

Advice to the NI Assembly Committee for Health on the Adoption and Children (Northern Ireland) Bill

October 2021

Introduction

The Northern Ireland Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. The Commissioner's remit includes children and young people up to 18 years, or 21 years, if the young person is disabled or in the care of social services. In carrying out her functions, the Commissioner's paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising her functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

The Commissioner welcomes this opportunity to comment on the draft Adoption and Children's (Northern Ireland) Bill. This is an important piece of legislation, which has been delayed for many years, and it is imperative that it completes its passage through the Assembly before the end of the current mandate.

Comments on Clauses

Clause 116 - Definition of family proceedings

NICCY welcomes the proposal to ensure that Female Genital Mutilation Protection Orders are included in the list of "family proceedings" for the purposes of The Children (Northern Ireland) Order 1995 to ensure that all relevant orders for the protection and welfare of a child can be made within the proceedings.

On a separate point, the Committee may wish to consider how the full range of harmful practices, as set out by the UN Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women¹, is being addressed in Northern Ireland.

Clause 119. The creation of “special guardians” has the potential to give clarity and stability in the lives of children and young people whose care and living arrangements are not covered by other mechanisms. It is crucial that support services (and financial help) for carers and children and young people properly meet their ongoing needs after a special guardian order has been made, otherwise this status could create disadvantage for those it is intended to help.

Clause 121. NICCY would like to see the practical implementation of this clause to result in commissioning of voluntary children’s services (with suitable monitoring) to provide services and support where Health and Social Care Trusts are otherwise unable to do so.

Clause 122. NICCY welcomes the creation of a duty upon authorities to prioritise educational achievement for children and young people. However, in its use of ‘*promote*’ the proposed wording is insufficiently strong in how prioritisation will be implemented or achieved.

NICCY notes that *The Education and Libraries (Northern Ireland) Order 1986* (“1986 Order”) confirms a ‘*duty*’ of parents in respect of education.² Failure to uphold this obligation can result in parents being issued with a school attendance order, a supervision order,³ or further judicial action.

At present there is a lack of clarity as to how corporate parents can be held to a standard no less than that expected of a birth or adoptive parent or other specific person in whose care a child or young person is in. The interpretation of “parent” as within the 1986 Order does not help, as it is mainly targeted at specified individuals.

Clause 122 should be an opportunity to clarify the expectations upon (and their enforceability) against corporate parents in the education of children and young people for whom they are directly responsible in the same way as any parent would be. The proposed wording must be strengthened to ensure that this is the case.

Clause 123. Steps towards a codification of corporate parenting responsibilities are long overdue however NICCY would stress that the regulations must provide more detail with regards to how corporate parents are held to account for the children in their care.

¹ CRC and CEDAW (2019) General Comment on harmful practices:
[CRC/C/GC/18/REV.1 - E - CRC/C/GC/18/REV.1 -Desktop \(undocs.org\)](https://undocs.org/CRC/C/GC/18/REV.1)

² Section 45

³ Section 55 of *The Children (Northern Ireland) Order 1995*

Clause 125. The need for minimum standards in respect of accommodation for children and young people is imperative. While NICCY welcomes the intent in this clause we recommend a revision to the draft of paragraph (7A) from

‘The Department may by regulations impose requirements ...’
to

‘The Department shall by regulations impose requirements ...’

This request is made with a view to ensuring that this vitally important matter will be addressed as a matter of urgency.

Clause 129. Proposals to ensure that care leavers will be made aware of services available to them are welcome. For this to be effective there should be a timeframe in which care leavers must be directly advised of specific services sufficiently in advance of leaving care so that they can effectively avail of them. As such a timeframe should be included.

Clause 133 – Definition of harm

The Committee may be aware that a planned proposal to amend the definition of harm as set out in The Children (Northern Ireland) Order 1995 was discussed with colleagues on the Justice Committee during their scrutiny of the Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021. This was raised in the context of the domestic abuse legislation progressing through Assembly at the time and Members may be aware that the Justice Committee gave detailed consideration to ensuring the harm that can be caused to children affected by domestic violence and abuse could be effectively captured in the 2021 Act.

Following on from this, the Commissioner welcomes the intention of the Department to ensure the definition of harm within The Children (Northern Ireland) Order 1995 will also reflect that children can be deeply affected and harmed by the ‘ill-treatment of another’ in the context of the Order including, but not only, in regard to domestic abuse. We also welcome the intention to ensure that such harm can be considered in relevant proceedings concerning the child, including contact and residence orders. However, we highlight that the provision should **not include a condition which requires a child to have witnessed or to have heard incidents of abuse** in order to be recognised as having been affected by such abuse. Following discussions with the Department, we understand that they are actively considering how the clause can be amended to capture harm to children without such a condition. We warmly welcome this and ask that the Committee engage with officials on this matter.

In considering this in more detail, the Committee may find it helpful to reflect on the relevant sections of a range of recent domestic abuse legislation. This includes the Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021 which seeks to ensure that provisions are engaged through a child aggravator clause where a child sees, hears, is present during incidents of abuse or where a reasonable person would consider the course of behaviour to be likely to adversely affect the child.⁴ In turn, the Domestic Abuse Act 2021 which passed through Westminster identifies children as victims of domestic abuse and makes provision for a child who sees, hears or experiences the effects of abuse⁵ while the Domestic Abuse (Scotland) Act 2018 provides that children do not have to be aware of or understand the nature of the abusive behaviour for a child aggravator clause to be invoked and also applies a reasonable person principle to consider whether the behaviour is likely to adversely affected the child.⁶

Conclusion

In conclusion, the Commissioner welcomes the Committee's scrutiny of this important legislation, and trusts that these comments are useful. Please contact us should any members need further information or explanation.

⁴ See Section 9(2)b and c and 9(3) Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021: <https://www.legislation.gov.uk/nia/2021/2/contents>

⁵ See Section 3(2)a and b Domestic Abuse Act 2021: <https://www.legislation.gov.uk/ukpga/2021/17/part/1/enacted>

⁶ Section 5(5) Domestic Abuse (Scotland) Act 2018: <https://www.legislation.gov.uk/ukpga/2018/12/part/5/enacted>