

Children's Services Co-operation Bill

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared on behalf of Mr Steven Agnew ("the Member") in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill so, where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. In 2002 the Westminster Government commissioned Lord Laming to undertake a major inquiry following the tragic death of Victoria Climbié. The inquiry identified a lack of co-operation as a factor which contributed to the failure of the Government in their duties. The Westminster Government's response was the Children Act 2004, which overhauled children's services in England and Wales. Sections 10 and 25 of that Act introduced a statutory duty on local authorities to promote co-operation with their relevant partners.
4. In Northern Ireland, a duty to co-operate to safeguard at-risk children was introduced in the Safeguarding Board Act (Northern Ireland) 2011. Nevertheless, Lord Laming's recommendations made clear that child protection could not be separated from policies to improve children's lives as a whole.
5. Northern Ireland has some of the highest levels of child poverty in the UK and 21% of children live in *persistent* child poverty, which is double the rate for GB. Poor outcomes for children in NI, in spite of the higher level of government spending per person when compared to GB, suggests that an opportunity exists to improve the current governance model of children's services. This view is shared by those organisations working within the children's sector.
6. Evidence shows that integrated working does bring about changes that can be expected to increase effectiveness in practice, which are likely to lead to better outcomes.¹ There

¹ Page 9 *Integrated Working: a Review of the Evidence* Children's Workforce Development Council 2010 <http://dera.ioe.ac.uk/3674/>

is presently no requirement for departments or public bodies to co-operate with each other on the issue of children's services. The objective of a statutory duty to co-operate, is to ensure that departments work together to devise and implement cross-cutting strategies. The intention is to improve outcomes for children by supporting, enhancing and encouraging co-operation, to ensure that children's services are most integrated from the point of view of the recipient.

7. Inadequate integration of children's services in Northern Ireland has been repeatedly identified by a wide range of organisations, many of which have made recommendations for stronger legislation to require those responsible for children's services in Northern Ireland to co-operate. These include the four Area Children and Young People's Committees (ACYPCs) in 2008 (now superseded by the Children & Young People's Strategic Partnership); the Northern Ireland Commissioner for Children and Young People (NICCY) and Queen's University Belfast (QUB) in 2011 in their report into 'Barriers to Effective Government Delivery for Children in Northern Ireland'; the umbrella group Children in Northern Ireland (CiNI); and the OFMDFM Committee in its 2008 inquiry into child poverty.
8. It is widely acknowledged that the lives of children and families cannot be compartmentalised in a way that coincides with the responsibilities of individual departments and public bodies. Greater levels of co-operation will make the delivery of children's services more effective and efficient by:
 - ensuring that statutory bodies take responsibility for those children who have difficulty accessing services as a result of perceived gaps in service provision;
 - supporting government departments and statutory bodies to tackle shared problems in a more coherent fashion;
 - motivating departments and statutory bodies to identify services which are duplicated or where over-provision exists and to reallocate resources more efficiently;
 - encouraging departments and statutory bodies to devise and implement more co-ordinated, and therefore more effective, strategies and plans for children;
 - mainstreaming collaboration through the use of reciprocal requirements for departments and statutory bodies co-operate with one another and with children's service providers; and
 - requiring departments and statutory bodies to self-assess and report on the efficiency and effectiveness of co-operation and what opportunities exist to improve collaboration and outcomes.
9. The Member has raised the problems associated with integration in children's services and the need for a duty to co-operate through public statements, media interviews, by tabling Assembly Questions, by supporting events at Parliament Buildings and through participation at the All Party Group for Children and Young People. The relevant Assembly Questions can be viewed on the Northern Ireland Assembly website via the AIMS portal, at <http://aims.niassembly.gov.uk/mlas/search.aspx>

CONSULTATION

10. The Member carried out a twelve-week consultation on the policies behind the Bill in Spring 2012. The consultation document was sent to approximately 200 organisations and all Assembly Members and Northern Ireland Members of Parliament. A total of 26 responses were received. Every respondent supported the principles of the Bill and the introduction of a statutory duty to co-operate on children's services.
11. Of those respondents who directly answered the relevant questions:
 - every respondent stated that the introduction of a duty to co-operate would make co-operation more likely;
 - every respondent stated that there was presently a lack of collaboration within government in relation to children's services;
 - every respondent stated that greater collaboration between government departments and agencies would improve the outcomes for children and young people;
 - every respondent expressed strong support for an enabling power to pool budgets;
 - some respondents highlighted that they considered an enabling power to pool budgets absolutely essential; and
 - every respondent stated that there was currently insufficient co-operation in planning, commissioning and delivering children's services and in the pooling of budgets.

OPTIONS CONSIDERED

12. In developing this legislation, the Member considered the following options:
13. **Option 1** – to retain the present legislative framework for children and young people's services under The Children (Northern Ireland) Order 1995. Co-operation would continue to depend on the adherence of the organisations to policy guidance and the good will of organisations involved. The legal competence for departments to pool budgets and share resources would remain ambiguous.
14. **Option 2** – to introduce the Children's Services Co-Operation Bill, which would enact a statutory duty to co-operate thereby legally requiring departments to work together and for those public bodies currently on the Children and Young People's Strategic Partnership to work together. The Bill would enact the Executives agreed six high level outcomes for children in legislation and require departments to further these outcomes. The Bill would establish new review and reporting mechanisms which would require departments and public bodies to assess the efficiency and effectiveness of their services for children and, when opportunities exist, to enhance co-operation. The Bill would also contain an enabling power authorising departments to pool budgets and share resources.
15. The response to the Member's consultation was unanimously in favour of introducing a statutory duty to co-operate and introducing legislative provisions to enable departments to pool budgets. In addition, academic research, which has become

available since the Member developed an initial proposal on this subject, has strengthened the case for a statutory duty to co-operate. Case studies detailed in the consultation responses provided additional evidence of existing problems.

16. The Member is not aware of any proposal by the Executive to review children's legislation and to introduce the provisions outlined in this Bill. England, Wales and Scotland have all already enacted a statutory duty to co-operate and this Bill will bring Northern Ireland closer into line with legislation elsewhere. Responses to Assembly Questions have revealed that legislation does not exist to enable departments to pool budgets. Moreover, departments provided conflicting responses as to whether they presently jointly commission services. This legislation would clarify the legal competence of departments to pool budgets and set a legal framework which encourages departments to consider such initiatives. For these reasons, the Member concluded that a Bill was necessary.

OVERVIEW

17. The Bill requires departments and statutory bodies to co-operate with one another and with other children's services providers to improve the well-being of children and young persons. 'Well-being' is defined drawing on language used in the Children's Strategy (A ten-year strategy for children and young people in Northern Ireland 2006-2016). The strategy is put on a statutory footing with a requirement that it contain outcomes, actions, measure and timelines as well as a requirement that children and young persons, parents and guardians and children's representatives, be consulted.
18. The Bill also contains an enabling power which will permit departments and statutory bodies to pool their budgets and share resources for the purposes of fulfilling their duties. This can improve co-operation, as it will facilitate the provision of joint services, helping to avoid duplication and to improve co-ordination. It would also facilitate the provision of services which would otherwise not be provided by any department or body acting alone. Pooled budgets will also create opportunities for early intervention and preventative spending as it will enable departments to fund services outside of their statutory remit, which may be a more effective means of meeting their own statutory responsibilities.
19. The Bill consists of eleven clauses. It was substantially amended at Consideration Stage, during which the Member in charge of the Bill opposed all but one of the original clauses and proposed amendments replacing and adding to the opposed provisions. Clause 4 of the Bill as introduced, dealing with children's and young people's services plans, was removed and the amendment to replace that clause was not moved.
20. Five amendments were made at Further Consideration Stage, refining definitions; adding regulation-making powers related to the pooling of budgets and sharing of resources; bringing forward the first reporting date; and requiring the Executive to take account of that report in preparing a Programme for Government.

COMMENTARY ON CLAUSES

A commentary on the provisions follows below. No comment is made where the wording is self-explanatory.

Clause 1: Well-being of children and young persons

Clause 1 acts as a purpose clause, making clear that the Bill is designed to improve the well-being of children and young persons. It also defines the key concept of “well-being”, drawing on language used in the Children’s Strategy and the Northern Ireland Act 1998. In addition, subsection (3) stipulates that in interpreting “well-being” regard must be had to the United Nations Convention on the Rights of the Child.

Subsections (5) and (6) allow the Office of the First Minister and deputy First Minister (OFMdFM) to modify the meaning of “well-being” by means of subordinate legislation which would have to be approved by the Assembly.

Clause 2: Co-operation to improve well-being

Clause 2 requires all “children’s authorities” (defined as Departments and other key statutory bodies) to co-operate with one another and with “other children’s services providers” (defined in clause 9) in the exercise of any functions which may contribute to the well-being of children. The Executive is obliged to make arrangements to promote such co-operation and the children’s authorities must co-operate with the Executive in that task.

Clause 3: Children and young persons strategy

Clause 3 imposes a statutory obligation on the Executive to adopt and maintain a children and young persons strategy to improve the well-being of children and young persons. The strategy must include the outcomes to be achieved, as well as the actions that will be taken, the measures to be used to assess progress and the timeline within which the outcomes should be achieved.

The Executive must consult children and young persons, parents and guardians and children’s representative bodies in preparing the strategy.

The clause also sets out the procedure for publishing, amending or replacing the strategy.

Clause 4: Sharing of resources and pooling of funds

Clause 4 is an enabling power allowing the pooling of budgets and sharing of resources with a view to co-operating under the Act and could be used, for example, to support actions contained in the strategy.

Clause 5: Report on the operation of this Act

Clause 5 requires the Executive to prepare and publish a report on actions taken by the Executive and departments towards achieving the outcomes set out in the strategy; the progress achieved; the extent to which children’s authorities and other children’s

services providers have co-operated with one another and pooled budgets and resources; and how the well-being of children and young persons has improved. The report must also identify opportunities for further co-operation, other ways in which well-being could be improved and any resulting revisions required to the strategy. The first report must be published within eighteen months of the first children's strategy being published; reports thereafter are required at intervals of no more than three years.

Children's authorities are required to co-operate with the Executive in preparing the report and OFMdfM must lay a copy of the report before the Assembly.

Clause 6: Programme for government

In preparing a programme for government, the Executive is required, by clause 6, to take account of the most recent report under clause 5.

Clause 7: Guidance

Under clause 7, OFMdfM may publish guidance on the Act, to which the children's authorities must have regard.

Clause 8: Regulations relating to section 4

Clause 8 gives the Department of Finance and Personnel the power to make regulations governing the children's authorities' use of the powers, under section 4, to pool budgets and share resources.

Clause 9: Interpretation

This clause defines children and young people largely in accordance with the definition in the Commissioner for Children and Young People (Northern Ireland) Order 2003, to ensure that this legislation mirrors existing legislative definitions of children and young people. It also defines "children's authority", "children's service" and "other children's service provider" for the purposes of the Bill.

Clause 10: Commencement

Under clause 10, the Act will become law from the day after it receives Royal Assent and the first strategy must be published within 12 months of that date.

FINANCIAL EFFECTS OF THE BILL

21. The Bill is intended to underpin, and enhance co-operation around, the Children's Strategy (A ten year strategy for children and young people in Northern Ireland 2006-2016). However, it will have cost implications for children's authorities (listed in clause 9). Those costs may include, but may not be limited to, transitional, implementation and running costs arising from the general duty to co-operate under clause 2, and the reporting requirement under clause 5: for example, administration, IT and staff training costs relating to the development, operation and delivery of new

policies, procedures, guidance, as well as recording and reporting systems. Similarly, administration of the shared resources and pooling funds under clause 4 may have cost implications relating to administration, IT and staff training.

22. The purpose of this bill is to improve the efficiency and effectiveness of children's services. The intention is that greater levels of co-operation would improve efficiency and enable public bodies to provide enhanced outputs with a given level of expenditure. Greater levels of co-operation will also ensure that greater proportions of expenditure are allocated to outputs which are more effective in furthering the achievement of the specified outcomes. It is anticipated that after an initial transition period the effect of the Bill would be to save costs through greater administrative efficiency.

HUMAN RIGHTS ISSUES

23. The consultation was sent to the Human Rights Commission and the Equality Commission in the spring of 2011. Neither organisation raised any concerns in relation to its compliance with human rights or equality law.
24. The Bill is intended to enhance services to children and young people and to be consistent with promoting human rights and equality.

LEGISLATIVE COMPETENCE

25. The Member in charge of the Bill, Mr Steven Agnew, had made the following statement under Standing Order 30:

"In my view the Children's Services Co-operation Bill would be within the legislative competence of the Northern Ireland Assembly."