

**Adoption Bill 2009**  
**Barnardos Submission to the**  
**Joint Oireachtas Committee for Health and Children**  
December 2009

Barnardos Post Adoption Service has been running an independent and confidential service to adopted people, birth parents and adoptive parents since 1977. Over the years hundreds of people have used this service to talk about their experiences in adoption and to seek advice on a range of issues. It provides a service to those matched on the National Adoption Contact Preference Register who wish to avail of an independent agency for counselling, group support and mediation. Since September 2007, the Post-Adoption Service also works with children who are adopted from abroad and their adoptive parents. 164 new adoptive families have used this service in 2009.

This service is funded by the HSE in the Dublin mid- Leinster region. It is the only service of this nature in Ireland and currently provides:

- A national post adoption help-line and e-mail advice service for adopted children and young people and parents.
- Individual counselling for children and families including direct work with children- 108 individual sessions have been held with adoptive families and their children during 2009.
- Support and information meetings for adoptive parents.
- Training and workshop events for parents

### **Introduction**

Barnardos welcomes the introduction of the Adoption Bill 2009, published in January 2009 by the Minister for Children and Youth Affairs. The Bill represents the consolidation of legislation on adoption and the placing of standards in adoption on a statutory footing. Barnardos firmly believes that this Bill creates an opportunity for promoting the rights, welfare and protection of children in adoption processes and must provide the strongest possible wording on all measures to ensure the implementation of such standards.

Barnardos also welcomes Ireland's ratification of the 1993 Hague Convention<sup>1</sup> and the incorporation of this important instrument into Irish Law. Ireland has seen a big increase in the number of children being adopted from overseas and it is vital that high standards of protection and care are applied to these children both before and after their adoption by an Irish family.

While welcoming the Adoption Bill, Barnardos continues to have concerns in relation to a number of provisions. We are particularly concerned by gaps in post-adoption service provision for adopted children and the failure of the current draft of the Bill to address this. While acknowledging the identification of the Child Care Act 1991 by the Department of Health and Children as addressing service provision for these

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<sup>1</sup> The Hague Convention of 29 May 1992 on Protection of Children and Co-Operation in Respect of Intercountry Adoption

children, Barnardos believes that dedicated post-adoption services are required to adequately support children who have been adopted, particularly those who have been adopted from abroad.

Barnardos believes that there is considerable opportunity to strengthen the current Adoption Bill before it is signed into law, providing the best possible statutory protection and support for adopted children in Ireland. It is essential that Ireland guarantees the integrity of the processes which establish the adoptability of a child adopted in Ireland. As a country that placed children into intercountry adoption in previous generations we must pay particular attention to this requirement.

### **Best Interest Principle**

Article 21 of the UN Convention on the Rights of the Child<sup>2</sup>, Article 4 of the European Convention on the Adoption of Children<sup>3</sup> and Article 1 of the Hague Convention all place specific obligations on states to ensure that the best interest of the child is the paramount consideration in all decisions concerning the adoption of children.

Barnardos considers that the best interests of the child must form the basic underlying principle of the Adoption Bill. We are concerned that the language in Section 19 of the Bill represents a dilution of this principle, stating that the authority or court deciding on matters of adoption “shall regard the welfare of the child as the first and paramount consideration.” Given the significance of the proposed legislation and its fundamental role in shaping Irish adoption policy and practice for the foreseeable future, Barnardos considers the failure to incorporate the language outlined in the relevant European and international legislative frameworks a retrograde step. We urge the Government to amend the Bill to incorporate the principle of best interest of the child in Section 19. This preferred term is used in other sections of the Bill.

Barnardos also considers it vital that the Adoption Bill provide for the inclusion of the voice of the child in any decisions affecting their adoption. The 2006 Baby Ann Case<sup>4</sup> provides an important reminder of the necessity of ensuring that the voice of the child is independently represented before the new Adoption Authority and before the Courts, particularly in contested adoption cases. The child’s views must be represented independently of all other parties in the proceedings to avoid any possible conflict of interests.

It is the opinion of Barnardos that in order for adoption to be a truly child-centred service, the best interests of the child must be placed at the heart of the Adoption Bill and statutory provision made for the inclusion of means through which the voice of the child can be best represented in adoption procedures in an independent way. This principle should be adopted throughout this legislation in a child centred way and no limits should be placed on a child’s right to express an opinion or give a view.

### **Constitutional Amendment on Children**

Section 23 Of the Bill sets out the category of children that can be adopted. This bill does not provide for the adoption of children whose parents are married to each other except under the extremely restrictive provisions of the Adoption Act 1988.

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<sup>2</sup> UN Convention on the Rights of the Child, General Assembly Resolution 44/25 of 20 November 1989

<sup>3</sup> European Convention on the Adoption of Children (Revised) 2008, Council of Europe Treaty Series No. 202

<sup>4</sup> N. & anor. -v- Health Service Executive & ors, Supreme Court Appeal Nos. 273 & 283/06

The work of the Joint Oireachtas Committee on the Constitutional Amendment on Children has been ongoing since 2007 and Barnardos has issued a report<sup>5</sup> and a number of submissions on the matter. In relation to adoption, it is clear to Barnardos that a constitutional amendment is categorically required to ensure that a balance between children's and parent's rights is clearly set out at the highest level of Irish law. This is crucially important in the adoption process where the needs of the child must be the fundamental guide to adoption practices and outcomes and the Adoption Bill should be appropriately amended once such a change has been made to the Constitution. A child of married parents who is in the long term care of the State and living with foster-parents who wish to secure the child's future with their family as a full and integral member of that family must have that opportunity available to them.

### **Parental Consent**

Barnardos welcomes the provision of Section 18 of the Bill in relation to dispensing with the need to consult the father in adoption cases. It is also important to provide for the HSE itself to be in a position to apply to the High Court for an order to dispense with parental consent where that application would be in the child's best interests. Time delays in resolving these matters are never in the child's best interest and consideration should be given to the insertion of some time limits on the right of a parent to withdraw consent. In the Baby Anne case the withdrawal of the consent of the birth mother was first signalled when the baby was 9 months old but the case was not fully determined until the child was 2 years old. It is not helpful for adoptive parents to have to be the ones to lead out on matters such as dispensing with consent. The child will in due course become aware of all matters surrounding their adoption and direct conflict between the two sets of parents is best avoided.

### **Contact with Birth family**

Barnardos believe that there should be statutory provision for open or semi-open adoption placements. Articles 7 and 9 of the UN Convention is relevant here as is the very real need of children to both know who they are within the context of a stable and secure family unit. In practice this often happens and Barnardos sees no reason not to provide for conditions to be attached to an adoption order where that is in the child's best interest. The area of step-parent adoptions is also one which bears examination and Barnardos believes that there should be provision for special guardianship in these cases rather than the present situation whereby a birth parent has to adopt their own child.

### **Intercountry Adoption**

The present framework for intercountry adoption does not guarantee children adopted from overseas the same treatment as those adopted here because the Adoption Board does not currently have a regulatory function as necessary under the Hague Convention.

Without full implementation of the Hague Convention, Barnardos believes that intercountry adoption continues to leave children and families in sending countries vulnerable to exploitation and the adoption system open to abuse. Barnardos is concerned that bilateral agreements undermine the Hague Convention and its role in standardising policy and procedures in intercountry adoptions. We urge Government to use diplomatic channels to encourage relevant countries to ratify the Hague Convention rather than enter into bilateral agreements. In the interim period, any bilateral agreements entered into by Ireland with a foreign state must provide equal protection to children as that contained in the Hague Convention.

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<sup>5</sup> Barnardos (2007) *The Case for Constitutional Change*

Barnardos welcomes the Government's decision not to renew a bilateral agreement with Vietnam, given concerning indications that there is a lack of transparency in relation to how children become available for adoption in the country and that some adoption agencies have "unhealthy relationships" with some residential centres involving fees and payment<sup>6</sup>. Barnardos believes that the integrity of the intercountry adoption process is greatly threatened where states do not comply with the international standards that place the needs and best interest of the child at the centre of all adoption policy and practice.

### **Adoption Services**

Article 32 of the Hague Convention provides that:

*(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.*

*(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.*

*(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.*

Barnardos considers it to be of crucial importance that the Adoption Bill is supplemented by ministerial regulations covering any agency doing work associated with adoption. In relation to intercountry adoption, such regulations should include measures to promote transparency in relation to the placing of children for adoption in foreign states and limitations to and itemised fee structures to safeguard the integrity of these processes, as per the Good Guide to the Hague Convention<sup>7</sup>. All agencies working in any aspect of adoption must be accountable and work to the highest International standards. The Irish state must monitor and inspect those agencies to ensure all obligations are fully met.

Barnardos recommends that Section 93 of the Adoption Bill also be amended to provide stronger requirements for ensuring that adoption made outside the state is effected in accordance with the law of the state. We propose that the Good Guide to the Hague Convention again be used as a basis for establishing robust evidence that a child subject to intercountry adoption and placed with adoptive parents in Ireland was placed for adoption within the laws of this country and that their rights and needs were the guiding principle in any such placement<sup>8</sup>.

In respect of all adoptions, both domestic and intercountry, the Adoption Bill must make specific requirements for the regulation of any agency engaged in assessment, intermediary work or post placement activities with respect to adoption.

### **Post-Adoption Services**

Both Article 9 of the Hague Convention and Article 20 of the European Convention for the Adoption of Children outline a requirement for the provision of adoption counselling and post-adoption services. While acknowledging that the Adoption Bill amends and continues the provision in the Child Care Act 1991 of adoption services by the Health Services Executive, the Bill does not include any provision for post-adoption services. Barnardos believes this represents a significant gap in the proposed legislation and weakens the impact of the Bill in relation to adoption practice in Ireland. The Law Reform Commission recommended the amendment of

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<sup>6</sup> UNICEF (2009) *Adoption from Vietnam: Findings and Recommendations of an Assessment*

<sup>7</sup> The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice, Chapter 5

<sup>8</sup> *Ibid* Chapter 6

section 6 of the Child Care Act 1991 to include provision for post-adoption services and counselling for both domestic and intercountry adoptions in 2008<sup>9</sup> and Barnardos urges Government to use the opportunity of the Adoption Bill to enact such provision.

Through the work of Barnardos' Post-Adoption Service, we see first hand the challenges which face adopted children and their parents. This is particularly relevant to children who have been adopted inter country, many of whom come from institutions in their country of origin and face a number of difficulties in relation to attaching and adapting to their new families and changed environment. Post-adoption services provide specific support to children and parents facing unique challenges that often cannot be dealt with adequately elsewhere. A significant body of expertise on post-adoption supports and services has developed internationally and all adopted children in Ireland must be provided with access to such services, based on their particular needs.

Barnardos strongly recommends that provision of such services be put on a statutory footing in the Adoption Bill in the best interests of all adopted children, birth families and adoptive parents in the State.

### **Information and Tracing**

A significant omission from this Bill is specific reference to the right of adopted children to information about their birth and origins. The recent report of the Commission to Inquire into Child Abuse (Ryan report) illustrated the damage and hurt caused to children when records of birth and family are not available to them. In international law, the UN Convention on the Rights of a Child provides that States must respect the right of the child to preserve his or her identity, including nationality, name and family relations.

Barnardos acknowledges the ongoing work of the National Adoption Contact Preference Register (NACPR) and the significant role it plays in assisting adopted adults in accessing their birth information. We believe that the function of the Register should be given statutory footing in the Adoption Bill (even if not expressly given to that particular agency) and that the rights of adopted children to access information of their birth and adoption, particularly once they have reached 18 years of age, should be solidified within the legislation. Provision must also be included for adopted children to access their original birth certificate and relevant documents pertaining to their adoption. This system has worked in the UK since 1977 without disruption and recognises the particular needs of adopted people.

### **Conclusion**

The Adoption Bill 2009 represents a significant achievement in consolidating and regulating the legislation applicable to adoption in Ireland and integrating the Hague Convention into Irish law following our ratification of that treaty. Barnardos broadly welcomes the Bill but remains concerned at the omission of significant aspects of provision for children adopted both domestically and through intercountry adoption. The Adoption Bill is a crucial opportunity to provide the strongest possible protection and support for children who are adopted at all stages of the process: pre-adoption, during adoption procedures and post- adoption placement. The failure to include an overall focus on the best interests of the child in adoption processes equivocates on what should be an absolute commitment for these children's needs and rights to be placed at the centre of all decisions made in regards to their adoption.

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<sup>9</sup> Law Reform Commission, Report on Aspects of Intercountry Adoption Law (LRC 89-2008)

Development of current policy and practice in this area necessitates that the State make a firm commitment to this measure and Barnardos urges the Government to amend the Bill accordingly.

Given the strong protection necessary for children experiencing intercountry adoption, Barnardos believes that the Adoption Bill must remain committed to the principles contained in the Hague Convention and that adoptions from countries who have not signed the Convention should be considered not to be in the best interests of the children concerned. Transitional arrangements to cover intercountry adoptions which were in process prior to the enactment of the Bill should be allowed to proceed during a transitional process.

It is similarly important that the Adoption Bill provide strict regulation for all agencies involved in adoption processes to oversee the best practice possible for children's protection and welfare. Post-adoption services must also be provided for in the Bill to ensure that children and families with specific needs for support have access to the services that best serve those needs. Children must also be given the right to access information about their birth and adoption, particularly crucial documents such as their original birth certificate.

The Adoption Bill is an opportunity to provide children adopted in Ireland and into Ireland with the best protection and support possible. It is imperative that this opportunity is not wasted and that any potential gaps which might emerge in the implementation of the legislation be covered in so far as possible in the best interests of these children. Barnardos believes that the issues outlined in this submission must be addressed before the Bill passes into law to ensure that the legislation produced will be a robust tool that places children's needs and rights at the centre of adoption processes and services.

### **Recommendations**

- Insert specific reference to the best interests of the child into Section 19 of the Adoption Bill and include a statutory provision for the inclusion of the voice of the child in the adoption process;
- Insert a statutory provision allowing for the independent representation of a child in all adoption procedures involving them;
- Prepare wording for inclusion in the Adoption Bill once the Irish Constitution has been amended to balance the rights of children and parents and clearly set out the paramount importance of children's needs and rights in decisions regarding adoption;
- Insert a provision in the Bill to allow the HSE to apply to the High Court for an order to dispense with parental consent where that application would be in the child's best interests. Children must have a statutory guarantee of independent representation in such cases;
- Insert a statutory provision for open or semi-open adoption placements in the Bill and provision for special guardianship for step-parents;
- Encourage relevant countries to ratify the Hague Convention rather than enter into bilateral agreements;

- Include specific standards for the regulation of any agency engaged in assessment, intermediary work or post placement activities with respect to adoption in the Adoption Bill;
- Include provision for post-adoption services in the Adoption Bill in the best interests of all adopted children, birth families and adoptive parents in the State;
- Amend the Adoption Bill to include statutory provision for the access of adopted children to information and documents relating to their birth and adoption.