

ADOPTION LEGISLATION CONSULTATION

DISCUSSION PAPER

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Foreword from Mr Brian Lenihan, TD Minister for Children

I have been conscious for some time of the need to undertake a complete review of adoption legislation in Ireland with the aim of making it more compatible with life in the 21st century by ensuring that it take account of the huge changes in society as well as changing trends and practices in adoption that have taken place since the 1952 Adoption Act.

Many of you will be aware that work has been ongoing in my Department on two legislative proposals – the first to provide for ratification of the Hague Convention on Intercountry Adoption and to make changes to the role and structure of the Adoption Board and the second to provide for a structured and regulated way of providing access to information and contact for those affected by adoption. Some of you were consulted previously on aspects of those issues. It seemed to me that, rather than focusing solely on those specific issues, the time was ripe to incorporate those proposals into a wider consultation process with a view to modernising all aspects of adoption legislation. This is the first time that you will have had the opportunity to examine the proposals in any detail and I look forward to further comments from you.

The paper raises a series of questions preceded by a descriptive passage intended to put each question into context. You are invited to answer some or all of them, and any general comments you wish to make will also be very welcome.

I hope that this consultation will provide valuable insights into the issues that need to be addressed in adoption legislation. I would like to take this opportunity to thank you in advance for taking the time to consider the issues raised in the discussion paper and in the legislative proposals.

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INTRODUCTION

Review of Adoption legislation

This discussion paper is part of a fundamental review of Irish adoption policy and practice referred to in the Minister for Children's foreword. The purpose of the review is to give organisations and individuals with an interest in adoption law and practice an opportunity to contribute to the development of a modern adoption system characterised by clarity, consistency and fairness. The paper describes adoption legislative and practical issues which have arisen over the years. These are followed by a series of questions designed to explore these issues further and allow the respondents to state their views. It is intended to hold a conference in early Autumn on the findings of the written consultation process.

NB This paper makes reference to existing and proposed adoption legislation where appropriate and these are summarised in the appendices. For a fuller description and explanation of the proposed pieces of legislation, the reader is advised to refer to both legislative proposals on the Department's website. The full adoption statute is available from the Government Supplies Agency, Molesworth Street, Dublin 2 and posted on the Office of the Attorney General's website, www.attorneygeneral.ie.

Interested parties are invited to send in written submissions on the issues raised in this paper and any others they feel appropriate by 18th July 2003 to Bernadette Fearon on bernadette_fearon@health.irlgov.ie or at the Department of Health and Children, Hawkins House, Hawkins Street, Dublin 2. Queries should be addressed to Siobhan_kennan@health.irlgov.ie. Submissions may be released under the Freedom of Information Act, 1997 (as amended).

Adoption

Adoption is the legal process by which a parent-child relationship is established between persons unrelated by birth, whereby the child assumes the same rights and duties as children in "birth families". In Ireland, unlike some other countries, adoption expunges all parental rights and duties of the birth parents in respect of the child and involves a complete severance of links with the child's birth family.

The Adoption Act, 1952 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.

The 1952 Act provided for the permanent transfer of parental rights and obligations from the birth parents to the adoptive parents. It stipulated that, upon an adoption order being made, “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”. Correspondingly, the birth mother and/or original guardian of the child are deemed to “lose all parental rights” and to “be freed from all parental duties with respect to the child”. The adoption process was confined to full orphans and non-marital children between six months and seven years of age. Eligibility to be assessed to adopt was confined to married couples living together, widows, the child’s birth mother, birth father, and certain relatives (traced at that point solely through the mother). Both of the adoptive parents had to be of the same religion as the child.

Key legislative changes since the 1952 Act are as follows:

The Adoption Act, 1964, provides for the adoption of children who had been legitimised by the subsequent marriage of their parents, but whose births had not been re-registered. The *1988 Act* provides for the adoption of children of married parents in certain restricted circumstances. The *1991 Act* provides for the recognition of foreign adoption orders made in respect of children deemed eligible to be adopted by the law of the place where the adoption was effected. The Act gives a statutory right to an assessment for foreign adoption and sets up the legal framework for assessing prospective adopters prior to adoption. It also extends eligibility to assessment to widowers and sole applicants where the Adoption Board is satisfied that it is in the best interests of the child. The *1998 Act* provides a legal framework for the consultation of the birth father in relation to the proposed adoption of his child, introduces new procedures to be followed by adoption agencies before placing children for adoption as well as making illegal a direct placement of the child by the birth parent with a stranger.

The main functions of the Adoption Board under the Acts are the making of adoption orders, the registering and supervision of the adoption societies, the granting of declarations for eligibility and suitability to adopt abroad and the recognition of foreign adoptions.

Adoption in practice

The normal procedure, under current legislation, is for a child to be adopted with the consent of its birth mother and/or guardian and only where the child’s parents were not married to each other at the time of the child’s birth. However, there are two situations in which an Irish adoption may be effected without the consent of the parents: (a) Section 3 of the Adoption Act, 1974 allows a child who has been validly placed for adoption by its natural mother or guardian to be adopted notwithstanding the subsequent withdrawal of consent and (b), the Adoption Act, 1988, provides for the adoption of

children (including the children of parents married to each other) in circumstances where total abandonment of parental rights and duties has occurred.

The adoption of a child not of Irish residential origin may be recognised in Ireland, provided that certain conditions are met.

Legislation under consideration

Two further pieces of adoption legislation are in contemplation by the government: (a) the Adoption Information, Post Adoption Contact and Associated Issues Bill and (b) the Bill to ratify the Hague Convention for the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 and to update the provisions relating to the structure and functions of the Adoption Board. The draft proposals are on the Department of Health's website on <http://www.doh.ie/publications/hobadinf.html> and <http://www.doh.ie/publications/hobhague.html> respectively.

Trends in adoption

In the last fifty years, just under 42,000 adoption orders have been made in Ireland. Recent years have seen striking changes in the trends in adoption in Ireland. There has been a dramatic fall in the number of Irish children being placed for adoption (from a high of 1287 in 1975 to 81 in 2001). The number of family adoptions has increased from 126 in 1975 to 196 in 2001. In 2001, 180 of these family adoptions were step-parent adoptions (i.e. where a single mother marries and then makes a joint application with her husband to legally adopt the child). Of the total births in 2001, 31% were non-marital births compared to 1 to 2% of total births during the 1950s and 1960s. In 1967 the number of adoptions as a percentage of the non-marital births was at a high of 96.9% compared to 1.6% of the non-marital births in 2001.

Intercountry adoption in Ireland began as a humanitarian response to the issue of abandoned children in post-Ceausescu Romania in the early 1990s. The growth in intercountry adoption emerged in conjunction with a dramatic fall in the number of domestic adoptions. The number of declarations to adopt abroad granted by the Adoption Board has increased each year since 1991. In 2001 there were 391 declarations granted, an increase of almost 40% on the previous year, the biggest annual increase so far. 163 adoptions were recognised by the Adoption Board during 2001.

Finally there has been a significant growth in enquiries from people who have been affected by the adoption process and who wish to trace their birth relatives.

SECTION 1 - ISSUES COMMON TO DOMESTIC AND FOREIGN ADOPTIONS

Age limits for adoptive parents

The legislation sets a lower age limit (adopting party or parties must be at least 21 years of age¹) but does not impose an upper age limit for adoptive parents. However, adoption agencies and health boards have imposed an upper age limit in practice.

Arguments in favour of allowing older people/couples to adopt include the fact that a woman can give birth well into her forties and even later. In addition, as the average marriage age is now close to 28 for women and 30 for men, it is possible that many couples will discover that they are unable to have children only in their mid to late thirties, when it may be too late to adopt under current practices. This upper age limit can be more relaxed in the case of foreign adoptions. Indeed, the Chinese authorities, for instance, tend to reflect a cultural respect for older parents.

Arguments against allowing older couples to adopt include maximising the adopted child's prospect of having two healthy parents until s/he becomes an adult. There is anecdotal evidence of dissatisfaction of domestic adopted persons who had older parents. In addition, increasingly birth mothers have a say in the selection of adoptive parents for their child and tend to choose younger couples.

Although there are no upper age limits specified for intercountry adoption, a report commissioned in 1999 recommended a lower age limit of 25 years and an upper age limit "of not more than 42 years" for the older of the applicants at the time of placement.² This recommended age limit mirrors the age profile of birth mothers in Ireland. However, the average age of giving birth has dropped and 99.5% of births in 2000 were to women aged 42 years or less.

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

¹ In the case of a married couple, either of whom is the natural parent of the child, it is sufficient that one of the parties is aged 21 or over, if the other is below that age. See Adoption Act, 1991, S.10(5)(b).

² *Towards a Standardised Framework for Intercountry Adoption Assessment Procedures: A Study of Assessment Procedures in Intercountry Adoption* (Stationery Office, Dublin, 1999).

Post-adoption services

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. It is argued that emotional, psychological and financial support services should be put in place to assist adopted children, adoptive parents and birth parents in dealing with issues which may arise as a direct result of the adoption, eg facilitation of ongoing access between the birth family and adopters, dealing with feelings of loss. Some of these issues may arise in the immediate aftermath of the adoption or years later. In the case of a child adopted from abroad, additional support may be required to deal also with issues surrounding culture, language and race.

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

The Adoption Board/Authority

The Adoption Board, *An Bord Uchtála*, was established under Section 8(1) of the Adoption Act, 1952. It has the primary function of making or refusing adoption orders and of registering and supervising the work of adoption societies established to facilitate the placing of children for adoption. All organisations and societies engaged in placing children for adoption must be registered with the Adoption Board which is responsible for regulating and monitoring them.

In summary, the Board is designed as a ratifying agency and a safeguard for adoptions where consent to adopt has been given. As Walsh J. noted in *G v. An Bord Uchtála*:³

“The Board has no function to settle disputes as to the custody of the child. Neither does it have any jurisdiction to adjudicate upon anything that could be said to be in controversy or dispute between the parties...The Board is simply concerned with what I am satisfied is the administration function of seeing that the steps taken are not contrary to the adoption legislation, are not inimical to the welfare of the child, and that everybody concerned has had a full opportunity of considering the matter carefully. It is quite clear that the Board was not invested with any power to settle or decide any question as to the existence of a right or obligation or duty. This appears to me clearly to have been the policy and effect of the Act of 1952”.

Where there is any dispute about the proposed adoption, the High Court may be involved by one of the parties. It is to be noted that Article 37.2 of the Constitution expressly permits the Adoption Board to make an order in respect of the adoption of a person, notwithstanding the possibility that this amounts to an “administration of justice”, that is, the performance of a “judicial function”.

Walsh J., in his foreword to Professor William Binchy's *Casebook on Irish Family Law*,⁴ was critical in his analysis of the role of the Adoption Board in making adoption orders without judicial confirmation or intervention. He pointed out that its powers are limited and it could not decide the validity of the marriage of the couples who seek to adopt. Such an issue might determine their eligibility to adopt in the first place and if this issue were raised later on, the invalidity of the order could have very serious consequences for all concerned, in particular the child. The Adoption Board may, however, state a case for the determination of the High Court on any question of law arising out of an application for an adoption order.⁵

Is it possible, therefore, to expand the remit of the Adoption Board to adoptions where consent has not been given, previously the exclusive preserve of the High Court? The Adoption Act, 1988, requires High Court approval on the ground that the legislature was concerned that the adoption of abandoned children would only proceed after the most rigorous consideration. It clearly felt that it might not be sufficiently safe for the Adoption Board to consider such a matter and that the courts would be less likely to strike down the legislation if they were given a role in giving effect to such adoptions. Will taking away the requirement for a High Court hearing reduce the safeguards that Article 42.5 demands to such an extent as to make any amending legislation unconstitutional? The Review Committee on Adoption Services recommended that the Adoption Board should be replaced by a specialist Adoption Court, functioning as a distinct branch of the High Court, which would be presided over by a single judge specially appointed to it and which would sit with two assessors.⁶ A system of Regional Family Courts could also be established with jurisdiction to determine all appeals from the Adoption Board, if necessary.

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?

³ [1980] I.R. 32.

⁴ Binchy, W., *Casebook on Irish Family Law* (Professional Books, 1984) p. viii.

⁵ Adoption Act, 1952, s. 20.

⁶ At paras 9.12-9.16.

SECTION 2 - DOMESTIC ADOPTION ISSUES

Time lapse between placement and final consent

An adoption can only proceed with the “full, free and informed consent” of all parties whose consent is required in that case (unless consent is dispensed with under the 1974 Act). The birth parents/guardians’ consent is required at two distinct stages – when the child is placed with an adoption board or adoption agency for adoption and before the making of the adoption order when final consent is given. In all cases, a person whose consent is necessary must be informed of his or her right to withdraw his or her consent at any time prior to the making of the adoption order.⁷

Section 9 of the Adoption Act, 1974, refers to a prescribed period during which the child must be in the care of the prospective adopters before an adoption order can be made. However, such a minimum period has never in fact been prescribed. The lack of a legally specified period after placement within which a final consent must be given, while allowing the birth parent time to decide whether or not to carry on with the adoption, can be potentially disruptive and detrimental to a child’s welfare if allowed to drag on at length. The Report of the Review Committee on Adoption Services suggested:

“that a natural parent be statutorily entitled to the return of her child at any time before she gives her consent to adoption or within three months from the date on which the child was placed for adoption, whichever is the shorter period...”⁸

The Task Force on Child Care Services had previously made a similar recommendation and also suggested the maintenance of the discretion to reduce the period in which the birth parent should be entitled to the return of her child in particular circumstances.⁹ A more restrictive provision exists in Australian legislation where consent is irrevocable after 30 days after placement, thus making the initial decision to place the child for adoption the key decision on the part of the birth mother; there is evidence to show that this is working well.

Do you think there should be a specified period between the placement of the child with prospective adoptive parents and the signing of the final consent?

⁷ Adoption Act, 1952, s.14(b).

⁸ *Report of the Review Committee on Adoption Services* (Stationery Office, Dublin, 1984), p. 29.

⁹ *Task Force on Child Care Services* (Stationery Office, Dublin, 1980).

Rights of non-marital father

The constitutional and statutory rights of the non-marital father are very limited relative to the rights of the birth mother despite improvements provided for in the Status of Children Act, 1987, and the Adoption Act, 1998. The Status of Children Act, 1987, amended the Guardianship of Infants Act, 1964 by giving the non-marital birth father a right to apply to the court to be appointed guardian of his child jointly with the mother of the child. Without guardianship status, the non-marital father had, until 1998, no right by virtue of his fatherhood alone even to be heard in an adoption application. The Adoption Act, 1998, provided a statutory procedure for consulting a non-marital father before his child is placed for adoption, although exceptionally the legislation allows the adoption to proceed where the father cannot, after reasonable efforts, be found or identified. A father who is consulted in this way may choose to apply for guardianship and/or custody of his child.

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.¹⁰ The question arises as to whether 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. Section 46(6) of the Adoption and Children Act, 2002, in England and Wales introduces such a provision.

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 an unmarried father in relation to the adoption of his child by a third party?

Alternatively, should the unmarried father be given preferential adopting rights?

Eligibility of adoptive parents

The Adoption Acts presuppose that adopters will be married couples. Section 10(2) of the Adoption Act, 1991, permits adoption by single parents but only where the Adoption Board is satisfied that "in the particular circumstances of the case, it is desirable" to effect such an order. The 1991 Act allows for a single person, a married person acting alone,¹¹ or (by implication) a divorced or separated person to adopt, even where the adopter is not related to the child. Although an individual in a stable non-marital relationship may adopt under the Acts, a couple in the same circumstances may not.

Who should be eligible to be assessed for adoption?

¹⁰ *W.O'R. v E.H.* [1996] 2 I.R. 248.

Guardianship as an alternative to adoption

Adoption is the only method of investing a step-parent with guardianship rights in respect of a child. However, as the application to adopt must be a joint one, the birth parent must also adopt his/her own child, even though s/he already has parental rights and obligations in respect of the child. In 1994, the Adoption Board's Annual Report first drew attention to this anomalous position, whereby the continuing parental relationship of the birth parent and child is not recognised. It recommended that legislation be introduced to permit a birth parent to retain her/his guardianship of the child while at the same time permitting her/his spouse to acquire guardianship rights over the child. Section 51(2) of the Adoption and Children Act, 2002, in Britain introduces such a provision.

Adoption is not always the appropriate form of care for children. Frequently, older children may not wish to be separated legally from their birth families. A new legislative option to provide permanence short of the legal separation involved in adoption should be considered. The Review Committee on Adoption Services recommended guardianship as such an option:

“We recommend that the Adoption Court should have power to grant applicants for an adoption order an alternative order appointing them to be the child's guardians and awarding them custody of the child where the Court is satisfied that, in the circumstances, such an order would be more appropriate than an adoption order.”¹²

A special guardianship order, intended to provide permanence for children for whom adoption is not appropriate, has been introduced in the Adoption and Children Act, 2002, in England and Wales. It might prove useful for the children of a widow/widower who remarries as well as for the children of a single parent who marries.

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

Adoption of children of marriage

In addition to the question of guardianship for children of marriage explored in the preceding question, your views are sought on whether it would be appropriate to legislate for the adoption of children of a marriage, ie children of a widow or widower who marries again, children in long-term foster care or who have been abandoned.

¹¹ Section 10(4) of the Adoption Act, 1991, however, requires the consent of the spouse of such a person.

¹² *Report of the Review Committee on Adoption Services* (Stationery Office, Dublin, 1984), at p. 83.

Current legal provision for adoption of children of marriage

Two parents who are married to each other cannot waive their parental rights should they wish to give effect to an adoption. However, the Adoption Act, 1988 permits the adoption of any child, without the consent of his/her parents, in exceptional and very limited circumstances.¹³ In effect, the Act requires that the parents of the child must have so comprehensively abandoned their parental duties that the child is unlikely ever to receive even minimal care from them. The flip side to maintaining the obligations of birth parents is that a small number of foster children remain in long-term foster care and cannot be adopted merely because their parents are married. For these children, there is no 'second chance'. The question arises as to whether the law should be changed so as to make adoption an option for these children.

Under the 1988 Act, a health board must make an application to the High Court for an order permitting the child to be adopted. In the absence of the permission of the High Court, or the Supreme Court in the event of an appeal, the adoption cannot proceed. The 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. The use of the term 'without interruption' seems to underline the need to prove a total abdication of duty on the parents' part;
- 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.

The Adoption Act, 1988, passed constitutional scrutiny precisely because it is so rigorous and exacting, yet it is this very factor that is its biggest shortcoming.

¹³ The annual reports of the Adoption Board reveal that there were six applications in 1998, seven in 1999 and seventeen in 2000 for adoption orders under the Adoption Act, 1988.

Foster care in the child care system

In 2001, 3,200 of the 3,600 children in the care of the health boards were in foster care living with a foster parent as provided for under regulations made under the Child Care Act, 1991.¹⁴ Fostering involves partnership between the foster parents, social workers, the health board and very often also the natural parents and aims to provide what many would perceive as the proper environment in which a child can develop his physical, mental and social capabilities to the full. Ideally, it is a temporary means of providing care for a child until his/her parents are in a position to provide care for the child. However, this does not always happen with the result that a number of children remain in foster care indefinitely, some of them drifting from one foster placement to another and others remaining with the same family for many years. As a result, some foster parent-child arrangements grow into relationships emotionally indistinguishable from birth parent-child relationships. While long-term foster placements have the veneer of *de facto* adoption, the fact that legal guardianship of the child has not transferred from the birth parents to the foster parents has very considerable implications for the nature of the relationship it creates between the foster child and foster family, and it does allow the return of the child to its birth family home at any time. The foster child has a dual family status – s/he belongs, in part, to both his/her foster family and his/her birth family.

Thus, a small number of marital children remain in care and cannot be adopted because their parents are married. It has been argued that we should review the possible expansion of the range of circumstances in which marital children are given the security of permanent adoption into a stable and loving family environment. The Review Committee on Adoption Services advocated adopting this approach:

“We recommend that all children should be eligible for adoption irrespective of the marital status of their parents”.¹⁵

Paragraph 3.40 of the report of the working group on foster care addresses the issue of adoption for children in long-term foster care.¹⁶ The report highlights the fact that a higher proportion of children remain in long-term foster care in Ireland “than is the case in either the U.K. or the U.S.A.”^{17, 18}

Provisions in other jurisdictions

In England and Wales, the child’s welfare dictates the outcome of disputes between substitute parents and birth parents. In Northern Ireland, if the child has been in the care of foster parents for a period of five years or more, the prospective adopters acquire statutory rights independent of their

¹⁴ S.I. No. 260 of 1995.

¹⁵ *Report of the Review Committee on Adoption Services* (Stationery Office, Dublin, 1984), at p. 12.

¹⁶ *Foster Care – A Child Centred Partnership* (Stationery Office, Dublin, 2001), p. 43.

¹⁷ Gilligan R, *Children Adrift in Care can the Child Care Act rescue the 50% who are in care five years or more*, *Irish Social Worker*, Vol. 14, No. 1.

¹⁸ *Ibid* at p. 21.

role as carers for the local authority.¹⁹ As a consequence of this, the child can only be removed from the foster parents after their application for the granting of an adoption order has been heard. Further, the consent to apply for an adoption order is not contingent on the support of the local authority. Thus, we see a situation where the length of the placement confers rights on the foster parents and acknowledges the value of long-established ties.

In order to provide a child with parents that he or she can identify as his or her “own”, with some promise of permanence, many jurisdictions in the United States have moved to simplify the process of termination of parental rights in circumstances where the parents have abandoned their child to foster care. This enables termination of access and other rights in cases where parents show no consistent interest in the child and where there is no reasonable or foreseeable likelihood that the parents can, or will, plan for the rehabilitation of the child’s birth family. One of the earliest examples of such termination of parental rights occurred in New York in 1959, to free the “permanently neglected” child for adoption.²⁰ The net effect of the New York reform was that termination of parental rights without the birth parents’ consent was made possible in circumstances where the birth parents had surrendered their rights to the child by a failure to discharge the obligations of parenthood.²¹ Previously such children could be adopted only in circumstances similar to those outlined in our Adoption Act, 1988.

It is arguable that if vesting rights in substitute parents involved divesting the birth marital parents of guardianship rights permanently, such reform would be unconstitutional, as it would involve the transfer of “inalienable rights and duties”. Adoption of marital children from abroad is permitted under the Adoption Act, 1991 (as amended by the Adoption Act, 1998).

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

¹⁹ “29(1) of the Adoption (NI) Order 1987 as amended: While an application for an adoption order in respect of a child made by the person with whom the child has had his home for the 5 years preceding the application is pending, no person is entitled, against the will of the applicant, to remove the child from the applicant’s [home] except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.

(2) Where a person (“the prospective adopter”) gives notice to the Board [or HSS trust] within whose area he has his home that he intends to apply for an adoption order in respect of a child who for the preceding 5 years has had his home with the prospective adopter, no person is entitled, against the will of the prospective adopter, to remove the child from the prospective adopter’s [home], except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before-

- (a) the prospective adopter applies for the adoption order, or
- (b) the period of 3 months from the receipt of the notice by the Board [or HSS trust] expires,

whichever occurs first.”

²⁰ A “permanently neglected child” was defined as a child in foster care whose parents “failed substantially and continuously or repeatedly for a period of more than one year to maintain contact with, and plan for the future of the child, although physically and financially able to do so...” Polier, “Amendments to New York’s Adoption Law. The Permanently Neglected Child” (1959) 38 Child Welfare 2.

²¹ For a comprehensive account of the circumstances in which parental rights can be terminated in the United States, see Pennypacker, “Reaching Decisions to Initiate Court Action to Free Children in Care for Adoption”

Ongoing contact between child and birth family

The 1952 Act was drawn up at a time when the stigma attached to extra-marital births led to many women concealing their pregnancy. The “closed” or “clean break” adoption was, in this respect, seen as a perfect avenue of escape from the dilemma in which these women found themselves.

Fifty years on, “open” or “semi-open” adoption or the “adoption with contact” is becoming increasingly popular.²² None of these changes the primary effects of adoption - the adoptive parents retain sole parental responsibility in respect of the child. The open adoption allows the birth mother, and other family members, to choose from a number of prospective adopters. In some cases the birth mother may meet the would-be adopters prior to the adoption order being made.²³ In a semi-open adoption, access is indirect only, the birth mother being supplied with information that does not identify the prospective adopters, and hence does not compromise the anonymity of all involved.

Many models of open adoption²⁴ allow an agreed level of contact between the child and its birth parents and other family members to be maintained. 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 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 birth parents and the pain of permanent separation of birth parent and child can be tempered.

Open adoption is permitted in several jurisdictions in the United States²⁵ as well as Australia and some Canadian provinces.²⁶ It has been argued that the use of open systems of adoption would encourage more birth parents to place a child for adoption where this would be in the best interests of the child²⁷, thus extending “the benefits of a secure upbringing within a stable family environment”²⁸

(1961) 40 Child Welfare; Polier, Parental Rights (Child Welfare League of America, New York, 1958); Polier, *ibid.*

²² Triseliotis attempts a broad definition of “open adoption” or “semi-open adoption” and “adoption with contact”. See J. Triseliotis, “Open Adoption”, in A. Mullender (Ed.), *Open Adoption: The Philosophy and the Practice*, (British Agencies for Adoption and Fostering, 1991), at pp. 17-35.

²³ The most widely used model operates in New Zealand, where the birth parent chooses adopters from written profiles and, after the birth, meets the couple she has chosen.

²⁴ For example, that operated in Oregon.

²⁵ For example, Minnesota, New Mexico, Oregon and Washington State.

²⁶ See Mullender, (ed.), *Open Adoption*, (BAAF, 1991). See also Berry, “The effects of open adoption on biological and adoptive parents and the children: the arguments and the evidence” (1991) LXX *Child Welfare*, at pp. 637-651 and Berry, Cavazos Dylla, Barth and Needell, “The role of open adoption in the adjustment of adopted children and their families”, (1998) 20 *Children and Youth Services*, at pp. 151-171. All the latter mentioned studies report the widespread success of, and satisfaction with, models of open adoption.

²⁷ See *Adoption Law: The Case for Reform*, (Law Society of Ireland, Dublin, April 2000) at p. 68.

²⁸ *Ibid.*

to more children. Adoption practice in general has become more open in recent years. The old insistence on secrecy and a “clean break” with the birth mother has virtually disappeared.

The key drawback of open adoption relates to the legal effects of the standard form of adoption. In Ireland, the effect of adoption is to extinguish absolutely the parental rights of the birth parents, whereas the success of an open adoption scheme depends largely on the goodwill of the adoptive parents (who, in many cases, may be anxious to foreclose the prospect of being perceived as something other than the child's primary caregivers). Any open adoption scheme should facilitate discussing thoroughly the appropriate boundaries for access arrangements prior to the adoption order being made. These agreed boundaries could then form the substance of a legally binding contract, which, subject to re-negotiation and possible variation in the courts, could form the core of an agreed parenting strategy.

Consideration might, therefore, be given to amending legislation to facilitate and encourage the use of open adoption practices. Open adoption of children from other countries is permitted under the Adoption Act, 1991 (as amended by the Adoption Act, 1998).

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

SECTION 3 - FOREIGN ADOPTION ISSUES

Proposed legislation to ratify the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption

Trends in intercountry adoption

The most significant change in adoption in Ireland in recent years has been the growth of intercountry adoption.²⁹ As the number of children being placed for adoption in this country has waned, the option of foreign adoption has become more attractive, especially for parents who do not necessarily meet the very tight criteria laid down by some adoption societies.

Intercountry adoption in Ireland began as a humanitarian response to the issue of abandoned children in Romania in the early 1990s. The Adoption Act, 1991 (later amended by the Adoption Act, 1998) was introduced in response to the large number of adopters who travelled to Romania at that time. The Act fulfils two functions, (a) it provides a framework for foreign adopted children to have the same rights as Irish born children and (b) it sets up a legal framework for assessing prospective adopters prior to adoption.

The adoption of a child in a country other than Ireland may be recognised in Ireland in accordance with the Adoption Act, 1991, as amended by the Adoption Act, 1998. Such recognition enables the adoptive parent or parents to be treated under Irish law as the full guardians of the child.

A number of issues have arisen in the course of implementing the 1991 Act, as amended by the 1998 Act which are discussed in greater detail in the section on the Hague Convention below. These are (1) the recognition of simple adoptions by which the parents in the country of origin still retain some rights in relation to the adopted child, (2) the absence of an appeals mechanism on decisions to grant declarations of eligibility and suitability to adopt and (3) the granting of country specific declarations.

The Hague Convention

The Department of Health and Children has produced legislative proposals to ratify the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993, concluded and signed on 29 May 1993. It is the first international instrument that has the potential to regulate intercountry adoption on a global basis. By implementing the 1993 Hague Convention,

²⁹ In 2000, for example, the Adoption Board recognised 323 foreign adoption orders compared to 117 in 1996.

Ireland will be incorporating procedures for the recognition of “simple adoptions”³⁰ provided, of course, that all parties go through the Convention procedure. The proposed legislation, the Adoption (Hague Convention) Bill, 2003, will ensure that intercountry adoption will only take place in the following circumstances:

- (a) where the same safeguards as for Irish domestic adoptions have been applied;
- (b) where the adopters have completed the proper assessment and approval procedures; and
- (c) where it is in the best interests of the child.

The proposed legislation provides a framework within which Ireland, by establishing a system of co-operation with those countries who have ratified the 1993 Hague Convention, may regulate the process of intercountry adoption. Ireland, upon ratification of the Convention, will deal only with countries that have signed or ratified the Convention or with those countries that satisfy the spirit of the Convention.

Its implementation will have significant implications for the Adoption Board. It is proposed to designate the Board as the “central authority” under the 1993 Convention which means that applications to adopt abroad; the transmission of documents to other central authorities; final agreement to the match between prospective adopters and the child; the control of children entering the country for the purposes of adoption or following adoption in the State of origin; and any decisions/negotiations with the State of origin if the placement should break down will now be carried out by the Adoption Board. The Board will be known as the Adoption Authority for the purposes of the proposed legislation.³¹ It will act as a point of contact, and a conduit for communication for authorities within the country and internationally. While assessments for suitability under the proposed legislation will continue to be made by the adoption agencies, the Adoption Authority will have to accredit the adoption agencies.

Under the proposals, recognition of an adoption may be refused where the adoption is manifestly contrary to public policy. In general, however, the philosophy underpinning the legislation is that non recognition is not in the best interests of the child, since it results in continuing uncertainty as to the child's status with his or her adoptive family.³² Under Head 18 of the proposed Bill Convention “simple adoptions” which cannot be converted to full adoptions, will have the same effect in Ireland as they have in the country where the adoption was effected. In the case of a simple adoption effected by persons in a third country (Ireland being neither the sending nor the receiving country) the adoption will have the same effect as it would be entitled to in the receiving country. In the case of the recognition of non-Convention simple adoptions, as a matter of public policy and in accordance with international obligations, these will go through the Convention process.

³⁰ A simple adoption confers full parental rights on the adoptive parents but does not extinguish entirely the legal relationship between the child and its natural parents.

³¹ See Head 32.

³² See also *The Law Reform Commission Report on the Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993*, (LRC 58-1998), at p. 42.

The proposals provide for an internal appeals mechanism on decisions relating to individual adoptions. Under Section 8 of the Adoption Act, 1991, any person ordinarily resident in its functional area is entitled to an assessment of suitability to adopt by a health board or, where appropriate, adoption agency social worker. The assessment is sent to the Adoption Board, which decides whether or not to make the necessary declaration as to suitability. A health board must be satisfied as to both eligibility and suitability in advance of a foreign adoption order being obtained. A copy of the declaration or refusal is sent to the social worker who carried out the assessment, who then informs the prospective adopters.³³ There is no appeal procedure, apart from an application to the court by way of judicial review of the administrative action. This is a matter of concern for many applicants. A review of assessment procedures for intercountry adoption undertaken in this country in 1999 identified different systems of assessment in operation throughout Ireland, with different standards being applied in the assessment of domestic and intercountry applicants for adoption.³⁴ The 1999 review advocated a standardised framework for the assessment of domestic and intercountry adoption. It has also been recommended that the Adoption Board should set standards of competence for all bodies administering intercountry adoption and that such standards should apply to both accredited agencies and health boards.

The proposed legislation gives new responsibilities to the Adoption Authority in relation to post-adoption services.³⁵ In summary, the Adoption (Hague Convention) Bill, 2003 is intended to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised under international law. All international studies agree that unregulated intercountry adoption can lead to abuses. The effective control of foreign adoption is therefore essential. Legitimate intercountry adoption, based on the best interests of the child, is beneficial to both the child and adoptive parents. It must, however, be reiterated that although intercountry adoption may offer a permanent home to a large number of children, it is essential that the process is, and is seen to be, a “child-centred” one which meets the needs of the individual child being adopted.

What are your views on both the regulation of intercountry adoption and the proposals for the incorporation of the 1993 Hague Convention into Irish law?

NB The issue of tracing and reunion services for people adopted from abroad is referred to in the following Section.

³³ In 2000, 282 declarations of eligibility and suitability to adopt were granted. This was the largest number of such declarations since the introduction of the Adoption Act, 1991. In 2001, 198 declarations were granted.

³⁴ O’Brien, V., and Richardson, V., *Towards a Standardised Framework for Intercountry Adoption Assessment Procedures: A Study of Assessment Procedures in Intercountry Adoption* (Stationery Office, Dublin, 1999).

³⁵ The Adoption Authority is required to “promote the development of adoption counselling and post-adoption services” in the country under Article 9C of the 1993 Hague Convention.

SECTION 4 - ADOPTION INFORMATION AND POST ADOPTION CONTACT

In the past, many birth mothers made the decision to place their child for adoption in the understanding that that would sever forever any link between them. However, while that remains the case for some, there is an increasing number who now wish to receive information about or make contact with their children and of adopted children who wish to learn more about their origins and/or meet their birth parents. Many adoption professionals regard the issues of privacy and confidentiality of records to be of vital importance and adoption societies remain reluctant to release details of birth parentage without the consent of the birth parents involved.

Existing rights to adoption information and post-adoption contact

There is no established legal right allowing access to birth records. In fact, section 22(5) of the Adoption Act, 1952, generally precludes the public inspection of the adoption index (this makes traceable the connection between each entry and the corresponding entry in the register of births). No information from the index may be given to any person without the consent of the Adoption Board. Section 8 of the Adoption Act, 1976, similarly 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.³⁶ Recently, there has been increasing support for greater openness in the adoption process. Articles 7 and 8 of the UN Convention on the Rights of the Child 1989 are often cited in support of the right of children to know their birth parents and to establish their identity.

The child, according to the Supreme Court, enjoys an unenumerated constitutional right to be told the identity of his birth mother. This right, however, is not absolute, and must be balanced against the natural mother's right to privacy and anonymity. The parameters of this conflict were examined by the Supreme Court in the joined cases of *I.O'T. v. B. and the Rotunda Girls' Aid Society* and *M.H. v. Rev. G.D. and the Rotunda Girls' Aid Society*.³⁷ These cases involved proceedings seeking declaratory relief relating to the natural parentage of two adopted children. Both applicants claimed that they had a constitutional right to access to information relating to the circumstances of their respective births. The respondent adoption society contested this, claiming, presumably in the interests of the natural parents, that the records in question were confidential.

The Supreme Court agreed that the right to know the identity of one's birth mother is a constitutional right guaranteed by Article 40.3 of the Constitution. Although this right is restricted by the Adoption

³⁶ See *P.C. v. An Bord Uchtála*, unreported, High Court, McWilliam J., April 1980.

Acts, such restriction may be valid, having regard to the need for the State to respect and vindicate the sometimes conflicting rights of the birth mother, being the rights to privacy and confidentiality in respect of the adoption. 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”.³⁸ The Supreme Court stated that neither set of rights was absolute. In making its decision, the Supreme Court pointed to certain criteria that the lower court should take into account:

- i. the circumstances surrounding the birth mother’s loss of custody of the child;
- ii. the current status and circumstances of the birth mother and the potential effect upon her of the disclosure of her identity;
- iii. the birth mother’s own wishes and attitude regarding the disclosure, and the reasons behind these wishes and the aforementioned attitude;
- iv. the current age of the birth mother and child respectively;
- v. the attitude of the birth child, including the reasons why he or she wishes to seek disclosure of his or her natural mother’s identity;
- vi. the present circumstances of the natural child; and
- vii. the opinion of the adoptive parents or other interested persons.

The European Court of Human Rights recently adopted a similar approach in *Odièvre v. France*.³⁹ In this case, the applicant was an adopted person seeking the release of information identifying her birth mother. As the birth mother had expressly reserved her right to confidentiality, the Parisian Child Welfare Authorities refused to release this information. The European Court of Human Rights held that the decision was not in breach of either Article 8 of the European Convention on Human Rights (which provides for respect for one’s private and family life) or Article 14 of that Convention (which prevents discrimination in the enforcement of Convention rights) 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.

Adoption Information, Post Adoption Contact and Associated Issues Bill

During a wide consultation process involving people working in adoption, especially tracing and reunion, adopted people, birth parents and adoptive parents in 1999, there was a clearly expressed desire for the introduction of new legislation to replace the present unstructured and inconsistent arrangements. The proposals on information in the Bill embody the best international practice and take into account the wishes of all those involved in that consultative process. The legislative proposals are on <http://www.doh.ie/publications/hobadinf.html>.

³⁷ [1998] 2 I.R. 321.

³⁸ Per Hamilton, CJ. at p. 52.

The main provisions of the Bill

The proposals apply only in respect of children adopted in Ireland. It is proposed that the Adoption Board will monitor and regulate all aspects of the new legislation.

For people adopted since the Adoption Act, 1952 (and prior to the enactment of the proposed legislation), the proposals provide for:

Information

- An adopted person will have the right to his/her birth certificate and personal information (ie about him/herself) from the file
- A birth parent will have the right to the adoption certificate and personal information from the file.

Contact

- A Voluntary Contact Register, which will be operated by the Adoption Authority. Any party seeking contact with another can place his/her name on the contact register and he/she will be assisted with reunion.
- A Contact Veto Register so that people who do not want to be contacted can register that wish. Penalties will be in place to discourage breaches. It is envisaged that those who knowingly break the contact veto will be guilty of "harassment" under the Non-Fatal Offences Against the Person Act, 1997. Research from other countries which have a Contact Veto has concluded that it works very well, and that people do not breach the veto.
- Counselling will be available to both adopted people and birth parents, if they wish. Experience shows that this can be a very difficult process, and that support from appropriately trained staff can smooth out problems.
- A State funded tracing and reunion service, which will be available to adopted people and birth parents. This service will be provided both by the health boards and by other agencies.
- A National Search Service, operated by the Adoption Authority, which will help to speed up tracing queries, which are slow and time consuming at present.
- A National Files Index, managed by the Adoption Authority which will ensure that there is speedy access to personal information.

In the case of all adoptions which take place after the legislation is enacted, the proposals provide that:

- The adopted person, from the age of 18, will have a right to his/her birth certificate, personal information from files and relevant information about birth parents.

³⁹ Decision of the European Court of Human Rights, 13 February 2003.

- The birth parent will have a right to information about the child's progress and well-being while the child is under 18 and the adoption certificate when the child reaches 18.
- The adoptive parent will have a right to non-identifying information on, for example, medical and family background while the child is under 18.

Where an adoption takes place after the enactment of the legislation, all parties to the adoption will be aware of these rights from the beginning. This means that it is possible to legislate for a more open system than is the case for adoptions which took place before the legislation.

The Bill provides that birth parents, adopted children and people raised in care can avail of state funded counselling which will be provided by health boards and by agencies accredited by the Adoption Board.

It has been recommended that rigorous record retention requirements for all adoption and institutional care records be set down in any legislation, to be underpinned by criminal sanctions. Many argue that tracing and reunion services should be standardised according to detailed guidelines or a code of conduct, which should be regularly subjected to assessment by the Adoption Board.

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?

The issue of providing information on birth families to people adopted from other countries as well as tracing and reunion has not been addressed in either of the legislative proposals. While a person adopted from abroad comes under the remit of the proposals on adoption information, in practice accessing information on the birth family is affected by the fact that the Adoption Board has no authority over foreign jurisdictions.

What provisions should be made for tracing and reunion services for intercountry adoption?

SECTION 5 - CONCLUSION

In view of changes in our society, adoption trends and other child welfare issues, it is argued that aspects of the current Irish adoption legislative framework should be amended to reflect these changes. Irish adoption legislation is also extremely complex, made more so by the mere fact of it being contained in seven separate pieces of legislation. The question of consolidating the existing legislation is being examined separately in the Department of Health and Children. For the purpose of this consultation exercise, you are asked as someone interested in adoption, either as someone directly affected by adoption or as someone working in the area to share your views regarding current adoption law and practices and the two proposed pieces of legislation.

Your views are sought on any adoption issue not already mentioned in this consultation paper that you believe to be in need of reform.

[REDACTED]

SUMMARY OF CONSULTATION ISSUES

[REDACTED]

Your views are sought on the following:

Section 1 – Issues common to domestic and foreign adoptions

Age limits for prospective adopters

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

Post-adoption services

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

The Adoption Board

- 3 *What are your views on the establishment of a specialist Adoption Court?*
- 4 *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?*

Section 2 – Domestic adoption issues

Consent to the final adoption order

- 5 *Do you think there should be a specified period between the placement of the child with prospective adoptive parents and the signing of the final consent?*

Non-marital father

- 6 *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?*
- 7 *Should additional rights be given to an unmarried father in relation to the adoption of his child by a third party?*
- 8 *Alternatively, should the unmarried father be given preferential adopting rights?*

Prescribed period with prospective adopters

- 9 *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?*

Eligibility of adoptive parents

10 *Who should be eligible to be assessed for adoption?*

Guardianship as an alternative to adoption

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

Adoption of children of marriage

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

Post adoption contact

13 *What provisions should be made for ongoing contact between adopted children and their birth family?*

Section 3 – Foreign adoption issues

The Hague Convention

14 *What are your views on both the regulation of intercountry adoption and the proposals for the incorporation of the 1993 Hague Convention into Irish law?*

Section 4 – Adoption information and Post adoption contact

Adoption information and post adoption contact

15 *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?*

16 *What provisions should be made for tracing and reunion services for intercountry adoption?*

Section 5 – Conclusion

17 *Your views are sought on any adoption issue not already mentioned in this consultation paper that you believe to be in need of reform.*

APPENDIX A - Summary of legislative proposals 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 institution care/boarded out held by information sources (see Interpretation above) 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 (where legal ties between birth 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 Authority 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 Authority 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 Authority, 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 Authority. 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 Authority 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 Authority:** 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 Authority 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.

APPENDIX B Summary of legislative proposals to ratify the Hague Convention on the Protection of Children and Co-operation on Intercountry Adoption

- 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)
- 2.2 The Authority may not delegate these functions except by order of the Minister 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 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 year's 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- accounts, reports, staff, etc. are included in the proposals
- 12**
- The Dissolution of the Adoption Board**
- 12.1 The Adoption Board will be dissolved.