

Oral Evidence on the Adoption and Children (Northern Ireland) Bill 9 December 2021

Introduction

I would like to thank the Committee for the opportunity to give evidence today and welcome the commitment of the Committee to ensuring that the Bill will provide the highest standards of care and protection for children and young people. I am mindful of the breadth and depth of the Bill and acknowledge the considerable work being undertaken by Members, the Minister and departmental officials to seek to secure the Bill within the now limited window of this mandate. I also want to thank officials for their engagement with my office at all stages of the Bill's development.

As you are aware, the legislation which established my office, 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) established my statutory duty to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Under Articles 7(2) and (3) of this legislation, I have a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. And under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons. My remit includes children and young people from birth up to 18 years, or 21 years if the young person is disabled or is care experienced. In exercising my functions, I have regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

My evidence today is not intended to be comprehensive across all clauses of the Bill but to address the key aspects of the draft legislation which were highlighted in NICCY's written submission. Before commenting on these, I would like to note the children's rights obligations that are placed upon our government and statutory agencies in this area. The United Nations Convention on the Rights of the Child sets out minimum standards for children's rights across all areas of their lives such as, civil and personal protection, health, education, welfare. The four guiding principles which flow through the Convention are:

1. children's right to non-discrimination;
2. right to survival and development to the highest level;

3. to their best interests being a primary consideration; and
4. to their voice being heard in all matters affecting them.

Comments on Clauses

Moving to specific clauses.

Clause 116 - Definition of family proceedings. NICCY welcomes the proposal to ensure that Female Genital Mutilation Protection Orders are included in the list of “family proceedings” for the purposes of The Children Order 1995 which will ensure that all relevant orders for the protection and welfare of a child can be made within the proceedings.

Female genital mutilation ...

Child and/or forced marriage

Polygamy

Crimes committed in the name of so-called honour

Clause 119. The creation of “special guardians” has the potential to give clarity and stability in the lives of children and young people whose care and living arrangements are not covered by other mechanisms. It is crucial that support services (and financial help) for carers and children and young people properly meet their ongoing needs after a special guardian order has been made, otherwise this status could create disadvantage for those it is intended to help.

Clause 121. NICCY would like to see the practical implementation of this clause to result in commissioning of voluntary children’s services (with suitable monitoring) to provide services and support where Health and Social Care Trusts are otherwise unable to do so.

Clause 122. Whilst NICCY welcomes the creation of a duty upon authorities to prioritise educational achievement for children and young people its use of ‘promote’ is insufficiently strong in how it will be implemented or achieved. It is important to note that The Education and Libraries (Northern Ireland) Order 1986 places a ‘duty’ on parents in respect of education.¹ Failure to uphold this obligation can result in parents being issued with a school attendance order, a supervision order,² or further judicial action.

At present there is a lack of clarity as to how corporate parents can be held to the same standard. This clause needs to be strengthened to do just that.

¹ Section 45

² Section 55 of *The Children (Northern Ireland) Order 1995*

The interpretation of “parent” as within the 1986 Order does not help, as it is mainly targeted at specified individuals.

Clause 122 should be an opportunity to clarify the expectations upon (and their enforceability) against corporate parents in the education of children and young people for whom they are directly responsible in the same way as any parent would be. The proposed wording must be strengthened to ensure that this is the case.

Clause 123 is another welcome clause but we again we will need to see more detail in regulations that will outline how corporate parents will provide evidence that they are applying the 7 principles and how they are held to account for the children in their care.

Clause 125. The need for minimum standards in respect of accommodation for children and young people is imperative. While NICCY welcomes the intent in this clause, we recommend a revision to the draft of paragraph (7A) from

‘The Department may by regulations impose requirements ...’
to

‘The Department shall by regulations impose requirements ...’

We make this recommendation with a view to ensuring the whole child is taken into account when providing an alternative home for a child.

Clause 129. Proposals to ensure that care leavers will be made aware of services available to them are welcome. For this to be effective there should be a timeframe in which care leavers must be directly advised of specific services sufficiently in advance of leaving care so that they can effectively avail of them. As such a timeframe should be included in the regulations.

Clause 133 – Definition of harm

I warmly welcome the interest of Members in ensuring this clause provides proper protection for children and young people affected by domestic violence and abuse. As highlighted in my written submission, the proposal to amend the definition of harm as set out in The Children (Northern Ireland) Order 1995 was discussed with colleagues on the Justice Committee during their scrutiny of the Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021. Members may be aware that the Justice Committee gave detailed consideration to ensuring that the harm that can be caused to children affected by domestic violence and abuse could be effectively captured in the 2021 Act.

Following on from this, I welcome the intention of the Department of Health to ensure the definition of harm within The Children (Northern Ireland) Order 1995 will also reflect that children can be deeply affected and harmed by the ‘ill-treatment of another’ including, but not only, in relation to domestic abuse. We also welcome the intention to ensure that such harm can be considered in relevant proceedings concerning the child, including contact and residence orders. We have previously highlighted that the **provision should not include a condition which requires a child to have witnessed or to have heard incidents of abuse**. Following discussions with the Department, we understand that they are actively seeking to ensure that the clause can be amended to capture harm to children without such a condition and that the amendment may reflect the definition provided for in the Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021.³

We welcome this intention and ask that the Committee seek further clarification from the Department. It is of particular importance that the protections of the amendment apply fully to all children and young people up to the age of 18 years and do not replicate the inconsistencies in how children are safeguarded by Section 11 of the Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021, depending on age and whether the perpetrator has parental responsibility.^{4 5}

Conclusion

In conclusion, I again wish to acknowledge the Committee’s commitment to fully scrutinising this important legislation and welcome any comments or questions from Members on this and other clause although I give no guarantee that I will be able to answer them.

³ See Section 9(2)b and c and 9(3) Domestic Abuse and Civil Proceedings (Northern Ireland) Act 2021: provisions are engaged through a child aggravator clause where a child sees, hears, is present during incidents of abuse or where a reasonable person would consider the course of behaviour to be likely to adversely affect the child. There does not need to be evidence that a child has awareness or understanding of the behaviour or has been adversely affected.

<https://www.legislation.gov.uk/nia/2021/2/contents0>

⁴ In turn, the Domestic Abuse Act 2021 which passed through Westminster identifies children as victims of domestic abuse and makes provision for a child who sees, hears or experiences the effects of abuse while the Domestic Abuse (Scotland) Act 2018 provides that children do not have to be aware of or understand the nature of the abusive behaviour for a child aggravator clause to be invoked and also applies a reasonable person principle to consider whether the behaviour is likely to adversely affected the child.

Section 3(2)a and b Domestic Abuse Act 2021: <https://www.legislation.gov.uk/ukpga/2021/17/part/1/enacted>
Section 5(5) Domestic Abuse (Scotland) Act 2018: [Domestic Abuse \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2018/12/part/1/enacted)