



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Children's Services Co-operation Bill:
Office of the First Minister and deputy First Minister

27 April 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Alex Attwood
Mrs Brenda Hale
Mr Alex Maskey
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr Jimmy Spratt

Witnesses:

Mr Peter Hutchinson	Office of the First Minister and deputy First Minister
Ms Margaret Rose McNaughton	Office of the First Minister and deputy First Minister
Mrs June Wilkinson	Office of the First Minister and deputy First Minister

The Chairperson (Mr Nesbitt): Today we welcome Peter Hutchinson, June Wilkinson and Margaret Rose McNaughton. Before we move to your opening remarks, Margaret, I thank you for your constructive engagement with Committee staff on the Bill. That has been much appreciated. I understand that you have also been engaging with the Bill sponsor and officials in other Departments. I think you previously received a copy of the clause-by-clause issues paper and the themes that we have been exploring through our oral evidence sessions. I will hand over to you for opening remarks.

Ms Margaret Rose McNaughton (Office of the First Minister and deputy First Minister): Thank you very much, Chair, and thank you for inviting us along to brief the Committee today. I just want to take a few minutes to provide an overview of some of our thoughts on the Children's Services Co-operation Bill. As you said, you have a paper that, hopefully, members have had an opportunity to read.

Ministers have previously agreed that they support the general principles of the Bill, but we do have a number of issues and areas where we would like to make amendments. The paper provided to members outlines the key concerns raised by Departments and some of our early thoughts on how the Bill could be revised, but, again, that is not a final or agreed position at this stage. We still have a lot of work to do on it.

I am conscious of time, but today I hope to take you through the paper that we sent to you on Thursday on the clauses and the amendments that we plan to make to the Bill. It is from paragraph 9 of the paper onwards. Again, I will be guided by what members feel is most appropriate or most

helpful at this stage. Please feel free to interrupt and ask questions as we go through each of the clauses. I will ask June to take us from clause 1 onwards.

Mrs June Wilkinson (Office of the First Minister and deputy First Minister): First, we want to consider the introduction of a new clause 1, which would act as a purpose clause. This was suggested by Daniel Greenberg when he assessed the Bill. Purpose clauses are more common in Australian law and there are only a few examples of such clauses in the UK. Whether the amendment is introduced will depend on whether the purpose clause adds any value to the Bill. We will liaise with the Office of Legislative Counsel (OLC) on that point. The purpose clause will define what the Bill is about and what functions will be conferred in the Act.

The Chairperson (Mr Nesbitt): Daniel Greenberg and others have said in evidence sessions that it would be useful to have a very clear articulation at the very beginning that this is what we want to do.

Mrs Wilkinson: OK. Moving on then, the existing clause 1 on the duty to cooperate would then be revised and would become clause 2. The duty would ultimately be on the Executive to ensure that the necessary arrangements were in place to promote cooperation and place the child at the centre of services. We would also wish to ensure that this cooperation would support rather than hinder Departments' existing functions. The focus on cooperation would be to achieve better outcomes for children and young people, and it would be detailed in the strategy that is going to be brought forward. It is about tying the duty to cooperate to the strategy, as opposed to leaving services in the ether.

The new clause 3, then, deals with the strategy. It would place a duty on the Executive to set out and bring forward a children and young people's strategy that sets out a high level of strategic outcomes for children and young people and how all relevant partners would work cooperatively to achieve those outcomes. This would mitigate concerns about naming policy outcomes in the legislation and places an emphasis on the Executive to deliver on the strategy document.

The Chairperson (Mr Nesbitt): One witness suggested that rather than say "deliver against the six high-level outcomes in the strategy" it would be reworded to say "against the high-level outcomes as currently defined" or words to that effect, so that if you change it, the Bill does not lose relevance.

Mrs Wilkinson: Yes, so that there is room to manoeuvre.

The Chairperson (Mr Nesbitt): Is that something that you are concerned about?

Mrs Wilkinson: Yes, we are concerned about that too because we want to ensure that there is flexibility. As the position changes, we want the legislation to be able to move with it. We want to get the wording right so that it links to the agreed outcomes.

The Chairperson (Mr Nesbitt): That are live.

Mrs Wilkinson: Yes, live as opposed to defined.

That clause would also provide an opportunity to have the relevant Department consult children and young people themselves, which is very important in the development of the strategy. We want the strategy to include key outcomes and measurable indicators that can be monitored to determine success. It empowers the Executive to hold Departments to account on what they are doing, how it is delivered and where the improved outcomes are.

The existing clause 4, which amends the Children (Northern Ireland) Order 1995, could be placed as a stand-alone clause rather than amend the 1995 Order. The clause would seek to have the focus on the existing clauses insofar as the Executive are the body working to produce a plan to deliver on the strategy. It is taking it to the next step; we would link with the 1995 Order's requirements to have a plan — the plan to deliver on the children and young people's strategy.

The Chairperson (Mr Nesbitt): I am not 100% clear on this. If there is a controversial clause, clause 4 seems to be it. You are saying that it will be a stand-alone clause.

Mrs Wilkinson: Yes. Rather than clause 4 amending the 1995 Order, we are just having a clause 4 in the strategy which is about planning, rather than linking it to an amendment of the 1995 Order, which was about planning.

The Chairperson (Mr Nesbitt): I have got that, but are you proposing to significantly alter the wording and the responsibilities as a stand-alone?

Mrs Wilkinson: Yes, completely.

The Chairperson (Mr Nesbitt): Completely. OK, that is clear.

Mrs Wilkinson: Yes, but totally still delivering cooperation in the underlying plan.

The Chairperson (Mr Nesbitt): OK, but I think we would be interested to know how you intend to monitor it and where the responsibilities will shift to.

Mrs Wilkinson: Children's services will still be planned, commissioned and delivered by the relevant partners. All the Departments and relevant partners will contribute to producing the strategy. They will also have to contribute to producing the plan that links to the strategy. In simple terms, if there is a health issue, the Health Department will have contributed a plan on how it is addressing that within the strategy. That is how it will be described in those terms. It breaks it down. That means that the elements of the strategy which link to the 1995 Order, and which the Children and Young People's Strategic Partnership (CYPSP) already delivers on, would be included. It means that the plan for this Act will encompass the work of the 1995 Order, so there will be one plan. The 1995 Order has its section of it, which is particularly for children with particular needs, and we will ensure that the plan covers all other children and all other requirements.

The Chairperson (Mr Nesbitt): Which body leads?

Mrs Wilkinson: At the minute, OFMDFM is the lead Department. Our duty is to coordinate, but it is the responsibility of all Departments to contribute to the strategy and the plan, because it is an Executive strategy. Children's issues touch on all Departments.

The Chairperson (Mr Nesbitt): What are the implications for the Health and Social Care Board, compared with what it currently has responsibility for?

Mrs Wilkinson: The Health and Social Care Board had concerns that it was only engaging with other partners where it was able to secure buy-in. This empowers the Executive to require all Departments to give buy-in to the Health and Social Care Board. If it needs a partner on a particular issue, it is empowered, under the Executive strategy, to ask that Department to work with it.

The Chairperson (Mr Nesbitt): Is it fair to say that, under your proposals, the HSCB stops being the core body and OFMDFM replaces it as the core driver?

Mrs Wilkinson: No, I would not say that it stops being the core body. It is unique in what it delivers in relation to the 1995 Order, and it would continue to do that. The Bill will ensure that other Departments are also required to cooperate with the Health and Social Care Board. At the minute, they do not have that definitive role. Some Departments and bodies do cooperate, but this will require them to.

The Chairperson (Mr Nesbitt): Would you argue that what you propose is consistent with the role OFMDFM plays in Delivering Social Change and Together: Building a United Community, for example?

Mrs Wilkinson: Yes. It would be by no means an OFMDFM strategy; this is an Executive strategy. OFMDFM just happens to be the tool to provide its operation. If the role moves to another Department in the new structures, that would move accordingly.

The Chairperson (Mr Nesbitt): If you do not mind, Alex Maskey will come in at this point.

Mr Maskey: Would this mean a new clause? I am not sure whether it is the same clause or if you are talking about a rewritten clause. Does this mean that OFMDFM would have the authority? If the Health and Social Care Board came forward and said, "We're taking this area of work forward, but we need this other agency or Department to participate. They are not doing that at the moment. We

need buy-in from this other structure", does OFMDFM have the authority, under this, to say to the other Department or agency, "Away you go; work away with that"?

Mrs Wilkinson: It does, but it would not be as specific as that. It is not OFMDFM but the Executive who would have the authority, because, through the Bill —

Mr Maskey: But it would be processed through OFMDFM.

Mrs Wilkinson: Yes, OFMDFM would be the agent.

Mr Maskey: So, in a way, this gives the Health and Social Care Board greater —

Mrs Wilkinson: No.

Mr Maskey: — authority, if you like, to call for greater cooperation, albeit via the Executive.

Mrs Wilkinson: That is right, yes.

Mr Maskey: It does not have it at the moment.

Ms McNaughton: This is just one of our proposals. None of this has been agreed in any way yet.

Mr Spratt: Just on the back of the questions that Alex has asked, in respect of the HSC Board, surely there is a danger, and it is important that it is not prescriptively laid down in legislation for a board directing Executive Departments, whether it is the Department of Education, the Department of Health, OFMDFM or any other Department. You cannot have an outside body wagging the tail of government, at the end of the day. Are we certain that that clause will make sure that that does not happen?

Mrs Wilkinson: Yes, that is why I was describing it as totally removing it in its current form but continuing to have a clause that required a plan. The clause that described it as it was in the Bill that was introduced is not the same. That would be removed completely.

Mr Spratt: That was always a major concern that I had. I think that I raised it in earlier meetings that we had in relation to that. Are you satisfied that that will make it watertight and that that will not happen?

Ms McNaughton: We want to bring the power back to the Executive to decide who it is that sets out the plan. The board will still continue to plan for services for children in need under the 1995 Order, but under the new Bill and what is required in terms of a plan for the children's strategy, we may well ask the board to produce that plan. That might be what comes out of all of this, but it will be an Executive decision as to who does it. It will be the Executive that will tell the board what they want to do. We have to discuss that with the board in more detail.

The Chairperson (Mr Nesbitt): So this is your current thinking rather than your definitive thinking.

Mrs Wilkinson: Yes, but we have had meetings with the board and outlined our view to it. I have been liaising with it to ask, if there was the one plan, how it would marry with its requirements, so that we get it right once rather than duplicating.

The Chairperson (Mr Nesbitt): OK.

Mrs Wilkinson: Will I move on?

The Chairperson (Mr Nesbitt): Please, June.

Mrs Wilkinson: Clause 5 will amend and replace the existing clause 2 entitled 'Co-operation report'. Clause 5 will require the Executive to report regularly on the delivery of the strategy through the plan and provide information on the measurable indicators and outcomes. The report will also be expected to include commentary on how Departments and relevant bodies have cooperated in the delivery of

the outcomes and further opportunities for cooperation. That takes in the aspiration of the current Bill but frames it around a report on how well we are doing on delivering the strategy.

Mr Spratt: On the reporting, I suppose that this is one of the areas of worry as well, in increased bureaucracy with adding other layers of reporting and actually taking away from getting the money to the source where it needs to go to. Some of the bodies that have been giving evidence have been suggesting yearly. Surely, on top of existing procedures for reporting — I am not exactly sure how that happens at the minute, but maybe you can give us some explanation around that — vis-à-vis new arrangements, are you certain that that clause will make sure that it will not be prescriptive in increasing bureaucracy and needing a lot more people to do it, and, at the end, you have another nonsensical report and the stuff is not getting done at the end of the day, which, I suppose, is the best way that I can put it?

Ms McNaughton: You are right. We had that concern as well: that this would just increase bureaucracy. Whatever we finally end up with in this Bill, we need to be clear that we will be reporting on the child poverty outcomes model. We are currently reporting on the children's strategy and the action plans associated with that. In any report that comes along, we want it to include the reporting requirements of all the other strategies so, where we can, we are doing one report. For some, we will have to report on a yearly basis because that is already written into legislation on child poverty. For this one, is it every three years for planning?

Mrs Wilkinson: Yes. We were not prescribing an annual report.

Ms McNaughton: In any case, our Northern Ireland Statistics and Research Agency (NISRA) colleagues continuously collate information around how we are doing in terms of the actions of the current strategy. There is a need to work with them and make sure that we have one reporting cycle that is easy to maintain and does not involve reporting on 300-odd actions. There is still a need for us to be clear about what the reporting arrangements are going to be. I share the concerns about the added bureaucracy; it has been a concern of ours from the beginning.

The Chairperson (Mr Nesbitt): The evidence sessions were fairly consistent in terms of the external commentators saying that they wanted an annual report. Were you surprised by that?

Ms McNaughton: Not surprised, I suppose, because there has been concern because not as much progress has been made in terms of the children's strategy as what they would have hoped in the past. That is something that we can work with. In the discussions that we have had with them so far, they are quite positive about some of the changes that we are planning to make. There is maybe a compromise; if it is not every three years, we can think about every two years.

Mrs Wilkinson: In some of my discussions with the sector, it suggested that we could review it annually and report every three years. That way, you are keeping on top of the issues and ensuring that there is delivery, and you keep moving against the indicators. You keep examining the measurement, so at least you are seeing whether we have made any movement, but you do not have to report annually.

The Chairperson (Mr Nesbitt): Could those indicators lend themselves to a sort of live update, where you could go online and say, "Well, a week ago, it wasn't as good as it is today"? That would almost negate the need for continuously writing lengthy reports and the concern that Jimmy has about bureaucracy.

Mrs Wilkinson: We have been engaging with the board to do that. The board has a website that reports on the plans that it delivers on for children and young people. We have been engaging with it to see how we can update that information and extend it so that the whole plan is reported on. That would be the ultimate.

Mr Maskey: Like anybody else, I would not want any additional bureaucracy in the system, but you can envisage MLAs at Question Time periodically asking OFMDFM for an update on the children's strategy, the cooperation Bill or whatever you might call it at that point in time, and you would get an answer. I cannot understand why there is a big issue around an annual report as opposed to a three-year one. I cannot see the sense of it, to be honest. I cannot see the big problem with that. I think that you made the point, Chair, that this is ongoing work. I cannot see why it cannot be topped and tailed at the end of the year and presented. I do not see the big fuss.

Ms McNaughton: There is probably a way for us to do this that reduces bureaucracy. You are quite right about ongoing and almost live reporting, but if we have an outcomes-focused strategy that is reported on, as far as possible, on a six-monthly basis, it depends on what the indicators are, how often you can measure them and how often you can see progress. I think that there is a way around this where, rather than producing a huge report on a yearly basis that just takes up someone's time, we produce something similar to what the board does at the moment. The board assures us on the information that it provides, the outcomes that it produces and the plans that it makes. I think —

The Chairperson (Mr Nesbitt): OK. Sorry, June. Let us crack on.

Mrs Wilkinson: The final substantive clause deals with pooled funds. It is an amendment to the existing clause 3. We want to ensure that there is provision that any pooled funds are managed properly and the practical outworkings of how that is done in terms of management and accountability are in place. That is our key goal.

Mr Spratt: This is one that seriously concerns me in terms of how it would work. It is fraught with all sorts of loopholes and dangers, certainly in the area of accountability and in terms of procedures and stuff like that. An MOU is an MOU, but it is not laid down in tablets of stone. Sometimes MOUs are written in ways that can make them very ambiguous. In some cases, maybe in the care of a child, the Department of Education, DSD to a degree and Health might be involved, and dear knows what other fund there might be. To me, that sounds like a nightmare waiting to happen in terms of public money, and there is a high danger of misuse. I am not saying that it will happen intentionally, but it may well be used in ways that it should not be used. Some of us will have the monitor that, but there are no accountability mechanisms other than that, at some stage, the Auditor General can come along and find that there has been a serious problem, that there is criticism of all the Departments and everything else, and that it is all because somebody wanted to put something like that in.

It is different in England, and I know that the English example has been used. There, an awful lot of this is carried out by the local authorities, which already have delegated budgets for all these things. They are operating education, a lot of the health stuff, a lot of the devices and a lot of physiotherapy that might be needed. When you go into a school like Mitchell House, you can see some of the good work whereby various Departments come in and help the children with physiotherapy and stuff like that. I suppose there is need in more mainstream schools, but I do not know how you would ever work out an MOU to make sure that this is working safely and is accountable to the public purse.

Mrs Wilkinson: Where a common goal and vision are shared between two Departments as you describe, it can be effective. Processes already exist to move money around to deliver on that.

Mr Spratt: That happens at the minute, June.

Mrs Wilkinson: Yes, it does happen; that is what I am trying to say. There is the need for a pooled budget.

Ms McNaughton: We suggest that it should still be an enabling power rather than a mandatory power.

Mr Spratt: Surely pooling is the sort of thing that, perhaps, starts in Education, and then more intervention might be needed, in terms of what the Department of Health might deliver through devices, wheelchairs or whatever, which might be needed for the movement of people with a disability. It already seems to work reasonably effectively, so I assume that some sort of procedure is already in place. I do not know how you would set something down in the present system here. Yes, England is different, but this is not England.

The Chairperson (Mr Nesbitt): I am conscious that we are in plenary. I will not say that we should be quick-fire, but let us see if we can get through these. The Health Minister has articulated concerns. Can you update us on where you are with the Department of Health and the Minister?

Ms McNaughton: Clause 4 is one of his big concerns, and the Bill's ability to amend the Children Order 1995 is a big issue. As you said, the Department of Health is meeting the board tomorrow or Wednesday, and we hope to meet the Department of Health after that to go through all the concerns raised in its letter. These are not new concerns; we knew about them. We hope that the amendments that we will put forward will address all the issues.

Mr Spratt: Chair, I have one point. It is not just Health, but Education and the new Education Authority have had an input as well. Have there been discussions with them?

Ms McNaughton: There have been initial discussions with the Department of Education. The SEN Bill is coming forward as well, and the Committee sent a copy of that to us a few weeks ago. We have not had the same discussions with Health, but we have shared the Bill with Education and have had a response back. We need to work through them to the new Education Authority.

Mrs Wilkinson: We will work directly with the Department of Education, and the Education Authority's views will come through that Department.

The Chairperson (Mr Nesbitt): There is also the Department of the Environment. Last week, we were hearing that there was a concern that these new statutory powers may have unintended consequences for community planning for the new councils.

Mrs Wilkinson: We met officials in the Department of the Environment and we are listening to what they say. This is exactly what we do not want. We do not want it to inhibit community planning actions. Cooperation on children's issues is very important in community planning, so we want to make it effective rather than challenge it.

The Chairperson (Mr Nesbitt): You are talking about Departments, and then you add agencies to that. Just give us the rationale, on the record, for that, please.

Ms McNaughton: Do you mean the like of the Health and Social Care Board? If we are talking to Departments — I am sorry, I am not quite sure I heard you correctly. Do you mean in terms of talking to them now?

The Chairperson (Mr Nesbitt): No, for the legislation.

Mrs Wilkinson: The Health and Social Care Board is a statutory body. So, this is to ensure that it is required to cooperate with a Department. It is so that the Department of Education, for example, would cooperate with the board. That is why agencies are identified as well as Departments.

The Chairperson (Mr Nesbitt): Let us go back to the witnesses we have heard from so far. There was some strength of feeling that there should be some sort of independent oversight or consultation with the sector in drawing up the report. Of course, we have the Commissioner for Children and Young People, and the Children and Young People's Strategic Partnership (CYPSP). Do you take a view on whether it is necessary for any further formal body to be set up?

Ms McNaughton: We did not think that we would be putting forward the view that there may be the need for another independent oversight. You are right: we have the Children's Commissioner and —

The Chairperson (Mr Nesbitt): They have a statutory duty to take a view on the delivery of services.

Mrs Wilkinson: We would not need to do that. It would not be on our radar.

The Chairperson (Mr Nesbitt): OK, if members are content, I will say, "Thank you very much" to June, Peter and Margaret Rose. That was very helpful. Again, thank you for the informal or ongoing liaison with staff. We appreciate that very much.

Mrs Wilkinson: Thank you.