

Family Rights Group

Initial briefing on Children and Families Bill

Second Reading 25th February

This briefing is a summary of more extensive detailed briefings on both the context to the bill and on specific clauses and amendments to the Bill available on Family Rights Group's website www.frg.org.uk

1. Family Rights Group

Family Rights Group is the charity in England and Wales that advises over 8000 families a year whose children are involved with, or require, local authority children's services because of welfare needs or concerns. We promote policies and practices, including family group conferences, that help children to be raised safely and securely within their families, and give families a voice when decisions are made about their lives. We also campaign for effective support to assist family and friends carers, including grandparents who are raising children that cannot live at home.

2. Context of the Bill:

The challenge for Parliament, when considering the public law aspects of this Bill, is to strike the right balance between ensuring that:

- the short and long term welfare needs of vulnerable children are met (including their safety, need for permanence, the opportunity to build strong attachments and to develop a positive sense of identity);
- the planning and decision-making processes enable and support their family to address identified concerns;
- their right to respect for family life is observed, including exploring all potential placements within their wider family; and
- plans for them are made without unnecessary or harmful delay and within a timescale that meets their short and long term needs, including the formation of secure attachments.

The specific reforms in the Bill are part of a more extensive programme of reforms to local authority and judicial decision-making processes. Some are welcome (for example increasing judicial continuity). Others have potentially negative implications. **New draft safeguarding guidance**¹ fails to address the importance of partnership working with parents when children are subject to child protection enquiries (despite this being confirmed by research to be key to keeping children safe). **The removal of**

¹ <http://www.education.gov.uk/a00211065/revised-safeguarding-guidance>.

adoption panel scrutiny of adoption plans in placement order cases² has particular significance for the proposed reforms in clause 1 of the Bill since it means that a child could be placed with adopters, even though their parents do not consent, without there having been any external scrutiny of the plan for the child to be adopted.

3. Our concerns and proposed amendments to specific clauses in the Bill

A. Foster for adoption (clauses 1 & 6)

Clause 1 amends the Children Act 1989 to insert a new sub-section s22C (9A) to the effect that when the local authority are **considering adoption** for a child in the care system **but are not yet authorised to place them for adoption**:

- they must consider placing the child with a local authority foster carer who is also approved as a prospective adopter;
- they are no longer required to give preference to placing the child with their parents or wider family network over other potential placements with unrelated carers;
- they are no longer bound to place the child within the local authority's area.

Clause 6 also allows them to place such children on the Adoption and Children Act Register to help find suitable adopters for them.

The Minister has indicated in the Contextual Information³ (page 26) that these provisions could apply in the first week that a child is looked after or even as a result of pre-birth planning. We are very concerned that the effect of these clauses will be to undermine due legal process, making local authorities vulnerable to challenge under the Human Rights Act 1998. Specifically:

- a) This clause could potentially be applied to any looked after child*** (even those who are in care by agreement with the parents) despite there not having been any due legal process in which the threshold for the state to remove a child from their parents and/or place the child for adoption has been fully established. In voluntary accommodation and pre-birth cases there will not have been any legal proceedings at all, hence families are very unlikely to have had legal advice;
- b) The court's final decision about whether the child should be removed from their family will be pre-empted*** by the child forming attachments to the prospective adopters. Any court which later considers the case would not be able to resist the status quo argument i.e. that it is better for the child to stay with the adopters than return to their parents since it would then be contrary to the child's welfare to break those attachments.
- c) Placement orders will become redundant.*** Originally introduced by the Adoption and Children Act 2002, they were intended to ensure that parents had

² Adoption Agencies (Panel and Consequential Amendments) Regulations 2012 and revised statutory guidance <http://www.legislation.gov.uk/ukxi/2012/1410/made>

³ Children and Families Bill 2013: Contextual Information and Responses to Pre-Legislative Scrutiny <https://www.education.gov.uk/publications/eOrderingDownload/Children%20and%20Families%20Bill%202013.pdf>

a real opportunity to oppose the adoption plan before the child was placed with adopters whereupon the status quo argument became very powerful (as above);

d) *There is no legal duty to work with parents to help them resolve their problems* before or after the child is looked after, although this is clearly

expected in guidance.⁴ Any Court later considering the case will be bound to conclude that it will be too late if the child has already become attached to the adopters.

e) *Potentially suitable family and friends carers (e.g. grandparents or older siblings) will be squeezed out* because:

- Clause 1 says that once adoption is considered by the local authority, the duty to give preference to family and friends care placements for the child no longer applies; and
- for those children who are not yet looked after, there is no legal duty on the authority to consider wider family placements before they enter the care system and are potentially placed with adopters.

Thereafter, the status quo argument militates against moving them from the prospective adopters to a relative's home. Whilst not only promoting positive outcomes for children,⁵ family and friends care also has the advantage of being able to provide the same short and long term care as prospective adopters under the Foster for Adoption model. Family and friends carers also offer the associated advantages of early attachment and stability which can continue long term if the child cannot return to their parents.

f) *There are currently insufficient adopters (and foster carers) available* for the 4,600 children who are currently authorised, and waiting, to be placed for adoption. Record levels of care proceedings are currently leading to an increase in the numbers of children in care for whom permanent placements are needed. Without a corresponding increase in the number of potential adopters, many more children will be left waiting in a legal limbo without achieving permanence, yet in most cases cut off from their family.

g) *This provision may actually deter potential adopters* because:

- many want absolute certainty about the child's future with them, which these provisions do not guarantee; and
- many who hope to adopt a child may find it very ***difficult to promote and manage contact with the birth family*** which should normally take place when a child is in foster care.

Example of how provisions might work in practice

Young parents agree to their baby being voluntarily accommodated because of social workers' concerns about their parenting ability. Father is a care leaver. The parents have not had any legal advice or representation.

Their social worker thinks there is a possibility that the parents may not be able to look after their baby, so is considering adoption. The local authority place the baby's details on the national adoption and children act register and subsequently find

⁴ Children Act 1989 Guidance, Volume 1, Court Orders, Chapter 3

<http://www.education.gov.uk/childrenandyoungpeople/strategy/a0065642/1989-children-act-guidance.-volume-1-court-orders>

⁵ Farmer E and Moyers S (2008) *Kinship Care: Fostering Effective Family and Friends Placements* (Jessica Kingsley); and Hunt, J., Waterhouse, S., and Lutman, E (2008) *Keeping them in the Family: Outcomes for children placed in kinship care through care proceedings*. London: BAAF

suitable adopters who are approved as foster carers. The social worker goes ahead and places the baby with them. She asks the parents for their agreement to this plan. They agree, not having had legal advice they are not be aware of the implications of giving consent.

The prospective adopters live 200 miles away. The social worker tells the parents that they can only see their baby once every 2 weeks as it is not good for the baby to travel long distances. She does not offer them more frequent visits as she says it will be disruptive to the baby. The social worker rarely contacts them, and they get no tangible help to prove or improve their parenting abilities, such as a residential placement.

The parents are upset and start to get very worried. They eventually see a solicitor who advises them that they should tell the social worker that they want to remove their baby from accommodation and go and stay with the maternal grandmother who will help them to raise the baby. The social worker says the baby has settled with the prospective adopters and the local authority will be issuing court proceedings.

The local authority apply to court for a care and placement order. At the first hearing the maternal grandmother applies for a residence order. The judge is impressed by her and by a subsequent assessment of her as a carer; he is also critical that the local authority has done so little work with the family, but refuses the application for a residence order on the basis that the child's welfare now *requires* the child to stay put with the adopters. An interim care order is made and thereafter final care and placement orders.

Our proposal:

In our view, clause 1 (linked to clause 6) subverts due legal process by biasing, in practice, consideration of how the child's long term welfare needs can best be met.

We therefore recommend that

- a. clauses 1 & 6 should be deleted on the grounds that they breach the child and parents' right to respect for family life;
- b. there should be a new duty on local authorities to ***engage and support families pre-proceedings*** so as to ensure effective work is undertaken with the family to explore all safe family options for the child, to avert the need for them to be removed into the care system and raised by unrelated carers; and
- c. There should be new duties on local authorities to ***support family and friends care arrangements*** akin to that provided to adopters, ***a national financial allowance for family and friends carers*** raising children who would otherwise be in care, ***and employment*** measures including paid leave akin to that provided to adopters to maximise optimal outcomes for children raised in family and friends care.
- d. the government should ensure in Regulation that ***the approval criteria for prospective adopters*** who want to be approved as temporary foster carers ***should include a thorough assessment of their ability to support the child*** having ***contact with their family*** pending a decision of the court and returning home as appropriate.

B. Consideration of the child's race culture language and religion when making adoption decisions (clause 2)

We agree with the recommendation of the House of Lords Adoption Select Committee that, rather than removing the requirement to give due consideration to the child's race culture language and religion when making adoption decisions as proposed by clause 2, these should be specifically included, along with other factors, in the welfare checklist in s.1 ACA 2002.

C. Contact (clauses 7 & 8)

The effect of clause 7 is to clarify existing law that the local authority must allow a child in care contact with their parents (and some other family members) provided it does not place the child at risk of harm. However there is also provision in clause 7(4) for the Secretary of State to issue further Regulations as to when contact with family members is consistent with safeguarding and promoting the child's welfare. In our view this would be inappropriate, since social workers should make careful judgements, according to the evidence in each case, about whether contact is harmful to the particular child's welfare. This is not something that can, or should be, prescribed by Regulation.

Clause 8(1)(4)(c) provides that parents of children who are being, or have been, adopted will need leave to apply for post adoption contact. We agree that the birth parents of children who have **already been** adopted should be required to get leave but we disagree that this rule should apply to parents whose children are not yet adopted since these parents remain legally related to their child and retain parental responsibility for them unless and until their child is adopted.

We also recommend that a new requirement is added to the clause 7 requiring the local authority to allow children in care contact with their siblings unless it would be harmful to them. 63% of children in care, whose siblings are also in the care system, are separated from them and young people in care themselves feel strongly that they have too little contact with their siblings. This amendment would make sibling contact a priority in social work practice.

D. Reducing timeframe for care proceedings to 26 weeks (Clause 14)

The proposed 26 week time limit in which care proceedings cases should be held will reduce the time available for parents to demonstrate their parenting abilities and will squeeze out potential family carers from being considered by the court because there will simply not be enough time to consider their application (and support needs) before

the proceedings are concluded.⁶ The aim of this amendment is to ensure that court timetabling is sufficiently flexible where this is necessary for the child's long term welfare. Our proposed new duty to work with families before proceedings start (see page 4) will also help to avoid family members only coming forward late in the day.

E. Reducing court scrutiny of care plans (clause 15)

Clause 15 of the Bill requires the court to consider only the 'permanence' aspects of the care plan and contact, rather than the whole of the child's care plan, before making a care order. However the 'permanent provisions' do not include arrangements for the child to be placed with their siblings where possible. We therefore propose that the definition of permanent provisions should include sibling placements.

F. Promoting effective support for looked after children returning home

Drawing on research about poor outcomes for children returning home, we recommend that the Bill should include a new duty on local authorities to assess, prepare, support and monitor the child's welfare when they returning home from the care system.

G. Special Educational Needs and Disability clauses

We welcome in general terms the intentions of the special educational and disability provisions to improve services for children and young people with SEN and disability (SEN & D). In particular, we welcome the aim to create a more integrated approach to the educational, health and care needs of children and young people. However, we have serious concerns that the provisions

- a) do not consistently apply to children with a disability but are restricted to those with stated special educational needs
- b) will adversely impact on other children in need, since the new proposals create a lack of parity between access to services for children who have special educational needs and access for children with other health and care needs who are children in need (CIN).

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⁶ Anecdotally, we are aware of concern amongst practitioners that, in many parts of the country, courts are operating a 26 week timetable (save in exceptional cases) on new cases, despite this not yet having been enacted. This was raised at a NAGALRO conference with Justices Ryder and McFarlane. They suggested it was aspirational rather than mandatory at this stage having not yet been debated in Parliament. Yet in practice it is already being implemented.

http://www.alc.org.uk/news_and_press/news_items/mr_justice_ryders_comments_on_26_week_timetable_at_nagalro_conference