to be adopted in 2019/20 was around 3 years (Figure 3).

<sup>69</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/child-social-care-19-20.pdf> p38.

<sup>70</sup> CoramBAAF website: Statistics Northern Ireland <https://corambaaf.org.uk/fostering-adoption/looked-after-children-statistics/statistics-northern-ireland>

- The average duration from HSC Trusts proposal that adoption was in the best interests of the child (also called a Looked After Child Best Interest Proposal<sup>71</sup>) to the Adoption Order, was 2 years 3 months.<sup>72</sup>

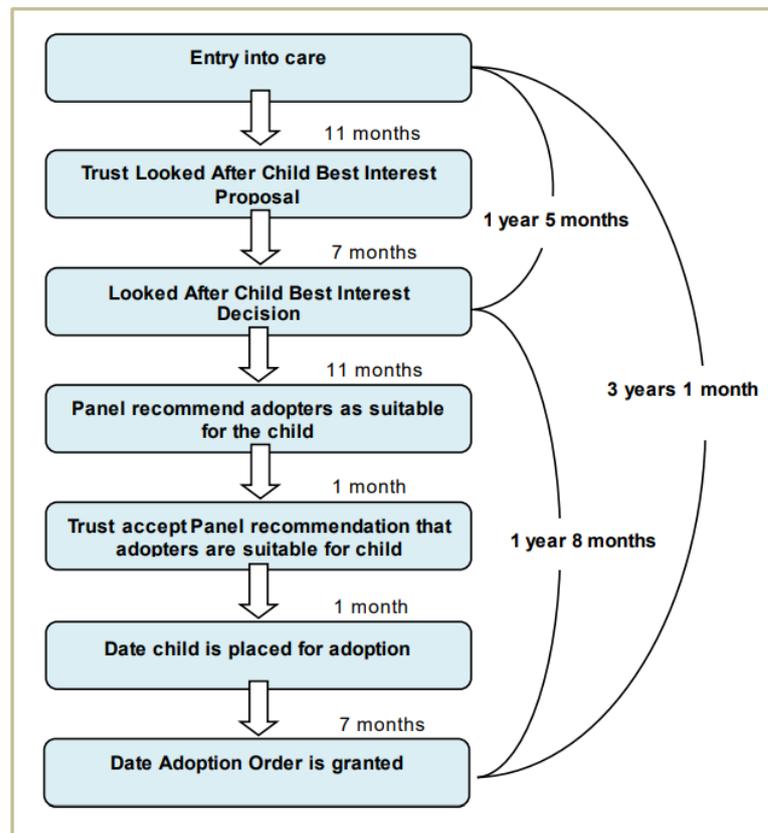


Figure 3. Average duration between different stages of the adoption process - year ending 31 March 2020<sup>73</sup>

#### 7.4 Targets and waiting times for looked after children to be adopted

While much of the delay in reaching a decision for adoption purposefully explores and exhausts options for family preservation, research consistently suggests that the earlier children are settled into a permanent placement, the more likely the placement is to succeed.<sup>74</sup> Due to the complex needs of many children, coupled with a shortage of prospective adopters, long waits for a new family are often incurred. Formal targets have therefore been set in the Health and Social Care Commission Plan and in the

<sup>71</sup> The Best Interest Proposal is the child's Looked After Child Review where it is agreed to pursue adoption as an option and refer the child's circumstances to the Adoption Panel for recommendation.

<sup>72</sup> The Department of Health (NI) and NISRA (2020). Information Analysis Directorate: Children Adopted from Care in Northern Ireland 2019/20

<https://www.health-ni.gov.uk/news/publication-children-adopted-care-northern-ireland-201920> The source of the data contained in this release is the Departmental AD1 statistical return, collected from Health and Social Services Trusts and relating to the period 1 April 2019 to 31 March 2020.

<sup>73</sup> Department of Health and NISRA (2020). Information Analysis Directorate: Children Adopted from Care in Northern Ireland 2019/20 <https://www.health-ni.gov.uk/sites/default/files/publications/health/cacni-19-20.pdf> p12.

<sup>74</sup> See MacDonald, M. and McLoughlin, P. (2016). Paramourncy, family rights and contested adoption: does contact with birth relatives balance the scales? *Child Care in Practice*, 22(4), 401-407. Available online at [https://pureadmin.qub.ac.uk/ws/portalfiles/portal/65541007/paramourncy\\_family\\_rights\\_contested\\_adoption\\_CCIPfinal.pdf](https://pureadmin.qub.ac.uk/ws/portalfiles/portal/65541007/paramourncy_family_rights_contested_adoption_CCIPfinal.pdf)

Indicators of Performance Direction (Northern Ireland).<sup>75</sup> The current target is that 90% of all adoptions in Northern Ireland for children in care should be completed within three years of their last entry into care. However, this target has **not been met** for several years - as shown in Figure 4. For example, only 57% of adoptions from care for the year 2019/20 were completed within three years.<sup>76</sup> It is likely the lengthy waits will have had a detrimental impact on these children.

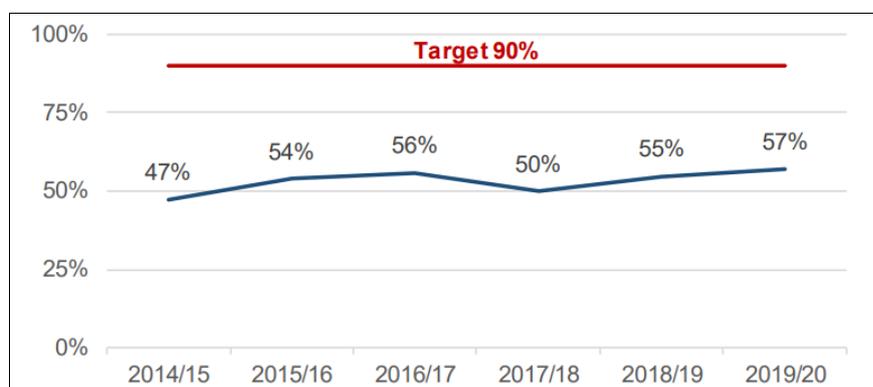


Figure 4. Percentage of children adopted within the three-year target: year ending 31 March 2014/15 - 2019/20

A number of other factors can cause delays to the adoption process, for example recruiting and matching adopters who can meet the needs of children who are traumatised or who have specific needs. 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. Delays may also be incurred because of certain court processes, requests for additional information, and staffing pressures.

## 7.5 Intercountry adoption data

In relation to intercountry adoptions, data was provided by the Northern HSC Trust following a formal request by the author. The data shows that the number of intercountry adoptions is low. Since 2005, 25 children have been adopted from overseas. In the last number of years, most children have been adopted from Thailand.<sup>77</sup>

In 2012, 7 children were adopted via intercountry adoption, however, there has been a decreasing trend since then (Figure 5). Amongst other reasons, this decline could be due to costs, the length of time to wait for a placement, adoption restrictions in some countries and bureaucracy, and the introduction of concurrent care for domestic

<sup>75</sup> For further information please see: <https://www.health-ni.gov.uk/publications/ministerial-priorities>

<sup>76</sup> The Health and Social Care Commission Plan and Indicators of Performance Direction (Northern Ireland) include a target and an indicator relating to the timing of the adoption process. See Department of Health/ NISRA (2020) Information Analysis Directorate: Children Adopted from Care in Northern Ireland 2019/20 <https://www.health-ni.gov.uk/sites/default/files/publications/health/cacni-19-20.pdf> p14.

<sup>77</sup> Data provided by Northern HSC Trust as part of Freedom of Information Request by author. Request received on 2/6/2020.

adoptions, meaning that younger children are available for adoption at home at an earlier stage.<sup>78</sup>

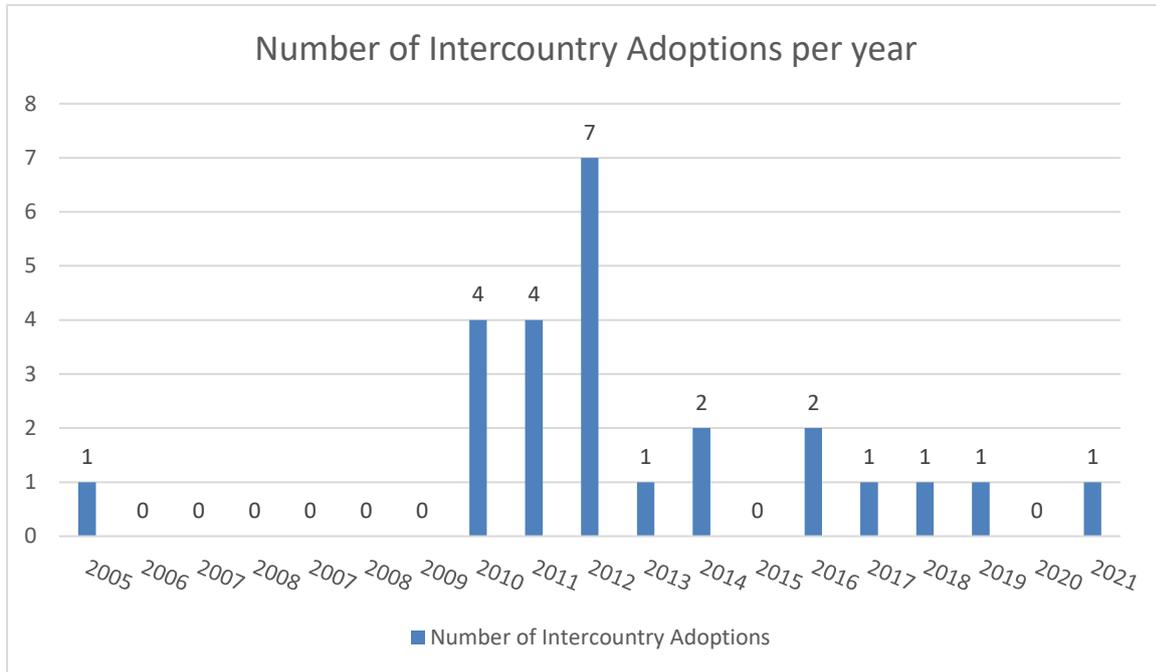


Figure 5. Number of intercountry adoptions 2005-2021<sup>79</sup>

### 8. Reforming adoption legislation – a timeline

Adoption legislation in Northern Ireland is 35 years old and the Children’s Order is more than 20 years old. The reform of the adoption process in Northern Ireland has been underway for over 15 years.

Still without an updated legal framework and lagging behind the rest of the UK, it is unclear why it has taken so long. However, a timeline of key events in the development of new adoption legislation is shown overleaf.

<sup>78</sup> Data provided by Northern HSC Trust as part of Freedom of Information Request by author. Request received on 2/6/2020.

<sup>79</sup> Data provided by Northern HSC Trust as part of Freedom of Information Request by author. Request received on 2/6/2020.

- 2004: The Department of Health (Northern Ireland), formerly the DHSSPS, sought views via a questionnaire on changes required to existing adoption legislation. Responses are analysed.
- 2006: A strategy entitled 'Adopting the Future' is published which sets out a new approach to improving adoption services, and for legislative reform in Northern Ireland. These proposals are issued for public consultation.
- 2007: The Adopting the Future consultation report is published.
- 2010 Draft proposals for a new Adoption and Children Bill are agreed by the Northern Ireland Executive.
- 2011: Department of Health Officials brief the Northern Ireland Assembly Committee for Health on the proposed Adoption and Children Bill. Officials identify a significant time lapse between consulting on proposals for adoption legislation reform and bringing a Bill forward. They state it is the Department's intention to introduce the Bill in 2013. The Bill was not introduced.
- May 2014: Department of Health Officials again brief the NI Assembly Committee for Health on the proposed Adoption and Children Bill. Following a public consultation intended for 2014, it was envisaged the Bill would be introduced to the Assembly by March 2015 to enable it to achieve Royal Assent by March 2016.<sup>80</sup> Again, the consultation did not happen, and the Bill was not introduced.
- 2017: In January 2017, the Northern Ireland Assembly is suspended. Ten years after Adopting the Future, a consultation document is published on a new Adoption and Children (Northern Ireland) Bill following the much-awaited public consultation. The consultation ran between January and April 2017.<sup>81</sup>
- 2017: Also in 2017, a draft Adoption and Children (NI) Bill (2017 Version) is published alongside an impact assessment, explanatory notes and a children's version of the consultation. The findings of the consultation are not made publicly available at that time. It is unclear why this is.
- In October 2020, during the Covid-19 pandemic, the Health and Social Care Board website states that the introduction of the Bill is imminent.
- August 2021: The Minister for Health confirms the 2017 Bill has been substantially amended and a new draft Bill (2021 Version) has been published. No further consultation on the Bill will be undertaken. The consultation responses are finally published showing the previous consultation received 71 responses.<sup>82</sup>

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<sup>80</sup> NI Assembly Official Report: Committee for Health. Adoption and Children Bill: Departmental Briefing (2014) <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2013-2014/may-2014/adoption-and-children-bill-departmental-briefing/>

<sup>81</sup> See Department of Health (NI) website: Adoption and Children (Northern Ireland) Bill <https://www.health-ni.gov.uk/consultations/adoption-and-children-northern-ireland-bill>

<sup>82</sup> <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-acb-consultation-summary-of-responses.pdf> p5.

At the time of writing, the latest version of the Bill has just been introduced on the 20 September 2021 to the Northern Ireland Assembly. The Minister has advised that subordinate legislation will be required, and it is anticipated that further consultation will also be required at that stage to inform the regulations.

### 8.1 Draft Adoption and Children Bill (2017 Version)

As discussed above, a draft Adoption and Children Bill<sup>83</sup> was published in 2017. It contained 140 draft clauses, 2 schedules and was accompanied by Explanatory Notes.<sup>84</sup> According to the Department, the key aims of the Bill were to modernise and enhance the existing legal framework for adoption. It was hoped that this would provide a more consistent approach with the principles and provisions of the Children (NI) Order 1995, international human rights requirements, and those that govern policy making<sup>85</sup> into domestic law. The new legislation would contain a range of prescribing powers and introduce new processes for adopters and new ways of working for adoption agencies and the courts. It was also intended to make the adoption process quicker.<sup>86</sup> The Equality Screening report for the 2017 Bill states that the reforms included provision for:

- enhanced focus on the welfare and best interests of the child,
- tackling delay in the adoption process
- introducing a new permanence option – Special Guardianship Orders - for young people for whom adoption is not suitable
- replacing freeing orders with placement orders - a new pre-adoption order that will retain the successful elements of freeing but will also provide a more effective balance of the competing interests in the adoption process
- re-enforcing the continued provision of adoption support,
- making amendments to the Children (Northern Ireland) Order 1995, and
- establishing a new voluntary registration scheme for nannies to replace the current Home Childcare Approval Scheme.

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<sup>83</sup> Department of Health (NI) [https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting\\_documents/Draft%20Adoption%20and%20Children%20Bill.PDF](https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting_documents/Draft%20Adoption%20and%20Children%20Bill.PDF)

<sup>84</sup> [https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting\\_documents/Explanatory%20Notes%20for%20Adoption%20and%20Children%20Bill%20consultation.pdf](https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting_documents/Explanatory%20Notes%20for%20Adoption%20and%20Children%20Bill%20consultation.pdf)

<sup>85</sup> The UN Convention on the Rights of the Child, the Northern Ireland Act 1998, and the incorporation of the European Convention on Human Rights.

<sup>86</sup> Department of Health (NI) Equality Screening, Disability Duties and Human Rights Assessment Template – Adoption and Children (NI) Bill [https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting\\_documents/EQUALITY%20SCREENING%20%20DRAFT%20ADOPTION%20AND%20CHILDREN%20BILL%202016.pdf](https://consultations.nidirect.gov.uk/doh-fcpd-directorate/adoption-and-children-bill/supporting_documents/EQUALITY%20SCREENING%20%20DRAFT%20ADOPTION%20AND%20CHILDREN%20BILL%202016.pdf)

## 8.2 The latest Draft Adoption and Children Bill (2021 Version)

Since the 2017 Bill, there have been a number of amendments. According to the Minister for Health the majority of provisions in the 2017 consultation have been retained in the latest version of the Bill (Version 2021). The new draft Bill now contains 160 clauses and 5 schedules.

The Department of Health has provided a summary of the key provisions in the latest Bill.<sup>87</sup>

In relation to adoption, the new Bill will make provision for:

- Adoption law to be made more child centered;
- There will be a statutory principle that delay is likely to prejudice the child's welfare; there will be a requirement for courts to draw up timetables for resolving cases without delay.
- The introduction of a new pre-adoption order, a "placement order" (replacing freeing orders) which will no longer extinguish the legal link between the child and the birth parents prior to making the adoption order.
- *Consent* rather than *agreement* to adoption and adoptive placements. Grounds for dispensing parent consent reduced from six to two.
- A new right of assessment of needs for adoption support services for adopted children/adults, families and birth relatives.
- A duty on Trusts, except in prescribed circumstances, to provide information about adoption support services to any person who has contacted Trusts to obtain information about a child/prospective adopters and adoptive parents within the authorities area.
- A duty on Trusts to make arrangements to provide adoption support services (including financial support).
- A power to establish an independent review mechanism relating to adoption decision making which will be prescribed in regulations.
- Adoption agencies to be required to give the Department statistical or other general information relating to the performance of their functions.
- The consideration of contact in adoption – and a policy intention that there should be no presumption of contact.

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<sup>87</sup> Personal correspondence between author and Department of Health. Minister for Health response dated 17.8.21

- Ensuring that children are only removed from adoptive placements by authorised people.
- Where the adopter is the partner of a child's parent, the child must have lived at their home for one year before an application can be made.
- Adoption services to be provided at a regional/sub regional basis which could provide great consistency.
- Powers to make regulations to enable adoption agencies to charge fees for the provision of adoption services.
- Changes to the information in which for example, adoption agencies/courts must disclose to adopted adults on request.
- Adoption agencies will become the gateway for adopted adults to obtain a copy of their original birth certificate and adoption information, not the Registrar General.
- A right for descendants of adopted people to access records and intermediary services (as drafted in regulations).
- Arrangements for intercountry adoption will be strengthened.
- A power to enable the Department to charge for administration in relation to intercountry adoption casework.
- The ARIS system to be placed on a statutory footing, including the retention and disclosure of information.
- Power to make regulations in relation to appropriate criminal record checks be conducted on prospective adoptive applicants.

In relation to amendments to the Children's Order, the Bill will concern:

- Article 8: To reduce the timeframe (from 3 years to 1) that a child is required to have lived with a foster carer before the carer can seek an order under Art. 8.
- Residence Orders - a looked after child will be automatically granted this to the age of 18 unless a court determines otherwise.
- Special Guardianship Orders - will be introduced to provide greater permanence for children who cannot return to their birth families but for whom adoption is not appropriate.
- Trusts to ascertain the wishes and feelings of a child in relation to suitable services or investigations which they are under a duty to provide.

- Power to make regulations to require Trusts to impose time limits on the making of representations (including complaints) about services provided under the Children Order.
- The introduction of statutory advocacy services.
- Renaming of Guardian Ad Litem to “Children’s Court Guardian for Northern Ireland”.
- Appointment of Children’s Court Guardians to be directly employed and appointed by the Courts to represent children in family law proceedings.

There are also other provisions which will change how services are provided for children in need, a duty to promote educational achievement of looked after children, the introduction of a corporate parenting framework for Trusts (e.g. acting in the child’s best interests), extending care for care leavers, regulation of fostering panels, and a mechanism to review fostering decisions, contact arrangements amongst several others.

## 9. Conclusion

Adoption is a complex area of family law which involves multiple stakeholders, often with competing interests. Most children in need of an adoptive family today are looked after children from the care system. However, the adoption process is lengthy, and many looked after children wait over three years for the process to complete. These waits can have a detrimental impact in relation to creating stability and their life outcomes. Although plans to modernise adoption law were first proposed in 2006, there have been many delays. More recently, two versions of the Adoption and Children (NI) Bill have been drafted in 2017 and 2021. Following Executive Approval, the latest version of the Bill has been introduced to the Northern Ireland Assembly and will be subject to a number of stages of scrutiny. It is hoped the Bill will create a more supportive and efficient adoption service for those children who have waited so long to have permanence; whilst at the same time, placing the needs of the child at the centre of the process. Yet, notwithstanding Departmental pressures with the Covid-19 pandemic, there is likely to be challenges associated with the time needed to consider the Bill within the current legislative mandate, given the Bill’s considerable size. There is also likely to be funding implications for delivering upon the provisions of the Bill once it is enacted.