

Adoption legislation:

**2003 consultation
and
proposals for change**

January 2005

Prepared by the Department of Health and Children

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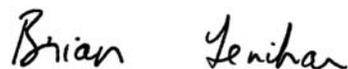
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Minister's foreword

In early 2003, I announced a review of Irish adoption legislation with the aim of taking account of the social and economic changes that have occurred since adoption was first legislated for in 1952. Notwithstanding six amending Acts since then, many issues relevant to people who have already been affected by adoption as well as to future adoptions remain to be examined and resolved either through legislative or administrative mechanisms.

In order to inform this review, I initiated a consultation process in June 2003 to give individuals and organizations with an interest in adoption law and practice an opportunity to contribute to the development of a modern adoption system characterized by *clarity, consistency and fairness*. I was delighted with the response to the consultation and with the wealth of ideas and comments which it generated. This Report and the Adoption (Hague Convention, Adoption Authority and Miscellaneous) Bill are the culmination of that consultation process.

I wish to thank all those who participated in the process. In particular, I was impressed by the personal testimonies of some of those affected by adoption. I wish to thank them for sharing their experiences, whether good or bad, of adoption with us. Such testimonies remind us of the personal and emotional impact of our adoption legislation and services and of the need to seek to improve them. I want to thank Geoffrey Shannon for his invaluable contribution to both the written and oral parts of the consultation process. I am confident that the new legislative provisions coupled with the work of the Adoption Board to lead and manage improvements in services for people affected by adoption and working in the adoption field will create a more sensitive adoption service, appropriate for the 21st century.



Brian Lenihan, TD
Minister for Children

Introduction

The 1952 Adoption Act provided the legal basis for adoption in Ireland and for the establishment of the Adoption Board, bringing order to the adhoc arrangement which had operated hitherto in lieu of formal adoption procedures. The 1952 Act has been amended six times, by adoption acts in 1964, 1974, 1976, 1988, 1991 and 1998. In 2003, the Minister for Children, Brian Lenihan TD, announced a review of Irish adoption legislation with the aim of taking account of the social and economic changes that have occurred since adoption was first legislated for in 1952.

The Minister initiated a consultation process in June 2003. The two-part process is described in Part 1. The written consultation generated a wealth of views and ideas from adopted people, natural parents, adoptive parents, adoption agencies, health boards, social workers, the Adoption Board as well as other representative and statutory bodies. These views formed the backbone of an oral consultation process in October 2003 in which delegates were asked to pool their ideas and try to reach consensus on how to tackle identified deficits or difficulties in adoption law and practice, taking account of domestic and international legislative considerations.

The purpose of this report is to draw these points of view together and, taking account of the Irish Constitution as well as Irish and international legal requirements and constraints, make proposals for legislative and administrative changes. The wide variety of views expressed during the consultation are judged on their merit and practical application rather than on the number of people who made them.

The issue of sensitivities surrounding language arose in the context of the consultation process. The preference of individual groups to be referred to in particular terms is respected in this document and accordingly, while the terms “birth parent” and “birth family” are generally recognized internationally, the terms “natural parents” and “natural families” are used throughout this Report. In order to differentiate between the past and ongoing work of the Adoption Board and the creation of the Adoption Authority under the new legislation, the Report refers to the Adoption Board throughout the document, except in Chapter 13 which deals with the creation of the Adoption Authority.

Part 1

Adoption legislation consultation process 2003

Description of consultation process

The consultation involved a two-part process – an invitation for written submissions during the summer of 2003 followed by a two-day conference held in Dublin in October 2003.

Written process

In June 2003, people's views were sought on issues set out in three separate documents. These were:

1. a discussion document prepared by an independent legal expert on family law, solicitor Geoffrey Shannon. Entitled *Adoption Legislation Consultation – Discussion Paper*, the paper identified a number of issues which might be appropriate for legislative changes and posed a number of questions eliciting people's views. The issues it examined are replicated in this Report;
2. draft Heads of Bill to ratify the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption signed by Ireland in 1997 (hereinafter referred to as the Adoption (Hague Convention) Bill); and
3. draft Heads of Bill on Adoption Information and Post Adoption Contact and Associated Issues (hereinafter referred to as the Information Bill).

Heads of both Bills had been drafted following consultation processes in 1999. The drafting of the Adoption (Hague Convention) Bill had been completed in the Department of Health and Children immediately prior to this consultation process. A summary of the Bill's main provisions is attached at Appendix A. The Convention is set out at Appendix E.

The Information Bill was approved by Government in May 2001. Currently, there is no established legal right allowing access to birth records for adults and a limited mechanism for getting information with respect to children. Notwithstanding the absence of information rights, adoption agencies and the Adoption Board have been involved in releasing information to people affected by adoption on an adhoc basis. The 1999 consultation had revealed a clearly expressed desire on the part of people affected by adoption and people working in that field for the introduction of new legislation to replace the present unstructured and inconsistent arrangements for releasing information and making contact. The Bill was an attempt to answer the increasing number of requests from adopted people and natural parents for information about each other and, in the case of adopted people, about themselves. It attempted to strike a balance between the right to know one's identity and the right to privacy by providing rights to information but placing a legal curb on unwanted contact. However, in view of the Minister's desire to examine all aspects of adoption legislation and in the light of concerns expressed by people affected by adoption about aspects of the Bill, it was decided to decommission it but nevertheless include it in the 2003 consultation process as a useful starting point from which to examine this subject. A summary of the Bill is attached at Appendix B.

A press release and newspaper advertisement¹ notified people of the consultation process. The draft Heads of Bill and Mr Shannon's paper were placed on the Department of Health and Children's website. In addition, copies of the documents were forwarded to support organizations for people affected by adoption as well as other representative and statutory bodies, inviting written comments on any or all of the issues raised in the three documents.

Two hundred and ninety-eight submissions were received. 43 submissions were received from adopted people, 9 from natural parents, 2 from other natural relatives, 9 from adoptive parents who adopted domestically and a further 9 from existing or prospective intercountry adoptive parents. 4 foster carer/parents made submissions. A further 15 were submissions from individuals with a declared interest or expertise in the area. 53 organizations and voluntary groups which made submissions are listed at Appendix C. While many submissions examined all or a number of issues, 154 can be termed single issue submissions. 110 of these asked that *"all adopted people should have access to their full adoption files and birth certificate, should they so desire. Any legislation which provides for anything short of this is totally unsatisfactory."* A further 44 focused on the issue of eligibility of adopters, primarily whether cohabiting couples should be allowed to adopt, 33 of which expressed total opposition to allowing unmarried couples to adopt.

Oral process

These submissions were used in the preparation of a consultation conference held on Friday and Saturday 17th and 18th October 2003 in Dublin. The Friday session was devoted to an examination of the Adoption (Hague Convention) Bill and domestic adoption issues, excluding rights to information and contact and Saturday was devoted to adoption information and post-adoption contact issues. Those who had made submissions on more than one issue were invited to the conference. One hundred and eighty delegates attended over the two days. A list of organizations which attended the conference is at Appendix D.

The conference was intended to meet three goals: to give delegates the opportunity to hear the legal issues to be taken into account in drawing up new legislation; to give them the opportunity to listen to the experience and views of other people affected by adoption and working in the adoption field as well as to share their own views; and to give them the chance to explore in workshops the various issues with a view to possibly reaching a consensus on the future shape of adoption legislation.

Each day began with an introduction by Brian Lenihan, TD, Minister for Children, followed by a summary by Siobhan Kennan, Department of Health and Children, of views expressed in the submissions and finally a presentation by solicitor Geoffrey Shannon responding to legal issues raised in the submissions and identifying the options and constraints of legislating for suggestions made in submissions. Delegates were then divided into 10 workshops, each one dealing with a different issue and facilitated by a team headed by Jim Halley of Halley & Associates. Each day, delegates spent three hours in workshops and reconvened in plenary session for a question and answer session. Reports of the plenary sessions and of the workshops are available separately on the Department's website, www.dohc.ie.

¹ Irish Times, Irish Independent, Irish Examiner and Irish Star (17 June 2003) and Foinse (22 June 2003)

General findings

The consultation highlighted that:

1. The adoption experience varies from person to person and a person's views can change over time, i.e. adoption remains a life-long process. As a result, a **variety of views**, some of them diametrically opposed to each other, exists.
2. **Points of agreement** exist in relation to a number of issues which can be used as guiding principles in drawing up legislation.
3. New legislative provisions cannot be developed in isolation – they must have regard to **constitutional, national and international legal considerations** and obligations with respect to adoption as well as to the rights and best interests of children.

Variety of views

Many of the people affected by adoption took the opportunity in their submission to describe their personal experience of adoption. Experiences differed greatly. Adopted people wrote of their upbringings and relationships with their adoptive parents – some had loving and happy upbringings whereas some had harrowing experiences having been placed with parents they describe as unsuitable. Some adopted people considered that adoption should be abolished whereas others were anxious it be maintained as only adoption can offer the sense of belonging to a family desired by some.

Disagreement was expressed relating to the rights of: the unmarried father; the eligibility of prospective adopters, including age limits; as well as adoption information and post adoption contact. There was disagreement on fundamental issues such as what should constitute a family for the purposes of adoption – some believing that adopted children's needs are best met in a family based on marriage and others that a broader interpretation of what constitutes a family was acceptable, in line with international law. Subsequent to the consultation process, a report on family life in Ireland launched in March 2004 by the Minister for Social and Family Affairs, Mary Coughlan, TD, highlighted the need to provide a broader definition of the family in light of modern societal changes which, *inter alia*, see an increase in the number of lone parent families, of separations and divorces, in the number of cohabiting couples (one in twelve family units) and in the number of births outside marriage (nearly a third of all births in Ireland). In October 2004, the All-Party Oireachtas Committee on the Constitution announced its intention to carry out a review of the Articles on the Constitution dealing with the family. This follows a long standing request from the Department of Health and Children to consider a constitutional amendment to underpin the individual rights of children.

This diversity of views, and sometimes polarity of views, is a challenge in attempting to develop a consensus on legislative proposals.

Points of agreement

Common views emerged which can be used as a guide in developing new legislation. These are set out below.

Best interests of the child are paramount

There was general agreement that any decision made regarding the adoption of a child must be predicated upon the best interests of the child being paramount. ***The purpose of adoption is to provide a family for a child, not a child for a family.***

The rights of the child as set out in the United Nations Convention on the Rights of the Child seemed to receive significant acceptance and support.

However, there was no agreement on how best to meet these rights. For example, there was no agreement on the optimal adoptive family or on who should be eligible to adopt. In addition, no agreement was reached on how to determine what is best for a child. Questions asked included who has the right to decide if a child should be adopted; if an adopted child should have continued access to his/her natural relations; if information about a child should be released to the natural parents; at what age should a child's point of view be taken into account in the adoption process; how should those views be given and what weighting should be given to them in the decision making process?

The primary foothold for the voice of the child in international law is Article 12 of the United Nations Convention on the Rights of the Child 1989 which provides:

- (1) State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

It was not until the 1964 Adoption Act (Section 2) that provision was made for the Adoption Board to hear the child's point of view in relation to an application for an adoption order. In practice, this is discussed with the child by the social worker while the assessment of the couple is going on and again by the Adoption Board when it makes its final decision to grant the adoption order. However, adoption legislation does not make provision for a right of a child to have a representative put across the child's point of view where the child might find the process traumatic. The general issue of listening to the voice of children is part of the National Children's Strategy which is the responsibility of the National Children's Office.

Guardianship as an alternative to adoption

There was agreement that the best interests of a child whose parents, for whatever reason, cannot mind him/her are not always served by adoption and there was general acceptance for the creation of a special form of guardianship to provide permanence of care short of the legal separation involved in adoption. It was agreed that this would prove useful in the case of children in foster care, whether they be children of marriage or not; for the children of a widow/widower who remarries; as well as for the children of a single parent who marries someone other than the other parent of the child.

The question of abolishing adoption completely and replacing it with guardianship was raised at the conference. However, there are no inheritance rights in guardianship and there are problems with regard to maintenance, both of which are difficult to legislate for. Other European Union States offer adoption and guardianship as alternative forms of care to meet the different needs of children. In view of this, and taking account of testimony by adopted people that adoption had been the right option for them, it is decided to retain adoption as a care option for those children who cannot remain in their family of origin. However, in view of the broad consensus regarding

the provision of a special form of guardianship, it has been decided to make legislative provision for this also (see Chapter 10).

Voluntary Contact Preference Register

The Information Bill had proposed the creation of two registers for people affected by adoption – one where they could register their wish to be contacted by natural relatives from whom they had been separated by adoption (voluntary contact register) and one where they could register their wish not to be contacted (contact veto register). An alternative was discussed at the conference and seemed to gain general support – that of a register where a person could register *preference* for contact. This would range from wanting no contact at the present time to wanting contact immediately or sometime in the future. Such contact might be in the form of letters, e-mail, exchange of information through a third party or a reunion.

Following the conference, in November 2003, the Adoption Board established an advisory group representative of adopted people, natural and adoptive parents as well as people working in the field of adoption to advise it on the appropriate arrangements for the delivery and regulation of a national adoption information and tracing service and *inter alia*, recommend arrangements for the establishment of a voluntary contact preference register. Following the group's deliberations, it has been decided to create such a register. The National Adoption Contact Preference Register will be established on a statutory basis and will be maintained and administered by the Adoption Board. It will be extensively advertised and promoted in Ireland and abroad. The proposed register will allow people separated by a relative through adoption to indicate that they are open to contact and/or the exchange of information, and will specify the mode of contact desired, including post, e-mail, telephone and meeting in person. It will also allow people to indicate that they do not want contact at this time.

Criminal sanctions

The Information Bill had sought to provide a balance between information rights and the right to confidentiality by giving information rights to one person but prohibiting contact with the other person if the latter had registered on the contact veto register. The vast majority of submissions were of the view that the Bill's proposed criminal sanction for breaching a contact veto should be removed. At the consultation conference, the Minister for Children announced his agreement with this view and stated that no adoption legislation will include a criminal sanction in this context.

Information rights for future adoptions

The Information Bill had made proposals regarding information and contact in respect of adoptions made before and after its enactment. There was a substantial welcome for the thrust of the proposals regarding information rights in regard to future adoptions. These gave rights to adopted persons, natural parents and adoptive parents to information from records, although some voiced concerns that the method proposed, i.e. on application to the Adoption Board, was overly bureaucratic. Some submissions considered that these same rights should be provided retrospectively, i.e. in respect of adoptions which have already taken place. However, it is important to state that such rights cannot be given retrospectively as is discussed in greater detail in Part 5 of this Report.

Although very popular, the welcome for future adoption information right as an automatic entitlement was not universal. In particular, the Crisis Pregnancy Agency holds the strong view,

based on its experience assisting women in crisis pregnancies, that provision should continue to be made for adoptions in the future based on the closed model if the natural mother so wishes.

Information rights for adopted adults

There was substantial agreement that people who have been adopted should have a right of access to their birth certificate, regardless of when they were adopted.

There was disagreement about the manner in which the Information Bill proposed this would be done, subject in some cases to exceptional circumstances which would allow the natural parent to apply to the Adoption Board to defer or withhold the release of the certificate and, in all cases, requiring a multi-step mechanism.² Some believed that all adopted people should enjoy the same access to birth certificates as all other citizens.

Adopted person must be told he/she is adopted

Anecdotal evidence was given in submissions and at the conference that not all adoptive parents inform their children they are adopted. Cases were cited of people discovering they were adopted only when they sought a copy of their birth certificate from the GRO. Cases of people incorrectly registered as the children of their adoptive parents were also cited. Although some submissions considered that there should be a legislative requirement compelling adoptive parents to inform their children of their adoption, it is considered that this is not enforceable. The issue was examined by the 1984 Review Committee on Adoption Services³ and this Report supports its recommendation that

- **all adopted children (and adults) should be told they are adopted and adoptive parents should get professional advice and guidance from the adoption agency in doing so.**

Current best practice dictates that all children who are adopted should be given knowledge of their background and origins. In support of this, it is recommended that

- **the Adoption Board will not make an adoption order unless satisfied that the applicant has demonstrated the capacity to value and support the child's needs in relation to his/her original nationality, culture, race, language, religion and identity.**

Support services

There was a widely held view, both from service users and service providers, that services for people affected by adoption are inadequate. While different views were held as to the type of services required and when, how and by whom these should be provided, there was a general consensus that counseling and other support services should be available to people affected by adoption before, during and after the adoption has taken place as well as before, during and after a search and reunion process.

² The Information Bill required the adopted person to write to the health board, meet with a health board official for an advice session on the legislation, write to the Adoption Board which would then confirm with the General Registrations Office (GRO) the existence or otherwise of a contact veto and finally the release of a copy of the certificate by the GRO, with "subject to veto" stamped on it if appropriate.

³ 1984 Report of the Review Committee on Adoption Services, p 85

Legal considerations

A hierarchy of legal considerations and provisions must be taken into account in new legislation. From the top, these are:

- (1) the 1937 Irish Constitution, *Bunreacht na hEireann*,
- (2) the 1950 European Convention on Human Rights (ECHR) and
- (3) the 1989 United Nations Convention on the Rights of the Child (UNCRC).

Ireland has ratified both the ECHR and the UNCRC. Through the European Convention on Human Rights Act, 2003, Ireland must take into account the views of the Convention and how the European Court of Human Rights has interpreted it in drawing up legislation. However, the European Convention on Human Rights Act has been incorporated at a sub-constitutional level, i.e. if there is a conflict between a provision of the Constitution and the ECHR, the Constitution prevails. While the UNCRC is not binding on the courts, its almost universal ratification has given it a moral authority beyond its legal force. It should be noted that the European Court of Human Rights has alluded to the provisions of the UNCRC where ECHR guidance is lacking.

The terms and spirit of the UNCRC and ECHR should be reflected in any change to Irish adoption law. However, where there is conflict between international law and the Constitution, the Constitution takes precedence.

The Constitution of Ireland

The Constitution is the principal source of fundamental rights in the family law arena in Ireland. Article 41 recognises the family “as the natural primary and fundamental unit group of Society”. The family which the Constitution contemplates as deserving such protection is that of the nuclear family based on marriage alone. Rights are conferred on the family as a whole, not on individual family members. Article 41.3 provides that the State shall “guard with special care the institution of Marriage, on which the family is founded, and to protect it against attack”.

Article 42 recognises the natural rights and duties of marital parents in respect of their children and describes such rights and duties as “inalienable” (ie, they cannot be transferred to another) and “imprescriptible” (ie, they cannot be lost by the passage of time).

Article 40 relates to personal rights. It gives rights to identity and information and rights to confidentiality and privacy. Neither right is absolute. The Supreme Court has stated that a child’s constitutional right to know the identity of its natural mother is qualified by the mother’s right to privacy.⁴

The European Convention on Human Rights

As stated earlier, the ECHR has been ratified by Ireland and is binding on the Irish courts, albeit at a sub-constitutional level. Article 8 provides the right to respect for private and family life, home and correspondence (whether the family is based on marriage or not). The definition given to the term “family” by the ECHR is in direct conflict with that of the Constitution which recognizes only the family based on marriage. The ECHR has held that the traditional family relationship between a divorced man and his marital child did not cease to exist on the separation or divorce of the

⁴ IO’T v B and the Rotunda Girls’ Aid Society and M.H. v Rev. D.D. and the Rotunda Girls’ Aid Society, [1998] 2 I.R. 321

parents,⁵ family life was held to exist between an uncle and a nephew⁶ and family life was held to exist where the father could show a close relationship to the child. Family life under the ECHR constitutes not only relations between parents and their children but also extends to grandparents and grandchildren.

The United Nations Convention on the Rights of the Child, (1989)

The 1989 United Nations Convention on the Rights of the Child (UNCRC) is binding on the State but not on the courts, ie the courts do not have to take it into account.

The UNCRC sets out the rights of children in all areas of their lives. The Committee on the Rights of the Child⁷ has made it clear that the Convention has three guiding principles which must govern the implementation of all Convention provisions. They are Article 2 which provides the right to enjoy Convention rights without discrimination on any ground; Article 3 which provides respect for the best interest of the child; and Article 12 which sets out the child's right to be heard in every action concerning him or her.

Article 20 provides the right to alternative care, i.e. that a child who, for whatever reason, cannot remain in his/her natural family, shall be entitled to special protection and assistance. States are required to provide alternative care, such as in the form of adoption, for such a child and to ensure the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background when considering solutions. Article 21 is dedicated to the rights of children in the adoption process and it requires that the best interest of the child shall be the paramount consideration in the adoption process. Article 7 recognises the right of every child to know and be cared for by his or her parents and Article 8 requires states to undertake to respect the right of a child to preserve his or her identity, including the right to have a name and family relations without unlawful interference. The Committee on the Rights of the Child has considered that Articles 7 and 8, when read together, require states to provide adopted children with birth information.

Summary

The consultation process highlighted the many different views held by people affected by adoption and people working in the adoption field. It confirmed that adoption is a life-long process for adopted people, their adoptive parents and natural parents. People's needs change over time and with them the type of services to address those changing needs. The current services provided in relation to adoption are characterized by an assessment process preceding an adoption, whether it be a domestic or intercountry adoption. However, once the adoption is effected, a mixture of scarce resources and either non-existent or uncertain legislative basis has resulted in a haphazard, inconsistent and sometimes ineffectual service punctuated by long waiting lists for services such as tracing and reunion for adopted adults and for a range of support services for adopted children and their adoptive parents. Many of the deficits identified in the consultation process were of service provision rather than legislative. Accordingly, legislative changes are not always the appropriate mechanism for meeting people's needs and therefore, some of the recommendations in this paper relate to administrative or service improvements.

⁵ Berrehab v the Netherlands (1989) 11 EHRR 322

⁶ Boyle v UK (1995) 19 EHRR 179

⁷ The Committee on the Rights of the Child is the body responsible for monitoring the implementation of the UNCRC.

Respondents were very generous in sharing their personal experience and this Report found this an invaluable resource. This experience – both the positive and the negative – has been drawn on in making proposals for legislative changes. However, it must also be noted that the Constitution of Ireland and Supreme Court rulings as well as international conventions and agreements must be taken into account in devising new legislation, irrespective of whether all are in agreement with them.

Respondents to the consultation process agreed that meeting the rights and welfare of the adopted children must take priority in any new legislation. In view of the above, the following guiding principles are proposed as a guide for legislators, service providers and people affected by adoption.

Guiding principles

The following guiding principles inform proposals for change made in this Report.

1. The best interests of the child are paramount – this is at the heart of every proposal.
2. The child has the right to be heard in every action taken concerning him or her and to have those views taken into account in accordance with his/her age and development.
3. The child has the right to know and be cared for by his/her parents and to preserve his or her identity, including name and family relations.
4. The child has the right to continuity of care where possible.
5. Efforts must be made to ensure that adoption legislation and service provision are characterized by clarity, consistency and fairness where possible, while retaining the necessary flexibility to meet individual needs.

Part 2

Issues common to domestic and intercountry adoption

Consultation questions

The discussion document asked people to consider the issue of eligibility with regard to domestic adoption only. However, in the light of submission responses showing that people considered this issue relevant to intercountry adoption also, the decision was taken to examine eligibility in respect of all potential adopters. In addition, suitability as determined through the assessment process is included as a separate section in this chapter given the emphasis placed on the issue during the consultation.

Written

Who should be eligible to be assessed for adoption?

Oral

What changes, if any, would you recommend to the current eligibility provisions for domestic and intercountry adoption?

Eligibility to adopt

Present position

Section 10(2) of the Adoption Act, 1991 establishes the eligibility criteria for both domestic and intercountry adoption. It provides that an adoption order shall not be made unless –

- (a) the applicants are a married couple who are living together; or
- (b) the applicant is the mother or father or a relative of the child; or
- (c) the applicant is a widow or widower; or
- (d) the applicant is a single applicant but the Adoption Board is satisfied that “in the particular circumstances of the case, it is desirable” to effect such an order.⁸

Applicants must be at least 21 years of age at the time of the adoption or, in the case of a married couple where one of them is a parent or relative of the child, one of them must be 21. (The issue of age limits is examined in the next chapter.)

The 1991 Act (Section 8(1)) provides that a health board shall carry out an assessment whenever so requested and as soon as practicable of a person or persons intending to adopt from abroad. No such right to an assessment exists with respect to domestic adoption.

The 1988 Adoption Act (Section 3) allows adoptions to be effected in cases where “but for this Act, the Board would not have power to make the order”. This allows health boards to make an

⁸ This means that a single person, a married person acting alone, or (by implication) a divorced or separated person is eligible to adopt, even where the adopter is not related to the child.

application to the High Court on behalf of a person or persons with whom the child has been living for 12 months for an order authorizing the Adoption Board to make an adoption order, taking into account the views of the child. Very stringent conditions are applied in these cases.⁹ This provision is used in the case of children of marriage in long term foster care who wish to be adopted by their foster parents.

In domestic adoption, children adopted by people who are not related to them (stranger adoptions) tend to be adopted by younger married couples, given the preference expressed by natural parents for such a family set up. However, the number of stranger adoptions is falling and increasingly, children are being adopted by one of their parents, usually the mother, in conjunction with a new spouse (step-parent adoptions) or by another relative. In 1983, 1184 adoption orders were made in respect of domestic adoptions, of which 173 were family adoptions and 1011 stranger adoptions. In 2003, adoption orders for domestic adoptions were made in respect of 263 stranger adoptions and 92 family adoptions.¹⁰

As a variety of family and living arrangements, other than that based on marriage, becomes more commonplace, the question arises as to whether or not provision should be made to give people involved in such arrangements guardianship rights in relation to a child. Existing legislation allows an individual in a stable non-marital relationship to adopt but a couple in the same circumstances may not. Spouses of sole adoptive parents and non-married partners of natural or adoptive parents cannot adopt the child. Foster parents wishing to adopt children of marriage must do so through the tortuous High Court process.

The eligibility of prospective adopters is also of relevance in intercountry adoptions where the natural parents may not have the same say or, indeed, may have no say in the selection of their child's adoptive parents.

Legal and other considerations

The issue of rights and duties of cohabiting couples has been examined in a number of recent legal cases in Ireland. The High Court found that there were constitutional difficulties in equating marital and non marital relationships. In one case, the Court stated that unmarried couples were free agents who owe no duty to each other and stated that *de facto* families fall outside the ambit of legal protection in Ireland.¹¹

The 1998 Commission on the Status of the Family stated that "a diversity of family forms and relationships should be recognized" and that the pledge by the State on marriage should not prevent the Oireachtas from legislating for the benefit of family units not based on marriage. The Equality Authority 2002 Report *Implementing Equality for Lesbians, Gays and Bisexuals*

⁹ The High Court may only grant such an adoption if it is satisfied of *all* of the following:

- (a) the parents of the child, for physical or moral reasons, have failed in their duty towards the child for a period of not less than 12 months immediately preceding the making of the application;
- (b) such failure must be likely to continue without interruption until the child has reached the age of 18;
- (c) such failure must, furthermore, amount to abandonment on the part of the parents of all parental rights, whether of constitutional or other origin, in respect of the child; and
- (d) finally, it is necessary to establish that, because of such failure, it is appropriate that the State "as guardian of the common good, should supply the place of the parents".

In addition to these stipulations being satisfied, it is also necessary to establish to the Court's satisfaction that, all things considered, the adoption is in the best interests of the child.

¹⁰ 1983 and 2003 Adoption Board Annual Reports

¹¹ *Ennis v Butterly* [1997] 1 ILRM 28, [1996] 1 IR 426 (HC)

recommended that “rights in relation to parenting, fostering and adoption should operate on an equal basis for same-sex couples, individuals, married and non-married heterosexual couples and should be based on the core principles of attaching rights to children and responsibilities to parents and carers”. The June 2003 National Economic and Social Forum *Equality Policies for Lesbians, Gays and Bisexuals: Implementation Issues*, recommended that the situation where an individual in a stable non-marital relationship may adopt, but a couple in the same circumstances may not, be changed to allow unmarried couples to adopt. The Law Reform Commission’s recent discussion document examining the rights and duties of cohabiting couples, in view of this consultation process, chose not to express a view as to whether cohabitants should be eligible to adopt.

Other countries have made provisions allowing people involved in non-marital relationships to adopt. Belgium allows a couple in a stable relationship to adopt as long as they are living together for a minimum of three years. Sweden gives the same rights to adopt to a same-sex couple registered in a partnership agreement as to a married couple. Denmark does not allow for joint adoption but does allow for the same sex partner of a parent to adopt his/her partner’s child where they are living in a registered partnership.

Regarding the right of same-sex couples to adopt, the European Court of Human Rights decided that it was not contrary to the ECHR to prevent a homosexual man from the adoption eligibility process on the grounds of sexuality, notwithstanding his suitability to adopt.¹² It also recognized that this is an area which is a “subject of controversy in many Council of Europe member states”.

The International Social Service¹³ (ISS) states “**adoption is a right of the child** in need of permanent substitute parental care. **Adults do not have a right to be entrusted with the care of a child simply because they want one.** The right to equality between people is too often used to justify recognition of anyone’s right to adopt. The child in need of adoption frequently is a child who has suffered serious deprivation. His/her history, situation as an adopted child, and sometimes even his/her physical features, make the child initially a different person in the environment of the State of the community envisaged for his/her placement. The receiving family should not add to the child’s differences or deficiencies. They should:

- provide or revalorize the maternal or paternal representation that he/she has lacked or suffered from;
- ensure an environment that will ease his/her social inclusion;
- enable him/her to face up to the particular difficulties of the adoptive family relationship.

For these reasons, and excepting justified particular cases, the ISS believes that a couple, composed of a man and a woman, both of an age in proportion to that of the child, provides a more favourable environment for the development of an adopted child than a single person, a couple of the same sex, or a couple where the advanced age of one or both partners constitutes an element ill-suited to the needs of the child, or an element of risk in respect to the duration of parental protection.”

¹² Frette v France, Judgement of 26 February 2002, (36515/97)

¹³ The International Social Service International Reference Centre (ISS IRC) for the Protection of Children in Adoption, Brochure No 1 “The rights of the child in internal and intercountry adoption – Ethics and Principles Guidelines for Practice” [1999]. (The ISS IRC is a not for profit, non political, non sectarian organization which promotes information, documentation, the exchange of experience, training and technical expertise for governmental and non governmental professionals in the service of children deprived of their family.)

Consultation

Widely different views were expressed in submissions regarding the eligibility of prospective adoptive parents. Proposals ranged from narrowing the current eligibility criteria to widening them so as to allow anyone to be assessed and, if deemed suitable, to adopt. The key question is whether the best interests of the child would be better served if a larger pool, rather than a smaller one, of prospective adopters were available?

The Adopted People's Association submission recommended a hierarchy of preference for adoption from which the natural mother should choose who might adopt her child. At the top of the list would be the child's father, followed by members of the child's natural extended family, then a couple or individual nominated by either or both natural parents and finally a couple who are a stranger to the child. The submission stated it was not in the best interests of the child to be adopted by a single person who is a stranger and recommended that racial and cultural identity and creed should be an important consideration in the selection of the adoptive parents.

According to an adoption agency submission, the findings from adoption agencies show that mothers considering placing their children for adoption indicate a primary reason for doing so is to provide the child with stability and security within a family setting where a couple are married and fully committed to each other and to any child placed with them. It stated that the introduction under the 1991 Act of the possibility of a non-related single person being eligible to adopt had undermined the right of a child to be raised in the optimum stable family environment where there are two parents and considered this to be particularly important when adopting a child from abroad. Therefore, the submission argued that the presupposition of the Adoption Acts that adopters should be married couples should remain and it should continue to be best practice to place children in stable two-parent marital families where they have the benefit of the role model of a heterosexual relationship. It argued that while single parenthood is becoming more common, this does not mean that it should be accepted as the norm particularly as parenting a child from abroad is likely to be more challenging than raising a natural child. It recommended removing the anomaly where one person in a non-marital relationship can apply to adopt and that couples in a non-marital relationship should only be eligible to adopt in exceptional circumstances, e.g. where a relationship has already been built up with a particular child who is eligible for adoption.

Other submissions also considered the issue of granting eligibility to unmarried couples. Views diverged widely. The view of those opposed to allowing unmarried couples to adopt can be summed up by the following extract from an individual's submission *"The only acceptable and secure environment for adoption is the family based on marriage. To hand over the child to either homosexual or unmarried couples would involve a monstrous betrayal of its rights"*. In the main, concerns were about the higher break-up rate of unmarried couples. This view is supported by some adopted people: *"Call me old fashioned but I feel that adoption should be restricted to married couples."* (Adopted man, aged 44)

This view was not universally held. Submissions believed that marriage should not be a prerequisite for adoption, that adoption legislation should reflect all family types existing in Ireland today and that anyone wishing and in a position to provide a family for a child should be eligible to be assessed, including cohabiting couples. They argued that many couples in a stable relationship capable of providing a loving home environment for a child decide for one reason or another not to marry and that, in view of the sharp increase in marital breakdown in this country, couples in second or subsequent relationships should not need to re-marry to be suitable for adoption. A submission from an adopted man, aged 36, states *"a marriage certificate is not a guarantee of*

good parenting. Therefore, I think any couple capable of providing a child with a loving home environment should be eligible to adopt.” Finally, the current legal position whereby an individual in a stable non-marital relationship may adopt, but a couple in the same circumstances may not, was seen as anomalous.

Some pointed out that a child brought up by a stable cohabiting couple “has no maintenance rights, no social welfare rights nor any inheritance rights in relation to the non legal parent.” Accordingly, submissions suggested that a person should have the right to become the adoptive co-parent of his/her cohabiting partner’s natural child or adopted child.

The issue of same-sex couples adopting was also examined. A submission argued that “children in lesbian or gay families deserve all the benefits and protections that other children have” (Linc). The submission pointed out that same-sex couples are currently certified foster carers to children who are in the care of health boards and asked how could the State “commit into the care of same-sex couples some of its most needy and vulnerable children but will not allow those same couples to adopt”. Submissions also referred to US and UK research which found no differences in emotional health and well-being, behavioural development and sexual orientation between children brought up by same sex parents or heterosexual parents. However, others believed that there is too much bias yet in the world to give same sex couples adoption rights and considered the difficulty the child would face from a young age in explaining having two parents of the same gender. An adopted person argued that in the future it may be possible but now the child could suffer tremendously at the hands of their peers and others as they grow up.

Finally, some submissions looked in particular at the adoption of children in foster care. Submissions proposed that foster carers should be eligible to adopt if they have been assessed and approved by the health boards and are caring for children whose better interests would be served by adoption or be eligible for a form of guardianship to give them rights with respect to the child without severing all legal ties with the natural parents. The issue of guardianship is addressed separately in Chapter 10.

Proposals

As demonstrated by the wealth of conflicting and deeply held views, the issue of eligibility is an extremely complex and sensitive area, made more so by the variety of scenarios in which consideration might be given to adoption as a care option for a child. Guidance is drawn from placing the emphasis on the best interests of the child, rather than any perceived “rights” of the adult to adopt. Key questions which need to be asked in deciding who should be eligible to adopt are what is in the best interests of the child; what are the wishes of the child; what are the wishes of the natural parents; is there a pre-existing relationship between the child and the adopter; what are the implications for the child of his or her parent’s partner not having guardianship rights; and what type of society is the child being adopted into.

Married applicants

It is accepted that marriage is not a guarantee of stability of a relationship or of good parenting. However, providing eligibility rights to cohabiting couples is fraught with difficulty in Ireland in the absence of any formal cohabitation agreement system which would also address the situation of children should the couple break up. The work of the All-Party Oireachtas Committee on the Constitution on a review of the Articles of the Constitution dealing with the family, with reference to the rights of the child, refers. It is considered that the issue of rights for cohabiting couples will have to be formalized before any move can be made to extend the right to adopt to non-married

couples. **Therefore, it is considered that the presupposition that stranger adopters should be a married couple should remain.**

Single applicants

Section 10(2) of the Adoption Act, 1991 allows single applicants to adopt if the Adoption Board is of the view that adoption is desirable in the “particular circumstances of the case”. This Section is extremely useful in circumstances where there is an existing bond between the applicant and the child or where the needs of a particular child would be best met by a sole applicant and, accordingly, the provision should remain. However, Section 8(1) of the same Act provides that whenever a health board is so requested for the purposes of intercountry adoption, it shall carry out an assessment of the person as soon as practicable. In practice, given the provisions of Section 8(1), health boards are placing single people on their intercountry adoption assessment waiting list in the same way as married couples. Since 1991, 44 children from abroad have been adopted by sole applicants, 15 of those in 2003.

It is considered that, for the best interests of the child, the special circumstances intended by the Act’s provisions should be more clearly identified. Accordingly, it is recommended that

- **the Adoption Board set standards for assessment of single applicants which would be approved by the Minister. In order to safeguard the best interests of the children, single applicants would be assessed only where the Adoption Board was satisfied that the circumstances were exceptional.**

Furthermore, cases may arise where a single applicant assessed as suitable to adopt would not have been found suitable if assessed jointly with his/her cohabiting partner. The lack of a legal provision to allow the health boards to assess the non-applicant partner on the same basis as the applicant was raised in the consultation process as a significant child welfare issue and is addressed later.

Adoption by natural mother and husband

Many domestic adoptions are step-parent adoptions, ie adoption by a natural parent jointly with his/her spouse who is not the other natural parent. In the years 1999 to 2003, 955 adoption orders have been made in respect of natural mothers adopting with their husband and 9 in respect of fathers adopting jointly with their wife.

The requirement for a natural mother to adopt her own child in order to invest guardianship rights in her spouse was considered in the consultation process and found to be deeply unsatisfactory. The issue of the natural mother retaining her natural rights over her child while allowing the husband to adopt has long been a contentious issue and was examined in 1984¹⁴ by the Review Committee on Adoption Services which, while acknowledging the objections of the natural mother being named as the adoptive mother of her own child, concluded that a mother would have to be party to an application in order to maintain her legal guardianship rights “*since adoption transfers all parental rights and responsibilities to those named as the applicants*”. However, it is considered that it is possible to circumvent this difficulty and accordingly it is recommended that:

- **one spouse may, with the consent of the other spouse and with other such consents as are required, adopt the latter’s child. If a spouse has adopted a child of the other**

¹⁴ Report of the Review Committee on Adoption Services [1984]

spouse, the said child shall have the same legal status in relation to both spouses as if he or she were their joint child.

Provision is being made for an alternative to adoption in those cases where adoption is not desired by allowing the natural parent to make a statutory declaration allowing guardianship to be shared with his/her spouse (see Chapter 10).

Adoption by adoptive parent and spouse

Section 18 of the 1952 Adoption Act provides for the re-adoption of a child only where the adoptive parents or sole adoptive parent have died. However, circumstances may also arise where the adoption of an adopted child may be desirable when an adoptive parent is still living, for example where a sole adoptive parent marries.¹⁵ This is considered important to safeguard the relationship formed between the child and the live-in spouse, in the event of the death of the adoptive parent. The spouse of a natural mother may adopt the child. Given the provision of Section 24 (a) of the 1952 Adoption Act¹⁶ and Section 3 of the Status of Children Act, 1987, which provides for equal rights for marital and non marital children, the question arises as to whether adoptive parents should be given the same rights as natural parents in this respect also. This would involve allowing an adoptive parent to adopt a child twice (ie a form of step-parent adoption) or allowing the spouse of the adoptive parent to adopt on his own. It is considered that a single adoptive parent should be treated in the same way as a natural parent. The required consents having already been given, there is no need to secure them for the subsequent application for a joint adoption by an adoptive parent and her spouse. It is recommended that

- **the spouse of a sole adoptive parent may apply to adopt on his/her own and, subject to the consent of the child, if appropriate, and the adoptive parent, the child shall have the same legal status in relation to both spouses as if he or she were adopted by them jointly.**

Where adoption is not desired or not considered to be in the best interests of the child,

- **the adoptive parent may make a statutory declaration allowing guardianship to be shared with the new spouse (see Chapter 10).**

A situation may also occur where an adoptive parent who adopted the child jointly with her/his spouse is subsequently widowed and remarries. In line with a recommendation made on page 59 in respect of children of widows or widowers, it is recommended that

- **children of a widowed adoptive parent who remarries should be eligible to be adopted by the parent's spouse, with the child's consent where appropriate.**

Adoption by natural or adoptive parent and cohabiting partner

A natural or adoptive parent cohabiting with a partner may wish to invest that person with guardianship rights in relation to the child. A recommendation has already been made that a cohabiting couple should not be entitled to adopt as a couple until cohabitation agreements are provided for. Consideration was also given to providing special guardianship rights in such cases.

¹⁵ Since 1991, 44 children have been adopted from abroad by sole applicants, 1 of those by a man.

¹⁶ Section 24 (a) of the 1952 Act states: Upon an adoption order being made—

(a) the child shall be considered with regard to the rights and duties of parents and children in relation to each other as the child of the adopter or adopters born to him, her or them in lawful wedlock.

However, it was considered that any such provision should also await a change in the rights of cohabiting couples. Existing guardianship legislation is available as an option for such couples.

Adoption by a relative

The right of the child to be brought up by relatives is in keeping with his right to know his family. The definition of “relative” as a person who may adopt a child is set out in the Adoption Act, 1998 and is a “grandparent, brother, sister, uncle or aunt of the child, whether of the whole blood or the half blood or by affinity and includes the spouse of any such person, relationship to the child being traced through the mother or the father”. The Adoption Board asked for the definition to include the aunt and uncle of either natural parent in light of cases which have come before it. Accordingly, it is recommended that

- **the definition of relative in the 1998 Adoption Act should be extended to include the aunt and uncle of either parent of the child.**

In line with the UNCRC Article 7 recognising the right of every child to know and be cared for by his or parents, it is considered that where possible the child should be raised by a member of his/her family. The issue of giving children a legal right to be adopted by a relative was raised in the consultation process. Notwithstanding the appeal of such a right, this Report considers it would be an impossible process to administer and unrealistic to require the Adoption Board to ascertain the identity and whereabouts of every relative eligible to make an application to adopt and inform him or her of that right. Therefore, responsibility for making themselves known to be interested in adopting the child should remain with the child’s relatives. The question arises as to whether the assessment procedure should be as stringent as that used in respect of stranger adoptions or whether special provision should be made. It is recommended that

- **the Adoption Board, as part of its current development of a national framework for domestic adoption, should make special provision for the assessment of a relative, as newly defined, so as to ensure that the child’s best interests in terms of continuity of care, right to know his family and right to preserve his identity are protected.**
- **Where more than one relative wishes to adopt the child, the health board or assessing agency should decide which placement would better meet the best interests of the child.**

Adoption of children in foster care

Submissions considered that barriers to adoption in foster care need to be addressed. At the end of 2003, there were over 4000 children in foster care Ireland with many in care for over 5 years. A number of issues militate against adoption being taken up as a child care option for a child in long term foster care, including financial issues in the loss of the foster care allowance and practice issues for the social workers with many social workers in fostering dealing with the child, foster parents and natural parents. This may result in cases where a child would benefit from adoption but that option is not pursued or is delayed. The delay in carrying out such assessments, particularly where it is the wish of the child to be adopted was considered to be at odds with the Court decision that while there is no right to have an assessment carried out within a particular time frame, the assessment period should not be prolonged beyond a period that was reasonably required to ensure the interests and welfare of the child are fully protected.¹⁷ Accordingly, it is recommended that

¹⁷ McC and McD v Eastern Health Board [1997] 1 ILRM 349

- **a foster care parent, whose foster care child has consented to being adopted, should be assessed for adoption within twelve months of making the application for assessment. The adoption application must be a joint one in the case of a married couple.**

The stringency of the 1988 legislative provisions is needed to meet the Constitutional provisions regarding the special position of marriage. Submissions referred to the strain placed on foster care families and the child of the rigours of adopting under that Act. Accordingly, it is proposed to provide that people of marriage, aged 18 or more, may be adopted by their long term foster care parents. A recommendation to that effect is set out in Chapter 7.

Adoption of children whose parents are divorced

No change is recommended in the case of children whose parents are divorced and subsequently remarry. However, it is proposed to allow a spouse of a divorced parent to qualify for special guardianship (see Chapter 10).

Suitability to adopt

Present position

Section 13 of the Adoption Act 1952 provides that:

- (1) The Board shall not make an adoption order unless satisfied that the applicant is of good moral character, has sufficient means to support the child and is a suitable person to have parental rights and duties in respect of the child.
- (2) Where the applicants are a married couple, the Board shall satisfy itself as to the moral character and suitability of each of them.

The Adoption Board may make an interim order of up to two years to make sure the applicant/s meet the criteria set out in Section 13.¹⁸

A Standardized Framework for Intercountry Adoption Assessment was developed in 1999 and since then has been in use nationally. The lack of a standardized assessment process for domestic adoption was identified as a problem in the consultation. The Adoption Board/Authority recently began the process of drawing up a Standardised Framework for Domestic Adoption and for the handing over of responsibility for assessment to the health boards.

Both parties in a joint application are fully assessed. A sole applicant is also assessed fully and efforts made to ascertain what other key figures in his/her life will be instrumental in the care and development of the child, including cohabiting partners. However, health boards currently have no legal right to assess the non-applying partner who may refuse to be part of the assessment or any other person who will live with the child.

¹⁸ Section 8 of the 1964 Adoption Act

Consultation

The absence of a legal right to assess a sole applicant's live-in partner was seen as a cause for concern by health boards and adoption agencies. Submissions questioned whether this diminished the child's rights to a safe environment. Furthermore, should all people who will be living in the same house as the adopted child be assessed, such as a sibling or child of the applicant/s? Child protection considerations would suggest that they should be assessed. However, the question was asked as to whether or not such assessment would be against their right to privacy as well as whether or not it would be against the right to privacy of the applicant/s who might be found unsuitable to adopt because of who they might be living with at the time of the assessment.

Submissions also commented on the lack of consistency between adoption placement committees in the various health boards, for example, differences in membership and method of working were cited.

Submissions also commented on the provisions of Head 22 of the Adoption (Hague Convention) Bill set out below.

Proposals

Suitability criteria

Head 22 of the Adoption (Hague Convention) Bill as examined in the consultation proposed replacing Section 13 of the 1952 Act with the provision that: the Adoption Authority will not make an adoption order unless it is satisfied that the applicant/s

- “(a) are of good moral character;
- (b) have a reasonable expectation of continuing to enjoy good health and being able to fulfill their duties to the child over his/her period of growing up;
- (c) have the capacity to promote the development and well-being of the child;
- (d) have the capacity to safeguard, actively support and arrange for the necessary health, social, educational or other interventions for the child throughout his/her childhood;
- (e) have adequate financial means to support the child;
- (f) have the capacity to value and support the child's needs in relation to his/her identity;
and, in addition to this, with respect to the making of an adoption order relating to intercountry adoption, that
- (g) the applicants have attended a course of education regarding intercountry adoption in line with Article 5(b) of the Convention and provided by a body accredited to do so by the Adoption Authority;
- (h) the applicant/s demonstrate the capacity to value and support the child's needs in relation to his/her original nationality, culture, race, language, religion;
- (i) the applicant/s have no convictions for a sexual offence.”

There is no legislative provision for ensuring that people adopting domestically have undergone a suitable assessment process and, in this context, the recent commission by the Adoption Board of a standardized framework with respect to domestic adoption is welcomed. It will address the

criteria covered in each strand of adoption and will also address the implications for children born in Ireland of foreign nationals and placed for adoption here. It will also address the implications for assessments of people wishing to adopt a child with whom they have a pre-existing family relationship and where such adoption is considered in the best interests of the child. With regard to the Head above, it is considered that the provision that no applicant for intercountry adoption should have a sexual offence should be made in respect of domestic adoption also. A number of submissions from adopted people wrote of the importance of ensuring continuity of creed, race and religion in respect of domestic adoptions as well as intercountry adoptions. Accordingly, it is recommended that

- **Head 22 should be amended so that: subsection (g) refers also to domestic adoption standardized adoption frameworks; subsections (h) and (i) relate to applicants for domestic and intercountry adoption and that there be explicit reference to the suitability of the applicants to have parental rights and duties in respect of the child. Subsection (h) will also include reference to the identity of the child.**

Assessment of cohabiting partners and other residents

Efforts to ensure the protection of the child are not complete unless the suitability of the home for the child has been judged by, *inter alia*, interviewing and assessing all residents. Indeed, in some cases, the non-applying partner rather than the applicant may be the primary carer of the child. Accordingly, it makes sense to assess all those who will be living with the child. However, notwithstanding the fact that the proposal is geared solely towards ensuring the welfare of the child, concern was expressed that imposing an assessment on a live-in partner or other resident would infringe on that person's right to privacy as well as on the rights of the applicant. However, as a matter of domestic and international law, the welfare of the child must take precedence over competing interests such as privacy. Given the fact that an applicant has no right to adopt, merely the right to an assessment, it seems sensible to find a mechanism by which an applicant's right to an assessment is balanced against that of the child to a safe environment. It is noted that there is no right to an assessment in domestic adoption. Accordingly, it is proposed that:

- **For both domestic and intercountry adoption, health boards should have the right to ask to make a full assessment of the cohabiting partner of a sole applicant and a partial assessment of any other person who will be living in the house with the child, e.g. grandparents and siblings. Assessment of such persons will form part of the overall assessment of the applicant. An inference may be drawn from any refusal to be involved in the assessment.**
- **The Adoption Board should set down guidelines on this issue.**

Health issues

The question of health as a measure of someone's suitability to adopt was also raised in the consultation. Some submissions wrote of the great upset caused to adoption applicants by the lack of clarity regarding this issue. Suggestions included providing a minimum illness free period of five years to applicants with a previous serious or life-threatening illness. Another submission suggested that regulations should set out a detailed set of tests which would be carried out by a panel of experts and against which an applicant would be tested.

In June 2004, the Adoption Board introduced a medical advisory service to support local health boards and agency medical advisors in assessments of the capacity of applicants to adopt. The aim is to provide speedy and consistent advice when medical issues requiring clarification arise

in individual adoption assessments. It is considered that this initiative which will take into account developments in medical treatment, and the Hague Bill provision that applicants have a reasonable expectation of continuing to enjoy good health over the period of the child growing up, are sufficiently robust to protect the best interests of the child as well as flexible enough to meet the concerns of prospective adoptive parents.

Waiting lists

Assessments for intercountry adoptions are currently carried out by health boards and some adoption agencies. The Adoption Board intends to transfer to health boards responsibility for domestic adoption assessments which are currently the responsibility of its own social worker unit.

Waiting lists for intercountry adoption assessments vary between health board areas and currently range from 3-6 months to 45 months, with the majority being between one and two years. Reasons for waiting lists differences include a variety of staffing issues, the increased provision of post placement and post adoption services as well as demands for other services in the child care area. Submissions suggested that the waiting times for assessment could be reduced by charging a fee for assessments or creating a centralized waiting list. However, health boards and agencies are prevented under existing legislation to charge applicants for this service. The question of charging for an assessment service raises many ethical as well as practical difficulties, some of which were identified in the consultation. However, pending further detailed examination of these difficulties and how they might be overcome, it is decided that

- **provision be made to allow for fees to be charged for professional services, subject to the approval of the Adoption Board.**

In addition, in view of the restructuring of the health services currently underway and the issue of the transfer of responsibility for domestic adoption assessments from the Adoption Board to the health boards, it is proposed that

- **the Health Services Executive should consider how best to provide an effective and efficient domestic and intercountry adoption assessment service.**

Duration of declarations of suitability

Section 5 (5) of the 1991 Act provides that a declaration of suitability lasts a year and allows prospective adopters to apply to the Adoption Board to extend the period, the latter not defined. A total of 180 extensions to declarations were granted by the Adoption Board in 2003, reflecting the difficulties faced by applicants in adopting children abroad within the 12-month lifespan of the declaration. This also has an impact on service provision as social workers are required to make a recommendation on the extension of the declaration. The Adoption Board has asked that declarations of suitability and eligibility should be for a duration of two years and longer in certain cases. It is recommended that:

- **Section 5 (5) of the 1991 Act should be amended to allow the Adoption Board to issue declarations of suitability and eligibility for a period of 24 months with provision to extend it for longer periods if the Board is satisfied that it is reasonable and proper to do so.**

Adoption placement committees

In view of the desire to ensure consistency and uniformity between placement committees, it is decided to

- **provide for the establishment of an adoption placement committee in each health board area whose function will be to make recommendations to the Adoption Board on the basis of an assessment report. The committee will include persons with social work, medical, psychiatric and psychological expertise.**

Consultation questions**Written**

Should there be a common lower and upper age limit for prospective adoptive parents and, if so, what should it be?

Oral

Should there be a lower and an upper age limit for domestic adoption? Why and when should it be imposed?

Should there be a lower and an upper age limit for intercountry adoption? Why and when should it be imposed?

Should age limits be common to both?

If not – what alternatives do you recommend instead of age limits to ensure the rights of the child are protected?

Legal considerations

The imposition of an age limit with regard to adoption is permitted under Section 5(2)(j) of the Equal Status Act, 2000.

The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption makes no comment about age limits or indeed about any other aspect of eligibility. However, some foreign authorities set both upper and lower age limits for applicants and these must be met by applicants, irrespective of Irish law.

The EU Convention on the Adoption of Children, Article 7, prescribes a lower age limit of between 21 and 35 and no upper age limit.

Lower age limits**Present position**

Section 10 (5) of the 1991 Act provides that an adoption order shall not be made unless—

- (a) the applicant and, if the applicants are a married couple, each of them, has attained the age of 21 years, or
- (b) the applicants are a married couple and one of them is the mother or father or a relative of the child and either of them has attained the age of 21 years.

The 1952 Act specified a lower age limit of 30 years for both adopters in stranger adoption cases or 21 where the adoption involved a natural parent. The 1964 Act provided that stranger

adoptions could be made in favour of couples married at least 3 years, each of whom was at least 25 years.

Consultation

The issue of lower age limit did not elicit much discussion in the consultation process. Considerations of lower age limits were seen to relate to the maturity of the adult/s to look after the child and a number of submissions suggested raising the limit to 25 years for stranger adoptions and/or for step-parent adoptions.

Proposals

Most domestic adoptions are step-parent adoptions. The law allows such adoptions where only one of the spouses has reached the age of 21, therefore the other could be as young as 18. In practice, step-parent adoptions tend to be in favour of people in their late twenties and thirties.

With regard to stranger adoptions, 4 adoptions have been effected in the past 5 years in favour of couples or individuals unrelated to the child under the age of 30.

With regard to intercountry adoption, the issue of a lower age limit arises very seldom in practice in Ireland given the reality that it tends to be older people who choose this option. In the past 10 years, only one person under the age of 25 has applied for a declaration of suitability. This person was refused on the grounds of suitability. Therefore, a small raise in the age limit would have no practical, or little practical impact, on current practices and it is therefore decided that

- **the lower age limit at which a person/s may adopt will remain unchanged.**

Upper age limits

Present position

There is no statutory upper age limit but adoption societies can and do impose an upper age limit in practice for domestic adoptions in view of the preference expressed by natural parents for younger married couples to adopt their child. The age limits can vary between agencies depending on circumstances.

The absence of an upper age limit for assessment in Ireland has resulted in cases of people in their fifties and sixties being granted declarations of suitability for intercountry adoption. The majority (60%) of declarations of suitability to adopt are made in respect of people in the 35 to 43 years age range with a further 19% aged between 43 and 47.¹⁹ However, the right to an assessment for any applicant and the lack of control over the countries from which people have adopted in the past has resulted in young children being adopted by people in their late forties, fifties and sixties, some of them single applicants. In the years 2000 and 2003, 64 declarations (3%) were made in respect of people aged between 50 and 60, 14 of these in respect of people aged over 54. Seventy-two per cent of children adopted from abroad whose adoptions were registered in 2003 were under 2 years-of-age and over 20% aged between 2 and 4.²⁰

¹⁹ Adoption Board Annual Report 2003, Table 21, shows that 2152 applicants received a declaration of eligibility and suitability between 2000 and 2003. Of these, 603 (28%) were aged 35 to 39 and 682 (32%) were aged 39 to 43. 402 applicants were aged between 43 and 47

²⁰ Adoption Board Annual Report 2003, Table 22a

In the absence of research in this country regarding intercountry adoption on this issue, it is hard to say what view children adopted by relatively elderly parents may have of having such parents. With regard to domestic adoption, some adopted adults have complained about the affect of having older parents. The average age of natural mothers in Ireland in 2003 was 30.6 years (32.5 years for births within marriage and 26.5 for births outside marriage).²¹

Adoption (Hague Convention) Bill proposals

The draft Adoption (Hague Convention) Bill, as circulated as part of the consultation, provided that prospective adopters must be aged 45 or less at the time of application. For first adoptions, the age gap between the child and the applicant or the older of two applicants had to be no more than 42 years at the time of the referral (eg, a couple aged 37 and 47 or a sole applicant aged 47, adopting for the first time, could adopt a child aged five and older). No age limit was proposed for people applying to adopt from abroad for a second or subsequent time provided the Adoption Board was satisfied it was in the best interests of the children. The Bill also provided that an older person could adopt a child with whom there was a strong familial link. It also provided that an older person who had children or who had personal or professional experience of caring for a child with special needs could be declared suitable to adopt a particular child aged three or more or who had a disability likely to have long term implications or who had a life threatening illness. In those cases, the suitability assessment and declaration of suitability were to relate to the identified child only.

Consultation

Strongly held views in favour of and against the imposition of an upper age limit were aired in the consultation process. Supporters of age limits, which included mainly adopted people and service providers, considered that having younger parents increased the adopted person's chances of having parents not only through childhood but beyond; reduced their chances of becoming a carer to elderly adoptive parents at a young age; reduced the generational gap between the child and his parents and between the child and his extended family; reflected more closely what happens in natural families; addressed complaints expressed by adopted people of having older parents. Some also thought that providing for a specified maximum gap between the age of the child and of the adopters would increase the chance of older children or children with disabilities being adopted. Proposed age limits ranged from 40 upwards.

Critics of age limits, comprised in the main of adoptive parents and prospective adoptive parents, considered that older parents make good parents in view of their greater maturity and financial resources and lower incidence of marriage breakdown. Some argued that the existence of an age limit would limit the number of eligible people and therefore reduce a child's chance of finding a home. With the rising marriage age, prospective adopters are often in their late thirties and early forties before making the decision to investigate intercountry adoption and with lengthy waiting lists, can be in their mid-forties before adopting for the first time. An age limit would prohibit them from adopting a second child. A specified maximum gap between the age of the child and adopters might result in older people adopting older children whose needs they cannot meet. They recommended that legislation should follow the guidelines of the Hague Convention on the Protection of Children in Respect of Intercountry Adoption which sets no age limits and which provides that the identification of a child suitable for adoption by a couple is left to the country

²¹ Central Statistics Office (<http://www.cso.ie/principalstats/pristat2.html>) on 30/11/04.

of origin based on a report sent to it by the Adoption Board setting out details of the prospective adoptive parents, including the characteristics of the children for whom they would be qualified to care.

Proposals

Domestic adoption

As stated earlier, in practice, adoption agencies impose an age limit in domestic adoptions and this can vary between agencies. A number of submissions cited this issue as an example of adoption agencies interpreting the legislation to suit themselves and called for greater fairness. The frustration of and emotional trauma for prospective adoptive parents of being refused an assessment or undergoing an assessment process for domestic adoption only to be taken off the waiting list because of their age, when no age limit is specified in law, cannot be underestimated. However, given that natural parents, who have a greater say in who adopts their child, tend to choose younger married couples, this Report considers that the imposition by agencies of an age limit is a practical response to a real situation. Moreover, an increasing number of domestic adoptions are step-parent and family adoptions. In imposing an upper age limit, provision would have to be made for a variety of different scenarios to allow natural family members or others who may exceed an upper age limit to adopt a child.

It is not considered that the absence of a statutory upper age limit has a negative impact on children adopted domestically. While the consultation revealed significant support for the imposition of age limits common to both domestic and intercountry adoption, it is considered that, in view of the need to maintain flexibility in the system to allow the best interests of children to be met in every case,

- **an upper age limit shall not be prescribed for domestic adoption.**

Intercountry adoption

Different arguments need to be taken into account in legislation for intercountry adoption, given the different circumstances in which such adoptions arise. The function of our legislation is to protect children coming into the country rather than take responsibility for children abroad.

The arguments in favour of and against age limits are already summarized above. This Report considers that the maturity, financial and emotional stability or otherwise of applicants is best left to be determined as part of the assessment process. In the absence of research in this country on outcomes for children adopted from abroad, the relative benefits of being adopted by older parents compared to remaining in an institution in one's country of origin cannot be answered with certitude although advantages and disadvantages to both can be identified. The workshop on intercountry adoption at the conference listed these and also suggested that research on intercountry adoption should focus on a comparison between adoption and remaining in an institution. In the absence of such research, it is noted that the Hague Convention is of the view that a child should grow up in a family environment for "the full and harmonious development of his or her personality" and if that family environment cannot be found in the country of origin, then intercountry adoption should be considered. Therefore, increasing the pool of responsible, committed and loving people from which to choose adoptive parents makes sense – within reason. In addition, the argument that the number of children needing adoption exceeds that of prospective adopters is open to debate. A report on adoptable children in need of adoption suggests that there are "very good grounds for maintaining that, as far as young children in good

health are concerned, requests for adoption would seem to outstrip the number of adoptable children, though it would undoubtedly be impossible at this point to estimate a precise ratio in this regard. The reverse seems to be true, however, as regards children described as “difficult to place”, for whom suitable prospective adoptive parents would indeed appear to be lacking”.²²

The impact of an upper age limit on the adoption of older children was raised by both supporters and opponents of upper age limits. Of a total of 341 children adopted from abroad and registered in 2003 in the Register of Foreign Adoptions, only 22 or 6% were aged 4 or more. This preference for adopting younger children is easy to appreciate. A substantial body of research shows “that a significant minority of adoptive placements of looked after children either disrupt or continue with enduring difficulties. It is also known that the factors most strongly associated with difficult placements are older age at placement and the child’s adverse experiences in previous environments. . . We are only beginning to learn what happens to a child’s problems once they are in a continuing, stable family placement.”²³ The difficulties associated with post institutionalization include complicated patterns of language delay, atypical attention deficit disorder, learning disabilities, attachment difficulties, behavioural disorders, post traumatic stress disorder and medical problems. Are older or younger parents better equipped to deal with these problems on a day-to-day basis? The view of social workers based on their experience is that energy as well as financial and emotional resources is required. It is considered that this is best determined in the assessment process and, therefore, if a person is to adopt an older child, the assessment process should address that additional factor specifically.

A number of submissions recommended that, rather than be a discrete issue, age should be included as part of the overall suitability assessment package. In fact, this is already the case. However, the lack of clarity implicit in such a system has already led to enormous distress in some cases.

The issue of the imposition of age limits is not a simple one. It is considered that parents within a certain age range meet the criteria required for a successful adoption from the point of view of the child – i.e. one where they have the finances to meet their obligations in terms of minding the child and ensuring that the child’s cultural and other needs are met, where they have a reasonable expectation of surviving until the child is an adult and beyond, and one which reproduces reasonably closely the experience of his non-adopted peers. In view of the above, it is proposed that an age limit should apply. Much consideration was given to the age limit which should apply. It was considered that an upper age limit of 45 was too low and that there might be circumstances where it may be legitimate to assess a person aged 50. However, the question of age cannot be looked at in isolation and will continue to be linked closely to a person’s overall suitability to adopt. Accordingly, it is recommended that:

- **a provision be made that an applicant for intercountry adoption, or in the case of a married couple the younger person, must be aged 50 or less.**

The Bill had also provided an age limit for people adopting for the first time but not for subsequent times. While the absence of an age limit for second or subsequent children may seem to be contrary to the aim of increasing the chance of the child to have a parent into adulthood and

²² Intercountry Adoption. A comment on the Number of “Adoptable” Children and the Number of Persons Seeking to Adopt Internationally; Nigel Cantwell, Senior Projects Officer, UNICEF Innocenti Research Centre (published in Volume V, Spring 2003 issue of the Judges’ Newsletter, International Child Protection).

²³ Alan Rushton, Support for adoptive families *ADOPTION AND FOSTERING* VOLUME 27 NUMBER 3 2003.

beyond, it was considered preferable that some flexibility be allowed for the benefit of the first child. However, in view of the increased age limit proposed, it is proposed that it should apply in respect of all adoptions, albeit with a few exceptions. Accordingly, it is recommended that:

- **the age limit will not apply in cases where the application is in respect of a particular child with whom there is a strong familial link; or where the applicants already have children or have personal experience or professional expertise in caring for a child with special needs and are applying to adopt a particular child who is aged three or more or who has special needs. In all cases, the Adoption Board must be satisfied that the adoption is in the best interests of the child.**

The Bill as circulated provided for an age gap of no more than 42 years between the child and the older applicant in the case of a joint declaration at the time of the referral. However, the Hague Convention provides that the matching process is carried out by the country of origin based on a report on the prospective adopters. Requiring the country of origin to specifically identify a child of the right age whose needs would be best met by the applicants is considered to be too complex and rigid and may not be in the best interests of a particular child. Accordingly, it is recommended that:

- **the legislation does not include a specific age gap between adopters and child.**

Consultation questions**Written**

What post adoption services should be provided and who should be entitled to them?

Oral

What pre and post adoption services are needed for natural parents, adoptive parents, adopted child and others (define others). Who should provide them?

Identify those that exist already and comment on their efficacy.

Present position

Existing pre-adoption services for natural mothers in a crisis pregnancy and for prospective adoptive parents include information sessions, assessment, education and preparation courses. Pre-adoption information and advice sessions for natural fathers, natural grandparents or other family members are provided on an informal basis.

The constitutional primacy of the family limits the extent to which interventions can be made once the child becomes a member of a family. Once the adopted child becomes a member of the adoptive family, the normal arrangements for health and social services apply as they do to all children, with the exception of post placement (pre adoption) and post adoption reports carried out by health board social workers in respect of children adopted from countries of origin which demand them such as the Philippines and the Socialist Republic of Vietnam. No post adoption reports are prepared in respect of domestic adoptions. An adopted woman, aged 30, placed with parents she described as unsuitable, wrote of the lack of discernible interest in her welfare from authorities after the adoption order was made. *"I do not remember any visits from social workers as I was growing up to see if I was doing OK."*

Adoption is now known to be a life-long process and different issues can arise at different times in the lives of adopted persons, their adoptive parents, natural parents and siblings. One of these, the issue of post adoption information and contact for domestic and intercountry adoption, is dealt with separately in Part 5 of this Report.

Research carried out in Ireland on the needs for and availability, appropriateness and effectiveness of post adoption service experiences in respect of children adopted from abroad²⁴ show that some children are in need of a range of services as a result of post institutionalization and that such service provision, as currently organized, can be inappropriate to the particular needs of the

²⁴ A Study of the Post-placement needs of Children Adopted from Institutions Abroad, Ann McWilliams, 10 June 2002; Marie Symonds, Social Worker, Adoption Services, NEHB; Valleri Switzer, TCD, 2001

children. A thorough initial assessment of the child was seen as the most important service that should be available.

Legal and other considerations

There is no statutory entitlement to post adoption services under the Adoption Acts. Article 9c of the Hague Convention imposes an obligation on central authorities, directly or otherwise, to promote the development of post-adoption services.

The Law Reform Commission, in its Report on the implementation of the Hague Convention, recommends that the Child Care Act, 1991 should be amended to place a statutory duty on health boards to provide post-adoption services.

Consultation views

There are two schools of thought with regard to pre and post adoption services. The first questions the fairness of giving an entitlement to specialized services to adopted children purely by virtue of being adopted thus rerouting resources which might otherwise be available for all forms of child care. The second is that there should be specialised services because adopted people have very particular needs and the State owes them a duty of care. Submissions and the conference workshop examining this issue identified the provision of pre and post adoption services as one of the most important potential developments in the whole area of proposed changes to the legislation.

Submissions looked at what services should be available to whom, when, how and why. A wide range of pre as well as post adoption services in the areas of domestic adoption, intercountry adoption and adoption of foster care children was proposed. Submissions suggested that *all* parties to the adoption and all affected by it should be entitled to such services, including grandparents, siblings, aunts, uncles. In order to inform the provision of such services, one submission proposed that as a preliminary consideration, a social researcher should be appointed to identify past and current issues relating to adoption.

Pre-adoption services suggested during the consultation

Foster children

Submissions identified the need for services to deal with emotional, behavioural, psychological and special educational needs, feelings of abandonment, loss and separation mixed with feelings of acceptance and pleasure at being adopted. In addition, services were suggested to deal with problems regarding levels of access suitable or desired by each child and their natural parents.

Foster carers

Submissions stressed that if adoption were to become acceptable as a care alternative for long term foster care children, foster carers would need support from social workers both well versed in adoption legislation and who viewed adoption as an acceptable care alternative for foster care children (some foster carers expressed a fear of jeopardizing their foster child's placement by raising the question of adoption with their social workers). Adopting a foster child means foregoing the allowance unless the relevant health board decides to keep paying it. While adoption may be the best option for the child, it may not always be financially possible with the loss of both the foster care allowance and in some cases the child's medical card and it is queried whether there was a need for a post adoption allowance similar to that paid in the UK.

Natural parents

Adequate and timely non directive pregnancy counseling was seen as paramount. It was also suggested that family/partner mediation, access to non-local services and provision of accommodation for women who need it during pregnancy were required.

Adopted children

Research and experience show that adopted children need to have as much information as possible about the “black hole” in their past, prior to their adoption. A comprehensive report on the child provides the adoptive parents with an important tool in their care of the child, particularly their understanding of the child’s background and how his or her experience is likely to affect behaviour and abilities. Thus the adoptive parents have the opportunity to prepare themselves as well as possible for their adopted child, to be as positive as possible, to make the necessary adjustments and allowances in their day-to-day raising of the child and seek the necessary help. Article 16 of the Hague Convention sets out what information the child report should contain including identifying information (of the child and natural parents (but only non-identifying information should be transmitted)), reasons why adoption was considered the appropriate action, a summary of psychosocial data of the child and family, diagnostic assessment and medical report. It is also recommended that a “child box” accompany the child intended for the child and containing mementos from the child’s natural parents and from the institution.

While the consultation process emphasis was on children adopted as babies or while still very young, many children are adopted at an older age. Their views and feelings on the subject also need to be explored.

Adoptive family

A submission stated that a child’s first contact with prejudice and ignorance can often be within the family unit – immediate and extended. While this submission was referring to intercountry adoption, a submission from an adopted adult highlighting the difficulties her much loved adoptive parents’ extended family had in accepting her, suggested this was an issue of possible relevance to all adoptions. Therefore, pre-adoption services should be available to all affected by adoption, in particular the extended family of the adoptive parents. This would include counseling on their decision to adopt and what it means, as well as assistance through the assessment process and post adoption.

In view of the wide range of difficulties which can arise as a result of institutionalization and/or birth difficulties, it is considered that before engaging in international adoptions, families must be well informed of all the risks and long term effects of institutionalization. “Parents need to prepare themselves for the difficulties that lie ahead so that they will be fully ready to handle a wide range of issues that are unique to the institutionalized child. Parents should enroll in preadoption counseling as well as familiarizing themselves with training for early detection of multiple medical, cognitive and emotional problems in the child. Understanding concepts related to learning disabilities, mental retardation, autism, and attachment disorders should be a mandatory requirement before adoption. To help the entire family, a unique and innovative family therapy approach should be arranged immediately upon the child’s arrival”.²⁵

²⁵ Understanding the complexities of US and International Adoptions, Ron Federici, PsyD

Post adoption services suggested during the consultation

Adopted people

Submissions listed a range of service requirements, including specialist social work post adoption services, counseling, support, group information, education/guidance on adoption issues such as support meetings; search and reunion services; mediation; post placement medical, psychological and social work support. Some suggested all placing agencies should have a statutory responsibility to provide a designated social work post adoption service. It was also proposed that the Adoption Board should be responsible for the promotion, development, research and standardization of services.

A range of services specifically identified for intercountry adopted people which should be provided as part of a multidisciplinary team including social workers, psychologists, speech and language therapists, physiotherapists, sensory integration therapists, nurse specialists, family therapists. Some highlighted the need for medical assessment on referral to eliminate any significant medical issues.

Adoptive families

Services proposed included the provision of multidisciplinary and coordinated assistance in dealing with children who may face many challenges, especially the effects of post institutionalization. The submission of the Parent Network for the Post Institutionalised Child stressed the importance of early and correct intervention to deal with complicated patterns of language delay, atypical attention deficit disorder, learning disabilities, attachment difficulties, behavioural disorders, post traumatic stress disorder and medical problems. It stated that standard medical, psychological and educational evaluations can often lead to an inaccurate diagnosis. Most children adopted from abroad were considered to need specialized testing and evaluations with paediatricians familiar with adoption issues and educated in the different medical issues from the children's country of origin. Therefore, early intervention in conjunction with the right services was seen as vital.

Services were also sought to assist the integration of children into Irish life while at the same time keeping them in touch with the culture of their countries of origin.

Natural families

Services recommended include the provision of counseling with regard to feelings of loss either at the time of the placement or subsequently, mediation for contact, peer support groups with active efforts to engage natural parents during the twelve months after placement as this is a most vulnerable time, as well as at specific times such as birthdays and Christmas.

Where should such services be provided?

The consultation revealed a variety of views as to how, where and by whom services should be provided. These included the development of a pre and post adoption counseling and support center for natural parents, adopted people, adoptive parents and children similar to such centers in Britain and the US. As well as being a resource, it would be a focus for the development of Irish expertise in the very complex area of post adoption. There were calls for the establishment of regional centers of excellence providing a multi-disciplinary approach whereas some considered a centralized unit would be preferable. Some called for the establishment of a dedicated post adoption center for intercountry adopted children staffed by a multidisciplinary team and attached to a medical center.

Proposals

In order to inform the provision of services, a submission proposed that a social researcher be appointed to identify past and current issues relating to adoption. This Report considers such research vital to the identification and prioritization of service needs in respect of both domestic and intercountry adoption.

The Adoption Board has recently commissioned research to document intercountry adoption outcomes in Ireland since 1980 as phase one of a major two-phase longitudinal survey. The aim of the project is

1. to identify, explore and evaluate the post placement experiences and needs of children across a range of ages and countries of origin adopted from overseas into this State and the factors which contribute to a successful intercountry adoption outcome
2. to use the knowledge gained from this research to improve the preparation and the assessment processes for intercountry adoption.

Ireland has one of the highest rates of intercountry adoption in Europe. While there have been discrete pieces of research on intercountry adoption in this country, there has been no major research on the social, physical and educational development of children and the long terms implications of intercountry adoption. It is vital to have such research carried out to help design pre and post adoption services to meet the needs of the children, adoptive parents and their wider networks. Accordingly, it is recommended that:

- **the Adoption Board should commission research on the long term implications of intercountry adoption with a view to help identify pre and post adoption service needs.**

At the moment, the Adoption Board notifies the applicants and relevant health board when a referral comes in regarding a particular child. In some cases, the applicants go the country of origin to adopt the child without consulting first with the health board. However, best practice would suggest that once a referral is received, the applicant(s) should meet with their assessing social worker and other health workers, such as a general practitioner, to discuss the referral and decide whether to proceed or whether to seek additional information.

It has been the experience of social workers that people who have adopted from abroad may be unwilling to approach services for their children, possibly out of the belief that this might reflect poorly on them, particularly if they wish to adopt another child. However, it is important that an initial assessment of the child's needs should be made to ensure that access is made on his/her behalf to the necessary existing services in a timely manner. Accordingly, it is recommended that:

- **an immediate step should be taken through the health boards to ensure that, in all cases, the Adoption Board and relevant health board are advised when a child comes to live in Ireland so that a preliminary check on the child by the relevant health board's professional staff can be made.**

Finally, it is noted that the Standardised Framework for Intercountry Adoption is incomplete. It is recommended that:

- **priority must be given to completing Part Four of the Standardised Framework for Intercountry Adoption guide for practitioners which relates to post placement issues.**

Part 3

Domestic adoption

Consent to adoption: time lapse between placement and final consent

Consultation questions

Written

Should there be a specified period between the placement of the child with prospective adoptive parents and the signing of the final consent?

Oral

Should a specific time lapse between placement and final consent be specified in law? When would it not be appropriate?

Present position

There are many circumstances under which consideration may be given to placing a child for adoption in Ireland, eg where a child is in long term foster care, or is the infant of a mother in a crisis pregnancy. Currently, the natural parent, usually the mother, is faced with two discrete decisions before an adoption can proceed, both of which must be full, free and informed. The first is the decision to place the child for adoption with a health board or adoption agency and the second is the decision to sign the final consent. This may be signed when the child is 6 weeks old but, in practice, such early signings are the exception. The final consent may be withdrawn at any time before the adoption order is made (Section 14, Adoption Act 1952).

In practice, agencies may provide counseling and support to the natural mother before and after the birth of her child when all options are discussed and the decision to place the child for adoption is usually considered by the mother to be final. Experience shows, however, that many mothers do not present to the adoption agency until after the birth of the child which means that many issues to be addressed in the counseling process take place after the birth, with a knock on effect on any decision she may take with regard to the future of her child.

There is no specified period in which the mother must sign the final consent. The lack of such a specified period has resulted in a small number of cases where the natural mother has refused or failed to give her consent and, in some cases, has sought the return of her child after a long period of time. On the other hand, there has been a small number of cases where adoptive parents have refused to return the child, even when the child has been with them a relatively short period of time. The mother's right to the return of her child is not easily enforceable when the adoptive parents decide to contest it. If the prospective adoptive parents refuse to return the child, the mother may institute custody proceedings under the Guardianship of Infants Act, 1964. The 1984 Review Committee on Adoption services noted that it "is in her own interests to bring these proceedings immediately since any delay may alter the balance between the parties in conflict in favour of the prospective adopters in whose care the child remains pending the determination of

the case. The court will be influenced by the extent to which the child may be considered to have bonded with the adoptive parents.”²⁶ Twenty years later, this is still the case.

Section 3 of the Adoption Act, 1974 permits prospective adoptive parents to apply to the High Court for an order dispensing with the mother’s consent before an adoption order is made. The trauma of such an action and the effect it must have on all involved, including the child, can only be imagined. From 1999 to 2003, 4 consents were dispensed with.

Legal and other considerations

Any consent to place a child for adoption must be full, free and informed. This means that in determining a particular time period in which a child must be in care before the final consent is given and an adoption order is made, a balance must be struck between ensuring a sufficiently long period so that it cannot be argued that there was a lack of consent and not so long that it could be against the interests of the child.

Consultation

There was a majority agreement in submissions that a period should be specified in law but disagreement about the length of the period, with suggestions ranging from 30 days to 12 months. It was argued that a time limit was required so as to:

- protect the best interests of the child as time limits are important in protecting the emotional security of the child
- focus the mind of the natural mother who, even when told the placement is the important decision, may not have considered the full implications of the adoption process until faced with having to sign the final consent
- help adoptive parents bond with the child without the fear that the child will be taken away.

A small minority considered that each case was unique and that no period should be specified so as to always allow for the reunion of natural mother and child. *“Adoption should not be a long-term solution to a short-term problem”* (adopted woman). On the other hand, some submissions found the possibility of a child being returned subsequent to placement unacceptable. An adopted person wrote, *“A child is not a pawn to be moved at will.”*

The submission from Treoir, the National Federation of Services for Unmarried Parents and Children expressed the majority view on this issue. It stated: *“it is important that a parent/s placing a child for adoption must be absolutely satisfied that the decision is the best one for both the child and the parent. It is important that all options are explored before the child is placed. However, if a child is being placed for adoption, delays in the placement should be avoided and the child should have as little disruption as possible. Following placement, if a mother changes her mind and wishes to reclaim her child she should be statutorily entitled to the return of her child anytime before signing the final consent to adoption.”* In addition, Treoir’s view is that the final consent should not be signed before the child has been in placement for three months and preferably not later than nine months after placement.

²⁶ Report of the Review Committee on Adoption Services (1984), paragraph 5.13

Treoir also suggested that mothers who reclaim their children are not always sufficiently supported by the placing agency when the prospective adoptive parents refuse to hand the child back and initiate legal proceedings. It considered it important that the placing agencies continue to support the natural mothers even if legal proceedings are initiated.

Proposals

Adoption agencies have a dual mandate – to assist the natural mother in a crisis pregnancy contemplating adoption and to find suitable adoptive parents for that child from a pool of prospective adopters. However, a question mark hangs over whether these two roles are compatible. Indeed, the Hague Bill prohibits an accredited agency from carrying out assessments and mediation as this is deemed to be a conflict of interest. It is recommended that

- **the Adoption Board should consider whether the practice of the same adoption agency being involved with both the natural parents and the adoptive parents should be reviewed, bearing in mind the best interests of the child.**

The child's right to know his family and to be reared by his own demands that every effort be made to keep child and mother united if that is in the best interests and welfare of the child. Currently, adoption counseling may be given to the mother-to-be but rarely to her own family, e.g. her own parents and siblings, or to the natural father and his family. Submissions from natural mothers who gave up their children for adoption spoke of pressure being applied by their own parents to part with their child. The Crisis Pregnancy Agency submission stated that this still happens today and that some women in a crisis pregnancy do not involve their own family in the decision they are taking. However, experience also shows that some mothers choose to conceal their pregnancy when they fear they may be made keep the child or where they fear a relation may wish to adopt the child.

Once a decision is taken in good faith that adoption is the best option for the child and the adoption placement process begins, the rights of the mother to reclaim her child need to be balanced against those of the child for continuity of care. Consideration was given to increasing the current six week limit from the date of placement in which the mother may give her final consent. However, in practice, very few final consents are given at such an early date in line with best practice but there may be cases where the possibility of giving such early consent is the only means of ensuring that the child is not left in a legal difficulty by being abandoned. Taking into account the best interests of the mother and child, it is recommended that:

- **A period of at least six weeks but no more than nine months should be prescribed in law between the initial decision to place the child for adoption and the giving of the final consent. If the natural mother changes her mind regarding the decision to place her child for adoption in that time, then the adoption agency will assist her in having the child returned to her. Signing the final consent form after the deadline and before the Adoption Order is made will not invalidate the Adoption Order.**
- **In exceptional circumstances, where the adoption agency considers that the return of the child to the mother would be detrimental to the child's welfare, it may refer the case to the Court which shall hear it without delay.**
- **A mother retains her existing right to apply to the courts for the return of her child if the prospective adoptive parents refuse to return the child.**

Time lapse between placement and making of adoption order

Consultation questions

Written

Would you be in favour of a prescribed minimum period during which the child must be in the care of the prospective adopters before an adoption order can be made?

Oral

Should a specific time lapse between placement and making of the order be specified in law? When would it not be appropriate?

Present position

Section 9 of the Adoption Act, 1974, refers to a prescribed period during which the child must be in the care of the prospective adoptive parents before an adoption order can be made. However, such a minimum period has never been prescribed. The purpose of this is to ensure that the placement is successful. In the very exceptional circumstances where a placement breaks down, good practice provides that the natural mother is informed and involved in the selection of alternative adoptive parents, if she wishes.

Consultation

There was general agreement that a specified period be provided before the adoption order is made in order to ensure the success of the placement. Proposals ranged from six months to a year.

Proposals

In determining a prescribed period during which the child must be in the care of the prospective adoptive parents before an adoption order can be made, consideration must be given to the fact that many placements relate to toddlers and older children rather than to babies. Given the importance of the decision, it is vital that a long enough period is allowed to enable the success or otherwise of the placement to be determined. Accordingly, it is recommended that

- **an Adoption Order shall not be made unless the child has been in the care of the applicants for a period of twelve months.**

Currently, the making of the Order is subject to confirmation from the placing agency that the child has settled in the adoptive family and bonded with the adoptive parents. It is considered that, as a further precaution in the best interests of the child and in line with practice in intercountry adoption, there should be a number of post placement reports before the Adoption Order is made. It is recommended that

- **a number of post placement reports should be made in respect of a child adopted within Ireland. The Adoption Board will be responsible for issuing guidelines on the number of reports required.**

Consideration was given to the issue of dispensing with the mother's consent where she fails to give it, in particular that failure on her part to give the consent within a particular time frame would be interpreted as consent. However, this idea was discounted in view of the seriousness of the issue and the need to ensure that every stage leading to the making of an Adoption Order is rigorously applied. For example, a woman may be married and wish her child to be adopted but may be unable to sign the consent form. If she were to disappear, and her consent taken as given, the subsequent adoption would be illegal. It is therefore considered that dispensing with the mother's consent requires a court decision as currently provided under Section 3 of the 1974 Act. Cases taken under this Act are funded through the Department of Health and Children. It is proposed that funding for such cases be channeled through the health boards and accordingly, it is recommended that:

- **statutory responsibility for taking cases and meeting costs taken under Section 3 of the 1974 Adoption Act should be given to the health boards.**

Consultation questions**Written**

In what circumstances should children of marriage be considered eligible for adoption?

Oral

Should children of marriage be eligible for adoption? Under what circumstances should provision be made for the adoption of children of marriage? Should provision be made to allow people aged 18 and over to be adopted?

Present position

Under existing legislation, marital children from abroad may be adopted.

Section 10 (c) of the 1952 Act as amended by Section 2 of the 1964 Act provides that, in order to be eligible for adoption, a child must either be “illegitimate or an orphan” or be a child who has been legitimated but whose birth has not been reregistered. Therefore, two parents married to each other cannot waive their parental rights should they wish to give effect to an adoption. Children of marriage can be adopted, however, under the Adoption Act, 1988 which permits the adoption of any child in exceptional and very limited circumstances where the parents are shown to have comprehensively abandoned their parental duties. The 1964 Act provides that the child has the right to be consulted in such cases.

The 2000 Health Statistics showed that over 40% of children in care at the end of 2000 were children of marriage. Many children remain in long-term foster care and cannot be adopted, even though they may have no contact with their natural parents and have a relationship with their foster care parents emotionally indistinguishable from natural parent-child relationships. The emotional and psychological benefits of the permanence of adoption cannot be underestimated for such children who desire to be adopted. A second problem is that children of widows or widowers who remarry cannot be adopted by their surviving parent’s new spouse.

Legal considerations

The Irish Constitution which gives married parents inalienable and imprescriptible rights would need to be amended to change the law on the adoption of children of marriage. However, in the absence of such an amendment, guardianship rights can be conferred on people other than the natural parents by virtue of special guardianship orders. Proposals for the creation of such special guardianship orders are set out in Chapter 10.

Consultation

Most submissions which addressed this question considered that there should be no discrimination against children of marriage in the provision of a permanent home. The general

view can be summed up in the following quotation: *[t]he child's eligibility to be placed for adoption should not be based on marital status of parents – it should be based on the children's need.*²⁷ This ties in with the recommendation of the 1984 Review Committee on Adoption Services *“that all children should be eligible for adoption irrespective of the marital status of their parents.”*²⁸

Where adoption was envisaged, it was thought it should be an open adoption. Others were of the view that guardianship only should be provided for marital children.

Submissions considered adoption should be available to children in long term foster care, children born to married women whose husband is not the father and children whose parents have made a mature and considered decision to relinquish their rights, without having to prove abandonment. The ability of children of widows or widowers to be adopted by the surviving parent's new spouse was also raised.

A number of submissions considered that a constitutional amendment was needed to allow children of marriage to be adopted more easily. A number of suggestions for doing so were put forward, including removing the words “inalienable and imprescriptible” from the Constitution's reference to the rights and duties of marital parents; and giving children in the Constitution a specific right to a caring and functioning family. Others suggested: circumventing the Constitution by allowing the High Court to make an Adoption Order similar to the simple adoptions in intercountry adoption, i.e. one which would not have the effect of terminating the pre-existing legal parent-child relationship, providing an automatic right of guardianship to foster parents after five years; and amending the Adoption Act, 1988 to make it less cumbersome, adversarial and expensive.

With regard to the adoption of children of marriage, issues of resources were raised. Submissions from foster carers argued that health boards concentrate too much on intercountry adoption at the expense of foster care adoptions and that this issue has not been given the status it deserves in health boards despite the recommendation of the 2001 Working Group Report on Foster Care that health boards should actively consider the option of adoption in the best interests of the individual child for all children in long term foster care. This has caused huge time delays in some health board areas in the assessment of foster families, e.g. 8 years.

Proposals

It is considered that the needs, best interests and wishes of children, rather than the marital status of their parents, should be the determining factor in their eligibility to be placed for adoption. However, the Constitution does not provide for this as currently drafted and any amendment to the definition of family would have far wider implications for and applications than the issue of adoption.

The point was made in the consultation process that the issue needs to be addressed now for those marital children already in the position of not being able to live with their natural parents. Accordingly, the issues are whether the current process for allowing marital children to be adopted can be improved and whether an alternative form of care, short of adoption but which provides greater stability to the children, can be provided. With respect to the latter, the proposal to have

²⁷ Submission of the National Steering Committee on Adoption.

²⁸ This report preceded the 1988 Adoption Act which allowed for the adoption of children of marriage in limited circumstances.

a special guardianship order received substantial support and is examined in detail in Chapter 10. With respect to whether it is possible to ameliorate the current process, the legal opinion is that the Adoption Act, 1988 passed constitutional scrutiny precisely because it is so rigorous and exacting. Between 1999 and 2003, 17 children born within marriage have been adopted.

Notwithstanding that, submissions from foster carers claimed that the issue of adoption is not raised with their social workers for fear that the social workers may remove the child from their care or by the social workers. If that is indeed the case, it is easy to understand the dilemma facing social workers in this area – fostering involves partnership between the foster carers, social workers, health boards and very often also the natural parents and ideally is a temporary means of providing care for a child before he/she can be returned to his/her parents whereas promoting the idea of adoption of a fostered child involves making a conscious decision that the child can never (again) live with his/her natural parent/s. It is recommended that

- **health boards should implement the recommendation of the Report of the Working Group on Foster Care that health boards actively consider the option of adoption , in the best interests of the individual child, for all children in long-term foster care²⁹.**

With the existing constitutional constraints necessitating a rigorous test for the permanent separation of marital child from parents, consideration was given to whether the existing mechanism can be made less stressful and divisive in practice. Submissions from people who have adopted and been adopted through this mechanism report a very lengthy, protracted system both before and after reaching the High Court. Consideration should therefore be given to speeding up the process and making it less adversarial while continuing to meet the constitutional exigencies of the 1988 Act.

- **The Adoption Board should examine mechanisms such as mediation services to assist reach agreement between natural parents, foster carers and the child regarding the adoption of the foster care child. It is accepted that such cases need to go before the High Court in view of the Constitutional ban on marital parents willingly surrendering their parental rights.**
- **While it is appropriate in some cases to go ahead with the adoption of children, provision should be made to allow people aged over 18 to be adopted by their long term foster carers where both parties consent or where consent has been dispensed with by order of the court if the person is unable to give or understand consent.**

It is recommended that:

- **The child of a widow or widower who remarries should be eligible to be adopted by the parent's spouse, subject to the consent of the child and of the surviving parent.**

²⁹ Report of the Working Group on Foster Care: Foster Care – A Child Centred Partnership, May 2001 (paragraph 3.40)

Adopted children (under 18): contact with natural relatives

Consultation questions

Written

What provisions should be made for ongoing contact between adopted children and their natural family?

Oral

What provision should be made for ongoing contact between a natural parent and her/his child? When should/could it be made?

Should it be voluntary (and therefore flexible) or should it be binding?

Should a natural mother, should she choose to, be able to specify a closed adoption in the future?

Present position

The 1952 Adoption Act provided for a “clean break” adoption system. The effect of an adoption order is that a child is considered as the natural born child of the adoptive parents and the natural parent loses all parental rights and is freed from all parental duties with respect to the child. Adoption procedures in Ireland evolved on the basis of anonymity and confidentiality in the belief that secrecy was essential to protect all parties and that natural parents and their adopted children did not need information about each other. However, it is now known that, while this may be so for some people, it is by no means true for all. Irish adoption legislation takes no account of the emotional impact of adoption and the need some people affected by adoption may have for information about or contact with their natural relatives as the child is growing up as well as later in life.

Domestic stranger adoptions used to be effected on the basis of complete secrecy – the natural mother would have no information on the adoptive parents. However, the current best practice in this area now involves giving natural parents as much input as possible into the selection of adoptive parents. Notwithstanding the fact that existing legislation makes no provision for ongoing contact between the child and natural relations, submissions from adoption agencies state that in many cases it is happening already on an informal basis. While they state that open adoptions can work well, agreements reached at the time of the adoption are not always adhered to, owing to the changing circumstances of the parties to the agreement as well as to the development of the child.

Definition of open and semi-open adoption

Open and semi-open adoptions refer mostly to the adoption of infants. They allow the identity of the child to be preserved but do not qualify adoption’s primary effects of giving full parental rights and duties to the adoptive parents.

Open adoption allows the natural mother, and other family members, to choose from a number of prospective adopters and, after the birth, she/they may meet the chosen adopter/s and exchange identifying information. In some cases, open adoption may go further and lead to the creation of some kind of ongoing relationship between the parties. The level of contact will differ, depending on the wishes and priorities of the various parties, but may include periodic visits, receipt of photographs of the child, phone calls and e-mails. The key advantage of open adoption claimed by its supporters is that, without compromising the legal integrity of the adoption process, the adopted child is aware of his/her origins, can have pre-planned and controlled access to his/her natural family and the pain of permanent separation of natural parent and child can be tempered.

In a *semi-open adoption*, access is indirect only, with the natural mother being supplied with information that does not identify the prospective adopters, and hence does not compromise the anonymity of all involved. Information may be exchanged as the child grows, such as photographs.

In rare cases, for instance where a mother abandons the child, there is no exchange of information.

Legal and other considerations

Semi-open adoption in respect of children adopted from abroad is permitted under the Adoption Act, 1991 (as amended by the Adoption Act, 1998).

Advocates of open adoption promote the practice on the grounds that it is better for all the parties involved, particularly for the child and for the natural parents. A 1991 survey, involving nearly 1400 adoptions in California, found that children in open adoptions had significantly better behaviour scores than children in adoptions with no access to natural parents.³⁰ Another study found that contact with natural parents did not tend to be frequent and that, when contact was terminated, it was more often terminated by natural parents.³¹

Article 9(3) of the UNCRC provides that the mutual enjoyment by a child and parent of each other's company is a fundamental element of family life and that access is the right of the child and should not be denied unless it is clear it would not be in the best interests and welfare of the child. Article 8 provides the right of a child to preserve his or her identity.

Consultation

The overall consensus was that this is an extremely sensitive area, has enormous emotional implications for all parties concerned and is therefore very complex. The main issues of discussion were whether or not open or semi adoption was in the best interests of the child, and, if it were, whether it should be provided for by means of a binding court order or by means of a more flexible mechanism, more easily revised to reflect the changing circumstances of the people it affects.

Submissions from adopted people varied a lot on this issue – some were in favour of fully open adoptions involving regular contact while others considered an exchange of information via the agency would be appropriate. Some felt any contact should be mandatory while others believed

³⁰ M. Berry, "The Effects of Open Adoption on Biological and Adoptive"Parents and the Children: The Arguments and the Evidence (1991), cited in *Adoption Law: the case for reform*, A report by the Law Society's Law Reform Committee, April 2000

³¹ M. Berry, D. Cavazos Dylla, R. P. Barth and B. Needell, "The Role of Open Adoption in the Adjustment of Adopted Children and their Families" (1998) cited in *Adoption Law: the case for reform*, A report by the Law Society's Law Reform Committee, April 2000.

any system of information exchange should be flexible. Some adopted people wrote to say they would have found regular meetings with their natural parent too muddling as they were growing up. Others considered that there should be no contact until the adopted person could express a view. Some proposed that if the adoptive family are willing to the exchange of letters and photographs, then this should be permitted, if they are not, then letters and photographs should be held via the contact register until the adopted person is 18 years of age.

Submissions from an adoptive and natural mother wrote that any such agreement needs to be formalized or regular contact or provision of information is not maintained, ended in one case by the natural mother and in the other by the adoptive parents. Others called for the statutory provision of what are currently non-enforceable agreements based on good will between parties. This would mean that agreements reached could then only be changed by order of the court having heard both parties. However, one submission warned *“[A]lthough open adoption is now regarded as good adoption practice, it is a very sensitive area often producing difficulties for all parties and the arrangements need constant review and monitoring. A voluntary agreement can be renegotiated whereas a legal binding contract would involve return to the courts for adjustment. It is therefore important that placing agencies should have adequate trained personnel to negotiate, support and facilitate contact arrangements.”*

The Crisis Pregnancy Agency’s submission, referring to a consultation process it carried out prior to drawing up its strategy published in November 2003, stated that those adoptive parents it consulted who currently have contact with one or both natural parents, were positive about the process and experience. However, in the same consultation process, adopted people, adoptive and natural parents expressed concerns about how adoption with contact would work in practice. Some suggested that guidelines would be critically important for all parties. Guidelines and protocols it proposed included how to involve the natural father in the consultation and decision making process and guidelines for practitioners in adoption agencies and elsewhere providing counseling for women contemplating adoption or in crisis pregnancies.

The conference workshop examining this issue considered that contact is generally in the best interests of the child, while accepting that this is not always the case. It considered that the Adoption Board should impose standards of best practice on agencies providing this service. It considered that all adoption orders should have conditions regarding ongoing contact and these conditions should be open to review. They should be agreed pre-adoption insofar as is possible in consultation with all parties involved.

Proposals

The wishes and needs of three different parties, at least, are to be taken into account in post adoption contact – those of the child, of the adoptive parents and of the natural parents. Others may also be involved, for example, grandparents. Although children adopted before they reach the age of reason, and certainly as infants, have no say in the matter, efforts must be made to take their best interests into account.

In the best case scenario, adoptive parents and natural parents agree a form of contact prior to the adoption which meets the needs of all concerned until the adopted person reaches 18. This agreement forms part of the adoption order and is adhered to by all. However, it is possible that adoptive parents and natural parents may agree to a form of contact at the time of the adoption which, in good faith, they consider they can adhere to but which over time becomes unsatisfactory or inoperable for one or other of the parties or which becomes unsatisfactory for the child.

Relationships between the parties could become strained and this may well have a negative impact on the child. How should these issues be tackled? Some would suggest that a binding agreement would deal with this problem. However, this Report considers that whether or not an agreement is binding is not the real issue to be resolved, rather the emotional impact of such an agreement on all the parties. Accordingly, a flexible system with supports for the various parties at different stages of the process from negotiating to implementing an agreement is considered the best means of addressing any problems which may arise in an open or semi-open adoption process, both before and after the making of the adoption order. Counseling is an integral part of that service. However, it is considered that a specialist mediation service as part of the adoption service, which would build up expertise and experience in best practice, may be the best method of addressing the question of reaching and renegotiating an agreement, where this cannot be affected at adoption agency or health board level. This should not be provided by the Adoption Board. It is recommended that

- **the Adoption Board should carry out research into the best method of effecting open and semi-open adoptions in Ireland and make recommendations for its implementation, if deemed appropriate. The research might consider the following:**
 - **How would the child's voice be heard in any decision being made, for example in reaching or in reviewing an access arrangement**
 - **Should such an agreement be informal and therefore flexible or should it be binding, and if so, where it would be lodged**
 - **Should such an agreement form part of the adoption order**
 - **Who should be party to such an agreement, eg grandparents, aunts, uncles of the child as well as natural parents**
 - **How could an agreement be renegotiated over time as needs and circumstances change**
 - **What level of support would be given by adoption agencies or other bodies to the parties, especially if difficulties arose in meeting the terms of the agreement**
 - **What course of action should be taken if a person reneges on an agreement**
 - **Should specific provisions be made for foster care children**
 - **What type of mediation service is required and who should provide it.**

Notwithstanding the significant support for open and semi open adoptions, the view was also put forward that such adoption arrangements should not be mandatory. Findings from the Crisis Pregnancy's consultation process suggest that concealment of pregnancy can be a defining characteristic for some women considering adoption. Best practice would suggest that social workers encourage the mother towards open or semi open adoption. Research shows that a woman insisting on a concealed pregnancy may nevertheless choose open adoption but that some mothers still choose closed adoption. It is considered that, in the best interests of the child, a natural mother should retain the right to a closed adoption. It is noted that the views of a woman in a crisis pregnancy deciding to place her child for adoption may change over time as her own circumstances change and she may become more open to contact or exchange of information later in the child's life. It is recommended that

- **mothers should continue to be able to place their child for adoption on a confidential basis. However, the medical and other identifying information gathered by the adoption agency as part of the pre-adoption information process should be as**

extensive as possible and relayed to the adoptive parents for sharing with the child as appropriate.

- **The agency involved should act as a go-between to give progress updates to both sides.**

Children adopted domestically are often adopted in situations where there is already a link with a natural parent or other relative such as a grand parent, for example in step parent adoptions or adoptions by foster carers. Notwithstanding the recommendation made above regarding the need for research into open adoptions, consideration must be given as to whether to legislate for the current good-will arrangements which exist, in the best interests of the child. It is considered that the Adoption Board in making adoption orders should be able to take into account the child's particular needs, wishes and feelings and the likely effects on the child of ceasing to have contact with his or her natural family. In addition it is considered that provision should also be made to allow for continued contact between the natural parents and the child where the child is adopted by non-relatives. Accordingly, it is recommended that

- **Provision be made to allow the Adoption Board to attach a provision to an adoption order permitting access of the child to natural parents or named relatives where this is considered to be in the best interests of the child.**

For the sake of brevity, the term “non-marital father” is used throughout this chapter to refer to the father of non-marital children.

Consultation questions

Written

Do you think that the Adoption Board should be provided with the option to attach a condition to the adoption order that the non-marital father’s access continue?

Should additional rights be given to a non-marital father in relation to the adoption of his child by a third party?

Alternatively, should the non-marital father be given preferential adopting rights?

Oral

What rights should be given to the non-marital father before, during and after the making of an adoption order?

Present position

The natural mother has constitutional and statutory rights to custody of her child. The non-marital father has the following rights:

- the right to apply to be appointed a guardian (Guardianship of Infants Act, 1964 as amended). (As a guardian, his consent is required before an adoption order can be made, unless his consent is dispensed with.³²);
- the right to be appointed a guardian if both parents agree to it and his name is on the birth certificate (Section 4(4) of the Children Act, 1997);
- subject to four exceptions,³³ the right to be consulted prior to the placement of his child for adoption. (He has no right to stop the placement.)
- the right to notify the Adoption Board that he wishes to be consulted in relation to a proposal by an agency to place the child for adoption or an application by the mother or relative to adopt the child (Section 4, Adoption Act, 1998). Where a father is informed by an adoption agency that it is considering placing his child for adoption (either as a result of his notification to the Adoption Board as above or because the Agency knew

³² Section 14, Adoption Act 1952 as amended by Section 2(20(3)), Adoption Act 1988 and Section 3, Adoption Act 1974

³³ The four exceptions are where the father cannot be contacted, where it is inappropriate to contact him, where the mother refuses to name him after counseling or where she cannot identify him and provides a statutory declaration to that effect.

his identity and contacted him direct) and he objects to it, he has three weeks in which to make an application to the court to be appointed a guardian.³⁴

- the right to apply to adopt his child (Section 10 (1) (b), Adoption Act, 1991).

Legal considerations

In his presentation to the consultation conference, Mr Shannon considered that the few rights afforded the father under Irish law seem at odds with the approach adopted under international law. He drew attention to the following international provisions:

- Article 8 of the European Convention on Human Rights and Fundamental Freedoms guarantees as a basic right the right to respect for private and family life, home and correspondence. It draws no distinction between the family life of a marital or non marital family, i.e. it is concerned with the substance rather than the form of the relationship;
- Article 7 of the UNCRC provides the right of a child to know and be cared for by his or her parents;
- Article 8 of the UNCRC provides the right of a child to preserve his or her identity;
- Article 9(3) of the UNCRC provides that the mutual enjoyment by a child and parent of each other's company is a fundamental element of family life and that access is the right of the child and should not be denied unless it is clear it would not be in the best interests and welfare of the child.
- The ECHR has stated that access is the right of the child.³⁵

Any order allowing the non-marital father (or any other person) access to the child is deemed to have lapsed upon the making of the adoption order (Supreme Court decision in *W.O'R v E.H* (1996)). There is no legislative basis for granting access after an adoption order is made, even though it sometimes happens in practice.

The 2002 England and Wales Adoption and Children Act requires the court before an adoption order is granted to (1) to consider whether there should be arrangements for allowing access, (2) to consider existing and future access arrangements, (3) to obtain the views of the parties.

Consultation

The specific questions asked in the written consultation document are addressed individually below. This section deals with other more general rights proposed in some submissions and at the conference.

The range of general rights proposed for fathers included giving the father a statutory right to know he is a father; compulsory registration of his paternity with both parents named on the birth certificate and both parents responsible for registration; the same guardianship rights as the mother; the right to be part of the decision to place a child for adoption; the right to information about the child after the adoption. Others took the view that fathers' rights are adequately protected in the Adoption Act, 1998 and that a father who wishes to rear his child already has sufficient access through guardianship legislation.

³⁴ Section 6A or Section 11 (4) of the Guardianship of Infants Act, 1964 (as inserted by the Status of Children Act, 1987)

³⁵ *Hoppe v Germany* [2003] 1 FLR 384

The frustration of adopted people at the fact that a natural mother can choose not to reveal the identity of the father of her child was expressed both in written submissions and at the conference. While the desire or need to know the identity of both one's parents cannot be underestimated, giving the father a right to know he is a father cannot be enforced in practice as a mother cannot be made name him. She may genuinely not know who the father is and if she is resolutely opposed to naming him, she may deny knowing who he is or she may give a false name. The provisions of the 1998 Adoption Act concerning efforts to convince the mother of the benefits of naming the father for the sake of her child are rigorously applied by the Adoption Board which, in some cases, spends up to 6 months trying to identify and make contact with the father. The new standards framework for domestic adoption being prepared currently includes an examination of present services to natural parents and the development of a model of working with both natural parents.

The issue of giving the unmarried father an automatic entitlement to guardianship or other form of access to the child was also examined. Some submissions wished the father to have automatic guardianship rights equal to those of the mother. It was suggested that should a natural mother not wish to raise her child, the natural father should be recognized in law as having equivalent rights as a marital father following a divorce or separation. While this has considerable merit, it cannot be enforced without a constitutional amendment. The Supreme Court in *G v An Bord Uchtala*³⁶ said that the natural mother has constitutional rights to the custody of her child. In *Nicolaou v An Bord Uchtala*,³⁷ the Supreme Court stated that the natural father did not enjoy rights which were constitutional in origin. The Supreme Court approved of this approach in two subsequent cases, *K. v W.*³⁸ and *W.O'R. v E.H. and An Bord Uchtala*³⁹.

Some submissions expressed a concern that a mother might not name the father if she did not want him to have access to the child. A survey carried out by Treoir post the Keegan Judgement revealed that some single mothers wished to place their child for adoption but when the father expressed an interest in caring for the baby instead, the mothers decided not to proceed with the adoption, i.e. some mothers would rather their child be adopted by strangers than be raised by their father. It could be argued that if a mother knew naming the father would give him an automatic right to adopt, she might not name him. Notwithstanding this, the 1998 Act provides that a man *believing* himself to be the father, even in the absence of proof or confirmation by the mother, may invoke the rights to be informed about the placement and apply for guardianship. The Adoption Board is extremely reluctant to make an adoption order in cases where the father has sought guardianship rights. A man believing himself to be the father has the right to apply to adopt under Section 10 of the 1991 Act. The Status of Children Act, 1987 provides that where a dispute arises in proceedings under the Act with regard to paternity, the court shall not impose any obligations or confer any rights on the putative father unless it is proved on the balance of probabilities that he is the father. An inference may be drawn from any refusal to submit to a DNA test.

Treoir's submission stated that many fathers do not wish to initiate court proceedings against the mother of their child and may not have the means to do so. Treoir is of the view that measures other than court proceedings, e.g. mediation, should be available and promoted for couples in dispute about adoption. It is recommended that

- **the Adoption Board should examine the best means of providing a mediation service to deal with this issue and others which arise in adoption generally.**

³⁶ [1980] I.R. 32

³⁷ [1966] I.R. 567

³⁸ [1990] I.L.R.M. 121

³⁹ [1996] 2 I.R. 248

Section 4 of the Adoption Act, 1998 provides a mechanism whereby the benefits of naming the father in the best interests of the child are made known to the mother in counseling by the adoption agency and where, if she refuses to name him or provides a statutory declaration stating that she is unable to identify him, the placement may proceed. It is recommended that

- **the Adoption Board should examine the application of this provision to ensure that it is enforced.**

Q: *Should the Adoption Board be provided with the option to attach a condition to the adoption order that the non-marital father's access continue?*

Present position

At present, non-marital fathers may seek an access order in the District Court or seek guardianship. If the father seeks the former, and the mother applies to adopt the child jointly with her spouse, the Adoption Board contacts the father and the mother to see if the access order is being acted upon. If it is and a commitment exists from the adoptive parents to allow access to continue, then the Adoption Board will make an adoption order, the access order having first been discharged. In cases of informally agreed access between the parties, the Board makes the order when satisfied it is in the best interests of the child to do so. However, if access is so recent that no pattern of commitment from either the father or prospective adoptive parents is clear or where there appears to be no commitment from the adoptive parents to allow it to continue, then no order is made. Any contact which does continue after the adoption order is made is based on the good will of the parties as an adoption order extinguishes all access orders which predate it.

Consultation

Submissions addressed four separate issues: (1) should the Adoption Board be able to attach an access condition to the adoption order, (2) should such an order be allowed for other members of the natural family, e.g. for the mother, siblings, grandparents and (3) what form should that order take, (4) should intercountry adoption declarations also be subject to such conditions.

Submissions also pointed out that some fathers only find out about the existence of the child when the placing agency contacts them to consult them about the placement of the child for adoption. Should such access conditions relate to cases where a meaningful relationship between father and child pre-existed the adoption, for example in the case of step-parent adoptions or should the father be able to apply for access if he becomes aware at a later stage that he is the father thus ensuring his child gets to know him or if he changes his mind about wanting contact?

Submissions to the Commission on the Family (1998) recommended that legislative provision should be made to allow step parent adoptions to be made while still allowing the natural father access to his child. Others proposed a new procedure of adoption to retain both natural parents' legal relationship with the child, while giving the husband rights and duties of joint parenthood.

Any decision must be made with the best interests of the child at heart and taking the child's view into account. While there was significant support for the proposal, not all believed that having access to a natural parent while being raised as the legal child of others would be in the best interests of the child. An adopted person wrote *"Personally I feel that this would be totally disruptive to the child."*

Proposals

This is a very complex area given the emotional impact of adoption, the personalities of the various people involved in an adoption and the many different types of scenarios in which adoptions take place. For example, a woman adopting her own child in a joint application with her husband who has a good relationship with the father of her child and wishes him to continue to have access to the child may have a very different view on continued access than one in which the relationship between natural parents is poor. In the absence of long term research in the area of continued contact, drawing on experiences of marital fathers maintaining contact with their children after a separation, it is not inconceivable that, for any variety of factors, a father may initially seek access to the child but over time, exercise his right less and less. Furthermore, continued access may not be in the best interests of the child or desired by the child.

The questions which need to be considered include what is in the best interests of the child; what are the child's wishes and needs; what are the views of the parents (both natural and adoptive); how can different views be accommodated in reaching an agreement; should the agreement be binding or should it be flexible to accommodate changing circumstances, in particular as the child becomes older, and allow all parties easy access to review the agreement and to mediation if necessary; should a mediation or defined arbitration service be established to deal with areas of disagreement or can it dovetail with existing services? These questions mirror those which this Report recommends in the previous chapter should be the subject of research by the Adoption Board.

The previous chapter makes a recommendation regarding attaching access orders to adoption orders. It is considered that this would apply in the main to access for non-marital fathers or other relatives to the child.

Q: *Should additional rights be given to a non marital father in relation to the adoption of his child by a third party?*

Present position

Under the 1998 Adoption Act, a natural father is required to be notified where possible about the adoption. The letter of notification informs him of the option of consultation with a social worker and the Adoption Board. In infant agency adoptions, the father can avail of the agency social work service and is also made aware of the need to seek legal advice in relation to his rights. In family and step-family adoptions, the father when named can consult the social worker at the Adoption Board and services offered include grief and loss work, passing of information about the child, letterbox contact, mediation and negotiation services for access purposes. Research shows that the number of natural fathers involved in the adoption process is lower in infant agency than in step-family adoptions. The need to further develop models of work with natural fathers is recognized and is being addressed currently in the creation of the Domestic Adoption Standardised Framework.

Consultation

Submissions identified a range of rights which natural fathers should have and some pointed out that any natural relative should be given special rights. Rights proposed included giving the father periodic updates on the child's development; securing the father's consent to the adoption; giving the father the right to be part of the decision making process for the future of the child. Others

claim no automatic entitlement can be given to a father given the different circumstances in which the child might be conceived, for example as a result of rape.

Some suggested that a defined arbitration procedure or mediation service, rather than the courts, should be established for cases where the mother and father cannot agree on the details of the adoption, e.g. in the case of step-parenting adoption.

Proposals

It is not considered either practical or desirable to give non-marital fathers automatic rights given the legal and practical difficulties in ensuring those rights are not compromised. It is not considered in the best interests of the child to delay unduly any decision regarding his or her care. The father's existing right to apply for guardianship allows him to register his desire to be involved in the decision making process regarding his child. His ability to seek guardianship even where he only believes himself to be the father and the ability of the court to draw inferences from the mother's reluctance to confirm or deny his paternity is as far as the Constitution will allow.

Within these constraints, however, it is considered that the father may be given additional rights in the adoption of his child by a third party by

- **providing that conditions regarding access may be attached to the adoption order**
- **making more widely available information setting out rights of natural fathers and other natural relations, for example through the Crisis Pregnancy Agency, family support groups, health boards.**

Q: *Alternatively, should the non-marital father be given preferential adopting rights?*

Present position

A father may under existing legislation apply to the court to get his name added to the register of births or he may seek guardianship. Section 4(4) of the Children Act, 1997 provides that, where both parents agree and the father's name is registered on the birth certificate, the father may be appointed a guardian of his child merely by the execution of a statutory declaration. However, adoption is irrevocable, unlike guardianship. The father has preferential adoption rights, as currently exists for any relative of the child, where the child is resident with him.

Consultation

There was a large support for giving the father the opportunity to raise his child if the mother is unable or unwilling to care for the child, whether by automatic entitlement or through adoption. Some considered that fathers' rights are adequately protected in the Adoption Act, 1998 and that fathers who wish to rear their child already have sufficient access through guardianship legislation or through the 1991 Adoption Act.

Submissions also examined the question of assessment, with some believing a father should be assessed as fully as any other prospective adoptive parents and others believing that if the father has developed a bond with his child and is in a position to provide a stable loving home for his child, he should be given preferential adopting rights. A submission argued that the obligation on the State to ensure the normal development of family life in legal and social terms under Section 8 of the ECHR may mean that it cannot put the normal obstacles of eligibility assessment in the

way of a natural father seeking to adopt his own child. In addition, amongst other rights, the rights of a child to know his/her parents and have regular contact and relations with them would appear to suggest that affording preferential adopting rights to a natural father would be in line with Ireland's international obligations.

Proposals

This Report is of the view that it is in the best interests of the child to be raised by his/her father rather than by strangers, except where there are welfare concerns, in line with Article 7 of the United Nations Convention on the Rights of the Child. As stated earlier, it is not considered practical to give a father automatic guardianship rights over his child. Therefore, the question is whether a father's ability to access his existing rights to guardianship or adoption may be improved. It is hoped that the wider availability of information and stringent implementation of existing legislation to inform him of the proposed adoption will address this. In addition, the recommendation made in Chapter 2 regarding making special provision for the assessment of a relative to ensure that the child's right to know his family and preserve his identity applies in respect of the father.

Consultation questions

Written

Do you think that a special guardianship order should be introduced to provide permanence short of the legal separation involved in adoption?

Oral

Do you agree with guardianship as an alternative to adoption?

If so, in what circumstances should this be provided for?

Present position

Foster care parents have no guardianship rights in relation to their foster children leading to practical difficulties such as having no rights to authorize medical treatments or seek a passport. Currently, foster carers of non-marital children can adopt the child through the provisions of the 1952 Adoption Act if the natural parents agree or through the 1988 Act where parental consent is to be dispensed with. Foster carers of children born of marriage can adopt the child through Section 3 of the 1988 Adoption Act which provides a mechanism whereby the High Court may make an order authorizing the Adoption Board to make an adoption order in relation to a particular child if it can be shown that the child's parent/s have failed and are likely to continue to fail in their duty to the child. This can be a very lengthy and upsetting process for all involved.

However, adoption is not always the appropriate form of care for children. Frequently, older children may not wish to be separated legally from their natural family, e.g. children in foster care, children in step families, or children of a widow or widower who remarries.

Legal considerations

Articles 41 and 42 of the Constitution essentially prevent marital parents from surrendering their parental rights to others.

Consultation

This proposal was generally well received. Some saw it as a helpful solution to a number of situations and others welcomed it as an alternative to adoption in all situations. All in favour did so on the basis that it provided permanence without severing ties with the natural family. Those opposed to it were so on the basis that it is not the same as being adopted and does not offer the same finality and sense of belonging as adoption. Situations where it was seen as helpful included:

1. where a natural parent marries and his/her new spouse can receive rights without either natural parent having to relinquish her/his natural rights;

2. to give security and permanence of a forever home to a foster child without the need for an expensive and adversarial High Court action which is off-putting to many people, even if it is considered to be in the best interests of the child. (The 1984 Report of the Review Committee on Adoption Services recommended the availability of guardianship to substitute carers of children in long-term care.);
3. where a custodial parent remarries following divorce;
4. where one partner in a non-marital relationship is the natural or adoptive parent of the child.

A number of submissions to the Commission on the Family (1998) looked at the situation where a mother marries a man who is not the father. The natural father has certain rights in cases where the husband wants to jointly adopt the child with the mother. Some submissions made to that Commission proposed a new procedure of adoption to retain both natural parents legal relationship with the child, while giving the husband rights and duties of joint parenthood.

Proposals

There was very broad consensus that guardianship should be an option more readily available. This Report considers it useful in the case of children in long term foster care and in step-parent situations where the natural or adoptive parent is single or widowed. It is not proposed to provide it in the case of a cohabiting partner of a natural or adoptive parent pending the examination of rights and duties of cohabiting partners with respect to each other.

It is recommended that

- **provision be made allowing a step parent or long term foster carer(s) (ie where the child has been with the foster parent for at least five continuous years) to apply to the Circuit or District Court for a guardianship order, taking account of the views of the child and having obtained all relevant consents. The Court may attach conditions to the order relating to access by the parents or other members of the child's family. The order may be revoked or varied on application to the court and will cease to have effect when the child reaches 18.**

Part 4

Intercountry adoption

Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption

Consultation questions

Written

What are your views on both the regulation of intercountry adoption and the proposals for the incorporation of the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption?

Oral

With regard to the child, what advantages and disadvantages do you see with intercountry adoption?

What are your views on the legislative proposals, in particular regarding:

- membership and functions of the Adoption Authority*
- suitability of applicants*
- other.*

Background

The purpose of intercountry adoption as set out in the UN Convention on the Rights of the Child and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption is to provide a family for a child in circumstances where a suitable family cannot be found for the child in his or her country of origin and where adoption is considered the right option for that child.

When the Adoption Act, 1991, was introduced, a number of people had already adopted from abroad, primarily Romania, or were in the process of adopting from abroad, without having undergone an assessment process or received Adoption Board approval. The 1991 Act achieved two main objectives. Firstly, it provided a framework for providing foreign adopted children with the same rights as Irish-born children and secondly it set up a legal framework for assessing prospective adopters prior to adoption. As a transitional measure, the Act also provided a mechanism for recognising the intercountry adoptions which preceded the 1991 Act.

A Standardised Framework for Assessment for Intercountry Adoption was published and implemented from January 2000, resulting in the standardization of training, preparation and assessment of applicants for intercountry adoption throughout the country. The Adoption Board is legally responsible for ensuring that all prospective adopters wishing to adopt abroad have been approved as both eligible and suitable to do so.

Present position

Between the enactment of the 1991 Act and 2003, the Adoption Board annual reports reveal that 2124 children have been adopted from abroad.

Currently, health boards obtain signed undertakings from prospective adopters stating that they will contact the health board on their return to Ireland with the child, and to allow the health boards to supervise the placement for the purposes of preparing post placement reports for the country of origin.

However, a number of problems have arisen since the 1991 Act including the following:

- there are no sanctions against those who go outside the terms of the Act. The consequence of this is that an unknown number of children are residing in Ireland whose adoptions are unrecognized. A number of children adopted outside the terms of the Act have been readopted under the Adoption Act, 1988.
- There would seem to have been instances of adoptive parents using immigration clearances to bring more than one child into the country.
- The 1991 Act deals mainly with recognition of foreign adoption laws and does not concern itself with the adoption process. In reality, the Adoption Board has no way of determining whether or not the laws and proper procedures were adhered to when asked to recognize an adoption.
- The 1991 Act does not regulate agencies involved in foreign adoption. In practice, prospective adopters have to use mediators and facilitators if they are to negotiate the adoption procedure in most countries of origin. It is the action of such mediators which have made adoptions a market in some countries and which have undermined efforts to introduce good adoption practice.
- The Irish authorities are not in a position to block particular adoptions even where they are strongly of the opinion that the child selected is not suitable for the prospective adopters.

Legal considerations

The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, 1993 is the first international instrument to regulate intercountry adoptions on a global basis. As on 24th November 2004, it has been ratified by 64 countries and a further 5 countries have signed but not yet ratified the Convention. Ireland signed the Hague Convention in 1996. In order to ratify the Convention, i.e. put into law, it must do so by means of legislation.

Proposed legislation to ratify the Hague Convention examined in the consultation

The Hague Convention contains 49 Articles set out in seven Chapters. The objects of the Convention are—

- “(a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- (b) to secure a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.”

The Convention is set out in Appendix E. For a comprehensive examination of the Convention, readers are referred to the Hague Conference on Private International Law, www.hcch.net. Some provisions of the Hague Convention are compulsory and there is an element of discretion with others.

The Bill as circulated in the consultation process is summarized in Appendix A. The approach taken in the Bill intended to be a child-centred one incorporating structures and procedures which accord with good practice in intercountry adoption. Its main provisions are the creation of the Adoption Board as the Central Authority on Adoption with responsibility for ensuring the correct procedures in terms of assessment of adoptive parents, granting of declarations of suitability and matching process between parents and child are made, and in a case where a child is adopted from Ireland to another country, that that child's best interests and rights are protected.

Consultation

Views on intercountry adoption

A number of submissions highlighted concerns with and objections to the idea of intercountry adoption while others welcomed it wholeheartedly.

To simplify greatly, there are two opposing views of intercountry adoption. The first sees intercountry adoption as an integral feature of the problems brought about by inequality world wide. It sees it as a substitute for more considered solutions to the rights of children and families from countries which are in difficulty and as a symbol of the exploitation of the poorer countries by the rich. This view is voiced not only in developing countries but also in some western countries where child care professionals have questioned the diversion of resources from domestic child care programmes into a practice which they see as serving the interests of childless couples and which is underlain by questionable ethical and cultural assumptions. Proponents of this view argue that the main motive for intercountry adoption is not a humanitarian one but the provision of children to mostly childless, wealthy (by relative standards) couples in the West. Submissions referred to research findings that in countries where intercountry adoption exists, children's human rights are denied and institutionalization will continue to exist as long as there is a demand for children from wealthy foreigners. Submissions referred to illegal practices regarding the provision of children, including the abduction of children. Others pointed to the adoption of Irish children in the US in the fifties and sixties and to the resulting problems of children being "displaced". A number quoted the Convention's provision that intercountry adoption should take place only after domestic adoption options for the child have been exhausted. Submissions also pointed to the lack of quality and ongoing research into intercountry adoption and, in particular, the welfare and outcomes for the children. This was seen as vital before Ireland continues adopting children from abroad.

The opposing view is similar to that put forward for adoption in general. The process of globalisation has reduced the world to one community. Common humanity and collective responsibility do not stop at state frontiers. Children suffering the devastation of wars, famines, abandonment etc are the concern of everybody, especially when their own families or countries cannot care for them. Proponents of this view recognize that intercountry adoption can only touch a small fraction of children in need but they argue that it would be immoral to stand by when there are families willing to offer the children homes in another country. Institutionalisation is seen as an independent problem, not one associated with intercountry adoption per se. To act only by endeavouring to improve child care and social conditions in the countries of origin is tantamount to sacrificing a large number of children who need families now.

The Hague Convention steers a middle way between these two opposing views. It recognizes that there is a place for intercountry adoption but not in a commercial or unrestricted form. It provides a multilateral instrument for effecting intercountry adoption by means of State to State contact and for regulating the practice in both the country of origin and the receiving country to ensure that the highest possible standards obtain. It recognizes that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin. Furthermore, it provides that intercountry adoption should only take place where a suitable family cannot be found in his/her State of origin.

With regard to the decision to regulate intercountry adoption, even those opposed to intercountry adoption were of the view that it is important the Hague Convention is incorporated into Irish law as it protects the potential adopted child and lays down standards to be followed in both the sending and receiving countries.

Views on the Adoption (Hague Convention) Bill proposals

There was a general welcome for the ratification of the Convention. Some concern was expressed about a number of the Bill's proposals discussed below. Other concerns, such as eligibility and suitability of adopters, including age limits, are dealt with separately in this Report.

The Bill allows intercountry adoptions to take place from countries which are signatories to the Hague Convention as well as from countries which merely operate within the spirit of the Convention and with which Ireland has reached agreements. Some submissions considered that Ireland should deal only with countries that have signed or ratified the Convention and not with countries that are merely operating in the spirit of the Convention. However, reaching agreement with non signatory countries is provided for under the Hague Convention in recognition of the fact that it is not possible for some countries to ratify.

On the other hand, some believed that intercountry adoptions should be allowed continue from non Hague signatories as is currently the case so that children from those countries continue to have the opportunity of a home. Clearly, to deal with countries which fall below the standards of protection of children set by the Hague Convention, is at odds with the aim of the Bill.

Concerns were also raised about the means by which the Adoption Board would satisfy itself that the rights of natural parents in the countries of origin are not infringed. For example, submissions asked how the Board would ensure that the natural mother and father had received appropriate counseling or that their consent was not given under duress.

Proposals

The concerns of people with regard to the rights of natural parents and the child in the country of origin are understandable. The Central Authorities of countries of origins are given responsibility under Article 33 of the Convention to make sure that the terms of the Convention are not flouted and receiving countries must rely on the probity and efficacy of the systems of the Central Authorities of the countries of origin. However, it is possible to institute some checks by liaising with other Central Authorities and sharing information about experiences (Article 9 of the Convention). It is recommended that

- **the Adoption Board should be proactive in initiating and maintaining links with sending countries to ensure best practice and**

- **the Adoption Board may make grants or otherwise provide assistance to states of origin to help develop services to assist in maintaining children in their countries of origin.**

The issue of which countries Ireland should allow people to adopt from was raised. It is this Report's view that the protection afforded children with respect to intercountry adoption must be fully supported. However, if a child is adopted before the legislation from a non-Hague country, it may be in the child's best interests for the parents to adopt another child from that country. Accordingly, it is recommended that:

- **where an adoption took place before the enactment of the Adoption (Hague Convention, Adoption Authority and Miscellaneous) Bill and where it is considered to be in the best interests of the adopted child, the Adoption Board may enter into a specific agreement with a non-Hague country so that another child may be adopted into the Irish family.**

Submissions were also concerned about ensuring appropriate representation on the Board of the Adoption Board for people affected by adoption. This issue is addressed in Chapter 13.

Part 5

Adoption information and post adoption contact

Adoption information and post adoption contact (for people aged 18 and over)

Consultation questions

Written

What are your views on the current proposals for search and reunion set out in the Adoption Information, Post-Adoption Contact and Associated Issues Bill General Scheme?

Oral

The questions were concerned with, inter alia, rights of access to information to adopted people; access to information to natural parents; access to information to adoptive parents; registers (e.g. National Contact Preference Register); appeals panel; contact veto; regulations and; information rights for people affected by future adoptions.

Present position on information rights

The 1952 Adoption Act provided that once the adoption order was made, the adopted child would become the child of the adoptive parents as if born to them in wedlock and the natural parent would relinquish all rights and duties towards the child. Section 22 provided for the creation of an adoption index (which makes traceable the connection between the birth index and the adoption index held in the GRO) but no information from this index may be given to any person without the consent of the Adoption Board or without a court order. Section 8 of the Adoption Act, 1976 precludes any court from ordering the release of such information, unless it is satisfied that such access is “in the best interests of the child” in question.

Existing legislation does not provide an adopted person a right of access to his/her birth certificate or to his/her adoption file. Similarly, there is no right for either the natural parents or adoptive parents to information on the adoption file. Siblings or other relatives of the adopted person have no information rights either. Notwithstanding this, a number of cases have appeared before the courts on the issue of release of information which allow for release of information on a case by case basis only and only where it is in the best interests of the child, ie to the adopted person. In *C. R. v An Bord Uchtala*,⁴⁰ the High Court confirmed that the Adoption Board must apply the same best interest standards when it receives an application for release of confidential information.

In the first six months of 2004, the Adoption Board received 49 requests for birth certificates. As of November 2004, 32 requests were approved and 4 refused.

Legal considerations

Article 40.3.1 of the Constitution provides that “[t]he State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen”. The Irish

⁴⁰ [1993] 3 I.R. 535 (H.C); [1994] 1 I.L.R.M. 217 (H.C)

Supreme Court⁴¹ has found that a child who has been informally adopted enjoys an “unenumerated” (i.e. unspecified) constitutional right to be told the identity of his natural mother, guaranteed by Article 40.3.1. This right, however, is not absolute, and must be balanced against the right of the natural mother to privacy and anonymity. The task of balancing these rights *falls to the courts*, which in doing so, must seek to “harmonise such rights having regard to the provisions of the Constitution, and in the event of failure to so harmonise, to determine which right is the superior, having regard to all the circumstances of the case”.⁴² Such circumstances include the circumstances surrounding the mother’s loss of custody of her child; the current wishes, status and circumstances of the mother and the potential effect on her of the disclosure of her identity; her views on the disclosure of her identity and her underlying rationale; the age of the mother and adopted person; the reasons for which the adopted person seeks this information; his/her present circumstances and the opinion of the adoptive parents or other interested persons. To determine the wishes and circumstances of the mother, the court recommended that a social worker should make contact and make a full report to the court before the court would decide whether to require her to participate in the proceedings.

Since the right to know the identity of one’s natural mother flows from the special relationship which exists between a mother and her child, its exercise is restricted in the case of children who have been lawfully adopted in accordance with the provisions of the Adoption Act, 1952, as this special relationship will have ceased to exist. Therefore the right of adopted persons to such birth information has been restricted by means of legislation. However, while legislation can be amended, it must take cognizance of the balance of rights required from the Supreme Court decisions.

The principles of natural justice would dictate that it is not possible to give rights retrospectively and therefore, it is not possible to adopt a uniform approach to past and future adoptions where new rights are being conferred in respect of future adoptions.

The European Court of Human Rights in the case of *Odievre v France*,⁴³ refused an adopted person the release of information identifying her natural mother on the grounds that France had a pressing reason to respect the privacy of the mother, namely that mothers might abandon or abort their children if confidentiality on adoption could not be guaranteed.

The European Court in *Gaskin v UK (1989)* examined the balance between the right to information necessary to know and understand childhood and early development and the need to keep confidential records to ensure the receipt of objective and reliable information. All things considered, the Court established the right to have a claim to access birth information determined by an independent and impartial authority.

Articles 7 and 8 of the UNCRC 1989 provide the right of children to know their natural parents and to establish their identity.

Previous reports on adoption information rights

Research shows that the “broad pattern is that people . . . think more about their birth relatives with age”.⁴⁴ This finding is echoed by anecdotal comments from social workers working in the search and reunion field as well as people affected by adoption. Research shows that “generally, increasing

⁴¹ *I.O.T. v. B and the Rotunda Girls’ Aid Society and M.H. v. Rev. G.D. and the Rotunda Girls’s Aid Society*, [1998] 2 I.R. 321

⁴² As above

⁴³ Decision of the European Court of Human Rights, 13 February 2003

⁴⁴ Adoption, Search and Reunion: the long term experience of adopted adults, David Howe and Julia Feast (2000)

age, female gender, and feeling different and not belonging to one's adoptive family each increase the likelihood of an adopted person thinking about their birth relatives at any stage in the lifespan prior to contact and reunion".⁴⁵

Research also suggests that a successful and enduring reunion is more likely to arise where both the natural parent/s and the adopted person are interested in making contact, than if one or other seeks to make contact. However, even where an enduring relationship is not formed, there are strong benefits to be derived in the sharing of information and background knowledge and insights that adopted people and natural parents could have gained no other way.⁴⁶

The question of retrospective application of a legislative right of access to birth records was examined by the Review Committee on Adoption Services in 1984 which concluded that retrospective grant of a right of access could create hazards for a natural mother's subsequent family relationships and fears among adoptive parents that any resulting contact might lead to divided loyalties and confusion for their children. The Committee considered that such a move would be regarded by many natural and adoptive parents as a breach of faith and a majority opposed the lifting of restrictions on the disclosure of birth records in respect of adoptions that have already taken place.⁴⁷ However, the past twenty years have seen a significant increase in the number of persons seeking information about relatives with whom they have lost contact through adoption and this is likely to continue to grow. In 1999, the Adoption Board received 1,010 search and reunion enquiries compared with 2,474 in 2003. There are no statistics compiled nationally in relation to the overall number of people seeking information or tracing relatives.

Adoption Information Bill

In order to answer the calls for legislation providing a right of access to information and facilitation of contact, Heads of a Bill General Scheme had been prepared and approved by Government. It attempted to strike the balance between right to information and right to privacy prescribed in the Supreme Court decision by providing rights to information for adopted people and natural parents but a veto on contact where desired. While some welcomed the terms of the Bill, others did not. That General Scheme was decommissioned by the Minister for Children prior to this consultation process but it was considered that its provisions provided a useful template for the discussion on the provision of information rights. A summary of the Bill's proposals is at Appendix B.

The Bill provided rights to birth certificates, adoption certificates and adoption information in respect of adoptions predating its enactment, subject to certain conditions. Access to information with respect to adoptions effected after the legislation was more automatic. The Bill also provided for the establishment of a contact veto register (with respect to adoptions predating the legislation) to facilitate those wishing no contact and for a voluntary contact register to assist speed up search and reunion for those wishing contact. A National Search Service was proposed as a State-funded search and reunion service and a National Records Index to enable identification of all adoption records in the State and where they are located.

⁴⁵ Adoption, Search and Reunion: the long term experience of adopted adults, David Howe and Julia Feast (2000)

⁴⁶ Adoption, Search & Reunion – the long term experience of adopted adults, David Howe & Julia Feast (2000)

⁴⁷ 1984 Report of the Review Committee on Adoption Services, page 89-90, para. 12.16.

Consultation

People's experiences of adoption in Ireland

A number of submissions received from adopted people, natural parents and adoptive parents described their experience of adoption and of accessing information.

Some found a clean break adoption acceptable – natural parents and adopted people wrote to say they have no desire for either information on or contact with their natural relatives. Adoptive parents wrote to say they made their decision to adopt based on this clean break system and were fearful and angry at any suggestion that legislation could now be introduced which would break the confidentiality agreement given to them at the time of the adoption. An adoptive mother wrote *“My children were reared by us in the belief that they were our children “as if they had been born to us” (definition of Adoption as per 1952 Act) . . . We taught them this, as it is what we were guaranteed by the Adoption Board when our adoption orders were passed . . . We were guaranteed that nobody would ever be able to access our records. How can legislation now be envisaged which would change this completely?”* This view was shared by some adopted people. One wrote *“I was reared by my parents in the belief, as they were guaranteed by the Adoption Board, that no-one could ever be given my details, or theirs, without our prior agreement”*. Concern was also expressed by adoptive parents of a number of children of the impact on the younger of their children should the older children be contacted by their natural parents. Some natural mothers gave up their children for adoption on the understanding that they, as one natural mother stated, *“would never need to hear any more about that”*, that the adoption would be *“private and confidential”*. Some stated that they would not and could not deal with having to face the past again.

Other natural mothers described a process where they gave up their children for adoption under financial, social or parental pressure but always hoped that they would be reunited some day with their child. One wrote *“I was forced by the State and my parents to give up my son for adoption in 1962, and I never agreed that the information about myself should be kept secret from my son, if he should request it, when he was 18 years old”*. Others wrote of the heartbreak of being forbidden to ever try to make contact and of not even having the right in law to know if their child is dead. Some adoptive parents wrote to express their sorrow on behalf of their adoptive children that no information or contact could be made with the natural mother. Adoptive parents of adults in their late 30s/early 40s wrote: *“while our children are dearest to us, in hindsight also, we have regrets and sorrow that in the closed adoption we were party to a conspiracy in which the fulfillment of our needs coincided with their separation from the birth mothers with whom we constantly wish we all could have full contact”*.

Some adopted people, regardless of the love they bear for their adoptive parents, wrote of the sense of tremendous loss they experience in not knowing their identity. Some adopted people stated that, regardless of the happiness or otherwise of their upbringing, they have a deep-rooted need for information regarding their origins. One adopted woman wrote *“I had a wonderful childhood with parents who loved me and wanted me. I would not have exchanged that for anything. But I am so glad I have found my birth family both maternal and paternal. I was never close to my extended family who did/do not regard me as one of them. As an only child, I realized that once my mum who is nearly 80 died I would be alone. Being adopted makes you disconnected and rootless despite the love of your parents and now finally at 36 I feel complete and grounded.”* People wrote of wanting to know if their natural relatives look like they do, have similar interests, abilities, personalities. Practical considerations raised in other submissions included the implication

of not having one's medical and genetic history and concern that, unknowingly, one might marry a close blood relation. They expressed the view that, as the information on their adoption file relates to them, it must be theirs to see in its entirety. Some stated that the whole basis of the legislative closed adoption system is flawed and argued that legislation which prohibits a person's access to their identity is wrong. Others wrote about the implications for their own children of not having this information, " *this is MY history and the history of my children*".

People's experience of accessing information

In addition to sharing their experience of adoption, people took the opportunity both in submissions and at the conference to express their view regarding information rights.

Submissions described people's experiences of getting information about themselves and natural relatives and, in some cases, meeting them. While people acknowledged the difficult task for adoption agencies of managing reunions, many complained of poor service provision from agencies, the Adoption Board and health boards and gave instances of long waiting lists (e.g. being told their file could not be looked at, never mind acted upon, for two or more years), being lied to (an adopted woman wrote "*my mother was told I would not want to know her – stop playing games with people's lives*"), inconsistencies, mistaken identity, tampering of adoption records by adoption agencies, lack of support, respect and understanding from service providers. A number wrote of the shame they were made feel for having been adopted or for having given up a child for adoption and strongly urged people to appreciate that there is no shame in this. Finally, some queried the relevance of having to explain why one would want such information and attempted to make people understand what it is not to know one's origins. One 30-year-old woman wrote "*I want to know who my birth family is because I am, quite simply, human.*"

Many of the inconsistencies and poor service of latter years were attributed to a lack of clarity about the law as well as lack of guidance from the Adoption Board on how to deal with such queries; a reluctance on the part of adoption agencies to break the confidentiality promises made to natural parents and/or adoptive parents at the time of the adoption; and inadequate resources. Some stated their belief that agencies and other bodies may wish to conceal their involvement in improper adoptions, such as tampering with information on file and illegal registrations of the child as the natural child of the adoptive parents. They argued that further discrimination against adopted persons is not justified to conceal wrongdoings in the past, no matter how well motivated these might have been.

Submissions drew comparisons between the information and tracing services provided by statutory agencies and services provided by voluntary groups. In particular, some wrote of the advice given to them by the latter in carrying out their own trace and on how to make contact with the natural relative in a sensitive manner and found the experience more satisfactory than using health board or adoption agency services. Thus, information can be garnered which will allow a reunion to take place or at least allow an adopted person to get access to their birth certificate through the GRO. The submission from an adopted man points out that if new legislation provides a lengthy and cumbersome method of accessing information, some people will avail themselves of the services of the voluntary groups. While this may be true, legislation must comply with the Constitution, as interpreted by the Supreme Court, namely to find a balance between the rights of the adopted person and the rights of the natural parent.

There was a number of calls at the consultation conference for the appointment of an ombudsman for adopted adults (including people affected by intercountry adoption). Although not discussed

in detail, the calls appeared to be in relation to being able to make a complaint with regard to the way in which service providers deal with adopted adults involved in tracing or seeking information. It was claimed that people's dealings with some agencies in the past had caused them emotional distress and had put people off from searching completely.

Views on legislative proposals

The consultation revealed a general welcome both from people affected by adoption and people working in the adoption field for comprehensive and unambiguous legislation to address the issue of disclosure of information and contact. However, views differed widely about the provisions of such legislation.

There was significant, although not universal, welcome for giving the right to adopted people to their birth certificate at age 18 and for the provision of a more open system of adoption in the future. The provision of other information and contact rights to adopted people as well as giving information rights to natural parents was not generally welcomed, some believing the proposals did not confer enough rights and others believing they conferred too many rights. Significant concern was also expressed at the proposal to grant different information rights with respect to future and past adoptions. There was also disagreement about the Bill's proposed method by which adopted people and natural parents would access their rights of contact and information which some saw as being too bureaucratic.

The age at which information rights might be conferred also drew much discussion. The Bill proposed that once adopted persons reached 18, information rights both for them and their natural parents would come into operation. Some adopted people thought 18 was an appropriate age at which to make contact, given it is the age of majority while some did not, believing it to be too young. Accordingly, some suggested that a natural parent's rights to information should only become operational when the adopted person reached the age of 23.

Proposals

The issue of adoption is one of the most complex and emotive issues in human relationships. Its effects differ from person to person and often change over a person's lifetime. While not everyone affected by adoption wishes to get information about or make contact with a relative, the number who apply to do so is increasing. The need of these people, in particular adopted people, cannot be ignored. However, due to the Constitution, unqualified rights to information and contact cannot be legislated for in this country. A system must be found which will balance the rights to contact and to privacy and must be such that it will find favour with the people for whom it is intended, including those who only seek information and those who do not wish contact. Such a system would, *inter alia*:

1. accept fully the legitimate need of people affected by adoption to information about themselves and their natural relatives;
2. give a rights-based rather than a welfare-based approach to information and contact;
3. address the hierarchy of legitimate interests in adoption;
4. accept that all information is releasable unless a valid reason exists for it not being released, similar to material released under the Freedom of Information legislation (there should be no ambiguity about the information each party to an adoption is entitled to);

5. provide the simplest possible rules and procedures governing access to such information while ensuring best practice ;
6. provide accessible, timely and responsive search and reunion services ;
7. include an audit mechanism;
8. include a complaints mechanism.

A major element of the restructuring of the Adoption Board, currently under way, is the establishment of an Information and Tracing Unit. In November 2003, the Adoption Board established an Advisory Group on a National Adoption Information and Tracing Service.⁴⁸ Its role is to advise the Adoption Board on appropriate arrangements for an efficient and effective national adoption information and tracing service and for the National Adoption Contact Preference Register. Much work has been carried out in devising and making preparations for the launch of the voluntary Contact Preference Register in 2005. It will provide a mechanism whereby adopted adults and their natural parents and other relatives may register a wish to make contact with or leave information for people from whom they have been separated through adoption. The register will allow contact or exchange of information to be made through it only where both parties agree. A paper advising on reunions which can be emotionally highly charged events, for the natural mother in particular, is also being prepared. It should be noted that the existence of the Contact Preference Register does not preclude people from contacting the adoption agencies or the Adoption Board seeking information or contact, as is currently done. In the first phase, the Contact Preference Register will be limited to domestic adoptions. Consideration will be given to extending it to people affected by intercountry adoption.

The Advisory Group has undertaken a number of initiatives to assess the current and future information requirements and possibilities. It is considered sensible to await the outcome of those initiatives and the Group's discussions before a determination is made about legislative needs. Accordingly, it is decided that any major change to the legislation on information, tracing and reunion for people already affected by adoption should wait until these procedures have been operational for some time, so that any gaps or opportunities for improvement can be identified. During the discussions by the Group, confusion emerged about people's rights and entitlements to information under current legislation. It is recommended that:

- **as a first step towards proposing new legislative rights to information, rights and entitlements to information under current legislation should be clarified.**

However, a number of issues such as care and maintenance of records and access to them have already been agreed by the Group and require legislative amendments. It is recommended that:

- **The Adoption Board will be given responsibility for the establishment and management of a National Contact Preference Register.**
- **The Adoption Board will be given responsibility for establishing and maintaining a National Records Index which will hold information on all records held in the State relating to adoption. Designated people working on behalf of people affected by adoption may be granted information from the Index.**

⁴⁸ Membership is made up of representatives of AdoptionIreland (the Adopted People's Association), Adoption Loss (the Natural Parents' Network of Ireland), the Adoptive Parents' Association of Ireland, the Council of Irish Adoption Agencies, health boards, Department of Health and Children and the Adoption Board.

- **The Adoption Board will provide a Tracing Service which will help establish the current location of a person being traced. However, the information will be given to a designated person working on behalf of the person wishing to trace and only when the person being traced has been contacted by a professionally qualified social worker will the Board approve or not the release of information to the person tracing.**
- **The Adoption Board will be given the right to access records held by adoption agencies and other bodies or individuals involved with adoption. Sanctions may be imposed on bodies or individual professionals involved in providing adoption services, who fail to release information to the Adoption Board or who willfully, conceal or destroy personal information about adopted people held in their possession.**
- **The care and maintenance of records will be protected in the legislation, giving the Adoption Board power to set standards of safekeeping, ensure that these are being met or remove the records into safekeeping where the standards are not being met.**

The concern of natural parents about the veracity or completeness of the information held on file about themselves and/or their wish to supplement such information is appreciated. Mothers who contact the Adoption Board currently receive copies of any document they have signed from the Adoption Board, including the consent form. No information can be changed on the file but additional information can be placed on file. It is recommended that consideration should be given to providing access to the adoption files held by the Adoption Board and the adoption agencies for natural parents to see information about themselves and give additional information if they so wish.

The question of giving information rights with respect to future adoptions was considered in this consultation process. There was significant support for giving absolute rights to adopted people of access to their birth certificates on reaching the age of 18. This would allow them to receive counseling before exercising that right, if they so wish, and natural parents could be informed at the time of placement for adoption that their child would have such a right. This allows all parties to ready themselves during the adopted person's childhood for the possibility of a reunion. However, the concern expressed by the Crisis Pregnancy Agency regarding the need to maintain an option allowing mothers to place their child for adoption on a confidential basis cannot be ignored, even where it is hoped that their view may change over time. In addition, the establishment of the National Adoption Contact Preference Register will provide a mechanism for making contact.

Part 6

Adoption Board/Authority

Consultation question

Written

What are your views on the establishment of a specialist Adoption Court? In the alternative, should the making of adoption orders be a matter for the District Court in line with other orders made for child welfare reasons?

In view of the complexity of the subject matter, it was decided not to include this issue in the conference consultation process. However, both the draft bills provided for changes to the powers and duties of the Adoption Board. Issues regarding the Adoption Board which arose during the consultation and which have not been discussed in earlier chapters are examined here.

Present position

An Bord Uchtala, the Adoption Board, was established under Section 8(1) of the Adoption Act, 1952. The Board is appointed by the Government and consists of a Chairman and eight ordinary members, one of whom may be appointed Vice Chairman. The Chairman and the Vice Chairman must be a judge or a solicitor or barrister of at least 10 years standing. The legislation makes no provision regarding the experience or background of other Board members. The duration of membership is five years but outgoing members may be reappointed.

The Board's primary function is to regulate adoption by making or refusing to make adoption orders or declarations of suitability to adopt abroad and by registering and supervising the work of adoption societies established to facilitate the placing of children for adoption.

Legal considerations

Two constitutional provisions are of particular relevance to the Adoption Board. These are contained in Article 37 as amended in 1979 which permits the Board the exercise of "limited" functions and powers of a judicial nature. This limited jurisdiction of the Board is a constraint on the extent to which it can be given additional powers of a fundamental nature.

The Adoption (Hague Convention) Bill, as circulated in the consultation, provided for the abolition of the Adoption Board and, in its stead, for the establishment of the Adoption Authority with an independent statutory status. In addition to all the functions assigned to the Board under the Adoption Acts, 1952-1998, the new Bill provided it with new functions and a new title to reflect its establishment both as a Central Authority under the United Nations Convention on the Protection of Children in Relation to Intercountry Adoption and as a center of excellence in relation to adoption practice and research. The new functions provided for in the Bill as examined in the consultation are listed in Appendix A.

Consultation

Submissions revealed a hurt and dissatisfaction amongst some people affected by adoption and

people working in the area in their dealings with the Board. Complaints included: lack of transparency, consistency and accountability regarding its decision making, e.g. on making information available to people affected by adoption or overturning recommendations regarding suitability to adopt; the lack of a complaints mechanism for dealings with the Board; the lack of an appeal mechanism against a decision of the Board; ineffectual implementation of its other existing statutory responsibilities such as the supervision of adoption services. Some called for the abolition of the Board and were concerned that the changes proposed in the Adoption (Hague Convention) Bill were not sufficient to address the difficulties identified.

The membership of the Board was examined during the consultation process. It was suggested that it must be representative of people affected by adoption, i.e. include an adopted person, natural parent, adoptive parent and inter-country adopted person. Finally, it was suggested that appointments should be based on a selection process rather than be a political decision.

Restructuring of the Adoption Board

An Organisation and Management Review of the Adoption Board was carried out in 2000 by Consultant Maureen Lynott and her subsequent report was approved in principle by the Government in May 2001. It recommended significant changes to the Adoption Board structure and practices to take account of the changing trends in adoption in Ireland and the implications of the Adoption (Hague Convention) Bill and changes in adoption information and post adoption contact. The Review's main recommendations were that the Adoption Board should be restructured as a statutory executive agency and that its primary purpose should be as the National Authority for Adoption, which would oversee the provision of integrated adoption services at local level (i.e. mainly through the health boards), set standards, provide guidance on good practice and be responsible for the management of records relating to adoption in order to carry out these functions. It also recommended a revised and enhanced management structure comprised of a four-person management team made up of a new Chief Executive Officer, Director of Social Work, Director of Adoption Administration and the existing Registrar post.

Recent developments in the Board

The Adoption Board's first Chief Executive Officer was appointed in February 2003 for a period of five years and a senior management team is in the process of being appointed. In February 2004, the Adoption Board launched its first corporate plan in which it sets out its high level objectives for the years 2004-2007 and which reflects an unprecedented wide-ranging consultation process undertaken with stakeholders during 2003. (As the legislation changing the Adoption Board to the Adoption Authority will be enacted before the end of this period, the corporate plan refers to the Adoption Authority rather than the Adoption Board although its legislative powers remain unchanged until the Bill is enacted.)

The Board sets out a number of high level objectives in the corporate plan as follows:

- “1. We will introduce major organizational change to ensure that the Adoption Authority is and remains an efficient and effective organization
2. We will develop as an organization committed to open and consultative processes. We will facilitate all our clients through the provision of information, advice and other appropriate supports.
3. We will develop as a center of excellence and leadership, which promotes the delivery of quality, accountable, client-focused adoption services.

4. We will develop an integrated adoption service which addresses the needs of all parties involved in the adoption process, having regard to available resources.
5. We value our staff and with their cooperation we will continue to develop their capacity to deliver a quality service to our clients.
6. We will measure and evaluate our performance during the delivery of our corporate objectives and we will publish the results.”

Work has already begun on a number of initiatives to reach these high level objectives which are set out on the Adoption Board’s website and in the Adoption Board’s 2003 Annual Report.

Proposals

The Adoption Board’s corporate plan lists its operational principles which address the criticisms leveled at it in the consultation process by aiming to provide a high quality, effective, efficient, accountable, transparent, respectful, consultative, inclusive, client-focused service. It undertakes to produce a corporate plan every three years and an annual business plan by which its work can be judged. The plan recognises the importance of legislative back up for these principles. In particular, it proposes that its administrative procedures and practices be made subject to the Freedom of Information Acts and other relevant public accountability legislation. It will also put in place transparent and accessible appeals procedures in relation to its legal functions, and transparent and accessible complaints procedures in relation to its administrative processes and practices. It is therefore recommended that:

- **all administrative records of the Adoption Authority should be made subject to the Freedom of Information legislation. However, content of confidential files remain protected and any registers or file index established with regard to tracing and reunion will be excluded from the provisions of the Freedom of Information and Data Protection Act**

and that

- **the operation of the adoption services should be made subject to review by the Ombudsman.**

In relation to the membership and working arrangements of the Authority, it is recommended that

- **the Authority will be appointed by the Minister and its membership will include people with expertise in adoption service use as well as people with expertise in management and relevant professions, including legal, social work and medical professions.**
- **A committee of the Authority will be established to deal with the quasi judicial responsibilities of the Authority, including the making of Adoption Orders, granting of declarations of suitability and eligibility and make decisions regarding the release of documentation to people affected by adoption.**
- **The Authority may establish committees to assist and advise it in relation to the performance of its functions which may include persons who are not members of the Authority of its staff.**

Appendices

Summary of Bill to ratify Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, 1993

1 The Hague Convention will have the force of law. Where there is any doubt as to interpretation of the Convention, the Parra-Aranguran report will be used to clarify such doubts.

2 Ireland as a receiving State

2.1 The Adoption Authority will carry out the functions under Articles

- 14
- 15 (2)
- 21 (1) (b)
- 21 (1) (c)

The Authority may not delegate these functions except by order of the Minister

2.2 Applications to the Adoption Authority must be preceded by an assessment of eligibility and suitability. This will be prepared either by a health board or by a body accredited by the Authority

2.3 The period of a declaration of eligibility and suitability is extended from 12 months (1991 Act) to 18 months, with discretion to increase it further

2.4 Adoption Orders made under the Convention in countries other than Ireland will be recognised in Ireland

3 Bilateral agreements

3.1 The Adoption Authority may make working arrangements or bilateral agreements with Convention States of origin

3.2 The Authority may make agreements with non Convention States and these agreements must be in line with the principles of the Convention. Adoptions from such States may only take place where an agreement exists

4 Matches and Placements

4.1 All matches and placements must be approved by the Authority

5 'Simple' adoptions (i.e adoptions where the link with the birth family is not legally severed)

The Adoption Authority will have the power to recognise simple adoptions and also certain foreign adoptions not covered by the 1991 Act

6 Eligibility

6.1 An upper age limit of 45 years will apply to anyone applying for a declaration of eligibility (with limited exceptions)

6.2 The maximum gap between the age of a child and that of the applicant (or in the case of couples the older applicant) will be 42 years (with limited exceptions)

7 Suitability

7.1 The Criteria for suitability will reflect the 5 capacities which form the basis for the standardised framework of assessment for adoption:

- (a) good moral character
- (b) have reasonable expectation of continuing to enjoy good health and being able to fulfil their duties while child is growing up
- (c) have the capacity to promote the child's development and health
- (d) have the capacity to safeguard, actively support and arrange for the necessary health, social, educational or other interventions throughout the child's life
- (e) have adequate financial means to support the child
- (f) have the capacity to value and support the child's needs in relation to identity
- (g) have no convictions for a sexual offence

and in the case of intercountry adoptions

- (h) have attended an approved course of education regarding intercountry adoption
- (i) demonstrate the capacity to value and support the child's needs in relation to original nationality, culture, race, language and religion

8 Accredited bodies

8.1 The Adoption authority will accredit bodies to

- 1. carry out assessments
- 2. mediate intercountry adoptions

provide post-placement services

8.2 An accredited body will not be able to both carry out assessments and mediate adoptions

9 Ireland as a sending country

9.1 Irish children and children resident in Ireland may be adopted to other countries under the supervision of the Authority and subject to certain conditions

10 Appeals

10.1 There will be a right of appeal on a point of law from the Adoption Authority to the Circuit Court.

11 The Adoption Authority

11.2 The membership of the Board will be a Chair, a Deputy Chair and 10 ordinary members. The term of appointment will be 5 years

11.3 The Chair and the Deputy Chair will be a judge or a barrister or solicitor of 10 years standing

11.4 The ordinary members will be people coming from the following backgrounds

1. family law
2. clinical psychology/psychiatry
3. social work/adoption
4. Department of Health and Children
5. doctor
6. parent
7. adopted person
8. management expertise

11.5 Adoption orders will be made by a sub group comprising 5 people from the following backgrounds

Family law

Clinical psychology/psychiatry or general medical

Social work

11.6 A CEO will be appointed with the functions of managing and controlling the administration and finances of the Authority

11.7 All of the standard provisions relating to state bodies such as accounts, reports, staff, etc. are included in the proposals

12 The Dissolution of the Adoption Board

12.1 The Adoption Board will be dissolved.

Summary of Bill on Adoption Information, Post Adoption Contact and Associated Issues

PART 1: Preliminary and general

1. **Commencement:** The Bill comes into effect on specific date or dates as decided by the Minister
2. **Interpretation:** Terms used in the Bill are defined
3. **Access to records:** The Adoption Board has access to all records relating to adoption or to people held in institutional care/boarded out held by information sources and it is an offence to interfere with records

PART 2: Information rights and associated issues for adopted persons, birth parents and adoptive parents

4. **Right of adopted persons to birth certificates:** An adopted person aged 18 or over is entitled to a copy of his/her original birth certificate, subject to exceptional circumstances (see 6 below). The process for getting the certificate, which includes the provision of a mandatory advice session by the health board, is described.
5. **Rights of birth parents to adoption certificate:** A birth parent is entitled to a copy of the adoption certificate of his/her child aged 18 or over, subject to exceptional circumstances (see 6 below). The process is described, including the operation by the Adoption Board of a voluntary advisory service.
6. **Exceptional circumstances:** A person may apply to the Adoption Board to defer or withhold the release of a birth or adoption certificate where there are reasonable grounds for believing that releasing the document could place a party at risk of serious harm. A right of appeal is also provided for.
7. **National Contact Veto Register:** Adopted people and birth parents *involved in adoptions preceding the enactment of this Bill* may register their desire to not be contacted in a register maintained by the Adoption Board, ie their right to information does not mean they have a right to make contact. A person must renew their contact veto register every five years but can lift it at any time. It is a summary offence to breach a contact veto.
8. **Right of adopted persons to information from records:** An adopted person aged 18 or over is entitled to personal information (ie about him/herself) and information which does not identify a third party from records held by information sources. Information about a deceased birth parent may also be released as long as it does not identify a third party. The process for releasing the information is described.

9. **Right of birth parents to information from records:** A birth parent is entitled to personal information and information which does not identify a third party from records held by information sources. Information about a deceased adopted child may also be released as long as it does not identify a third party. The process for releasing the information is described.
10. **Information rights in regard to future adoptions:** An adopted person *placed for adoption after the enactment of this Bill* can, on reaching 18 years of age, get his/her original birth certificate, personal information about him/herself and birth parents. (A veto on contact will not apply.) Birth parents have the right to apply to the Adoption Board at regular intervals for prescribed non-identifying information while the child is under 18 and when the child is over 18 they are entitled to apply to the Adoption Board for identifying information such as the child's adopted name and name and address of the adoptive parents. An adoptive parent is entitled to non-identifying information on the child's medical and family background while the child is under 18. Regulations will specify all the information requirements and entitlements.

PART 3: Information rights – Others (ie, where legal ties between parent and child were not severed)

11. **Right to information from record:** People raised in care have a right to specific information about themselves within a set timescale. Identifying information about a third party may not be released without consent. Counselling is provided for in certain circumstances. The procedures and types of information which can be released will be set out in Regulations.

PART 4: Records

12. **Care and maintenance of records:** The Adoption Board is given powers to ensure that records are properly cared for and maintained and to facilitate individuals accessing records.

PART 5: Search and reunion services

13. **Voluntary Contact Register:** The Adoption Board will maintain a register containing the name of every person aged 18 or more wishing to make contact with a birthparent, child adopted or raised in care or, subject to the agreement of the Adoption Board, an other person. In special circumstances, a person aged 12 or more may be included in the register. Where two people separated by adoption or care are listed in the register, the Board must notify them of this and, where agreed, give contact details to the other party.
14. **National Records Index:** All record holders are legally obliged to have their records registered in an index maintained by the Adoption Board. Information from this index can be made available to individuals or organisations in certain circumstances. The index will be subject to Regulations.
15. **Establishment of a National Search Service:** The Adoption Board will provide a search service in which it will identify for information sources the location of a search subject and will have the right to access information held by other State sources to do so. The Service will be exempt from the Data Protection Act, 1988 and from the Freedom of Information Act, 1997 (as amended). The Service will be subject to Regulations.

- 16. Provision of support services:** A regulated, State-funded **Tracing and Reunion service** will be provided by health boards and other designated information sources to assist people in locating a search subject, provided that no Veto on Contact has been lodged and that other conditions are met.

PART 6: Administration/Miscellaneous

- 17. Regulations:** The Minister may make Regulations as required under the legislation.
- 18. Powers of the Minister:** The Minister can give directions where required for the purposes of the legislation.
- 19. Functions and powers of the Adoption Board:** This gives the Adoption Board the powers it needs to carry out the duties assigned to it in the legislation.
- 20. Functions and powers of the health boards:** Health boards may carry out or contract out duties assigned to them in the legislation.
- 21. Expenses:** Resources needed to implement the legislation, subject to the sanction of the Minister for Finance, shall be paid out of monies provided by the Oireachtas.
- 22. Appeals panel:** The Minister will establish a panel made up of persons with expertise or interest in adoption and the law to review decisions made by the Adoption Board or information sources to deny an individual access to an original birth or adoption certificate. The panel's decision will be binding on all parties.

PART 7: Exemptions, amendments and repeals

- 23. Exemptions:** The provisions of the Data Protection and Freedom of Information legislation will not prevail over these proposals.
- 24. Amendments and repeals:** Section 3 of the Adoption Act, 1974 is amended to allow health boards to meet the costs of cases taken under this section by both parties (where adoptive parents seek a High Court order dispensing with the birth mother's consent to the adoption).
Section 22(5) of the Adoption Act, 1952 is amended to allow An tArd-Chlaraitheoir to access the index which shows the connection between birth entries and adoption entries to fulfill his/her duties under points 4, 5 and 9 above.
Section 8 of the Adoption Act, 1976 which prevents access to the Adoption Board's records for the purposes of giving or obtaining information is deleted.

C

Adopted Fostered People's Association of Ireland
Adopted Peoples Association of Ireland (US Coordinator)
Adoption Board
Adoption Crossroads
Adoption Ireland (The Adopted People's Association)
Adoptive Parents Association of Ireland
BAAF
Barnardos
Catholic Children's Society (Arundel & Brighton, Portsmouth & Southwark)
Catholic Children's Society (Westminster)
Cherish – The National Association for Single Parent Families
Children's Rights Alliance
Council for the Status of the Family
Council of Irish Adoption Agencies
Crisis Pregnancy Agency
Cunamh
Daughters of Charity Fostering Initiative
Department of Social & Family Affairs
Family Diversity Initiative
International Adoption Association
Irish Association of Social Workers
Irish Chinese Contact Group
Irish Families for Russian Adoptions
Irish Family Planning Association
Irish Foster Care Association
Irish S.O.C.A.
Know My Own
Linc
Mid Western Health Board
Midland Health Board
Midland International Adoption Group
National Children's Office
National Steering Committee on Adoption
Natural Parents Network (UK)
North Eastern Health Board
North Western Health Board
PACT
Parent Network for the Post-Institutionalized Child
Parents of Adopted Romanian Children
Responsible Society
South East Post Adoption Network

Southern Health Board
Southern Western Area Health Board
St Attracta's Society
St Patrick's Guild
St. Mura's Adoption Society
Thai Adoption Group
The Children's Society Services Ltd
The Equality Authority
The National Consultative Committee on Racism and Interculturalism
Treoir
Western Health Board
Young Fine Gael

**List of organizations which attended Consultation
Conference, October 2003**

Adopted Fostered People's Association of Ireland
Adoption Loss (Natural Parents Network of Ireland)
Adopted Peoples Association of Ireland (US Coordinator)
Adoption Board
Adoption Ireland (The Adopted People's Association)
Adoptive Parents Association of Ireland
Barnardos
British Agencies for Adoption and Fostering
Catholic Children's Society (Arundel & Brighton, Portsmouth & Southwark)
Catholic Children's Society (Westminster)
Cherish – The National Association for Single Parent Families
Chernobyl Children's Project
Children's Rights Alliance
Council for the Status of the Family
Council of Irish Adoption Agencies
Cunamh
Daughters of Charity Fostering Initiative
Department of Social and Family Affairs
Eastern Regional Health Authority
Family Diversity Initiative
Intercountry Adoption Association
International Adoption Association
International Orphan Aid Ireland
Irish Association of Social Workers
Irish Chinese Contact Group
Irish Families for Russian Adoptions
Irish Family Planning Association
Irish Foster Care Association
Irish S.O.C.A – Survivors of Child Abuse
Linc
Mid Western Health Board
Midland International Adoption Group
Midlands Health Board
National Steering Committee on Adoption
North Eastern Health Board
North Western Health Board
Office of the Attorney General
PACT
Parents of Adopted Paraguayan Children
Parents of Adopted Romanian Children
Sacred Heart Adoption Society

South Eastern Health Board
South Western Health Board
Southern Health Board
St Attracta's Society
St Catherine's Adoption Society
St Mura's Adoption Society
St Patrick's Guild
Thai Adoption Group
The Law Reform Society of Ireland
The National Consultative Committee on Racism and Interculturalism
Treoir
Vietnamese Group South
Vietnamese Irish Group East
Western Health Board

Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (29 May 1993)

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

CHAPTER I — SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are—

- (a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- (b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

- (1) The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State

(‘the receiving State’) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

- (2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests;
- (c) have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- (d) have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child’s wishes and opinions,
 - (3) the child’s consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State—

- (a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- (b) have ensured that the prospective adoptive parents have been counselled as maybe necessary; and
- (c) have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
- (2) They shall take directly all appropriate measures to—
 - (a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - (b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- (c) promote the development of adoption counselling and post-adoption services in their States;

- (d) provide each other with general evaluation reports about experience with intercountry adoption;
- (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall—

- (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- (b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- (c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV – PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

- (1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
- (2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

- (1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—
 - (a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
 - (b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
 - (c) ensure that consents have been obtained in accordance with Article 4; and
 - (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
- (2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

- (a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- (b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- (c) the Central Authorities of both States have agreed that the adoption may proceed; and
- (d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

- (1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
- (2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
- (3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

- (1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—
 - (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
 - (c) as a last resort, to arrange the return of the child, if his or her interests so require.
- (2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

- (1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- (2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who—
 - (a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
 - (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- (3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
- (4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.
- (5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

- (1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.
- (2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

- (1) The recognition of an adoption includes recognition of
 - (a) the legal parent-child relationship between the child and his or her adoptive parents;
 - (b) parental responsibility of the adoptive parents for the child;
 - (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
- (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.
- (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

- (1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect—
 - (a) if the law of the receiving State so permits; and

- (b) if the consents referred to in Article 4, sub-paragraphs c and d , have been or are given for the purpose of such an adoption.
- (2) Article 23 applies to the decision converting the adoption.

CHAPTER VI – GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

- (1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
- (2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

- (1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- (2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
- (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- (c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- (d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

- (1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
- (2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to [Article 14](#) has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII – FINAL CLAUSES

Article 43

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

- (1) Any other State may accede to the Convention after it has entered into force in accordance with [Article 46, paragraph 1](#).
- (2) The instrument of accession shall be deposited with the depositary.
- (3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in [sub-paragraph b of Article 48](#). Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in [Article 43](#).

- (2) Thereafter the Convention shall enter into force—
 - (a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - (b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

- (1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following—

- (a) the signatures, ratifications, acceptances and approvals referred to in Article 43;
- (b) the accessions and objections raised to accessions referred to in Article 44;
- (c) the date on which the Convention enters into force in accordance with Article 46;
- (d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
- (e) the agreements referred to in Article 39;
- (f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention. Done at The Hague, on the ____ day of _____ 19__, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

