



## Briefing Note on Separated Children

6 May 2008

### Who are Separated Children?

Separated children are children under eighteen years of age who are outside their country of origin and separated from both parents or their previous legal/customary primary caregiver.<sup>1</sup> Separated children are an extremely vulnerable group. Many have experienced war and violence or have been trafficked or smuggled into Ireland. Some separated children are reunited with family in Ireland, some enter the asylum process and others do not.

### How many Separated Children are living in Ireland?

Research has indicated that the majority of separated children are not identified at Irish ports of entry; and may have been in Ireland for some time before they come to the attention of the statutory agencies. Between 1998 and 2008, over 5,000 separated children have been identified in Ireland. Statistics indicate that the number of separated children presenting to the HSE has diminished significantly since figures peaked in 2001 (1,085 in 2001 to 340 in 2007).<sup>2</sup> There are approximately 180 separated children currently in the care of the Health Service Executive (HSE).<sup>3</sup>

### UN Convention on the Rights of the Child

All children in Ireland, including separated children, are entitled to the rights set out in the UN Convention on the Rights of the Child, which Ireland ratified in 1992. Article 22 of the UN Convention states that asylum seeking and refugee children should receive appropriate protection and humanitarian assistance. Furthermore, under Article 20, the State has an obligation to provide special protection for children deprived of their family environment and to ensure that appropriate alternative family care or institutional placement is made available to them, taking into account the child's cultural background.

## 1. CARE PROVIDED TO SEPARATED CHILDREN

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- 1 UNHCR and Save the Children, Separated Children in Europe Programme (2004) *Statement of Good Practice*, Third Edition, Copenhagen and Geneva.
  - 2 <http://www.omc.gov.ie/viewtxt.asp?Userlang=EN&DocID=211>
  - 3 Council of Europe (2008) *Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Ireland* <http://wcd.coe.int>

### **1.1 Care Orders**

The HSE has statutory responsibility for the care of separated children (who are not verifiably reunited with family members). Children are taken into care under either Section 4 or Section 5 of the Child Care Act, 1991 (depending on whether they are in the care of the East Coast Area Health Board or other areas). Section 4 is a voluntary care order and places responsibility on the HSE for the care needs of these children. Section 5, however, is an order made in respect of children who are homeless and obliges the HSE to provide merely for the child's accommodation needs. Section 5 does not offer appropriate legislative protection and support and should not be used in relation to separated children.

#### ***Recommendations***

- All separated children should be taken into care under Section 4 of the Child Care Act, 1991. This will ensure that a standard approach is adopted nationally to providing care to separated children.
- The Child Care Act 1991 should be amended to include a definition of a separated child, along the lines of the UNHCR / Separated Children in Europe Programme definition.

### **1.2 Working Group**

The 'Bruton' Working Group, established in 2006 under the Department of Health and Children, has responsibility for the implementation of the recommendations of the HSE commissioned 2005 Bruton Report (which was a management review of the services provided to separated children). No results from the work of this Group have been made public since its establishment, despite the fact that it was anticipated that the Working Group would complete its work by the end of 2006.<sup>4</sup>

#### ***Recommendations***

- The Office of the Minister for Children, as Chair of the 'Bruton' Working Group, should ensure that the Group is delivering on its terms of reference and that information be made public on the work of the Group to-date and its current work plan.
- An independent representative should be invited to join the Working Group, for example, a representative from the Children's Rights Alliance, the Irish Refugee Council or the UNHCR.<sup>5</sup>
- Furthermore, the Working Group, should fulfil its commitment to consult with all necessary bodies/agencies, and this should include NGOs.

### **1.3 Accommodation**

The majority of separated children in the care of the HSE are accommodated in private profit-making hostels. It was reported that the HSE has contracts with eight such hostels in the Dublin area with capacity to accommodate 253 separated children.

The quality of care and accommodation provided to separated children in these hostels is significantly below that provided to other children living in residential care. The inadequate level of

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<sup>4</sup> Office of the Minister for Children, Press Release, 7 June 2006.

<sup>5</sup> A good model of independent representatives on a working group is the Reception and Integration Agency's (RIA) Working Group to Review RIA House Rules and Procedures.

care provided to separated children has been directly linked to instances of vulnerable children going missing and being trafficked for exploitation.

The Alliance welcomes progress that has been made to improve the quality of staffing and the level of supports provided to children in these hostels. However, we are extremely concerned that the level of care for separated children continues to provide an inadequate level of adult supervision, security and support. The Alliance believes that all separated children should be entitled to equality of care on a par with other children in the care of the HSE. Under Article 2 of the UN Convention on the Rights of the Child, Ireland has committed to implement its policies for children in a manner which does not discriminate.

*Standards and Inspections:* The Alliance understands that the private hostels are still not covered by the National Standards for Children’s Residential Centres (2001) – which includes access to internal and external complaints systems. No inspection report on the private hostels has ever been made public. It is not clear what progress has been made since the media reported (following a ‘freedom of information’ request) that all of the private hostels bar one had failed the inspection. It was reported that these inspections did not result in any changes to those hostels and they remain open without penalty. Have the hostels been inspected recently? Are these reports public, and if not, why not? Are the hostels now registered?

*Reform:* The system of accommodating separated children needs to be reformed, as a matter of urgency. An emphasis should be placed on providing fostering as a first option. Fostering has many advantages over residential care in terms of the quality of emotional support it can offer a child; it can also provide substantial savings to the Exchequer. In addition to fostering, small residential group homes should be established which would afford the children a more appropriate environment to the existing hostel system. No separated child should be accommodated in a large hostel or in an adult unit. The quality of foster and residential care must be on an equal level with that provided to other children in the care system.

*New Centres:* The Alliance warmly welcomes the planned opening of three residential units for separated children. We understand that these units will each accommodate six children and will operate under the National Standards for Children’s Residential Centres. Whilst we appreciate the enormous work involved in opening new centres, we are concerned with the delay in the planned opening of these centres and would appreciate an update on their status.

It is our understanding that there are approximately 180 separated children in the care of the HSE, the majority of which are in residential care. The new centres will provide 18 places, leaving the majority of children within the existing residential services. We would greatly appreciate an update on the level and quality of care that is being provided to the remaining children in residential care. In particular, we would appreciate information on the quality of care and accommodation being provided to older teenagers (16 and 17 year olds) and to young mothers (under 18) and their children.

### **Recommendations**

- The HSE should adopt a policy of equality of care for all children in its care, including separated children. The Child Care Act 1991 should be amended to reflect this policy.
- The Office of the Chief Inspector of Social Services should prioritise the inspection of private hostels and its future reports should be made public.
- Abandon the use of large residential centres in favour of fostering or small group homes.
- Ensure that all residential placements are subject to the National Standards for Children’s Residential Centres (2001).
- Ensure that all foster placements are subject to the National Standards for Foster Care (2003).
- Update as when the new centres will open and provide information on the level and quality of care that is being provided to the remaining separated children in the care of the HSE.
- Confirm that all staff in the hostels (including non-care staff such as security personnel) are now vetted.
- Confirm that each hostel is now staffed by trained care staff on a 24 hour basis and that each child is allocated a care-staff member as a ‘support’ or ‘key’ workers.

### **1.4 Guardianship**

Separated children face a series of distinct challenges within the protection (asylum) process. There is a need to provide a mechanism to independently represent, aid and assist separated children in the care of the HSE. The *National Children’s Strategy* (2000) commits that “unaccompanied children seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and Guardian-Ad-Litem”. To prevent conflict of interest, the guardian should not be the child’s legal adviser or their social worker. Their role is to act as advocate and to safeguard the best interests of the child.

The UN Committee on the Rights of the Child provided authoritative guidance on the role of such guardians in its General Recommendation No. 6.<sup>6</sup> Under Article 12 of the UN Convention, a child has a right to have their views taken into account, in any matter affecting him or her, in accordance with his or her age and maturity.

### **Recommendations**

- The Office of the Minister for Children should examine how a mechanism can be put in place to independently represent, aid and assist separated children who are in the care of the HSE, such as a Guardian ad litem.
- The Child Care Act 1991 should be amended to provide for the appointment of an independent, professional Guardian to each separated child on identification.

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6 UN Committee on the Rights of the Child (2005) *General Recommendation No. 6 on the Treatment of Unaccompanied and Separated Children outside Their Country of Origin*.

## 2. CHILD PROTECTION

### 2.1 Missing Children

It has been reported that in the period from 2000 to 2007 of the 5,369 separated children placed in HSE care, 441 children have gone missing from their care placements; of which only 53 have been accounted for.<sup>7</sup>

The HSE has not made public any information about these children – how and why separated children go missing from care and what happens to them afterwards. Some recent cases – reported in the media, and in international research – have documented children being trafficked to Ireland, within Ireland or from Ireland for exploitative purposes, including sexual exploitation, domestic servitude and as a forced bride.

A comparison of the monthly statistics issued by the HSE in relation to missing children and the postings on the [www.missingkids.ie](http://www.missingkids.ie) website has highlighted discrepancies between the two sets of figures. Clarity is needed as to what lies behind these discrepancies. A mechanism is needed to ensure that all missing children are officially recorded and the Gardaí notified of their disappearance.

New national protocols regarding missing children are being developed by the HSE and the Garda Síochána (Missing Persons' Bureau).<sup>8</sup> This initiative is to be welcomed. The protocols should address both the reporting and follow-up mechanisms for all missing children.

There is concern that separated children are at a high risk of going missing during the period when they are identified outside of office hours and are placed in hostels by the Out of Hours Service (for homeless children). Follow-up on such children who go missing is extremely difficult as many have not been interviewed by a social worker.

#### **Recommendations**

- Social worker services must be accessible outside of office hours and available at points of entry (ports and airports) to assist in the identification, assessment and referral of separated children.
- All separated children must be registered upon identification or arrival. (The majority of separated children have been in Ireland for some time before they come to the attention of the statutory agencies).
- Clarity in relation to the discrepancies between the monthly statistics issued by the HSE in relation to missing children and the postings on the [www.missingkids.ie](http://www.missingkids.ie) website.
- Publish the new national protocols regarding missing children and inform all relevant staff that they are in place.

<sup>7</sup> Figures cited by Denis Naughten, TD on 29 April 2008 in the Dáil. See also *Irish Independent* 21 April 2008.

<sup>8</sup> Council of Europe (2008) *Report by the Commissioner for Human Rights, Mr. Thomas Hammarberg on his visit to Ireland.*

## **2.2 Trafficking**

Despite the publication of the Criminal Justice (Trafficking in Persons and Sexual Offences) Bill 2007 and the Immigration, Residence and Protection Bill 2008, the Government has failed to use these opportunities to provide for the protection of child victims of trafficking. There is inadequate provision for supports to suspected victims of trafficking and children at risk of going missing.

### ***Recommendations***

- Amend the Immigration, Residence and Protection Bill to enable the development of a national referral mechanism, and adequate protection and services for the victims of trafficking.
- Ratify the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Council of Europe Convention on Action against Trafficking in Human Beings.

## **2.3 Family Reunification**

Statistics from the Health Service Executive show that from January to October 2007, 144 separated children were reunited with their family members living in Ireland. This represents 51.6% of all referrals to the HSE for that period. There have been documented instances where family reunification has been 'false' and has led to the child being exploited (including for the purpose of sexual exploitation and domestic slavery). In order to guarantee the safety and well-being of children who have been reunited with their families, there is an urgent need to provide adequate checks at the initial placement and through periodic follow-up visits.

### ***Recommendations***

- The Office of the Minister for Children should commission a study into what mechanism would be best suited to carry out a follow-up monitoring service for separated children reunited with their family members in Ireland. For example, a Public Health Nurse, social worker, or appropriate non-governmental organisation could call to the family on a series of occasions after the child's initial placement. The study should explore international best practice in this area, issues of child protection and what principles should underlie the operation of a follow-up service.

## **2.4 Legal Limbo**

The HSE assesses the circumstances of each separated child and decides whether or not an application for asylum/protection should be made on their behalf. The Alliance believes that such a decision should be made by an independent professional Guardian appointed on the arrival/identification of the separated child, following consultation with the Refugee Legal Service/legal aid. There is a need for clear procedures to ensure a formal 'best interests determination' is carried out when making decisions in relation to separated children (see The UNHCR Guidelines on Formal Determination of the Best Interests of the Child).<sup>9</sup>

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<sup>9</sup> [http://www.iin.oea.org/2006/Lecturas\\_Sugeridas\\_2006/00-69422.pdf](http://www.iin.oea.org/2006/Lecturas_Sugeridas_2006/00-69422.pdf)

In instances where an application is not made, the child remains in a legal limbo: they have no legal status and may not have any identity papers, and it is unclear what will happen when they reach eighteen years.

### ***Recommendations***

- The Immigration, Residency and Protection Bill should be amended to grant separated children temporary permission to remain while their situation is being assessed. This would avoid situations of children being in a legal limbo.
- The Bill should be amended to ensure that the decision to submit an application for asylum/protection on behalf of the child is made by an independent Guardian following consultation with the Refugee Legal Service/legal aid.
- There is a need for clear procedures to ensure a formal ‘best interests determination’ is carried out when making decisions in relation to separated children (see The UNHCR Guidelines on Formal Determination of the Best Interests of the Child).

## **2.5 Aged-out Minors**

Aged-out minors are young adults who entered the asylum system as separated children. There are estimated to be approximately 120 aged-out minors living in ‘direct provision’ accommodation. In some cases, these young people have been waiting for a decision on their asylum application for up to five years. This group is at high risk of going missing.

The Alliance was disappointed that the Transition Supports Project was discontinued in December 2007, and urges that the services and supports it offered to aged out minors be continued.

### ***Recommendations***

- Clarity is needed on how many aged-out minors (between the ages of 18 and 23 years) remain within the ‘direct provision’ service.
- Ensure continued funding of aftercare services and supports to aged-out minors. This should include funding the services previously provided under the Transition Supports Project, some of which are now provided by the CDVEC Separated Children Education Service.
- Grant aged-out minors a timely decision in line with their best interests.

### **3. IMMIGRATION, RESIDENCE AND PROTECTION BILL, 2008**

The Alliance has made a submission in relation to the Immigration, Residence and Protection Bill, 2008, our recommended amendments to the Bill include:

- The best interests of the child must be the primary consideration in all decisions.
- Separated children should be provided with an independent, professional Guardian on identification.
- Reform the legislation and practice governing the care of separated, including providing temporary permission to remain for children in a legal limbo.
- Uphold the child's right to family life through additional family reunification provisions.
- Implement measure to protect children at risk of trafficking and support victims.
- Child must not be detained for reasons related to their immigration status.
- Children must have an individual right to seek asylum
- Children must not be denied access to public services
- Humanitarian considerations must be a criteria when seeking protection



## Children's Rights Alliance

**The Children's Rights Alliance is a coalition of over 80 non-governmental organisations (NGOs) working to secure the rights and needs of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child. It aims to improve the lives of all children under 18, through securing the necessary changes in Ireland's laws, policies and services.**

### *Our Membership*

The Alliance was formally established in March 1995. Our membership, from which Board Members are elected at the Alliance's AGM, consists of a diverse range of groups, including child welfare agencies and service providers; child protection groups; academics; youth organisations; family support groups; human rights organisations; disability organisations; parent representative organisations; community groups and others interested in children's rights. The Alliance's policies, projects and activities are developed through ongoing collaboration and consultation with our member organisations.

### *Our Aims*

- Bringing about a shared vision that will realise and protect children's rights in Ireland
- Securing legislative and policy changes to give meaningful effect to the UN Convention on the Rights of the Child
- Securing the effective implementation of Government policies relating to children.

### *Our Experience*

- The Alliance is recognised for its participation in the international monitoring and reporting process of the UN Convention on the Rights of the Child, including the publication of two shadow reports critically evaluating progress made by the Irish State to implement the Convention's provisions into domestic law, policies and services
- In 2006, the Alliance was the sole Irish NGO commentator reporting to the UN Committee on the Rights of the Child
- The Alliance is a designated Social Partner within the Community and Voluntary Pillar
- The Alliance has played an important role in influencing the development of several key initiatives for children, including the publication of a National Children's Strategy; the establishment of the Office for the Ombudsman for Children; and the inclusion of children's rights in the EU Charter of Fundamental Rights.

The Children's Rights Alliance is a registered charity – CHY No. 11541

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