



Irish Foster Care Association

**THE IRISH FOSTER CARE  
ASSOCIATION POSITION PAPER  
ON FOSTERING TO ADOPTION  
NOVEMBER 2018**

**The Adoption (Amendment) Act 2017:  
A New Era for Adoption Law in Ireland**

**Introduction**

The Irish Foster Care Association (IFCA), the representative body for foster care in Ireland, is a membership organisation and seeks to advocate for and inform policy development on areas which impact on foster care. The Adoption (Amendment) Act, 2017<sup>1</sup>, (hereinafter the 2017 Act), permits the adoption of children from foster care, and IFCA sets out its considerations for policy development in this area.

This paper sets out the changes to achieve permanence for children in care, brought about by the Adoption (Amendment) Act 2017, the cohorts of adults who can adopt children from care, the importance of the voice of the child, the role of the Adoption Authority and Guardian ad Litem, the needs of children, foster families and birth families who are involved in the process and the supports required. It concludes with a number of recommendations for consideration by policy makers, policy implementers, and those supporting foster carers, birth families and children, in the process of moving from foster care to adoption.

**The placement of children in care**

The placement of children in alternative care is legislated for in the Child Care Act 1991<sup>2</sup>, governed by the UN Convention on the Rights of the Child (UNCRC), and ratified by the Irish Government in 1992, ensuring that it takes all appropriate, legislative, administrative and other measures to implement the Convention (CRC Article 4). Two of the most important articles are; Article 3<sup>3</sup>, the “Best Interest” principle, and Article 12, “The Voice of the Child”<sup>4</sup>. Article 12 can be said to be one of the most advanced articles, in that it is a vehicle

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<sup>1</sup> The Child Care Act (1991) Department of Health.

<sup>2</sup> UN Convention on the Rights of the Child(1989).

<sup>3</sup> CRC/C/GC/(2003)

<sup>4</sup> CRC/C/GC/12 (2009)

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to realise other rights. Subsequent government policy, the National Children's Strategy (2000)<sup>5</sup>, Brighter Outcomes Better Futures (2011)<sup>6</sup>, the National Policy Framework for Children and Young People (2014-2020)<sup>7</sup>, the National Consultation Policy (2015)<sup>8</sup>, and the National Youth Strategy (2015)<sup>9</sup>, inform national objectives and outcomes for *all* children in Ireland. Specifically, the placement of children for adoption as set out in the 2017 Act should be informed by the 31<sup>st</sup> amendment of the Constitution<sup>10</sup> in which the rights of the child are enshrined. This will require all involved in the process to seek the views of children for whom adoption is a consideration, take these views seriously and be seen to act on them.

#### **Permanence**

The concept of Permanence has been identified as a framework of emotional, physical and legal conditions that gives a child a sense of continuity, commitment and identity.<sup>11</sup> It offers the fulfilment of parenting tasks within the context of family relationships which are expected to nurture a child's individual development and growth.<sup>12</sup>

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<sup>5</sup> National Children's Strategy (2000), Department of Children and Youth Affairs.

<sup>6</sup> Brighter Outcomes, Better Futures (2014), Department of Children and Youth Affairs.

<sup>7</sup> The National Policy Framework for Children and Young People (2014), Department of Children and Youth Affairs.

<sup>8</sup> National Consultation Policy (2015), Department of Children and Youth Affairs.

<sup>9</sup> National Youth Strategy (2015) (DCYA).

<sup>10</sup> Irish Constitution.

<sup>11</sup> Thorburn, J., Nordford, L. and Rashid, S. (2000) *Permanent Family Placement for Children of Minority, and Ethnic Origin*, London: Kingsley.

<sup>12</sup> Schofield, G., and Beek, M., (2002) 'Foster Carers' Perspectives on Permanence', *Adoption and Fostering*, 26 (2).

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Permanence can be defined as:

*To provide children with a foundation from which to develop their identity, values and relationships, not only through childhood, but into their adult lives.<sup>13</sup>*

In child welfare, permanence can be achieved either through reunification, long-term fostering, forms of special guardianship or adoption.

**The Adoption (Amendment) Act 2017**

The 2017 Act came into effect on 19 October 2017<sup>14</sup>. Its main purpose is to amend the Adoption Act 2010 (hereinafter the 2010 Act) to extend the law in relation to the adoption of children and to provide for the repeal of Part 11 of the Children and Family Relationships Act 2015 (Amendments to Adoption Act 2010). This innovative piece of legislation intends to better reflect the complex realities of modern family life in the context of adoption.

The 2017 Act allows for the adoption from foster care of children who have been in care for more than 36 months and have been living with prospective adoptive parents for not less than 18 months. This legislation can be viewed as one vehicle to achieve a sense of permanence for children who have been placed in care, where it is deemed that there is no prospect of reunification with their birth family. The act repositions adoption by paving the way for major change, from a largely consensual system to one that will permit adoption as an adjunct to the care system, in which parental rights can be terminated more easily<sup>15</sup>.

Foster care is the backbone of the care system in Ireland<sup>16</sup> and there are currently more than 6,000 children in care, with 92 per cent of children residing in foster care.

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<sup>13</sup> British Association for Adoption and Fostering, 'Planning for Permanence', *Practice Note 33*, 1996.

<sup>14</sup> S.I. No. 443/2017 - Adoption (Amendment) Act 2017 (Commencement) Order 2017.

<sup>15</sup> O'Brien, V. and Palmer, A. (2018) 'The Changing Landscape of Irish Adoption: An Analysis of Trends (1999-2016)', *Child Care in Practice*. [www.doi.org/10.1080/13575279.2018.1481367](http://www.doi.org/10.1080/13575279.2018.1481367).

<sup>16</sup> Bond, C. (2017) Tusla (2018).

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In 2017, 21 children were adopted from the Irish foster care system and 20 children have been adopted from foster care between January and November 2018<sup>17</sup>. Most of these adoptions related to children in long-term foster care who were aged between 16 and 18 years old<sup>18</sup> a happening that indicates the desire for legal permanence from both foster carers and the fostered child<sup>19</sup>. Palmer's<sup>20</sup> forthcoming research illustrates that the voice of the child in these adoptions seems clear within the process, since the foster child is old enough to understand the reality of legally separating from a (birth) family in order to legally become a part of another (adoptive) family. This number of adoptions from long-term foster care is low at present, out of the total 5,623<sup>21</sup> children in foster care. It is likely that this age cohort will change as the new legislation embeds. Palmer<sup>22</sup> identifies that the easing of legal restrictions to adoption under the 2017 Act might see an increased cohort of younger children adopted from foster care in the future. Adoption from care, widely used in our UK neighbouring jurisdiction, is waning as more strategies are being used to keep children connected to their families of origin if they are not able to return to live with them, although, during 2017, 56 per cent of children were adopted by dual-approved carers, (applicants are assessed and approved as both foster carers and adopters).<sup>23</sup> The changes introduced by the 2017 Act mean that more children will be available to be adopted from foster care. While it is likely that numbers will increase, it is unlikely that the experience of the UK, where adoption from foster care without parental consent is widely used, will be mirrored here in Ireland.

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<sup>17</sup> Adoption Authority of Ireland, (2018) Domestic Adoption Unit Statistics (unpublished).

<sup>18</sup> Adoption Authority of Ireland, (2018) Domestic Adoption Unit Statistics (unpublished).

<sup>19</sup> O'Brien, V. and Palmer, A. (2018) 'The Changing Landscape of Irish Adoption: An Analysis of Trends (1999-2016)' *Child Care in Practice*. [www.doi.org/10.1080/13575279.2018.1481367](http://www.doi.org/10.1080/13575279.2018.1481367).

<sup>20</sup> Palmer, A. (forthcoming 2019) *Adoption from Irish Foster Care: Analysis of the Lived Experience and the Policy Process*, PhD Thesis, School of Social Policy, Social Work and Social Justice, UCD, Dublin.

<sup>21</sup> Tusla Child and Agency Family Report (2017).

<sup>22</sup> Palmer, A. (forthcoming 2019) *Adoption from Irish Foster Care: Analysis of the Lived Experience and the Policy Process*, PhD Thesis, School of Social Policy, Social Work and Social Justice, UCD, Dublin.

<sup>23</sup> *Beyond the Adoption Order: challenges, interventions and adoption disruption* (2014), University of Bristol School for Policy Studies Hadley Centre for Adoption and Foster Care Studies.

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Irish parents have full participation in the District Court when Care Orders are made and in the High Court when an order is sought to dispense with their consent. They may be further entitled to Legal Aid (if financially eligible) at the Adoption Authority hearing.

Success for adoption from foster care is critical for the child and would be greatly supported with the involvement and consent of the birth parent and/or interested guardians.

#### **Open and semi-open adoption**

The 2017 Act mandates that, not later than 10 months after the passing of the 2017 Act, the Minister for Children and Youth Affairs shall initiate a review and consultation in respect of the potential introduction of open or semi-open adoption in Ireland<sup>24</sup>. Although definitions vary, in general, semi-open adoptions occur where birth families have ongoing contact with the adoptive families and open adoptions occur where there can be contact between the adopted child and their birth family. This type of adoption can offer a broad approach to permanency, in the best interests of the child, as they retain their birth identity and have permanency simultaneously. Dribben and Howorth (2016)<sup>25</sup> found that because the existing relationship between foster carers and the child's birth family was already developed, prior to adoption, this type of adoption contributed to successful outcomes for the child.

The Department of Children and Youth Affairs has already initiated a review in respect of the potential introduction of open or semi-open adoption in Ireland. It is expected that a report on the findings of the review and subsequent consultation will be laid before the Houses of the Oireachtas by November 2019<sup>26</sup>.

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<sup>24</sup> Section 42 of the 2017 Act.

<sup>25</sup> *Adoption by Foster Carers* (2016) CoramBAAF.

<sup>26</sup> [www.dcy.gov.ie/docs/EN/Press-Releases-copy-dcy-gov-ie-2018/81/4688.htm](http://www.dcy.gov.ie/docs/EN/Press-Releases-copy-dcy-gov-ie-2018/81/4688.htm).

### **Enhanced rights**

Foster carers may apply for “enhanced rights” as provided for in the Child Care Act (Amendment) 2007<sup>27</sup> following a period of five years of caring for a child in foster care and this can offer a sense of permanence for both the child and foster carer. Enhanced Rights offers the foster carer greater (limited) autonomy in certain requirements for consent for the child<sup>28</sup>. Offering a higher level of enhanced rights to foster carers would also offer children a greater sense of permanency.

Current practices and procedures to obtain enhanced rights vary across the 17 Tusla areas and throughout the District Courts. It may be the case, that if this process was more streamlined, foster carers might opt for enhanced rights over open/semi adoption or closed adoption.

### **The welfare of the child**

Across all spheres of child welfare and protection, the rights of the family are recognised. However, despite all efforts, there are situations where children are not able to enjoy stability or security within their family of origin and where there is no alternative but that they grow up outside their family. Adoption can give them the security and legal stability they require. Research also shows that children adopted from foster care are less likely to experience disruptions than children in non-relative, non- foster-parent adoption (Barry and Barth, 1990; Mc Roy, 1999; Smith and Howard, 1991, in Dribben et al 2016).

We know that children who enter care have higher challenges and a higher level of need than children from similar backgrounds who are not in care, and that children adopted from foster care are likely to have been made subject to a care order.

If the implementation of adoption as a practice, under the 2017 Act has the rights of children at its centre, as set out in the constitution, additional resources and a tailored set of supporting

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<sup>27</sup> Child Care (Amendment) Act 2007 Section (43A) (2).

<sup>28</sup> John Bermingham and Terence O’Connor (2016), Foster, Issue 2, Irish Foster Care Association.

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infrastructures are essential to support children's needs. These will include, but may not be limited to:

1. The voice of the child in pre-adoption planning
2. The needs of the child pre- and post-adoption planning
3. Pre and post-adoption supports for carers
3. The importance of contact, identity and open adoption.<sup>29</sup>

#### **Prior to adoption: providing reasonable support to birth parents**

The 2017 Act inserts a requirement that the Child and Family Agency must be satisfied that every reasonable effort has been made to support the parents of a child before that child can be adopted without the consent of the birth parents<sup>30</sup>. While a child is still in the home and the parents are trying to maintain the child, a range of support services is available to them. Nevertheless, once a child is removed from his/her family, the support from social services may cease, making it more challenging to overcome any difficulties. This provision aims to ensure that, before a child can be adopted, adequate support and resources have been offered to parents to enable them to provide a stable home.

At a practical level, the supports that may be needed by the family may fall outside the remit of Tusla. Such supports may include mental health services, addiction services, financial support, housing, transport, disability services, education, and employment. Therefore, it is unclear how the court will be able to ascertain that the Child and Family Agency has met the "reasonable effort" threshold. This highlights the importance of inter-agency collaboration to support families prior to and after adoption.

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<sup>29</sup> Palmer, A., (forthcoming 2019) *Adoption from Irish Foster Care; Analysis of the lived experience and policy process*, PhD Thesis, School of Social Policy, Social Work and Social Justice, UCD, Dublin.

<sup>30</sup> Section 54 (1) of the 2010 Act as amended by section 24 (1) (a) of the 2017 Act.

### **Consent to adoption**

The Adoption Act 2010 requires that for an adoption to take place, full, free and informed consent must be obtained from the natural mother of the child, any guardian of the child and any other person having charge or control of the child immediately before the child is placed for adoption<sup>31</sup>. The High Court may authorise the Adoption Authority to dispense with the consent of a person whose consent to the making of the adoption order is necessary where it is satisfied that it is in the best interests of the child<sup>32</sup>.

The 2017 Act amends the definition of a guardian to take account of changes introduced by the Children and Family Relationships Act 2015, in particular, unmarried fathers who become legal guardians automatically if certain cohabitation criteria are met<sup>33</sup>, and non-parental guardians appointed by the court with specific right to place the child(ren) for adoption and consent to the adoption of the child(ren)<sup>34</sup>. Following the commencement of the Children and Family Relationships Act 2015, a child could have an unlimited number of guardians if it is deemed to be the best interest of the child concerned.

### **Children who may be adopted**

In the past, only in very exceptional circumstances could a child be adopted without the consent of their parents and guardians. It required comprehensive failure and complete abandonment by the parents in respect of the child<sup>35</sup>. The 2017 Act introduces a lower threshold test for non-voluntary adoption<sup>36</sup>. The High Court, before authorising the Adoption

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<sup>31</sup> Section 26 of the Adoption Act 2010.

<sup>32</sup> Section 31 of the Adoption Act 2010 as substituted by section 14 of the 2017 Act.

<sup>33</sup> Guardianship Act 1964, Section 2 (4a) as inserted by the Children and Family Relationships Act 2015, Section 43 (c).

<sup>34</sup> Section 6c of the Guardianship of Infants Act 1964 as inserted by section 49 of the Children and Family Relationships Act 2015.

<sup>35</sup> Section 54 of the 2010 Act.

<sup>36</sup> Section 54 (2a) in of the 2010 Act as inserted by section 24 (1) (c) of the 2017 Act.

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Authority to make an adoption order in respect of a child without parental consent, must be satisfied that the parents of the child have failed in their duty towards the child for a continuous period of at least 36 months immediately preceding the time of the making of the application, and that there is no reasonable prospect that the parents will be able to care for the child in a manner that will not prejudicially affect his or her safety or welfare.

In addition, the length of time that the child has been in the custody of the adoption applicants has been increased from 12 to 18 months in order to ensure that the child has had a home with the adoption applicants for a significant period of time. This provision allows a greater prospect of stability for some children in long-term foster care, where it is unlikely that they will return to live with their parents, through the process of adoption by their carers.

All children are now treated equally in terms of eligibility for adoption. The 2017 Act increases the age limit for adoption from seven<sup>37</sup> to 18<sup>38</sup>. In addition, the fact that a child was previously adopted<sup>39</sup> or born to married parents<sup>40</sup> is no longer an automatic restriction<sup>41</sup>. Under the new legislation any child may be voluntarily placed for adoption, removing the requirement that the child in respect of whom an adoption order is sought is either an orphan or born of parents not married to each other. Formerly the children of married parents could only be adopted on a non-voluntary basis in extremely exceptional circumstances where the parents have failed in their duty towards the child<sup>42</sup>. Marital children in long-term foster care, whose parents have voluntarily chosen adoption, could not be adopted because their parents were married.

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<sup>37</sup> Section 23(1)(b) of the 2010 Act.

<sup>38</sup> Section 23(1)(a)(ii) of the 2010 Act as substituted by section 12 of the 2017 Act.

<sup>39</sup> Section 23 of the 2010 Act as inserted by section 45 in the 2017 Act.

<sup>40</sup> Section 23(1)(c) of the 2010 Act.

<sup>41</sup> Section 23 (1) of the 2010 Act as substituted by section 12 of the 2017 Act.

<sup>42</sup> Section 54 of the 2010 Act.

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The 2017 Act<sup>43</sup> provides that married parents may place a child for adoption, on a voluntary basis, in circumstances where both parents place the child for adoption and where both parents consent to the making of the adoption order. This provision reflects the reality that adoption may be the best option for some children born within marriage for reasons not necessarily related to parental failure. It also renders the perception that the function of adoption is to provide a marital home for non-marital children redundant<sup>44</sup>.

#### **Eligibility to adopt extended**

Prior to this legislative change, there was no provision to allow civil partners or cohabitants to adopt jointly. Only a married couple living together could adopt a child jointly. A member of a civil partnership or cohabiting couple could adopt a child as single person. In these circumstances, the single person was the legal parent of the adopted child to the exclusion of the other partner. It was not possible for a civil partnership or cohabiting couple to adopt a child as a couple.

The 2017 Act extends the eligibility to adopt jointly to civil partners and cohabitants aligning legislation governing adoption with contemporary family forms<sup>45</sup>. Cohabitants must have resided together for at least three years in order to be eligible to adopt a child.

#### **Step-parent adoption**

Formerly, as only marital couples could jointly adopt, a step-parent could legally adopt a child only if the natural parent spouse could jointly adopt the child. In effect, it required the natural parent to become the adoptive parent of his/her own child. The 2017 Act introduces changes in law to address this anomaly that are very welcome.

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<sup>43</sup> Section 12 of the 2017 Act.

<sup>44</sup> Shannon, G, *Paper on Adoption Amendment Bill*, 2016, 4

<sup>45</sup> Sections 33 and 34 of the 2010 Act as amended by sections 16 and 17 of the 2017 Act

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In addition, the 2017 Act widens the interpretation of “step-parent” to include the civil partner of a parent of the child; a cohabitant in a cohabiting couple where the other cohabitant is a parent of the child; and the spouse of a parent of the child.

**Consultation with relevant non-guardians**

The 2017 Act introduces the definition of “relevant non-guardian” which encompasses certain interested parties to an adoption who are not guardians, and consequently are not required to give consent to the adoption process but have a right to be consulted in relation to the adoption<sup>46</sup>.

A relevant non-guardian means, in relation to a child:

- a father of a child who is not a guardian of the child;
- a person who has been appointed the guardian of a child but who has not been granted certain rights of guardianship including the right to consent to adoption;
- a person appointed by the court to be a temporary guardian of a child; and
- a parent of a donor-conceived child who is not a guardian of the child.

On receipt of an application for an adoption order, the Adoption Authority is to take such steps as are reasonably practicable to ensure that every relevant non-guardian of the child is consulted in relation to the adoption<sup>47</sup>. In addition, the 2017 Act provides that where any relevant non-guardian objects to the proposed placement of the child for adoption, the placement will be deferred for not less than 21 days for the purpose of affording the relevant non-guardian an opportunity to make an application to court to become a legal guardian<sup>48</sup>.

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<sup>46</sup> Section 3 of the Adoption Amendment Act 2010 as amended by section 3 of the Adoption Amendment Act 2017.

<sup>47</sup> Section 30 of the 2010 Act as amended by section 13 of the 2017 Act.

<sup>48</sup> Section 17 of the 2010 Act as substituted by section 7 of the Adoption Amendment Act 2017.

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These provisions ensure that non-guardian parents (the natural father and the parent under donor-assisted human reproduction procedures including second female parents), non-parental guardians without the right to place the child for adoption and temporary guardians are consulted in relation to an adoption. Although they are not required to give consent in relation to the adoption, their inclusion in the category of relevant non-guardians reflects that they are an interested party in the child's life whose opinion on the proposed adoption must be sought. Moreover, as an interested party in the child's life, a relevant non-guardian is afforded the opportunity to become a legal guardian of the child in order to be able to give or withhold consent to the adoption.

#### **Children's rights**

Article 3, (UNCRC), "Best Interests Principle"<sup>49</sup>, requires that the best interests of children must be the primary consideration in making decisions that may affect them. All adults should do what is in the best interests of children and when they make decisions, they should think about how their decisions will affect them. The Child and Family Relationships Act (2015) sets out the criteria for the court in determining the "best interests" and the Amendment to the Adoption (Amendment) Act (2017) also specifies criteria for such a determination.

Article 12 (UNCRC)<sup>50</sup> enshrines the rights of children to be heard, listened to and taken seriously. Article 12 does not interfere with the parents' right and responsibility to express their views on matters affecting their children. Moreover, the Convention recognises that the level of a child's participation in decisions must be appropriate to the child's level of maturity. Article 42a<sup>51</sup> of the Constitution requires that the State recognises and affirms the natural and imprescriptible rights of children and shall, as far as practicable, by its laws protect and vindicate those rights. In all proceedings referred to, in respect of any child who is capable of

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<sup>49</sup> *ibid*

<sup>50</sup> *ibid*

<sup>51</sup> Irish Constitution (2013)

forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

In determining what is in the child's best interests, the Adoption Authority of Ireland or the court shall have regard to all of the factors or circumstances that it considers relevant to the child concerned including:

- a) the child's age and maturity,
- b) the physical, psychological and emotional needs of the child,
- c) the likely effect of adoption on the child,
- d) the child's views on his or her proposed adoption,
- e) the child's social, intellectual and educational needs,
- f) the child's upbringing and care,
- g) the child's relationship with his or her parent, guardian or relative as the case may be,  
and
- h) any other particular circumstances pertaining to the child concerned.

This non-exhaustive list of factors and circumstances seeks to provide guidance to the Adoption Authority or the court by focusing on specific aspects of the child's present and future welfare when determining his/her best interests<sup>52</sup>.

### **Voice of the child**

The National Children's Participation policy (2015) establishes the government's policy for eliciting the views of children. Specifically, the government has adopted Lundy's Model of Participation (2007)<sup>53</sup> as the basis of consultation with children. This model of participation includes four principles:

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<sup>52</sup> Section 9 (2) of the 2017 Act.

<sup>53</sup> Lundy, L. (2007) Voice is not Enough, *British Educational Research Journal*, 3(6) pp 927-942.

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*Space:* “Children must be given safe space, inclusive opportunities to form and express their view”

*Voice:* “Children must be facilitated to express their view”

*Audience:* “the view must be listened to”

*Influence:* “The view must be acted on as appropriate”.

Consultation with children requires skilled adults to ensure that the “voice” of the child is heard, and it is the role of the Adoption Authority to ensure that the views of the child in adoption proceedings are elicited and acted upon. So, how are children represented? The child is at the centre of the Adoption Process, they are consulted by their social worker and by the Adoption Authority and attend the Adoption Hearing. The child does not have direct legal representation or advice, nor do they have a Guardian ad Litem. The case for adoption is currently presented by the legal representatives of the Child and Family Agency.

### **The role of the Guardian ad Litem**

Under the current legislation there is no provision for the appointment of a Guardian ad Litem in adoption proceedings. However, the Adoption Authority can ask Tusla to commission an independent report on any issue relating to the child. This work can be carried out by a person who was previously appointed as Guardian ad Litem for the child. Where a child was not so represented, a report can be sought from an independent social worker. Within care proceedings, the Guardian ad Litem is usually involved for the duration of the court proceedings. There is no national data available for the average length of court proceedings and the courts also have the power to review cases following the making of a care order. Guardians ad Litem may work with children for significant periods of time. The Department of Children and Youth Affairs is working on reform of the Guardian ad

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Litem service. The policy objective of the reform is “to ensure that the Guardian ad litem service can be provided to benefit the greatest number of children and young people, so that their voices can be heard in child care proceedings and that this service will be of high quality and sustainable into the future.”<sup>54</sup>

It is likely therefore that in the future the proportion of children in long-term foster care who have worked with a Guardian ad Litem will increase.

The Guardian ad Litem’s role in care proceedings is to represent both the views and the interests of the child. They have a key role in commenting on the care plan for the child. As adoption from foster care is likely to be an increasingly used pathway to leaving care, the input of the Guardian ad Litem both at the stage of the care proceedings and later at the time of adoption will have a value in bringing an independent view, separate from that of Tusla. It provides both a means of participation and a safeguard for the child to ensure that they are independently supported in expressing their view.

The current proposed reform of the Guardian ad Litem system offers the Department of Children and Youth Affairs and the Adoption Authority the opportunity to agree a joint protocol for those cases where a Guardian ad Litem may provide independent support to the child in expressing their views, and an opinion, based on their experience of the child and their family in the care proceedings, that will add value to the adoption process.

#### **The role of the Adoption Authority of Ireland**

The Adoption Authority legalises all adoption orders in Ireland and regulates the provision of adoption services nationally. In adoption from fostering, the process set out by the Adoption Authority is followed by the Tusla child and family agency involved with the child, birth family, and foster family.

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<sup>54</sup> [www.dcy.gov.ie/docs/Reform\\_of\\_Guardian\\_ad\\_litem\\_arrangements\\_in\\_child\\_care\\_proce/3969.htm](http://www.dcy.gov.ie/docs/Reform_of_Guardian_ad_litem_arrangements_in_child_care_proce/3969.htm)

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Adoption is one of a number of options to provide permanent homes for children who cannot be cared for by their families. The other options of extended family care, fostering and guardianships are used by significantly more families in Ireland to provide emotional security, predictability and stability for children.

To provide stability and permanence to more foster children at a younger age, prospective parents of children could be assessed initially for adoption and fostering. That is, parents wanting to adopt children could also be assessed for their suitability to foster children. This would provide a necessary cohort of permanent parents for infants entering the foster system, who are unlikely for many reasons, to be able to return to their original families.

#### **Summary of the adoption process**

When a child is placed in foster care, efforts are made to reunify the family through family support services where possible. Reunification may not be possible over time if the child and family become estranged; the child sees themselves as full members of their foster families; and the foster family develop deep and lasting attachments to the child. Adoption into the foster family can then become an option to meet the child's best interests. The foster parents must want to adopt the child. The child must be less than 18 years old and want to be adopted. The birth parents must consent to the adoption, or the High Court can remove the necessity for consent in certain circumstances.

#### **The Adoption Act 2010, as amended 2017**

The Adoption Act 2010<sup>55</sup> ensures that a legal adoption removes all rights and responsibilities from the birth parents and transfers them to the adopters. Following adoption, the child is treated as a birth child of the adoptive parents. The adoption terminates all legal connection to

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<sup>55</sup> Government of Ireland. Adoption Act 2010

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the child's birth family. While open adoption is not legally available, existing contact can be maintained in practice, based on trusting relationships between birth and adoptive parents.

#### **Current process**

Where the foster parents want to adopt, they apply through their local Tusla Child and Family Agency office to initiate an adoption assessment for the family. The assessment and the child care review processes provide the information for the Tusla social workers to report to the Adoption Authority of Ireland and in certain circumstances to the High Court also, on the family's adoption application. The foster parents, birth parents and the child will be consulted separately by each of these State authorities at different stages in the process.

#### **Consent**

Consent to the adoption is sought from all guardians during the process. This includes the child's mother. All practicable efforts are made to include both mother and father in the adoption process. Where a guardian does not consent to an adoption, the adoption can proceed without consent if the High Court approves it in the best interests of the child.

#### **Guardianship**

The Adoption Authority will satisfy itself that alternative care arrangements such as extended family care or guardianship have been comprehensively considered as a proportionate response to the child's need for care. Specific reference within the assessment report to addressing this issue comprehensively with prospective adopters is required by the authority. Where the Adoption Authority is not satisfied that adoption is a proportionate response and is in the child's best interests, it will not make an adoption order.

#### **Granting an adoption order**

The Adoption Authority of Ireland is the sole body that grants adoption orders. Before agreeing to make an adoption order, the board of the Adoption Authority considers all the

assessment and background reports, evidence, and oral consultations required from the foster parents, child, birth parents and the Tusla social workers. Hearing the voice of the child is particularly important within this process, where most children are aged 16-18 years old when an adoption order is made from a fostering situation.

The adoption order day is the final official stage of the process. The foster parents and the child appear in a brief hearing before the Adoption Authority. It is an important legal event and family celebration. The Adoption Order is signed, making the child a fully legal member of the adoptive family. The General Register Office later issues an Adoption Certificate that replaces the child's original Birth Certificate for all legal and identity purposes.

### **Post adoption support**

Ongoing financial post adoption support can be granted under the terms of the Child Care Act 1991, Section 44 (1)<sup>56</sup> at the discretion of the local Tusla services. Post adoption supports and services are regularly required by families parenting children who have had traumatic or challenging early life experiences. Many public and private post adoption services are listed on the Adoption Authority's Post Adoption Services Directory<sup>57</sup>. Training on risks and causes of disruption in adoptions should also be provided for prospective parents and professionals, to support the adoptive family.

### **The needs of children moving from fostering to adoption**

Research has indicated that some of the reservations expressed by foster carers about adopting relate to the levels of support available to adopted children compared to the support available to fostered children.<sup>58</sup> Many children in care have high a level of need as a result of adverse early life experiences, and it is when the child is established in the foster care home, that the extent of their needs is established, resulting in the need for access to CAMHS and

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<sup>56</sup> Child Care Act (1991) Section 44.

<sup>57</sup> Adoption Authority of Ireland (2018); [www.aai.gov.ie](http://www.aai.gov.ie)

<sup>58</sup> CoramBAAF (2016). Adoption by Foster Carers.

other appropriate therapeutic supports. IFCA's 2015<sup>59</sup> survey of the Emotional and Psychological Support Needs of Carers, the Children in their Care, and their Families, highlights the paucity of appropriate supports for children whilst in the care of the State. Foster carers would therefore need to be assured that the existing limited supports offered to children in care will continue and that they continue to be prioritised for state services.

The National Standards for Foster Care<sup>60</sup> require that children in foster care should be prioritised for all state services, and this stipulation should follow the child to adoption from foster care.

### **Life story work**

Identity is described as; *individuality, personal identity, social identity, and cultural identity*<sup>61</sup>

Article 8 of the UNCRC<sup>62</sup> bestows the right to his or her identity on every child. The sometimes-fractured nature of children's placements in care can result in the loss of their "childhood stories". It is therefore imperative that children in care should have access to life story work, and that those who care for them, including the State, take responsibility for cherishing their memories and important life stages and offer them a simple and truthful explanation of why they are in care. Where children are adopted from foster care, many foster carers will have already gathered their memorabilia and shared with them their past, and in particular, their journey into care. Life story work can be very successful where positive existing relationships exist between the foster carer and birth family, so that the child has a full understanding of his/her past and can build a bridge from the past to the future.

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<sup>59</sup> Irish Foster Care Association (2015).

<sup>60</sup> National Standards for Foster Care (2005)

<sup>61</sup> UNCRC

<sup>62</sup> *ibid*

### **Support for contact**

Open adoptions can offer continued access for children to their birth family and siblings. This can be particularly supportive to the child, where contact with his/her family in the past has been a positive experience. However, for some children, contact with family can cause distress and may not be a positive experience. Therefore, each individual case must be taken into consideration in the best interest of the child.

### **The Voice of the Child**

As outlined previously in this paper, the voice of the child should be central to all decision making in respect of being adopted from foster care. To elicit the views of the child requires skilled individuals who provide the space, time, voice and audience, as outlined in Lundy's model of participation. Whilst not every child may have a court appointed Guardian ad Litem, it is the view of IFCA that this should be the case. Adults who were adopted spoke of the lack of understanding as to what was happening and having a feeling of loss of control.<sup>63</sup>

### **Support for adopters**

Biehal et al (2010)<sup>64</sup> found that the motivating factor for foster carers wishing to adopt the child placed with their family was their feelings of love for the child, wanting to provide them with security and stability and also to protect them from the "vagaries of the care system". Dribben et al (2016) in their study, identified that the children adopted by their foster carers had formed a strong bond prior to the adoption and a sense of belonging to the foster family. Interestingly, the children did not report divided loyalties between their birth family and fostering to adoption family. Also, in studies by Hill (1982)<sup>65</sup>, Kirton et al (2006)<sup>66</sup>, and Biehal

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<sup>63</sup> Biehal, N, Ellison, S, Barker, C and Sinclair; (2010) *Belonging and Permanence; Outcomes in long-term foster care and adoption*, London: BAAF

<sup>65</sup> Hill, M, Lambert, L and Triseliotis, J (1989) *Achieving Adoption with Love and Money*, London: NCB

<sup>66</sup> Kirton, D,, Beecham, J. and Ogilvie, K. (2006), 'Adoption by Foster Carers; a profile of interest and outcomes', *Child and Family Social Work*, 11:2, pp 139-146

(2010), foster carers named the importance of continued supports for the placement post adoption.

Such supports identified are:

**Financial:** foster carers expressed a fear of the sudden loss of financial support to meet the continued needs of the child. In the UK, foster carers are offered transitional payments of up to two years to support the adoptive placement, which are reflected in the Adoption Support Plan.<sup>67</sup>

**Support:** foster carers currently receive a range of supports from the Tusla appointed link social worker and through support organisations such as IFCA. In Dribben's study (2016), the absence of access to one to one support was cited as a barrier to adoption; therefore, such supports should continue for adoptive carers.

**Support Groups:** foster carers avail of peer supports groups where available. Peer support offers a safe space for carers to share experiences, learn from each other and offer support to each other. Foster carers have reported the value of such groups and moving from being a foster parent to an adoptive parent was also an inhibitor to seeking to adopt the child in their care.

**Information:** foster carers currently have access to information on the range of issues which impact on foster care, for example, seeking educational supports, access to relevant higher education grants, information on passports, etc<sup>68</sup>. Information should be made available to foster carers who are considering adopting to include the legal difference between fostering and adoption, what the new status of adopter/adoptee means in reality and the range of current supports available.

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<sup>67</sup> CoramBAAF (2016)

<sup>68</sup> Irish Foster Care (2017) Annual Report

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***Ceasing Fostering:*** many foster carers identify fostering as a vocation and the choice of moving from being a foster parent to being an adoptive parent exclusively, can be a barrier to them choosing this route. In the UK, local authorities, and the private fostering agencies, provide for foster carers to continue fostering following a reasonable period after adoption. This permits foster carers to continue to meet their vocation of fostering, and to offer other children a stable family life.

***Training:*** the needs of children who are fostered today and adopted tomorrow do not change, and foster carers will require access to a range of training which supports them in their role as adoptive parents. The Adoption Authority currently offers a directory of services available to adoptive parents. Barnardos also offers supports for children who have been adopted and their adopted parents. However, the emergence of adoptive families who have fostered the child, will require further supports and services. IFCA currently offers a range of support services to foster carers and would be well placed to meet this need.

#### **Beliefs and Values**

Research shows that where agencies have clear policies for processing foster carer adoptions, this ensures a common understanding amongst social work staff, removing the potential for personal bias in the process. Tusla The Child and Family Agency should develop policies and procedures for processing foster carer adoptions, to include clear expectations around financial and other supports and the potential for the carer to continue to foster. The unique circumstances of each case should be taken into consideration. However, the rationale for all decisions must be transparent and made known to the foster carer seeking to adopt.

Where it is likely that a child placed in short to long term foster care and potentially to adoption, the fostering assessment should consider these factors, including motivation of the

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prospective foster carers, if adoption is the ultimate objective.<sup>69</sup> Likewise, foster carers who seek only to foster should be respected in their choice and should not be placed under any undue pressure to adopt a child whom they foster. This change to the former fostering assessments will need to be represented in the recruitment of foster carers into the future. The training of social workers as well as the Foster Care Committee to consider all of the options for the care of children when undertaking assessments and approval status will be essential.

#### **Conclusion**

The 2017 Act is a child-centred piece of legislation that modernises the law governing adoption in Ireland. It gives legislative effect to the Thirty-first Amendment of the Constitution bringing the best interests of the child and the voice of the child to the fore in adoption proceedings. In addition, it promotes the equal treatment of children by removing the automatic restriction on the voluntary adoption of marital children; increasing the age limit for adoption from seven to 18; and allowing for re-adoption. The new legislation extends the eligibility to adopt jointly to civil partners and cohabitants.

A lower threshold test for non-voluntary adoption is introduced, addressing the reality that adoption may be the best option for some children whose parents fail in their duty towards them although there was no comprehensive failure and complete abandonment. Thus, it allows a greater prospect of stability for some children in long-term foster care where it is unlikely that they will return to live with their parents. The parents must have failed in their duty towards the child for a continuous period of 36 months at least. Rather than a waiting period, there is a need during this timeframe for active engagement with, and providing support to, parents to return to be the primary care givers. Alternatively, even in circumstances where reunification is not possible, this support could lead to a contact relationship and a constructive ongoing long-term rapport with fostering where it is in the

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<sup>69</sup> Bond. C. (2017) Paper presented to the Adoption Authority of Ireland.

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best interest of the child. For instance, homelessness can lead to severe circumstances that are unsafe for families and children. A number of children have entered care following a period of homelessness. Support and active engagement are key elements to identify a feasible and appropriate pathway out.

The introduction of post-adoption supports including legislating for open and semi-open adoptions is critical. Traditional adoptions, where all contact with the birth family is severed, could be damaging for some children. It is crucial to provide adopted children with the opportunities to explore and to build their identities where it is in the child's best interests. In addition, there is considerable support leading up to an adoption but children and adoptive families are left adrift afterwards. It is essential to continue providing support to adoptive families after adoption. In particular the lack of financial support post-adoption may act as a deterrent for many families who are in receipt of a foster care allowance but could not afford to lose this payment if adopting the child and could not continue to support the child in the same way financially. This will be of most importance for access to aftercare services, and educational supports where a foster child is adopted close to the age of 18.

Overall, the Act 2017 highlights the importance of interagency collaboration to support families prior to and after adoption in the best interest of the child. The implementation of this new legislation should be examined closely in the context of the impact of the referendum on children's rights, family relationships legislation and developments of the status of the family under the Constitution. Ultimately, it is fundamental to ensure that any operational and policy issues are identified and addressed in order to ensure that all aspects of the law governing adoption reflect modern society.

## **Recommendations**

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1. Birth families should be offered every support to retain their child to live with them in the first instance.
2. Review the current Enhanced Rights provisions to offer greater autonomy to foster carers.
3. Streamline the securing and implementation of Enhanced Rights for foster carers by Tusla and the District Courts.
4. Open or semi-open adoption should be a first consideration for children moving from foster care to adoption.
5. The Government's participation policy, including the Lundy Model, should be employed to elicit the views of children.
6. Trained and experienced professionals only should be engaged to seek the views of children
7. Every child for whom adoption is a consideration should be allocated a Guardian ad Litem.
8. Children who are adopted from foster care should retain a prioritised status for all State support services into adulthood.
9. Children should (where it is in their best interest), continue to have access to their birth parent(s).
10. Children should (where it is in their best interest) continue to have access with their birth siblings.
11. All children in care, fostering and adoption, should be facilitated in Life Story Work, to affirm their identity.
12. Children who are adopted close to the age of 18 years should remain eligible for aftercare supports, including the current access to third level financial support.
13. Foster carers should receive a transitional payment for at least two years to support the transition from fostering to adoption.

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14. Foster carers should receive a range of supports to include: peer support groups, training, information, one to one support, pre and post fostering to adoption.
15. Additionally, foster carers may need to continue to seek the support of foster care support groups post adoption.
16. Foster carers who have adopted should have access to counselling support services.
17. Research into the needs of birth children whose parents adopt should be undertaken to elicit the needs of this group of children and develop services accordingly.
18. Where it is deemed that a child will never return to their birth family, birth parents should be supported in the process of giving consent pre and post adoption. Open and semi- open adoptions should always be considered in the first instance, so as not to sever family ties.
19. Social workers and Foster Care Committees should be trained in a dual assessment process; fostering and fostering to adoption
20. Training should be offered to social workers in the Child and Family Agency's policy and procedures in receiving and processing applications from foster carers to adopt.
21. All decisions must be impartial of the social worker's personal views, and be communicated to the foster carer in a clear and timely manner. The rationale for all decisions must be clear and open to appeal.
22. Consideration should be given to initiating the UK "Adoption Passport" for securing all appropriate services for children, but with a wider range of services to be funded.
23. Consideration should also be given to the establishment of the Adoption Support Fund, similar to that offered in the UK.
24. The length of time from initial application for foster care adoptions in the past five years has varied from a number of months to eight years. Waiting through

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this lengthy process can be deeply frustrating for families. Efficiency of the process and management of people's expectations could be enhanced where a single professional social worker or manager oversees the application from beginning to finalisation. This would also facilitate transparency of the process and consistent delivery of the assessment service nationally.

25. The current timescales for the legal procedures or assessment processes should be reviewed.

The Irish Foster Care Association would like to thank the members of IFCA's Working Group who contributed to this position paper.

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