

Adoption and Children Bill

Written submission to the NI Assembly Committee for Health

8th October 2021

Introduction

The NSPCC is the leading children's charity fighting to prevent child abuse in the UK and Channel Islands. We help children who have been abused to rebuild their lives, protect those at risk, and find the best ways of preventing abuse from every happening. To achieve our vision, we:

- create, deliver and evaluate services for children which are innovative, distinctive and demonstrate how to enhance child protection;
- provide advice and support to ensure that every child is listened to;
- campaign for changes to legislation, policy and practice to ensure the best protection for children; and
- inform and educate the public to change attitudes and behaviours.

We are grateful for the opportunity to provide evidence on the Adoption and Children Bill. We welcome the introduction of the Bill, which will provide a revised and updated regulatory framework for adoption in Northern Ireland. Proposals for the reform of adoption law in Northern Ireland have been in development since 2004, and the introduction of this Bill delivers on the Department of Health's longstanding commitment to reforming adoption law in Northern Ireland.

The Bill also makes a number of welcome amendments to the Children (Northern Ireland) Order 1995 (Children Order). We are pleased that the Department of Health has taken the opportunity presented through the passage of this Bill to make timely and necessary amendments to the Children Order in order to improve outcomes for looked after children

and young people who have left care.

The Bill is extremely complex and detailed, and the proposals contained therein have been subject to a series of public consultation exercises and Assembly scrutiny processes.¹ Our comments are therefore limited to a number of discrete areas which NSPCC believes warrant further consideration. As we approach the end of the Assembly mandate, it is crucial that the Committee and wider Assembly expedite these vital and overdue legislative reforms without delay.

General Comments

While the Bill is extremely lengthy, a great deal of the detail as to how aspects of it will operate in practice has been left to a raft of Regulations and Rules to Court to be developed after the Bill is made law. Ongoing engagement with key stakeholders will be extremely important in taking this work forward. It is therefore difficult to provide fully informed comment on the Bill and its outworkings in their entirety at this stage. We note from the Explanatory and Financial Memorandum that it is not expected that expenditure on the Bill will be incurred before 2023/24, when funding will be required to underpin the suite of Regulations to be made under the Bill, which will then come into force.

In addition, the number of looked after children in Northern Ireland is rising. As of 31st March 2020, there were 3,383 looked after children in Northern Ireland. This is a 30% increase over the last ten years and the highest number of children in care since the introduction of the Children (Northern Ireland) Order 1995.² This figure has further increased throughout the pandemic and provisional figures for the week ending 27th September 2021 show that there are currently 3,564 looked after children in Northern Ireland.³ This is a 6% increase on the latest collected regional figures prior to Covid 19 (30 September 2019). It is vitally important that legal reform to improve the lives of looked after children is progressed as a matter of

¹ Pages 15 and 16, Reforming adoption legislation – a timeline, NI Assembly Research and Information Service Briefing Paper, “Adoption: Northern Ireland,” Dr Lesley-Ann Black, 7 September 2021 NIAR 98-2021.

² [Childrens Social Care Statistics Northern Ireland \(health-ni.gov.uk\)](https://health-ni.gov.uk/childrens-social-care-statistics-northern-ireland/)

³ [Northern Ireland Children's Social Services Data during COVID-19 - 29 September 2021 \(health-ni.gov.uk\)](https://health-ni.gov.uk/northern-ireland-childrens-social-services-data-during-covid-19-29-september-2021/)

urgency. This should include the expedient introduction of draft foster care regulations to develop standards for foster care which are complementary to the Adoption and Children Bill. These were consulted on in 2014, but have not yet been progressed.

Given the delay in reforming this area of the law in Northern Ireland to date, we urge the Department of Health to continue to progress legal reform of adoption and foster care in Northern Ireland as expediently as possible to ensure that there are no further delays in its full implementation.

Commentary on the provisions of the Bill

There are many very welcome aspects to the Adoption and Children Bill, these include:

- the welfare checklist at Clause 1(4) which brings the welfare test regarding adoptions into line with the Children Order and ensures that the welfare of the child is the paramount consideration in making decisions about the adoption of a child;
- the obligation in Clause 5 on adoption authorities to carry out an assessment of the needs for adoption support services of children, their parents and guardians, prospective adopters, their parents, natural parents and former guardians and other prescribes people at their request;
- the provision of adoption support services at Clause 5(4) where needs have been identified in an assessment;
- the obligation on the court at Clause 113(1) to draw up a timetable and give directions to ensure adherence to the timetable when dealing with any matter relating to a placement or adoption order in order to avoid delay;
- the amendments to Articles 18, 21 and 66 of the Children Order, under Clause 120, which require an authority to ascertain the wishes and feelings of the child and give them due regard when providing social care for children in need, their families and others; in the provision of accommodation for a child, and; when carrying out an investigation where a child is the subject of an emergency protection order, is in police protection or is likely to suffer significant harm;

- the introduction of statutory care planning under Clause 134 which places obligations on authorities to prepare, review and revise a care plan.

Definition of Harm

Clause 133 amends the definition of harm in Article 2(2) of the Children Order to take account of the impact of domestic violence on children.⁴ It amends the current definition as follows,

“In Article 2(2) of the Children Order (interpretation) in the definition of “harm” after “health or development” insert “including, for example, impairment suffered from seeing or hearing the ill-treatment of another.”

The requirement in the above amendment for a child to have seen or heard the ill-treatment of another to come within the definition of harm under the Children Order does not reflect the approach taken regarding the child aggravator in Article 9 of The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021. In recognition of the damaging impact on a child of living in a home where domestic abuse is taking place, there is no requirement for a child to have an awareness or understanding of the abuse for the child aggravator to apply. Article 9 2(c) of The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 states that the child aggravator will apply if,

“a reasonable person would consider the course of behaviour, or an incident of A’s behaviour that forms part of the course of behaviour, to be likely to adversely affect the child.”

Article 9 (3) goes on to state that,

“For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—

(a) has ever had any awareness or understanding of A’s behaviour, or

(b) has ever been adversely affected by A’s behaviour.”

⁴ [Adoption and Children Bill EFM \(niassembly.gov.uk\)](https://niassembly.gov.uk)

The impact of abuse on children is profound, and the risk of harm to children is not dependent upon their awareness or understanding of the abuse. Children who experience domestic abuse have been shown to have an increased risk of immediate harm, with greater risk of physical abuse occurring, or children being killed because of a domestic abuse incident.⁵ They can pick up on a parent's distress, or be severely impacted upon by living in a home where its inhabitants live in fear.

The psychological impact of living with the day to day reality of abuse can also have significant detrimental impacts on a child's sense of self, safety and wellbeing. One study estimates that children who live in a household with domestic abuse are three times more likely than other children to have a conduct disorder.⁶ Children living in household where domestic abuse is taking place can also be detrimentally impacted upon by their parent's compromised capacity for parenting. This impacts on children, including very young children, and threatens the attachment relationship with their parents.⁷ Children are at greater risk of emotional harm and neglect due to living in homes where domestic abuse takes place.⁸

It is vitally important that the definition of harm in the Children Order takes cognisance of the corrosive impact on children of living in a home where domestic abuse is occurring, whether the child has an understanding or awareness of the abuse or not. NSPCC recommends that definition of harm in the Children Order be amended to reflect that a child can be severely adversely impacted by domestic abuse in the home, even if they do not see or hear the abuse taking place.

We would also suggest that consideration is given to the introduction of a statutory duty on Health Trusts to provide specialist domestic abuse support for children in the Bill. NSPCC knows that with the right support, children affected by domestic abuse can recover and go

⁵ Callaghan (2018), 1553.

⁶ Meltzer, Doos, Vostanis, Ford, Goodman (2018) The mental health of children who witness domestic violence. American Psychological Association

⁷ Powell, B., Cooper, G. Hoffman, K., and Marvin, B. (2014) The Circle of Security Intervention: Enhancing Attachment in Early Parent-Child Relationships, New York: Guilford Press.

⁸ Katz, Coercive Control, Domestic Violence and a Five Factor Framework: Five Factors that Influence Closeness, Distance and Strain in the Mother-Child Relationship, 2019, *Violence Against Women*),p5.

on to enjoy happy and healthy childhoods. If children are to recover from the impacts of domestic abuse, we must ensure that there is sufficient specialist support available. This is particularly pressing given the rise in the number of police recorded domestic abuse crimes in Northern Ireland for the period 1st July 2020 – 30th June 2021.⁹ In this period the number of domestic abuse crimes rose to 19,612, an increase of 4% on the previous 12 months. This is the highest 12 month period recorded since 2004/05.

A child's experience of domestic abuse is different to that of an adult and specialist, child-centred support is needed to help children recover and move forward with their lives. Due to the scope of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 it was not possible to introduce a statutory duty on Health Trusts to provide specialist domestic abuse support. However, we feel that sufficient emphasis on recovery and support remains lacking in this area for children who are victims of domestic abuse and their families.

Evidence has identified that children have a better chance of recovering from domestic abuse when they have a strong relationship with the parent victim of abuse, usually the mother.¹⁰ The Domestic Abuse Recovering Together (DART) service run by the NSPCC, and delivered from our Belfast service centre, helps children and mothers talk to each other about domestic abuse, learn to communicate and rebuild their relationship. Over a number of sessions, mothers and children aged 7-14 meet for a weekly two-hour group session, and then take part in activities in separate groups. Mothers learn about how domestic abuse happens and the impact it has on children. Children take part in activities together that help them build their own understanding of domestic abuse, how they're feeling and how to keep themselves safe. They then join together again to conclude the session. Evaluations of the programme found that:

- mothers' self-esteem and confidence in parenting increased, and they reported more affection towards their children; and

⁹ [Domestic Abuse Incidents and Crimes Recorded by the Police Update to 30th June 2021 \(psni.police.uk\)](#)

¹⁰ Katz, 2019.

- children had fewer emotional and behavioural difficulties; reductions were greater among children who received DART than those involved in an alternative service.

The provision of sufficient and specialist support services will be key to ensuring that the damage caused by domestic abuse is minimised.¹¹ A statutory duty on Health Trusts to provide specialist support and recovery services for children affected by domestic abuse and their families would go some way to ensuring that domestic abuse does not define children's futures and that they can recover and go on to lead happy and healthy lives.

NSPCC would therefore welcome the consideration of the Committee on the introduction of a statutory duty to provide specialist domestic abuse support for child victims in the context of this Bill.

Duty on authorities to promote educational achievement and prevent disruption of education and training

Clause 122 amends Articles 26 and 27 of the Children Order to introduce a duty on authorities to promote educational achievement and prevent disruption of education and training. This is very welcome, given the well-recognised need for improvement in the educational outcomes of looked after children and the need for permanence and stability in their lives.¹² It would be useful to know the extent of this duty and the specific requirements which authorities will be under to ensure compliance. In specifying these requirements, it will be important to interrogate the underlying reasons why disruption to placements, and therefore education training, continue to occur and address their root causes as this is essentially a symptom of wide failings within the care system.

Corporate parenting principles

¹¹ Children affected by domestic abuse need support to process their distinct experiences, and to develop an understanding of healthy relationships. Specialist children's services, like Children's Independent Domestic Violence Advisors in England emotional and practical support, reduce the impact of domestic abuse and improve children's safety and health outcomes. See [Safe Lives \(2014\), In plain sight: Effective help for children exposed to domestic abuse.](#)

¹² Departments of Health and Education (NI) (2021) A life deserved - "Caring" for children and young people in Northern Ireland. <https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-lac-strategy.pdf> p8

Clause 123 introduces a framework of corporate parenting principles for Health and Social Care Trusts. These are high-level principles and it would again be useful to know the specific obligations on Trusts as a result of the principles, as well as any potential consequences where a Trust does not act in accordance with the principles. With regard to the principle, *“helping them gain access to services provided by the Trust and any relevant partner”*, we would suggest the inclusion of access to suitable and appropriate services which will meet the needs of the child. We would refer to the Children and Young People (Scotland) Act 2014 which outlines a range of duties and responsibilities on corporate parents which may be of assistance in determining how compliance with these principles could be determined.¹³

Short term breaks outside of the looked after children system

Cause 121(1) introduces a power for Health and Social Care Trusts to provide accommodation to a disabled child, for the purposes of providing short term breaks outside of the looked after children system. The new provision also contains a power for the Department to prescribe other categories of children to whom such accommodation may be provided. NSPCC recommends that consideration is given to defining further “other categories of children” to which this provision could relate. There are a number of groups of children for whom such provision would be beneficial, such as homeless 16 and 17 year olds where time and accommodation are required to allow for the arrival at a permanent solution, children requiring post-adoption support and children on the edge of care. It will be very important to have ongoing engagement with key stakeholders in the development of regulations relating to “other categories of children” to ensure that all groups of children who require this support are included in order to be able to access it.

Statutory advocacy services

¹³ <https://www.legislation.gov.uk/asp/2014/8/part/9/enacted>

Clause 132 introduces statutory advocacy services for looked after children, former looked after children, special guardianship children or adopted children where they are making representations in the context of complaints or reviews. This is extremely welcome but we would like to see some clarity around this provision, including assurances that advocates will be independent of the statutory sector and will have undergone all the necessary training and child protection procedures. In addition, advocacy should be age appropriate and young people should be able to appoint an advocate of their choosing, particularly where they worked with a particular advocacy service on a previous occasion, where they have a good relationship with an advocate or where they feel that a specific service is best suited to meet their needs.

A key aspect to advocacy is the right of the individual to express their views and be heard. We therefore would like to see the extension of the provision of statutory advocacy services to situations outside of the limited contexts proposed in the Bill, including to assist children and young people in ensuring that their wishes and feelings are heard in all matters concerning them. This is particularly important given the complexity of the care system, the particular vulnerabilities of children in, entering into or leaving that system and the appropriate emphasis in this Bill on capturing the views and feelings of children and giving them due regard. Access to high quality advocacy support is a key component in facilitating disadvantaged groups, including the most vulnerable in society to vindicate their rights.

We would also emphasise the need to ensure that appropriate advocacy services are available to children of all ages to facilitate them to have their voices heard and taken into account in decisions about their lives. This would be in line with Article 12 of the United Nations Convention on the Rights of the Child. Article 12 states that all children who are capable of forming their own views have the right to express those views freely in all matters affecting them. For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The UN Committee on the Rights of the Child's General Comment on Article 12¹⁴ imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him.¹⁵ It states that the government should,

*"...presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them."*¹⁶

In addition, this would reflect the position taken in the Children (Scotland) Act 2020¹⁷ which replaces the presumption that only children aged 12 and over are mature enough to have their views heard in courts proceedings. It takes a flexible and holistic approach to the hearing of children's views so that any child who is capable of forming and expressing a view should be heard. NSPCC would like to see all assistance being given to children of all ages to help them to express their views and feelings at every stage of their journey through the care system and would welcome an extension of the provision for statutory advocacy support services for children and young people in this Bill.

Contact

Clause 135(2) amends the Children Order to make it clear that the duty on a Health and Social Care Trust to allow reasonable contact between a child in care and their birth parents and guardians and others is subject to the duty on the Trust to safeguard and promote the welfare of looked after children. We believe that every decision, particularly in relation to contact, should have the welfare and best interests of the child at its core as is currently the case under the Children (NI) Order and as required by Article 3 of the UNCRC. Where it has been established to the satisfaction of the Court that contact is not in the child's best interests, we agree that the duty on the Trust to promote contact should be released.

¹⁴ CRC/C/GC/12, 1st July 2009

¹⁵ Para 21, CRC/C/GC/12, 1st July 2009

¹⁶ Para 20, CRC/C/GC/12, 1st July 2009

¹⁷ [Children \(Scotland\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

However, the Trust should give particular weight to the views of the child and also to available options for sibling contact.

Dually Approved Carers

Clause 15 introduces a legal duty on a Health and Social Care Trust to consider the placement of a child with dually approved carers when it is considering adoption, or where the decision has been made that the child ought to be placed for adoption. These are approved foster parents who are also approved prospective adopters. This is welcome as it has the potential to minimise disruption to children's lives and reduce the number of placement moves. It also has the potential to allow for adoption to happen sooner and when the child is younger, allowing for earlier permanence and bonding. In 2020/21, children adopted by concurrent carers¹⁸ were younger at the time of adoption (3 years 3 months compared with the national average of 3 years and 10 months) and they also had a shorter last duration in care (2 years 9 months compared with the regional average of 3 years 2 month).¹⁹ There may be implications for foster carers, particularly those who do not wish to adopt which will require further consideration.

Special Guardianship Orders

Clause 119 introduces Special Guardianship Orders (SGOs), a new legal order intended to provide greater permanence for children who cannot return to their birth families but for whom adoption is not appropriate. These were introduced in England and Wales in 2005 and it is welcome that the proposed provisions take into account some of the learning from how they have operated there to date. The requirement that a child must have lived with an adult or adults seeking an SGO for at least one year to ensure that there is a sufficiently strong existing relationship is welcome.

However, one of the failings identified with the operation of SGOs in England and Wales has been the lack of adequate preparation and support for special guardians.²⁰ In a 2015 public review of SGOs in England and Wales, 72% of respondents said that advice and support

¹⁸ Carers who are approved as foster carers and adopters.

¹⁹ [Children Adopted from Care in Northern Ireland 2020/21 \(health-ni.gov.uk\)](https://www.health-ni.gov.uk/publications/children-adopted-from-care-in-northern-ireland-2020-21)

²⁰ [Department for Education consultation response \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/424242/department-for-education-consultation-response.pdf)

should be provided to children, special guardians and birth parents before, during and after the award of special guardianship.²¹

We would therefore like to see special guardianship support on the same basis and with the same eligibility as adoption support as per Clause 5 of the Bill.

²¹ 72% of respondents to the Call for Evidence said that advice and support should be provided to children, special guardians and birth parents before, during and after the award of special guardianship.