

An Overview of Adoption Policy and Legislative Change in Ireland

1952–2017

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1. Introduction

The objective for this report was laid out in the **‘Request for tenders for the development of an audit of Irish research and an overview of policy and legislative change in relation to adoption for the Adoption Authority of Ireland’**, published on 15 Feb 2017¹. The approach to delivering this objective involved reviewing literature and research, government policy documents and publications corresponding with the eight amendments that have been made to adoption legislation between 1952 and 2017².

The first Adoption Act in Ireland was passed in 1952. Adoption legislation was amended eight times in 63 years (ARA, 2017) – in 1964, 1974, 1976, 1988, 1991, 1998, 2010 & 2017. In this Overview report, each amendment is described with reference to the drivers underpinning the change and the implications arising from the change.

A discussion of adoption legislation in Ireland has to reference the primacy of the Irish Constitution of 1937. The view of family set out in the Constitution is fundamental to an understanding of adoption in Ireland and, according to Kearney (2012), it has been a hard struggle for adoption to gain traction on the ‘glassy smooth rock-face of the constitutionally protected family’ (p. 26). The recent insertion of specific children’s rights into the Constitution resulting from the 2012 Referendum has widened the scope of adoption for children, while providing protection for children in the balancing and adjudication between children’s and birth parents’ rights (O’Brien & Palmer, 2015).

Similarly, the Marriage Act 2015 which permits marriage of two people without distinction of their sex has also impacted on adoption. Reference must also be made to the Children and Family Relationship Act (2015), which has also widened the lens. This provides legal support and protection for children in their relationships with those parenting them, which may include single parents, civil partners, co-habiting or married parents, a parent’s partner, grandparents or relatives.

¹It indicated that the overview covers the development of adoption legislation, policy and practice since 1952, and up to the start of 2017, including a brief analysis of the origins, impact and implications of the changes.

²A review of literature was undertaken for a duration of 3½ months and included relevant documents of the government and non-government funded organisations which cited Irish adoption research.

These changes reflect a shift in the socio-cultural context, as well as the legislative progress with respect to acceptance of diverse family structures in Ireland in respect of adoption.

While focusing on these changes, this overview also highlights developments in policy and practice issues that have been incorporated into law, and those that have emerged as a result of legislative change. It also incorporates a discussion of adoption issues (e.g. open adoption, search and reunion and post-adoption supports) that have not yet been enacted into Irish legislation. Hence, discussion regarding legislation and policy and practice issues in this Overview are interwoven in a timeline commencing with the Adoption Act 1952 up to the Adoption Act 2017.

2. Adoption Act 1952

2.1 The Commencement of Legal Adoption

The era when the first Adoption Act was passed was characterised as one where secrecy and stigma in respect of birth outside marriage and illegitimate children prevailed (McCabe, 1949; O'Brien, 2010). As a consequence, unmarried women who became pregnant were marginalised and oppressed and were often thrown out of their homes and dismissed from employment (Kelly, 2005; Raftery & O'Sullivan, 1999). There was a general lack of concern and empathy for the women and their children on the part of both Church and State (Maguire, 2002). In addition to a de-facto un-regulated domestic adoption system in Ireland prior to 1952, children were being sent to the USA for the purpose of adoption. These adoptions were carried out in virtual silence and secrecy and there was 'no sense of urgency to initiate legislation that legalises adoption at home and regulates overseas practices' (Maguire, 2002: p. 393). This silence continued until high-profile media coverage shattered official and societal complacency on the practice (Kearney, 2012). The revelations of practices surrounding overseas adoptions were 'embarrassing and Irish national society was portrayed in a demeaning manner within the international community' (Shanahan, 2005: p. 87). This prompted the head of the Catholic Church, Archbishop McQuaid of Dublin, to shut down overseas adoptions until guidelines could be put into place to regulate them. This marked a turning point in Ireland's adoption policy. Whyte, writing in 1971, vividly captures the protracted discussions and negotiations surrounding the introduction of the first adoption law. He highlighted a number of factors that led to the decision to rapidly enact adoption legislation in

1952. These factors included increasing protests regarding overseas adoptions, a campaign by adoptive parents and advocates for legal adoption run by legal adoption societies, and a change in the stance of the Catholic church when safeguards were promised to prevent Catholic children from ending up in Protestant homes. Department of Justice officials formulated the religious safeguards which became an integral part of the 1952 Adoption Act (Whyte, 1971). The Act came into force on 1 January 1953.

2.2 Eligibility and Suitability to Adopt

The terms ‘eligibility’ (for adoption and to adopt)³ and ‘suitability’⁴ (to adopt) are two criteria that are integral to adoption law and practice.

Eligibility criteria included in Adoption Act 1952 in relation to who could be adopted, and who could adopt are as follows. First, the legislation only permitted adoption of non-marital (illegitimate) children or orphans who resided in the State, provided they were not less than six-months old and not older than seven (Barrett, 1952). The term ‘relinquished for adoption’ was a term that was used in practice and reflects that such adoptions were primarily consensual in nature, and occurred within the domain of private law (O’Halloran, 2015)⁵.

Second, the Act allowed the following categories of persons to adopt: married couples living together; the natural parents or a relative of the child; or a widow. Access to adoption was restricted to married couples predominantly. This was at variance with what was acceptable at the time in the USA and UK (Kearney, 2012). This disparity in adoption law, policy and practice between Ireland and these two neighbouring jurisdictions is a feature of Irish adoption that continues to the present day (Palmer & O’Brien, 2018).

³Eligibility (to Adopt): Applicants must meet the eligibility criteria set out in law, which describes those persons who may adopt. If applicants do not come within the classes of persons deemed eligible to adopt, an application to adopt cannot be considered valid and cannot proceed.

⁴Suitability (to Adopt): The 1952 legislation governing adoption required the applicants’ ‘suitability’ for adoption to be assessed and approved (S13.2). However, the Act did not set out specific criteria for the assessment of suitability. In the interests of transparency, agencies generally specify certain suitability criteria in their policy documents, and against which they assess applicants.

⁵The basis on which consents were given has been contested (See Adoption Rights Alliance) and these practices are now the subject of a re-examination as part of the Mother and Baby Homes Commission set up by the Government in 2015 (Commission of Investigation (Mother and Baby Homes And Certain Related Matters) Order 2015).

Third, if the applicants were a married couple, each of them must have attained the age of 30 years or, if they have been married for at least three years, each must be at least 25 years old. In the case of natural parents or relatives of the child, the legal age was set at 21 years.

And lastly, the residency of applicants was an important aspect in making an adoption order. The criteria Stated that, with respect to a married couple, the husband must be an Irish citizen or be a person who had been ordinarily resident in the State during the five years preceding the date of the application.

As regards applicants' 'suitability' for adoption, the 1952 legislation required assessments of suitability, but did not set out any specific criteria for this assessment. In the interests of transparency, agencies generally specified certain suitability criteria in their policy documents against which they assessed the applicants (The Adoption Board, 1953).

Richardson (2003) asserted that the Act was 'framed within the existing social, moral and religious philosophies of the time, reflecting the stigma of unmarried motherhood, the emphasis on secrecy and the fear of proselytising' (p. 14).

2.3 The Impact and Implications of the Act

The Act was seen 'as a private, consensual mechanism designed to facilitate a legal transplantation of a child into the adoptive family' (Shannon, 2010: p. 445). The enhanced security by legalising adoption was suggested to prompt more people to come forward to adopt children (McCabe, 1949). This was evidenced when adoption was legalised in 1952 recording constant increase in the number of adoptions, that is, 381 adoptions ... in the first year, 786 in 1955 and 505 in 1960 (AAI, 2016: p. 41). In 1967 1,493 children or 97% of all illegitimate births were placed for adoption⁶. The striking feature of adoption at this time was that less than 2% of all births took place outside marriage, but an increasing proportion of these children were placed for adoption in the 15 years

⁶AAI statistics present data in respect of the percentage of all births outside marriage and total number of adoptions on an annual basis. The data presented in the two different data sets does not necessarily represent the same children, however. Children recorded as born in one year may not be the subject of an adoption in their year of birth but may be adopted in another year.

between 1952 and 1967. However, the Act did not prevent the practice of ‘sending’ healthy children to America for the purpose of adoption. This practice continued into the 1960s, earning Ireland a reputation, as a ‘happy hunting ground’ (Milotte, 2012: p.12). Kearney (2012) argued that the sole purpose of the Act was to ‘bolster the constitutional model of the traditional family’ by permitting the adoption of children from ‘unconstitutional family units, thus acting as a form of social control and ridding the society of problem children’ (p. 281).

In summary, adoption continued to be operated through religious lenses, and adoption agencies were mainly run by religious orders and denominations. People of different religion to these orders were unable to adopt a child. At this time, there was no State support or provision for the unmarried birth mother to keep her child. Such State support did not come until the unmarried mother’s allowance was introduced in 1973.

3. Adoption Act 1964

3.1 Extending Eligibility

The 1960s saw a sea change in Irish political, social and economic life and this in turn, affected societal attitudes. The Second Vatican Council, with its focus on private conscience, was considered an important factor in the change. There was a general softening of attitudes towards unmarried motherhood and illegitimate children, and adoption was seen as an act of charity for which adoptive parents should be appreciated (Shanahan, 2005). Twelve years after adoption was first legalised in Ireland, the original 1952 Adoption Act was amended by the Adoption Act 1964 (The Adoption Board, 1965). The changes introduced extensions to eligibility in the main. The Act was understood to be a clean-up measure⁷ (Haughey, 1963) but the wording of the new law did not alter the fact that the welfare of the illegitimate child was the sole responsibility of the mother (Houses of the Oireachtas, 1965). Hence, there were continued tensions in adoption and ambivalence towards the role of the mother and the removal of her rights during this era.

⁷Mr. Haughey, Seanad Éireann Debates, December 18, 1963, 297. <https://www.oireachtas.ie/en/debates/debate/seanad/1963-12-18/9/?highlight%5B0%5D=mr&highlight%5B1%5D=haughey>

3.2 The Impact of the 1964 Act

The debates around the 1964 Adoption Act and a second law, the Guardianship of Infants Act 1964, helped weaken the distinction between legitimate and illegitimate children, as well as the negative connotations of what would now be called female-headed households (Shanahan, 2005). The Guardianship of Infants Act has been seen as instrumental in first recognising the welfare of the child as the paramount consideration⁸ (O'Donoghue, 1997). Shanahan, in her analysis of Irish Adoption Policy in 2005, questioned how much this legislation had really advanced the welfare of children. While attitudes towards illegitimacy started to change slowly, there was evidence that prospective adoptive parents were beginning to experience long waiting lists in adoption agencies (Sweeney, 1969). Although, it was not fully appreciated at the time, a turning point had been reached in traditional domestic adoption.

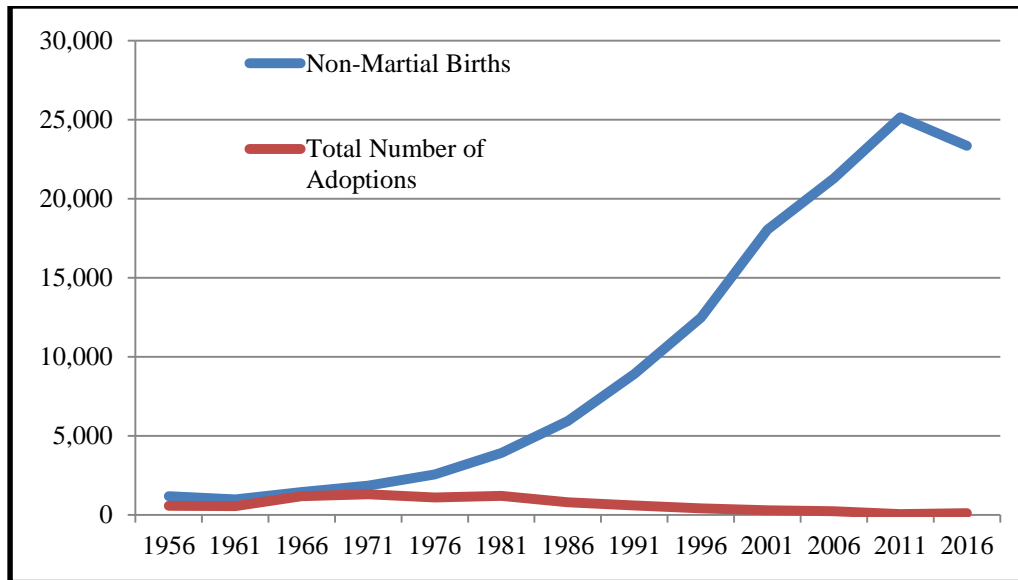
Eight years after the Adoption Act 1964, Ireland joined the European Economic Community in 1973. EEC membership had major impacts across many spheres of Irish society, including adoption⁹. It was associated with major shifts in respect of women's position in society, and this had a direct connection with adoption rates. This development propelled a greater recognition by government, and society in general, that an unmarried mother had a right to be supported by the state in caring for her own child. While it reflected the changes in sexual mores and attitudes towards illegitimacy (O'Higgins, 1993), there were many who believed that placing a child for adoption should be the normal course of action for an unmarried mother, rather than rearing the child herself (Maguire, 2002). Against this background, a State allowance for unmarried mothers was introduced in 1973. However, the stigma associated with birth outside marriage (Kelly, 2005) continued for some time, and continuing high rates of adoption for children born outside marriage were reported for the next decade (Figure 1).

⁸Mr. O'Donoghue, Dáil Éireann Debates, November 19, 1997, 1.

⁹European Convention on the Adoption of Children is an influential instrument and was revised in 2008. <https://rm.coe.int/1680084823>

Figure 1

*Births Outside Marriage and Adoption Rates, 1956 to 2016:
Overview of Absolute Figures for Every 5th year.*



Source: Palmer & O'Brien 2018: Data Presented based on Adoption Authority of Ireland Annual Report, 2016.

4. Adoption Act 1974

4.1 Advancing the Welfare of the Child

The 1974 Act was ground-breaking when it introduced a provision for adoption where adoptive parents and birth family could be of different religions, provided that the person consenting to the order was aware of this before giving consent. The Adoption Act 1974 largely dealt with an issue which arose from a court case (*M v An Board Uchtála and the AG (Supreme Court)*). The case was taken to challenge the religious criteria of the 1952 Act.

The Act further emphasised that in all matters concerning the making of an adoption order, the Board, or a court, should **regard the welfare of the child as the first and paramount consideration**. This legislative change was a major influence in subsequent policy developments

in the child welfare and protection arena (Smith, 2016). Nonetheless, the management of inherent tensions and the balancing of rights between children and their parents continued to challenge stakeholders in adoption for decades to come.

4.2 Eligibility to Adopt

The Adoption Act 1974 permitted a change to the lower age range of children eligible for adoption from 6 months to 6 weeks. A recommendation for this change had been made in Adoption Board reports from 1970 to 1973. In what is believed to be a direct consequence, the number of adoption orders made in 1975 increased to 1,443, up from the starting point of 381 in 1953 (The Adoption Board, 1976). The Act also provided for widowers to adopt, provided that the widower and his wife had previously made an adoption application, he had another child in his care and that the birth mother consented. While this was seen as an improvement in the position of men in adoption, it also reflected the gendered delegation of decision-making and negative attitudes towards the single father.

5. Adoption Act 1976, the Sixth Amendment of the Constitution (Adoption) Act 1979¹⁰ and the Growth of Advocacy Groups

5.1 Key Drivers of Change

The driver for the 1976 Adoption Act was yet another judicial ruling. The Supreme Court had ruled in the McL case that a particular adoption order was invalid because the Adoption Board ‘had not fulfilled its statutory obligation to be satisfied that the mother understood the nature and effect of giving consent to adoption or her right to withdraw consent up to the making of the order’ (DoH, 1984: p. 3).

¹⁰The Sixth Amendment of the Constitution (Adoption) Act 1979 is an amendment to the Constitution of Ireland intended to ensure that certain adoption orders would not be found to be unconstitutional because they had not been made by a court. It was approved by referendum on 5 July 1979 and signed into law on 3 August 1979.

The 1979 Amendment Act specified that ‘orders made by the Board were no longer open to challenge on the grounds that the Board is exercising a judicial function’ (Shatter, 1997: p. 499). Shatter (1997) explained this came into being as a result of an on-going threat and the 1979 Act copper-fastened the role of the Adoption Board in the making of adoption orders.

5.2 Impact and Implications of the 1976 and the 1979 Acts: Policy and Societal Change

Although the changes introduced in the 1976 Act were underpinned by the 6th Amendment of the Constitution (Adoption) Act 1979, Kearney (2012) traced how this ruling had caused disquiet in the adoption community, which was changing quite dramatically at this time. In this context, a campaigning role was beginning to emerge among the various stakeholders involved in adoption and single parenthood. For example, the organisation Cherish was established in 1972 with the aim of supporting single women to keep their children¹¹. The organisation – Children First had been established in 1974 to promote adoption law and practice reform. Following this, the Federation of Services for Unmarried Mothers was formed in 1976¹² and in the same year, the first Adoptive Parents Association of Ireland¹³ was founded to seek to have the rights of adopted children placed on an equal footing with other children. Many of these organisations exist to the present day, though their names and missions have changed somewhat over the years.

Societal changes continued to impact not only on adoption but on the welfare of children, and especially children in State care. This was evident through various reports that were published during this time period –The Kennedy Report in 1970 and the CARER report (1972), both of which advocated for change in child care services, and Task Force Report in 1980. Around the same time, the Minister for Health set up a *Review Committee on Adoption Services* which reported in 1984

¹¹O’Dea Richards who formed Cherish explained on the 40th anniversary of Cherish in 2012 that ‘by 1977, the founders of Cherish had secured a Dublin headquarters, enlisted Mary Robinson as their president, and Eamon Casey as a sponsor, among others. O’Dea Richards appeared on the Late Late Show, and won an Irish Times Person of the Year Award in 1975. In 1987, after many years of campaigning, Cherish celebrated the Status of Children Act, which abolished illegitimacy. Cherish is now called One Family. Accessed at:<http://www.irishexaminer.com/lifestyle/features/alone-we-stood-210918.html>

¹²In 1976 various *agencies* working with *unmarried parents* formed a *federation* to channel efforts to improve the quality of the *services* provided to *unmarried parents* and their children. This organisation still exists and is now called Treoir.

¹³Adoptive Parents of Ireland retains its original name.

to examine the standards, practices and laws in regard to adoption and to make recommendations for their improvement or amendment as considered necessary.

Corresponding with the publication of the 1984 Review, there was evidence of a shift in adoption patterns. The numbers of children being relinquished for adoption in relation to births outside marriage (Fig.1) was declining and the number of family adoptions was growing. In 1977, there were 99 family adoptions, including adoptions by relatives/family members other than the birth mother. By 1989, 188 adoption orders involved the child's natural mother and her husband (The Adoption Board, 1977, 1989). Also, 'there was no need for the mother to adopt her own child to improve the child's legal position' (Conway, 2000: p. 101) following the enactment of this legislation.

In addition, a change was also seen in adoptive family structures, with the emergence of step-parent adoptions (Loftus, 2004; Palmer & O'Brien, 2018), even though its rise was slower when compared with the UK and USA where it was quite common from the mid-1950s onwards (Kearney, 2012: p. 278). However, this slow development is not surprising when the high rates of adoption vis-a-vis birth rates are considered, the dominance of the traditional family structure and the lack of divorce in society at this time.

This period also saw campaigning for the abolition of illegitimacy, and the enactment of the Status of Children Act in 1987. The focus on children's welfare was undoubtedly influenced by work occurring at UN level, which was subsequently instrumental in delivering the UN Convention on the Rights of Children in 1989.

6. Adoption Act 1988

6.1 Opening Up Adoption as an Option for All Children?

The driver for change leading to the introduction of the Adoption Act 1988 can be traced back to a rather controversial (for the time) recommendation made in the 'Review of Adoption Services' (1984). This stated that 'children's eligibility for adoption should not be determined on the basis

of the marital status of his parents' (p. 11) and that there should be provision for adoption of children in exceptional circumstances, even if it is against the wishes of the birth parents and irrespective of marital status. This concept can be traced to the thinking of the permanency movement, which was influential in both the UK and the USA where policymakers moved towards enacting legislation geared towards the termination of parental rights and freeing of children for adoption.

The situation of children in care in Ireland came into sharp relief when the Adoption Review 1984 identified many children who were in care for longer than five years, many of whom came from marital families but had limited chance of been reunited with their families. This was similar to the UK and the USA child welfare trend. It resulted in a situation where Irish policymakers were faced with an increasing numbers of children entering and staying in care, an increasing number of adoptive applicants who were unsuccessful in their quest to adopt and a decreasing number of children available for legal adoption. What was occurring in the UK and USA influenced professionals and policymakers in Ireland, but the constitutional protection of the family based on marriage and parents' role was a dominant counterbalance. In fact, it would take a further 25 years until the enactment of the Adoption Amendment Act 2017 before wider provision could be made for many of the children in the care system in respect of adoption. This issue is considered again in a later section of the report.

In the meantime, an Adoption Bill 1986 was proposed to enable adoption for children of marriage and to provide for the freeing of children for adoption. This Bill fell with the government and Alan Shatter, TD introduced a Private Members Bill in 1987. While Shatter's Bill was defeated, it was on the basis that the government was set to introduce its own Bill which it did in June 1987, eventually becoming the 1988 Act. The potential for a constitutional challenge was considered on the basis that it was contrary to parents' rights and the status of the family based on marriage. A decision was made by the President to refer this Act to the Supreme Court. The constitutionality of the Bill was upheld and the court declared that the Act was not repugnant to the Constitution (O'Halloran, 2010).

6.2 1988 Adoption Act – Extending Eligibility to a Greater Range of Children?

The 1988 Act extended the eligibility categories for children who may legally be adopted in strictly defined circumstances, e.g. children of marriage, foundlings, abandoned children and children in long-term foster care where there has been no placement of the child for adoption at the time of reception into care of the child (The Adoption Board, 2009). The Adoption Act 1988 also gave a father the right to petition for guardianship of an illegitimate child in cases where the mother refused to extend it to him. The mother was invariably given the privilege of characterising the nature of this relationship. Thus, despite considerable efforts to develop rights for fathers and to make children's welfare a 'central concern in adoption, a mother-centred philosophy of family predominated through the 1980s' (Shanahan, 2005: p. 99).

6.3 Implications of the 1988 Change: From Private to Public Adoptions

The 1988 Act provided for the enactment of public adoptions for the first time. Up to this time, all domestic adoptions were considered private and consensual (O'Brien & Palmer 2016a; 2016b). This Act also provided for children of marriage to be adopted, but only when the child is an orphan, or in circumstances in which the parents have been branded legally as failures (Shannon, 2004). Adoption was not available to married parents, even if they wished to consent to adoption. Increasing numbers of single unmarried parents continued to opt *not* to relinquish their children and if adoption was available to married parents, it is highly likely that this trend would have been observed also for them. The implications of the state freeing children for adoption against parental wishes, and the adoption of children of marriage were to become central almost 30 years later in the Children's Referendum 2012 and the Adoption Amendment Act 2017.

From the late 1980s, adoption practice began to change as part of wider changes occurring in Irish society. The children who were adopted from early 1953, who were now grown up were very much part of a society that was undergoing rapid social change. A number of these children, now adults were instrumental in the development of a representative organisation for adopted people called

the Adopted People's Association (APA) in 1990¹⁴. The association focused on the need for a legislative change to ensure the dignity, maintenance of history and equality of adopted people (Adoption Ireland, 2003). APA had been central in advocating for justice for women incarcerated in Magdalene laundries and was to the fore in opening up stories of mistreatment in mother and baby homes, as well as issues related to consent and illegal adoptions in Ireland.

7. Adoption Act 1991

7.1 The Start of a New Era in Irish Adoption with Intercountry Adoption

Momentous political changes took place in Eastern Europe in 1989 with the collapse of the 'Iron Curtain'. One of the consequences was the highlighting of the plight of children in residential institutions in Romania. Many people, wishing to save children from the conditions they saw on TV, travelled East and adopted children. However, on their return to Ireland, they were in a legal limbo with respect to the recognition of the adoption orders. The Law Reform Commission published a 'Report on the Recognition of Foreign Adoption Decrees' (LRC, 1989), and referenced the need for a process whereby children adopted abroad by Irish parents could be legally recognised in Ireland. Hence, the Romanian situation and the subsequent policy development process became one of the key drivers towards the Foreign Adoption Act 1991 which provided for intercountry adoptions.

7.2 The Eligibility Criteria to Adopt

An important provision of the 1991 law was related to the setting up of a Register of Foreign Adoptions (Shatter, 1997). This Act also gave applicants a statutory right to an assessment home study process in respect of determining their eligibility and suitability to adopt. The Act also made provisions for single and separated persons to adopt. It dropped the lower age limit to 21 years and made no reference to an upper age limit (DHC, 2005). This latter aspect would prove controversial in decision-making in respect of assessment practices and granting of 'declarations of suitability' to adopt (Greene et al., 2007; O'Brien & Richardson, 1999). The 1991 Act brought forth a

¹⁴The Adopted People's Association was re-launched and called the Adoption Rights Alliance in 2009.

difference in the application of eligibility and suitability criteria between domestic and intercountry adoption (Conway & O'Brien, 2004).

7.3 Impact and Implications of the Foreign Adoption Act 1991

An analysis of the impact and implications of the 1991 Act necessitates an overview of intercountry adoption in the period 1991–2010. This discussion focuses predominantly on The Hague Convention, stakeholder concerns and gaps in legal provision; intercountry adoption service provision; the relationship between Ireland's legacy as a sending country and its evolution to its status as a receiving country; outcome studies and, finally, the decline and fall off in the numbers of intercountry adoptions.

7.4 The Hague Convention 1993 and Gaps in Service, Policy and Legal Provision

The Hague Convention on the 'Protection of Children and Cooperation in Respect of Intercountry Adoption' was finalised on 29 May 1993. This convention aimed to ensure that intercountry adoption took place in the best interests of the child involved and with respect for his or her fundamental rights as recognised in international law and to prevent the abduction, sale or traffic in children. Ireland signed the Convention in 1996 and ratified it 13 years later in January 2009.

Even though the ratification was the first stage of Ireland's legislative process and was welcomed (O'Brien, 2009), there was also a growing concern about intercountry adoption among adoption professionals in Ireland (McCaughren & Sherlock, 2008; O'Brien, 2009) and overseas (Evan B Donaldson Institute, 1999). This was related to adoption ethics, market forces (Freundlich & Phillips, 2000), an apparently growing consumer-driven culture in adoption practice (Triseliotis et al., 1997) in intercountry adoptions where the children who should be at the centre of this process may not have a direct voice in these practices. According to Greene, et al. (2007: p. 320),

‘... there was a strong belief among Principal Social Workers that intercountry adoption in Ireland was being driven by the applicants’ agenda and that they were a vocal and a politically influential group in Irish society ... and neither are the current procedures sufficiently robust to ensure that the welfare of the child to be adopted is promoted at all times’.

A situation had emerged between 1991 and 2010 (when legislation to implement The Hague Convention was enacted in Ireland) whereby the assessment of potential adopters and the registration of children adopted from overseas were regulated, but there was a major void in the regulation that surrounded the mediation of the adoptive placements in third countries (O’Brien, 2009). This remained a matter of deep concern for many professionals, adopted people and adoptive parents alike.

7.5 Stakeholder Concerns

7.5.1 Assessment Practices

A report was commissioned by the Minister for Health in 1998 as a result of extreme dissatisfaction by some overseas adoptive applicants with their assessment process (O’Brien & Richardson, 1999). The report traced the development of the intercountry adoption assessment process since the enactment of the Adoption Act 1991 and recommended the introduction of a standardised framework for assessment for intercountry adoption, which was developed and delivered in 2000 (Department of Health, 2000). Subsequently, a ‘Guide for Practitioners in Domestic Adoption’ was commissioned by the Adoption Board (Conway & O’Brien, 2004). The focus of both reports was to make children’s needs central during the decision-making process, to make the process fair and transparent for adopters, and to safeguard children through adoption. This focus implied a rigorous, quality-oriented process.

7.5.2 Outcome Studies

A striking aspect of adoption research in Ireland is that little or no outcome research has been conducted with adopted children. One outcome study was undertaken by Greene et al. (2007) who reported that most of the children adopted from overseas appeared to be doing well and overcoming problems after arrival in Ireland. The majority of children in the study responded well to their new parents and showed remarkable powers of recovery from institutional care. However, almost all the adoptive parents (80%) came to adoption primarily to meet their need for a child. They chose intercountry adoption ahead of foster care because they considered that fostering in Ireland could not provide sufficient security for them or for the child. Greene's report recommended significant changes in adoption services and recommended that more outcome and longitudinal studies be conducted in this field.

7.5.3 From Being a Sending to Becoming a Receiving Country

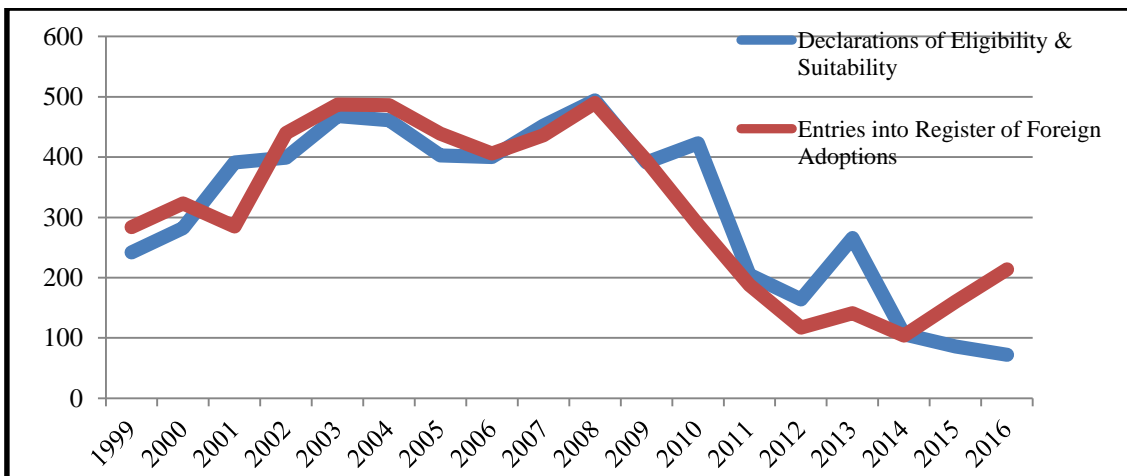
The history of intercountry adoption in Ireland can be divided into two phases, when first we were a sending country and later a receiving country. The connection between these two deserves attention. From the late 1940s, Ireland can be described as a sending country because Irish children were sent abroad, mainly to the United States, for the purpose of adoption. This scenario was well covered in Milotte's (2012) investigative work, which had an enormous impact on Irish society (O'Brien & Pavao, 2014; Redmond 2018). Milotte's research suggested that at least 2,400 Irish children were thought to have been adopted by American families from the 1940s to the 1970s. These intercountry adoptions first began to occur at a time when there was no legislative regime in place for adoption in Ireland. As discussed earlier, the Adoption Act 1952 was introduced against this backdrop (Milotte, 1997). In a complete reversal of the situation, 5,021 children have been adopted into Ireland through intercountry adoptions between 1991 and 2016 (AAI, 2016). There appears to be limited ability, however, to make connections between Ireland's history as a sending country and the more recent experiences of Ireland as a receiving country (O'Brien & Pavao, 2014).

7.5.4 Increase and Decline in Trends in Intercountry Adoptions

Since 1991, international adoptions represent the largest group of non-family adoptions in Ireland (Palmer & O'Brien, 2018). The interest in intercountry adoption as an option in Ireland and the increase in intercountry adoption rates between 1991 and 2010 have been shaped by many external factors (Green et al., 2007; O'Brien, 2009; O'Brien & Richardson, 1999), with the most prominent being the demise of domestic adoptions. The activity level of international adoptions is presented in Figure 2.

Figure 2:

The Rate of Intercountry Adoption in Ireland, 1999-2016.



*Source: Palmer & O'Brien, 2018 –
Based on Adoption Board Reports and Annual Reports of
Adoption Authority of Ireland, 1999 to 2016.*

8. Adoption Act 1998

8.1 Preventing Illegal Adoptions

The 1998 Act made it illegal for a birth parent to directly place the child with a stranger (Shannon, 2003). It prohibited private adoption placements (The Adoption Board, 2000) where birth mothers

were introduced to prospective adopters by a third party during the pregnancy or after the birth, and then placed the child directly with them. Hence, this Act helped to overcome the fears of third party involvement in the planning/making of placement.

8.2 Evolution of Fathers' Rights

The 1998 Act provides a legal framework which necessitated consultation with the birth father in relation to the proposed adoption of his child. In a significant case (*Keegan v Ireland*), a judgment by the European Court of Human Rights and Fundamental Freedoms was delivered in May 1994 which addressed the position of a natural father of a non-marital child in the Irish adoption process. As a consequence, the Adoption Board noted in the same year that while changes were effected in its practice and in the practice of agencies in response to the judgment, there had been no change in the law (The Adoption Board, 1996). The Adoption Act 1998 provided a new statutory framework which involved consulting the father of a child born outside marriage before placing the child for adoption. In addition, the legislation also allowed the adoption to proceed where the father could not, after reasonable efforts, be found or identified. This legislation also enabled the father to apply for guardianship or custody of the child should he so wish (DoHC, 2003; Traynor, 2017). Up to that point, fathers were largely invisible in the adoption process. As the role of fathers in adoption significantly improved following the enactment, it became vitally important for birth fathers to have their name entered in the Register of Births in the interests of the welfare of the child. Overall, the position of the birth father was strengthened with this Act.

9. Adoption Act 2010

9.1 Consolidation of Change

The Adoption Act 2010 was enacted at a time when there was a major decline in the number of intercountry adoptions in Ireland. Several local reasons, cited by Hanratty (2013) were identified for the decline, including the increased regulation of and changes to previous practices in intercountry adoption, thus making it more difficult for prospective adoptive parents to adopt internationally. Hanratty also showed that the two-year time limit, with the possibility of a one-

year extension, on Irish declarations of suitability introduced in the Act resulted in many adopters failing to effect an overseas adoption during the currency of their declarations.

The 2010 Act incorporated and consolidated many of the provisions of the previous Adoption Acts such as the traditional adoption where a single mother places her child for adoption (Part 3 of the Act); the adoption of children from a marital family (Part 7 of the Act) and foreign adoptions where children are brought to Ireland from overseas (Part 8 of the Act).

In addition, the Act also established the Adoption Authority of Ireland (AAI), a successor to the Adoption Board, as a separate corporate entity (AAI, 2011).

9.2 Implications of the Adoption Act 2010

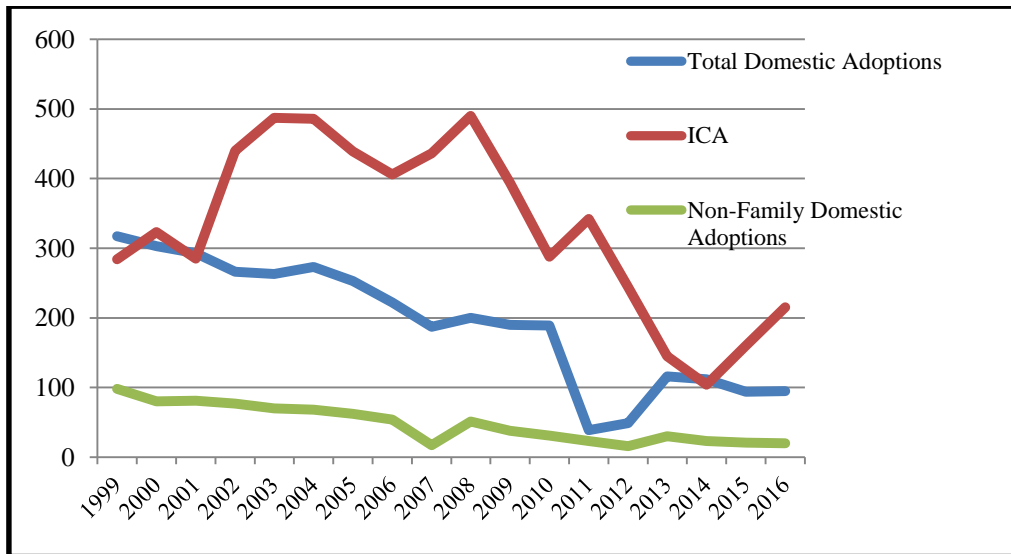
9.2.1 Regulation of Intercountry Adoption: A Children's Rights Agenda

The enactment of the Adoption Act 2010 encompasses the requirements of The Hague Convention and enabled ratification to proceed (Cantwell, 2013). The thirteen-year delay between Ireland signing The Hague Convention and the enactment of the legislation was a major concern to many stakeholders, as there was the scope for practices to develop that were not particularly child centred in the interval. Those in favour of intercountry adoption argued that by rescuing children from institutions, prospective parents and families could improve children's overall life chances, and thus in this way, safeguard children's rights (Bartholet, 2011). On the other hand, children's rights campaigners argued that intercountry adoption reflected the demands of childless couples, to the extent that a culture of entitlement had emerged (Lohan et al., 2014). Over time, the concerns of policymakers, politicians and advocacy groups for a cohort of children in the Irish care system, alongside a more general desire to place children's rights and child protection more centrally in legislative processes, drove the children's referendum in November 2012. The successful referendum led to the insertion of clauses into the Constitution relating to children's rights. The amendment of the Constitution led to subsequent legislative reforms through the provision of the Adoption (Amendment) Act 2017, thus paving the way for extending adoption as an option for children in care.

9.2.2 A Changing Profile of Domestic Adoption

In addition to the changing face of intercountry adoption presented in Figure 2, and in the discussion above, domestic adoption had also changed (Figure 3).

*Figure 3:
Total Domestic Adoptions, Non-Family Adoptions and ICA Adoptions
from 1999 to 2016*



Source: Palmer & O'Brien, 2018 – based on Adoption Reports 1999 -2016.

The changes illustrated in Figure 3 show the shifting contexts including the disappearance of non-family related domestic adoption and the emergence of intercountry adoption as the dominant form of non-related adoption in Ireland between 1991 and 2016. Thus, the landscape of adoption has continued to change.

10. Adoption (Amendment) Act 2017

10.1 Enacting a Child Centred Approach?

The Adoption Act 2017 paves the way for adoption of any child, regardless of the marital status of his/her parents and opens up the possibility of adoption of more children from the care system (McCaughren & McGregor, 2017; O'Brien & Palmer, 2015). The Act gives effect to Article 42A (Children) of the Constitution, in so far as it relates to adoption. This moves Ireland closer to UK and USA adoption practice in that it extends the system for freeing children for adoption and thus positions adoption more as an adjunct to the care system (Palmer & O'Brien, 2018). However, major differences still exist in what is legally possible. The 2017 Act provides for dispensing with parental consent to adoption in circumstances where the High Court is satisfied that the parents of a child have failed in their duty towards that child for a continuous period of 36 months, or more and where it is considered likely that such failure will continue and where adoption is considered to be in the best interest of the child. In addition, the 2017 Act also provides for a number of eligibility changes in adoption which are discussed below.

10.2 Changes in Eligibility and Suitability to Adopt Criteria

First, the step-parents will now be permitted to adopt their step-child without the requirement for the child's other parent to adopt their own child. The legal status of the parent will not change and only the step-parent will become an adoptive parent. This progress was seen by O'Halloran (2015) as both the irony and the level of transformation underway in Irish society in respect of adoption where the birth mother's adoption of her own child reflected a move from birth mother as donor to applicant. Second, Section 20 of the Act now enables the Adoption Authority to make an adoption order in respect of civil partners, or a couple who have been cohabiting for over three years, provided they have been assessed as eligible and suitable to adopt.

11. Further Issues in Adoption and Conclusion

11.1 Adoption Service Delivery

The arrangements for the provision of adoption services have changed enormously in Ireland over time (Palmer & O'Brien, 2018). From the inception of legal adoption in 1952, domestic adoption services were provided in the main by voluntary adoption societies (Conway, 2000; Darling, 1977). Many of these services are now closed and have been replaced with public bodies/and to a smaller extent 'not for profit agencies'. This shift in service provision started with the enactment of the Foreign Adoption Act 1991. Nonetheless, adoption resided in a peripheral position in the State agencies, and was generally viewed as the 'Cinderella' of the child welfare system (O'Brien & Richardson, 1999). A limited social work service was provided that focused predominantly on intercountry adoptions and search and reunion services (Conway & O'Brien, 2004). Arising from the 2017 legislative reform, adoption is moving to a more central position within the child welfare system, thus necessitating further restructuring of social work service delivery models.

11.2 Adoption Information and Tracing Legislation

In the Adoption legislation from 1952 to 2010, no provision was made for adopted people to know that they were adopted or to specify the grounds on which they could search for or obtain information on their origins. It is known that not all adoptive parents inform their children that they are adopted (DoHC, 2005) and again, although this is clearly not in the child's interests, no condition regarding the child's right to this information can currently form part of an adoption order (CIAA, 2009). There are major implications for adopted people in relation to hereditary medical conditions, apart from the obvious violation of the basic human rights of an adopted person. The Adoption Rights Alliance recommends that a statutory provision be introduced to provide the right for adopted people to know they are adopted (ARA, 2011).

11.2.1 The Pathway for Search and Reunion

Search and reunion was not envisaged in the Adoption Act 1952, as the Act was based on the premise of the ‘clean break and closed’ adoptions¹⁵. The Adoption Review in 1984 briefly referenced ‘search’ in its report, when it discussed the need for ‘a greater openness about children born out of wedlock’ and recommended birth certificates to be made available (DoH, 1984: p.88). However, nothing more was said about the issue in other adoption literature during this time. In 1989, the ‘Guidelines for Policy and Disclosure of Background Information: Adoption and Foster Care Placements’ was published by professionals involved in adoption (CCIAA, 1997). Moreover, the incorporation of more openness at a practice level was also beginning to garner attention at a legislative level (O’Brien & Mitra, 2015). This was seen in 1994 when the High Court held that if an adopted person sought information under section 22 (5) of the 1952 Act, the Adoption Board was obliged to inform itself of the full circumstances of each individual case and to decide whether or not to release or withhold the information sought. In practice, the Adoption Board generally looked for a report from the adoption agency involved in the initial placement prior to deciding whether or not it was appropriate to make an order releasing information under Section 22(5) of the Adoption Act 1952. This information disclosure may be the right of a child to know the identity of his or her birth mother, but a Supreme Court decision declared that this right might be restricted by a birth mother’s right to privacy and confidentiality (DoHC, 2005). Hence, this has become an on-going challenge for adoption professionals and prevents information from being shared with the child.

In 1999, the Adult Adoptees Association launched a Contact Register on the internet, sponsored by Tesco, where birth relatives who wished to get in contact with one another could register on this confidential database. In the same year, the Adoption Board released copies of 45 original birth certificates to adoptees and arranged 27 reunions. At the same time, there were repeated calls for a National Contact Register in the Adoption Boards’ reports (1996, 1997). The introduction of a National Contact Preference Register was finally announced alongside a national media publicity campaign in April 2005 (AAI, 2013). The Unit processed 628 applications from January to

¹⁵ A ‘clean break /closed adoption’ is characterised by identity information not being shared between adoptive and birth families and no contact occurring between any of the parties after the legal transfer of the child is realised from one set of parents to another.

September 2014, resulting in 64 ‘matches’ (O’Brien & Mitra, 2015). While this does not grant access to adoption information, it created a choice for adopted people and birth parents to register their preference for contact or not. Adopted people’s right to their original birth certification, however, remains a contested issue with slower legislative progress on it. In 2001 the first *Adoption Information and Tracing Bill* (DoH, 2001) was introduced to Dáil Éireann. The proposed Bill would have criminalised adopted people if they tried to contact their natural parents without their prior expressed permission. After a successful campaign by the Adoption Ireland organisation, and a level of public outcry, the Bill was shelved in October 2003 (Adoption Rights Alliance, 2014). It was a further 14 years before the *Adoption (Information and Tracing) Bill 2016* was published on 25 November 2016. The 2016 Bill has replaced the proposed ‘statutory declaration’, proposed as part of a previous Bill with an ‘undertaking’ which, according to the Adoption Rights Alliance, (2017) would still have the effect of introducing statutory discrimination against adopted people. To date, this Bill has not been enacted. Time is of the essence for many involved in searching in adoption and therefore there is an urgent need to develop processes in which differences in position are resolved and legislative progress can be achieved.

Alongside legislative change in respect of search and reunion, there is also a perceived need to place openness practices in adoption on a statutory footing. Openness in adoption generally refers to practices that involve children under 18 years being involved with their two families –birth and adoptive. In 1989, the Adoption Board noted and welcomed the trend and discussed how an increasing number of agencies were engaged in practices whereby adoptive and birth parents were meeting during the adoptive process. This showed that at a societal level, ‘greater openness in adoption began to be understood as occurring along a continuum with open communication among the parties at one end, to no contact at the other’ (O’Brien, 2013: p. 22). This change was also connected to the changing family structures and diverse parenting in Irish society. O’Halloran (1994) noted that, arising from this practice, the aura of strict secrecy which has traditionally shrouded the adoption process has begun to lift. In 2006, the Adoption Board report noted that some agencies were involved in on-going contacts by facilitating on-going contact and openness through exchange of letters and photographs between birth and adoptive parents once or twice a year. This development has been captured through research studies conducted by McCaughren (2010) and McGrath (2012). However, despite greater openness occurring within the adoption

field, there is still no legal provision allowing the attachment of a contact arrangement to an adoption order. The changing face of Irish adoption, and especially the likely increase in adoption for children in the care system, will require legal provision to facilitate on-going contact. The development of a legal mechanism, however, while not impossible, is likely to be highly complex and difficult to achieve and examples of good policy, practices and laws from other jurisdictions could be used as a basis for this development.

11.3 Conclusion

In this overview, legal, policy and practice changes and continuity in Irish adoption from 1952 and 2017 have been mapped. The development of adoption law, policy and practice reveal how change and continuity is often ‘discursively dependent’ where the framing of a social problem in one era sets the agenda, language, and framework for debate in future periods.

Even though there has been a lag between policy and practice, social policies and law have been involved in the changing social construction of family including how ‘motherhood,’ ‘fatherhood,’ and ‘childhood’ are perceived. This can be seen in three major developments, including the shift from consensual to non-consensual adoptions; the dramatic change in Ireland’s adoption history from being a sending country to being a receiving country; and the importance of acknowledging identity, genealogical connection and recognising that decision-making in adoption has trans-generational repercussions.

In outlining this chronology of adoption policies and changes, it is evident that a particular national vision of children, women, and family has been heavily influenced by international norms and policies, e.g. UN Convention on Children’s Rights, the Hague Convention. Nonetheless, it has illustrated the State’s adjudication and translation of international human rights, norms, and principles and how these acts of interpretation alter historical categories of family and childhood. For example, the passing of the Adoption Amendment Act 2017 paves the way for a significant change in respect of adoption within the Irish care system in that the Act places adoption as an adjunct to the care system (O’Brien & Palmer, 2015, 2016a; 2016b, Palmer & O’Brien, 2018). This major shift requires careful consideration at a policy and practice level if best outcomes are to be realised for some of the most vulnerable children in Irish society. The debate needs to include

those individuals affected by and responsible for legislative change, policy formation and identifying best practice and its implementation.

In the adoption arena, we need an acute awareness of competing discourses, inherent tensions involved in balancing the rights and needs of different people, including children, and the extent to which power has been central to many of the processes, structures and relationships. In moving forward, we must be aware of the important lessons to be learnt from the past and that changes in one context influence and are influenced by what is occurring in others. Finally, at a societal level, there is greater appreciation that adoption is a process and not a single event and that there are life-long and generational implications for the individuals, families and communities involved.

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