



Committee for Health

OFFICIAL REPORT (Hansard)

Adoption and Children Bill:
Northern Ireland Assembly Research
and Information Service

23 September 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colm Gildernew (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Gerry Carroll
Mr Alan Chambers
Ms Cara Hunter
Ms Carál Ní Chuilín

Witnesses:

Dr Lesley-Ann Black NIA Research Office

The Chairperson (Mr Gildernew): I welcome Dr Lesley-Ann Black.

Dr Lesley-Ann Black (NIA Research Office): Good morning.

The Chairperson (Mr Gildernew): Lesley-Ann, I ask you to go ahead with your briefing, please.

Dr Black: Thank you very much. Thank you, members. It is great to be here. This presentation will provide members with a brief overview of the complex area of adoption, how it affects children and families and the lengthy waits that can be incurred during the adoption process. I will briefly highlight the current legislative context for adoption and a few points that may set the context for the Bill before it proceeds.

The need for adoption reform began about 15 years ago. Just this week, the Adoption and Children Bill was finally introduced to the Assembly. That is welcome news. Adoption is a legal process by which a child or their siblings, who cannot be brought up in their families, become permanent legal members of a new family. It is a complex area of family law that involves multiple stakeholders, often with competing interests.

The key legal framework for adoption is the Adoption (Northern Ireland) Order 1987. That should be read alongside the Children (Northern Ireland) Order 1995, which deals with the care and protection of children who live in Northern Ireland. The research briefing outlines what the current adoption law does and the wide range of legislative provisions, regulations and international conventions that link to child welfare and the impact that that can have on the adoption process. It is also worth noting that the adoption legislation is 34 years old and much in need of reform.

An important point to highlight is the changing profile of children in need of adoption. In the past, most children who were adopted were orphans or babies born out of wedlock. Today, the vast majority of adopted children come from the care system, and many people are not necessarily aware of that. Most will have been removed from their families to protect them from significant harm, neglect or abuse. Few, if any, will be babies. Many children will have had significant need to support them with the trauma that they have experienced, and some may have disabilities or fetal alcohol syndrome that will require long-term management throughout their life.

Other groups of children are also adopted, including those adopted by a step-parent and a birth parent, and an even smaller number of children are adopted from other countries, which we call "inter-country adoption". Such adoption is more complex, with the need to deal with international statutes and other state laws; it can also be much more expensive. The number of inter-country adoptions is relatively small; there have been only about five in Northern Ireland in the past five years.

As shown in the briefing paper, the number of children being adopted has declined since the 1970s, when, in any given year, maybe 500 children could have been adopted. In the last 20 years, between 100 and 150 children have been adopted in any given year. For example, last year, there were 125 adoptions in Northern Ireland. Of those, 111 were looked-after children, 13 were step-parent adoptions, and one was an inter-country or overseas adoption.

As adoption is a lifelong commitment, it requires serious thought and preparation, and we know that the assessment process is rigorous. Adopters can be anyone over the age of 21. They can be married or unmarried couples, single people, people of different sexual orientations, people with or without children, people with disabilities and people from any religious or ethnic background.

I will concentrate on the majority of children who are adopted — children who enter the care system or looked-after children. The Government state that they are committed to helping those children to remain with their families in all but the most exceptional circumstances. When a child becomes a looked-after child, the trusts assume a corporate parent role and are responsible for safeguarding and promoting the child's welfare and well-being.

Over the past 10 years, there has been about a 30% increase in the number of looked-after children in Northern Ireland; there are over 3,000 such children in the system. We know that some looked-after children will experience successful outcomes, but, overall as a group, their life outcomes and life chances, especially regarding health and education, tend to fall significantly below that of the general population. I think that data from the Department show that about 57% of those children will have some sort of special educational needs (SEN) provision. Looked-after children will also experience different care journeys. Some will stay in care briefly during a crisis before returning home, whereas others spend periods re-entering care. Sadly, some will spend long periods in care. That care can take many forms and placements, such as formal kinship or residential care, before a permanent way forward is found. Last year, about 80% of all looked-after children were placed in foster care, and, of those leaving care, 50% returned to their families and only 12% were adopted.

It is important to stress that, as shown by the figures in the paper, adoption is not suitable for every looked-after child. However, if adoption is the plan, which is known as a "best-interest decision", trusts must follow a range of statutory processes. That is because adoption is one of the most serious interventions a court can make in a family's life.

The research indicates that the earlier a child is placed in a permanent placement, the more likely it is to be successful. However, it takes an average of three years for the adoption process to complete in Northern Ireland. Evidence suggests that the process is much slower than in England and Wales. Formal targets to place a child for adoption within the three-year period have been set by the Health and Social Care (HSC) commissioning direction, but the targets are repeatedly missed year on year, as described in the paper. For example, in 2019-2020, only 57% of adoptions occurred within the three-year timeframe, even though the target is for 90% to be achieved within the three years. Whilst we want the children to be matched with the right families and the due process that goes along with that, the lengthy waits are likely to have a serious and detrimental impact on children who desperately require family stability. It must also be exasperating for prospective adopters, who are waiting and want to have permanence for that child.

The paper also highlights the important role of adoption agencies and the services that they provide for adoptions that take place at home and from other countries, and they have various roles in assessing potential adopters. Although the agencies will try to place siblings together, it can be difficult. The data suggests that about 40% of adoptions last year were in sibling groups. There is also

the adoption regional information system (ARIS) that can help match the children with prospective adopters.

Applications for adoption are considered by the adoption panel. The panel will decide whether adoption is in the best interests of the child and whether an application should be made to free a child for adoption. Essentially, the courts can decide whether a child will be adopted, with or without their parents' consent and agreement. As only a small number of children are adopted with their parents' consent, that often leads to lengthy, costly and protracted court cases. Therefore, on the one hand, there is the balance of the rights of the birth parents, such as their right to family life under article 8 of the Human Rights Act 1998, and, on the other hand, the best interests of the child. We know the best interests of the child are paramount. The Department will talk a lot about that when it comes to the Committee.

Difficulties also arise about the level of parental contact there will be with the child. Once the adoption order is granted, the court must make that decision. A number of other factors can also cause a delay in the adoption process. It is not just recruiting and matching prospective adopters; it is also about meeting the needs of some extremely vulnerable children. There is also considerable pressure on social workers who are trying to demonstrate proportionality while struggling with those tensions. We know that delays also exist because of the current court processes. The court might request additional information, and there may be issues with resources such as staffing. Once an adoption order has been granted, the state will sever all legal ties with the child's natural parents and give those rights and responsibilities to the new family. That decision is irreversible.

As I mentioned earlier, the reform represented in the Bill has been under way for 15 years, and the timeline is highlighted in the paper. To recap, the Department first asked for views on the proposed adoption legislation in 2004. By 2010, the Executive had agreed on draft proposals for a new adoption and children Bill. Health officials briefed the Committee for Health on the proposed Bill in 2011 and 2014. Delays on the Bill's consultation meant that it was not introduced in those mandates. A new consultation finally ran in January 2017, and, as part of that exercise, views were sought on the proposals for legislative reform to both adoption and children's legislation. The views of young people were also sought. That same year, a draft Bill of 140 clauses was produced alongside an impact assessment, explanatory notes and a children's version of the consultation. We then had the collapse of power-sharing.

Recently, the Minister confirmed that the 2017 version of the Bill had been substantially amended and that a new Bill — the 2021 version — had been published. As we can see, there are now 160 clauses. The consultation responses from 2017 have now finally been published on the Department's website. There were 71 responses to the Bill. Overall, there was good support for the proposals. There are many clauses to consider. Broadly, the Bill looks to be a welcome and positive step in the right direction for vulnerable children.

As we know, the key aims of the Bill are to modernise adoption law, amend the Children Order, and place the needs of the child at the centre. There will be a range of prescribing powers, new processes for adopters, new ways of working for adoption agencies and courts, and different review mechanisms. It is also intended that the process will become more efficient and reduce delays, for example, by getting courts to draw up timetables for resolving cases and perhaps dispensing with parental consent earlier in the process.

Other positive aspects of the Bill are to create a right for adopted children and adoptive parents to request an assessment of the needs for adoption support services. There will also be a duty to promote the educational achievement of looked-after children and the introduction of special guardianship orders, which could support older children who do not wish to extinguish the legal link that they have with their birth parents.

It would be good to hear from the Department about how some of the finer details of the Bill will be worked through and about what it considers to be the most complex and controversial aspects of it. It is also anticipated that further consultation will be required to inform the regulations associated with the Bill. Finally, there will be a cost implication for the Bill: about £14 million in the first year and about £12 million of recurrent funding in years 2 and 3 with additional moneys required for staff to make the changes.

I have taken up far too much of your time. Thank you for your attention. I am by no means an expert, but I would be happy to take questions or comments.

The Chairperson (Mr Gildernew): Thank you, Lesley-Ann. That was very useful. It is a hugely important and complex area. I declare an interest as having worked previously as a social worker with looked-after children, families and with foster and adoptive parents. It is hugely complex; there is no doubt about that. We will get into some of the questions about that today and as we move through a complex Bill that deals with a complex area.

From a research point of view, have the fundamentals of the Bill been drawn from other places that have done something similar, and has there been an opportunity to look at the impacts or outworkings, or is this a bespoke new approach for here?

Dr Black: Much of the Bill will have taken learnings from jurisdictions nearby. For example, I think that the special guardianship orders that have been drafted are based on those in England and Wales. Our legislation is in so much need of reform that we have plenty to learn from those other jurisdictions. They are much further ahead of us. For example, I think that views about special guardianship orders are mixed, so it will be useful to see what other jurisdictions can impart to us as we try to develop the right legislation to meet the needs of the children.

The Chairperson (Mr Gildernew): You touched on the conflict of interest and the complexity around the rights of birth parents versus the rights of the child, which must, of course, always be central. It is also about the rights of potential adoptive or foster parents. Do you have any thoughts on the transparency of the process, the right to appeal and the right to be involved in the process, from a best practice point of view?

Dr Black: That is a good question. I do not want to give any personal opinions, but all voices need to be heard on this really complex issue. Of course, the child will always be at the centre, but there are important stakeholders on the *[Inaudible owing to poor sound quality]* side and on the other side, as the prospective adopters. Yes, it is my hope that that will be played out in the Bill and that the voices not just from the perspective of the children and the voluntary organisations that represent them but from the families who have experienced this or are going through it will be very much heard. It is about both sides of that coin.

Mrs Cameron: Thank you, Lesley-Ann, for your presentation. It is very useful to have. Lesley-Ann, you talked about the cost implications of the Bill. It is £14 million in the first year. What are the other two figures you gave us?

Dr Black: It is £12 million in years 2 and 3, with additional moneys required for staff. There will be cost implications.

Mrs Cameron: That is great. Thank you.

You mentioned educational underachievement. In dealing with this legislation, we are, obviously, behind everywhere else, but, to some extent, that could be a good thing because we can take on board the learning from the other jurisdictions and, hopefully, get it right, because it is long overdue. I appreciate that. Do you know why there was a decision to include issues such as educational underachievement in the Bill and why a stand-alone Bill on children was not considered? Do you know why they decided to include that in this adoption Bill?

Dr Black: I am not sure exactly why they decided the Bill is the place for that, but we definitely know that so many of the children concerned are affected. It seems to be a perfectly appropriate place to put provision, because 57% of the children will have some sort of need or a special educational needs statement. We know they are so disadvantaged, not through their own faults, by any means, but it is just about their vulnerability because of what has happened to them through no fault of their own. It is welcome. I point you in the direction of the departmental officials when they come to the Committee so that you can check that point with them, if that is OK.

Mrs Cameron: Yes, I will check with them, Lesley-Ann. I just wanted to get your opinion. Is educational underachievement included in any other legislation in other jurisdictions?

Dr Black: I am not sure, but I will find out and get back to you, if that is OK.

Mrs Cameron: That would be great. Thank you very much.

Dr Black: OK. Thank you.

Ms Hunter: Thank you very much, Lesley-Ann, for being here this morning. I found your brief very helpful.

My question is similar to Pam's and is on educational underachievement. It is OK if you do not know the answer. Is there any discussion in the Bill about educators liaising with social services to perhaps hear more about why a child may have behavioural issues or complex needs? Also, what further support will be available for adoptive parents, post-adoption, through the Bill?

Dr Black: I will let the Department answer the first question because it will know exactly who has been involved in the discussions, but I am sure that, over the past number of years, there has been a lot of discussion with all those interested stakeholders.

Regarding further support, one of the brilliant things about the Bill is that it will now offer the right for all the families involved to get an assessment of the support of their needs. That was a big gap before. Think of all the years that have gone before us when the legislation could have come into place. Those families have had to manage a lot of the time with little support and to try to find their way. The children sometimes have complicated needs, so the families really need the additional support. That has to be welcomed very much.

Ms Hunter: That is great, Lesley-Ann. Thank you.

The Chairperson (Mr Gildernew): I do not see any other indications from members, although I cannot see members on-screen. I do not see hands raised. If hands are physically raised, I am not able to see them. Do any members want to indicate by speaking whether they want to ask Lesley-Ann anything before we let her go? I do not think anybody does. If there are outstanding questions from members that we have not been able to get as a result of the system, we can forward them through the Clerk.

Lesley-Ann, thank you very much for attending this morning and for that very useful briefing. All help is greatly appreciated as we work our way through a large, complex and important Bill. Thank you, Lesley-Ann. Take care. Go raibh maith agat.

Dr Black: Thank you.