

THE **LAW SOCIETY**
OF NORTHERN IRELAND



**Committee for Health (Northern Ireland
Assembly)**

Call for Evidence

ADOPTION AND CHILDREN (NI) BILL

**Response of the Law Society of
Northern Ireland**

October 2021

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ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (Northern Ireland) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,800 solicitors working in approximately 470 firms, throughout Northern Ireland, in the public sector and in business. Members of the Society thus represent private clients, small, medium, and large enterprises, government bodies and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland.

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RESPONSE

Introduction:

The Law Society (the Society) supports the proposed legislative reform of adoption law in this jurisdiction. The alignment with the Children Order to support the aim of ensuring that a child's welfare is the paramount consideration in adoption related decisions, along with other measures including placement orders, a framework for disclosure of information and delay reducing procedures will update the current adoption legislation which was introduced in 1987. There are a number of comments that the Society would like to make about the new Bill but asks the Department to note that there are a number of proposed provisions that are outside the Society's remit to comment.

Part one – Adoption:

The clear indication of considerations to be applied when exercising powers under the legislation along with definitions will greatly assist in adoption practice going forward. It is welcomed that this long awaited revision of adoption law is now at an advanced stage.

To have one body or authority operating the adoption process in this jurisdiction will make this area of law more streamlined and assist in consistency of approach as well as dealing with practical day to day issues that can arise if a child is placed in a different Trust area, to that which it had been living in previously. This is seen as a positive step for all involved including the carers.

The Society hopes that sufficient recurring funding will be available to operate the new service and all ancillary supports as this will be imperative to its success.

The introduction of placement orders to replace freeing orders is an interesting development that will certainly assist with current delays in the process and ensure key decisions are taken earlier. The Society is mindful of the issues of informed consent and undue influence and therefore asks that specific guidance and training operates in tandem with this legislation to ensure that independent legal advice is always recommended to parents. This would chime with obligations under the ECHR.

Placement Orders should introduce a degree of clarity in the adoption process. For prospective adoptive parents, the making of a Placement Order should mean that the

likelihood of them achieving adoption of the child is more realistic. The introduction of this degree of certainty will have a stabilising effect for all. The Society is interested to see what the interplay will be between Placement Orders and Special Guardianships as it is not unreasonable to envisage a situation where a parent might withdraw their consent. This could result in a number of difficulties which need to be planned for.

Clarity is required on whether Special Guardianship and Placement Applications will fall under private or public law applications for the purposes access to legal aid funding. The funding of these applications will be a challenge to some and thought needs to be given to this otherwise the concept and intentions of the legislation relating to this maybe frustrated which ultimately will have an adverse impact on the child/children.

The Society welcomes the introduction of contact in adoptive situations focusing on the welfare viewpoint as opposed to the current practice of parental behaviour and issues. The extension of the Welfare Checklist to include relatives should in effect include contact with wider family members including siblings which is very welcome.

The flexibility for a judge to direct contact which may not fall on all fours with the Guardian ad Litem recommendations is an interesting step which might be viewed by some as fair. The opportunity to review decisions not to allow parents have their child/children returned to them is a welcome development.

The suggestion that there may be provision of services post adoption will be very well received by adoptive parents. On occasion some have been left in limbo without support in special circumstances where the child obviously required on-going input and support from social services.

Part Two – Children Order amendments:

Amendments within the Children Order are necessary to ensure that both pieces of legislation accord with each other.

The Society notes the proposal to introduce Special Guardianship into this jurisdiction. The sharing of parental responsibility with a party looking after a child is important and will reduce delay as otherwise some decisions would have to be made with input from the

Trust/adoptive authority. However, with the societal make up in this jurisdiction, the concept of Special Guardianship may not operate as smoothly as in England and Wales. Close family relationships and communities in Northern Ireland will make the operation of Special Guardianships less smooth than in neighbouring jurisdictions.

Finally, the suggested renaming of Guardian Ad Litem is not supported by the Society as it is easy to foresee how confusion could arise. This is especially so given that the current terminology has been in place for some time and is familiar to all. In addition, there is already a Court Children's Officer connected to family courts, albeit in respect of private law matters. With such a similar name already in the family court system it would be unwise to introduce what is proposed.

CONCLUSION

The Society welcomes the opportunity to submit a response in respect of the Call for Evidence on the Adoption and Children (Northern Ireland) Bill.

Overall, the Society supports the principles behind the Bill as it will make legislation in this area fit for modern day practice and tackle some of the delays currently experienced.