



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Adoption and Children Bill: Departmental Briefing

28 May 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Mr Roy Beggs
Mr Mickey Brady
Mrs Pam Cameron
Mr Gordon Dunne
Mr Samuel Gardiner
Mr Kieran McCarthy

Witnesses:

Ms Eilís McDaniel	Department of Health, Social Services and Public Safety
Mrs Frances Nicolson	Department of Health, Social Services and Public Safety
Mrs Carol Picton-Lynas	Department of Health, Social Services and Public Safety
Mrs Julie Stephenson	Department of Health, Social Services and Public Safety

The Chairperson: Folks, you are very welcome. We have Ms Eilís McDaniel, the director of family and children's policy; Mrs Julie Stephenson, the head of the Adoption and Children Bill team; Mrs Frances Nicolson, a social services officer from the office of social services; and Mrs Carol Picton-Lynas, the deputy principal of the Adoption and Children Bill team. We will hand over to you for a 10-minute presentation, and then I will open it up to members for queries or comments.

Ms Eilís McDaniel (Department of Health, Social Services and Public Safety): Good afternoon. I thank the Committee for the opportunity to provide an updated briefing in respect of the Adoption and Children Bill. The Department was last invited to brief members on the Bill in November 2011.

As was indicated previously, the Bill is principally intended to modernise the legal framework for adoption in Northern Ireland and place children's welfare at the centre of the adoption decision-making process. The Bill will deliver a framework for adoption which is more consistent with the principles and provisions of the Children (Northern Ireland) Order 1995 and international human rights requirements. It will create greater opportunities for older children to benefit from permanence and stability by offering them an alternative route to permanence through the introduction of a new special guardianship order. It will reduce drift and delay for young people unable to live at home by introducing a principle of no delay and court timetabling. It will also provide for better quality, consistent and efficient services for everybody affected by adoption.

The overall timeline for the Bill is particularly challenging. Subject to Executive approval, the Department intends to consult on the Bill from July to September 2014. The Department fully accepts that it is not ideal in any way to consult over the summer period, but we have extremely limited

capacity to extend or amend that period. The Bill must be introduced in the Assembly by early March 2015 at the latest to enable the Bill to obtain Royal Assent by March 2016.

The substance of the Bill relates to adoption, although we are also proposing to make changes to the 1995 Order. The Bill will contain approximately 140 clauses and five schedules. It is complex in nature, and it will contain a range of prescribing powers. The Bill cuts across the policy responsibilities of a number of Departments. For example, it will place certain requirements on the registrar general in respect of the continued maintenance of the adopted children's register and the adoption contact register and access to information by adopted adults.

Some provisions impact on private law; for example, the introduction of the special guardianship order. Both are the responsibility of DFP. It will require a consequential amendment to legislation that is the responsibility of other Departments; for example, DEL and DSD in relation to the legislation governing statutory adoption pay. It will introduce new offences relating to adoption; for example, offences associated with the removal of children from prospective adopters and the disclosure of protected information linked to adoption. It will introduce new court orders, potentially impacting on the legal aid budget, and will require both the support of and liaison with the Department of Justice.

Work on the consultation document is being finalised. The document includes four chapters. Chapter 1 relates to the contents of the Bill; chapter 2 relates to the legislative changes that have occurred in other parts of the UK and the Republic of Ireland since the introduction of the Adoption and Children Act 2002, with which the Adoption and Children Bill closely aligns; chapter 3 relates to new policy proposals to be considered for inclusion in the Bill; and chapter 4 outlines the arrangements for consultation.

The majority of what is contained in the Bill is based on policy proposals that we originally consulted on in 2006. It also contains new provision not previously consulted on but that we consider will make a step change for children and young people and deliver improved outcomes for them. In the consultation document, we are also seeking views on provision that is a departure from policy previously consulted on in 2006.

In the briefing paper provided to members in advance of today's sessions — I have to offer my apologies for getting the paper to you late in the day — we have set out the key provisions contained within the Bill in terms both of adoption and of children more generally. I do not intend to describe those in any detail in my opening remarks but will answer any questions that members may have on any provision contained in the Bill. With the Committee's agreement, I will focus on what is new and what is a departure or a potential departure from original policy.

The new provisions that have been included in the draft Bill and not previously consulted on are: amending the 1995 Order to enable a trust to provide accommodation for respite purposes to a disabled child with the consent of his or her parents, without requiring the child to become looked after — that is, taken into care — by the trust as is currently the case; amending the 1995 Order to lift the restriction on making of cash payments to families in need in exceptional circumstances only; creating an additional duty on trusts, as part of the duty to safeguard and promote the welfare of a looked-after child, to promote the child's educational achievement; and further strengthening the arrangements for contact and introducing two new post-adoption contact orders, a contact order, which will require the adoptive parent to allow the child to visit or stay with the person named in the order or otherwise have contact with them, and a no-contact order, which will prohibit the person named in the order from having contact with the child.

We will also amend the 1995 Order to enable guardians ad litem appointed by the courts to represent children in family law proceedings to be directly employed by the Northern Ireland Guardian Ad Litem Agency (NIGALA), reflecting current employment practice within the special agency. We will introduce a power for the Department to regulate the operation of fostering panels in Northern Ireland by prescribing, again by way of regulations, the constitution and membership of fostering panels, their functions and how panel meetings should be conducted. We will introduce an independent review mechanism to enable reviews of decisions by fostering panels. The mechanism will be comparable to the independent review mechanism for adoption decision-making, which is referred to in the briefing paper.

Changes in policy position relate to a number of areas, including independent reviewing officers, adoption support agencies and adoption support advisers, adoption support services and special guardianship orders. Starting with the independent reviewing officer (IRO), the primary focus of the role of the officer is to quality assure the care planning process for each child, participate in any

reviews of a child's case and ensure that a child's current wishes and feelings are given full consideration. In England and Wales, IROs are also responsible for monitoring the local authority's performance of its functions in relation to the child's case. In recent years, a number of systems and mechanisms for independent review of HSC services have become well established in Northern Ireland. Also, significant investment has been made in advocacy for children in the care of health and social care trusts. Advocacy services will be given a statutory basis in the Bill. In addition, the operation of the IRO service in England and Wales has met with some criticism. In light of that, the Department is seeking views on whether an IRO service should be put in place here under the Bill or whether a non-statutory system of independent review, similar to that now successfully in operation in Scotland, should be introduced.

Also in England and Wales, adoption support agencies provide assistance to adopted children and adults, such as counselling and finding out the details of their adoption. They also help adopted children and adults and their relatives if they want to know more about their birth relatives or trace them. Most people who use adoption support agencies in England and Wales are adults. The role of the adoption support adviser in England is to provide advice and information on adoption support services to people affected by adoption. They also advise staff in adoption agencies on assessment of need for adoption support, effective planning for service delivery and, in particular, supporting and facilitating interagency working when required.

We do not intend to include provision for the establishment of adoption support agencies or adoption support advisers in the Bill. We do not consider that the volume of adoptions in Northern Ireland in any given year is sufficient to justify the establishment of a distinctive dedicated support agency. Also, adoption support agencies are already well developed in Northern Ireland and are already included in the services provided for by our existing adoption agencies, both trusts and voluntary adoption agencies. In relation to adoption support advisers, again it is not considered necessary to establish a distinct role, principally on the ground that it would be difficult to justify because of the number of adoptions in Northern Ireland each year. However, we will ensure that adoption support services involve the supply of advice to those affected by adoption; in other words, we will reflect the role and the function of the adoption support adviser without creating a distinct role in statute.

The Bill places a duty on adoption authorities to make arrangements for the provision of adoption support services as specified in regulations. It also provides a new right for those named individuals to request and receive an assessment of needs for adoption support services. However, as currently drafted, the Bill does not require adoption authorities to provide support services where those have been assessed as needed; rather, authorities must decide whether to provide the services. That mirrors arrangements in England and Wales. In Scotland, however, the authority must provide the service that has been assessed as needed in respect of certain people: those adopted; those who may be adopted; adoptive parents and prospective adopters; and birth families. In all other cases, the authority has discretion as to whether to provide the service that has been assessed as needed.

In the consultation paper, the Department is seeking views on whether we should create a duty to assess only, or whether we should also create a duty to provide services assessed as needed. If it is the latter, we are also seeking views on whether such a duty should apply in respect of all individuals or be restricted to particular categories of people, as currently happens in Scotland.

As drafted, the Bill mirrors the special guardianship order (SGO) arrangements currently in operation in England and Wales. However, a number of issues have arisen as part of the implementation of those arrangements, and we now have the opportunity to introduce additional provision to prevent similar issues from arising in Northern Ireland. Proposals on which we are seeking views in the consultation document will include whether to impose additional requirements to ensure that special guardianship orders are not made until placements are tried and tested; whether to introduce panel consideration of SGO applications relating to looked-after children; and whether to specify in regulations that, for looked-after children and their special guardian, an authority must carry out an assessment of need for support services and for the support plan to be subject to the approval of the SGO panel as part of its considerations.

Finally, we are also seeking views on a range of proposals neither previously consulted on nor included in the Bill, and they are contained in chapter 3 of the consultation document. In brief, we are seeking views on whether to introduce a duty on the Health and Social Care Board to provide information about adoption support services; repeal articles 74 to 78(a) of the 1995 Order, which deal with the provision of accommodation for children by voluntary organisations without being looked after by a health and social care trust, on the basis that such practice ceased some decades ago; introduce a right for descendants of adopted people to access records and intermediary services; amend the

1995 Order in line with the Children Act 2004 to strengthen arrangements in respect of private fostering; require a health and social care trust to consider placing a child with dually approved carers when considering adoption where the decision has already been made that the child should be placed for adoption; and introduce a power to provide by way of regulations for the search and inspection of the adoption regional information system by prospective adopters who are suitable to adopt a child, to enable them to identify a child on the register for whom they might be appropriate adopters. Finally, the intention is to change the name of those who independently represent the interests of children in court under article 60 of the 1995 Order from the Latin term "guardian ad litem" to "children's court guardian". That was the subject of a recent consultation by NIGALA.

Members are aware that a legal challenge to current adoption legislation has been brought by the Northern Ireland Human Rights Commission. The legal proceedings concluded in October 2013. As a consequence, the draft Bill contains provisions that reflect the High Court judgement and the Court of Appeal ruling in respect of who can apply to adopt. Executive approval to commence the process of drafting a Bill was secured on the basis that the draft Bill would reflect the outcome of the judicial review proceedings.

I thank members for giving me the time to provide an overview of what we plan to do with regard to consultation on the draft Adoption and Children Bill. We will of course share a copy of the consultation document with members in advance of its publication. My colleagues and I are happy to answer any questions that members may have. Thank you very much.

The Chairperson: Thank you for that, Eilís. First, the paper makes reference to amending the eligibility criteria to enable one person or two people who live as partners in what it calls "an enduring family relationship" to apply to adopt. How is an enduring family relationship defined?

Ms McDaniel: It is not defined in the Bill, Chair. It is certainly something that we would have to consider for inclusion in guidance. That term is actually used quite frequently to describe a suitable household for a child or children to be brought up in. In response to your question, there is nothing in the Bill to define it. It is certainly something that we would need to define or describe very clearly in any guidance document that accompanies the introduction of the Bill.

The Chairperson: Is that likely to cover couples in same-sex relationships, whether they are in civil partnerships or not?

Ms McDaniel: The emphasis is on ability to offer a child a stable family home, which is demonstrated by being in a stable family relationship. The question is whether that is confined to married couples, for example. The answer is no: it will extend to other couples.

The Chairperson: Is that something that would be very clearly laid out in guidance?

Ms McDaniel: It would have to be laid out in guidance. In response to the judicial review findings, and the findings of the Court of Appeal in particular, which, I think, happened in June 2013, the Department issued a note to adoption agencies — that is the trusts and the voluntary adoption agencies — instructing them to accept applications from same-sex couples and unmarried heterosexual couples.

The Chairperson: OK. On another point, your briefing paper mentions amending aspects of the 1995 Order. That seems to be in and around greater permanence for young people in particular family situations, I suppose, for want of another description. Given some of the criticism that is reflected on the 1995 Order generally — that it is dated and out of date — and some of the challenges of the pending Mental Capacity Bill that is going forward, which are, ultimately, that under-16s are left out of that legislation and will still be subject to a children's Order which many people say is outdated given the needs of children in the current climate, is it enough to simply say that we will amend or tag on?

Ms McDaniel: The reference to amending the 1995 Order to offer another route to permanence is a direct reference to the introduction of the special guardianship order, and we consulted on that back in 2006. We are proposing to make further amendments to the 1995 Order based on changes that have been made in other parts of the UK over the past decade. So, while we are consulting on a set of proposals that were originally consulted on back in 2006, we have spent a bit of time looking at further changes to children's legislation that have been made to the 2004 Act, for example, which is the equivalent of the 1995 Order for England and Wales, and equivalent Scottish legislation. We have

either included some changes in the Bill, or we have made reference to those changes in the consultation paper. Specifically, on some issues, we are seeking views about whether or not we should use the Bill to make those changes now, and we have a catch-all at the end of the consultation document that is basically asking whether there is anything else that has happened in legislation in other parts of the UK over the past decade that you think has application in Northern Ireland and which potentially could be carried forward by way of the Bill.

You are quite right to say that the Children Order dates back to 1995. I think that the Minister is on record as being committed to a wider review of the 1995 Order. We had two options here. We either had to move now to reform adoption, which is based on practice dating back 40 years, or wait for a wider review of the 1995 Order. The Minister has sided with going forward with new adoption legislation with some children's amendments added to that, followed by a wider review of the 1995 Order to come next.

The Chairperson: Finally, another point strikes me. How will the Bill start to address kinship care arrangements? Very clearly, there is almost a sense, if not a real sense, of a disparity of access to services depending on whether the kinship arrangements are formalised or not formalised. Will the Bill deal with and address that, given the high numbers of kinship arrangements in the North, and probably across the island?

Ms McDaniel: You are quite right: the number of children in kinship care is increasing year on year. There is some provision in the Bill that I think will benefit children in what we have termed, in the recent past, formal kinship care. That is children who are the subject of care orders or who are in care with the approval of a health and social care trust. By way of example, the intention is to amend article 18 of the 1995 Order, which currently only allows for cash payments to be made in exceptional circumstances. The intention is to remove the restriction on payments being made in exceptional circumstances only. That will give a trust discretion to provide for kinship carers — not only kinship carers who are looking after children in the care of the state but, potentially, children of families in need. That strays into what we have now termed as informal kinship care.

Mr Brady: You have already answered one of my questions. The Chair must have been reading my mind. It was on the issue around the Mental Capacity Bill, which will be a huge and complex piece of legislation. I think that you mentioned that the Bill will have 140 clauses and five schedules and is a huge Bill of complexities. Around that, on the under-16s, as you said, the Minister has committed to reviewing the 1995 Order, but God knows when that will be.

Ms McDaniel: It is unlikely to be in the current mandate. A review of the 1995 Order is a big undertaking.

Mr Brady: It is a big undertaking.

Ms McDaniel: It would probably take several years to complete, and then you would have legislative change potentially coming behind that.

Mr Brady: I think it is accepted that it is out of date, and you sort of answered that question. One of the proposed amendments to the 1995 Order is to provide for advocacy services for former looked-after children, especially guardianship children or adopted children who wish to make representations through complaints. Do you envisage that that will be an independent advocacy service?

Ms McDaniel: It will be. Currently, advocacy services, which are non-statutory in nature, are offered by organisations such as Voice of Young People in Care, which are completely independent of health and social care trusts.

Mr Brady: So, it would be the Children's Law Centre and, presumably, organisations like that?

Ms McDaniel: Absolutely. The nature of advocacy requires an element of independence. The intention under the new statutory arrangements is certainly to have independence built in.

Mr Brady: I presume that complaints would go through official channels in terms of social services first. If an adopted child had a complaint and a social worker was involved, because they would still have a duty of care to the younger children, I presume that that would go through those channels before it reached —

Ms McDaniel: The advocacy services that will be provided relate to advocacy on behalf of a child who has a complaint to make, for example, about how a trust is performing any of its functions, or some of its functions under the 1995 Order. You are quite right; there will be social services involvement, and the independent advocate will come in on top of that.

Mr McCarthy: Does the Bill merely place us in line with what is going on across the water in other jurisdictions?

Ms McDaniel: It certainly brings Northern Ireland adoption legislation into line with what has happened in other parts of the UK, but I have given you some examples of where we are proposing to go a step further. One of the examples was a duty to assess whether those affected by adoption have needs for services. Our intention is possibly to take that a step further and say that, having assessed a need, we provide. In some cases, we are proposing, subject to the outcome of consultation, to go a bit further than has been done in other parts of the UK.

Mr McCarthy: That is just what I wanted to find out.

Mr Beggs: Thank you for your presentation. One of the criticisms of the current adoption system in Northern Ireland is the length of time it takes to complete the process. How do you foresee the average adoption time changing as a result of this new legislation?

Ms McDaniel: You are quite right; the statistics on the length of time taken to adopt are poor in comparison with what happens in other parts of the UK. Currently, for example, from the last entry into care until a child is adopted, it takes three years and five months in Northern Ireland compared with two years and seven months in other parts of the UK. We currently have a target to reduce that to three years; that target is contained in the commissioning plan direction to the Health and Social Care Board. By way of introduction of the Bill, which will have a statutory principle of no delay, for example, and will require courts to introduce systems of timetabling by removing a freeing order to replace it with a placement order, altering arrangements for contact for consent — the intention in doing all those things as a package of measures is to begin to impact on the time it takes for a child to be adopted in Northern Ireland, which none of us believes is acceptable as it stands.

Mr Beggs: By how much do you think it will shorten that period?

Ms McDaniel: If everything goes according to plan and on the assumption that the reduction in other parts of the UK is a result of new legislation, for example, we should begin to show durations similar to other parts of the UK, which should make a significant difference for children.

The Chairperson: OK. Thank you all for that information. Obviously this is at the very early stages, so we look forward to it being brought to the Executive in the first instance and continuing to have the consultation on what is hugely important and probably quite complex legislation. Thank you for your time today.