

Date: 5 December 2001

Venue: Committee Room 3, National Assembly for Wales

Title: Adoption and Children Bill

Purpose

1. On 19 October 2001, the Government published the Adoption and Children Bill and introduced it in the House of Commons.
2. This paper summarises the main provisions of the Bill and highlights those areas where the Assembly has specific powers.

Summary

3. This paper is not, and is not meant to be, a comprehensive description of the Bill.
4. In December 2000 the Government published a White Paper on adoption (*Adoption - a new approach*) setting out the Government's plans to promote greater use of adoption, improve the performance of the adoption service, and put children at the centre of the adoption process. The White Paper included a commitment to introduce new adoption legislation in 2001.
5. The purpose of the Adoption and Children Bill is to reform adoption law, to implement the proposals in the White Paper that require primary legislation, and to underpin the Government's programme to improve the performance of the adoption service and promote greater use of adoption. A previous version of this Bill was introduced on 15th March 2001. It received its second reading on 26th March and was committed to a select committee. The Bill fell at the dissolution of Parliament.
6. In summary, this Bill:
 - aligns adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions relating to adoption;
 - places a duty on local authorities to maintain an adoption service, which must include making

arrangements for the adoption of children and for the provision of adoption support services (to include financial support);

- provides a new right to an assessment of needs for adoption support services for adoptive families and others;
- sets out a new regulatory structure for adoption support agencies, requiring them to register under Part 2 of the Care Standards Act 2000, to ensure that adoption support services are provided to a high standard;
- enables the appropriate Minister (in Wales, the National Assembly) to establish an independent review mechanism in relation to the assessment of prospective adopters and the disclosure of protected information by adoption agencies;
- makes provision for the process of adoption and the conditions for the making of adoption orders, including new measures for placement for adoption with consent and placement orders to replace the existing provisions in the Adoption Act 1976 for freeing orders;
- provides for a new more consistent approach to access to information held in adoption agency records, by ensuring that the release of this sensitive information about adopted people and birth families happens in a proper manner and takes account of their views wherever possible;
- incorporates with amendments the Adoption (Intercountry Aspects) Act 1999 (other than *sections 1, 2 and 7 and 16(1)*, and Schedule 1), as respects England and Wales;
- provides additional restrictions on bringing a child into the UK in connection with adoption, aimed at ensuring that British residents follow the appropriate procedures where they adopt a child overseas or bring a child into the UK for the purposes of adoption;
- provides for restrictions on arranging adoptions and advertising children for adoption (through traditional media and electronically) other than through adoption agencies, and prohibits certain payments in connection with adoption;
- makes express provision enabling the Secretary of State to establish an Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters;
- makes provision obliging courts to draw up timetables for resolving adoption cases without delay;
- amends the Children Act 1989 to provide that an unmarried father acquires parental responsibility where he and the child's mother register the birth of their child together;
- amends the Children Act 1989 to introduce a new special guardianship order, intended to provide permanence for children for whom adoption is not appropriate.

Changes to the Adoption Service

7. The White Paper set out the Government's proposals to encourage wider use of adoption, particularly of children looked after by local authorities. The measures to improve adoption support included in the Bill are intended to encourage more people to come forward to adopt and to help adoptive placements to succeed. The Bill places a duty on local authorities to make arrangements for the provision of adoption support services, as specified in regulations (the National Assembly will have regulation making powers covering the provision of these services in Wales). This duty will be used to deliver the new frameworks for adoption support and financial support promised in the White Paper. It also provides for specified persons a new right to request and receive an assessment of needs for adoption support services. The

assessment will link with other local authority functions and local authorities will be required to notify the local education authority and health services, where the needs for such services are identified, with the aim of identifying a co-ordinated package of support to help adoptions succeed.

8. To encourage more people to apply to adopt and to build confidence in the adopter assessment process, the White Paper committed the Government to provide an independent review where an adoption agency intends to turn down a prospective adopter's application. The Bill includes powers enabling the appropriate Minister (which, in relation to Wales, is the National Assembly) to establish a mechanism, which may be run by an independent organisation, to review qualifying adoption agency determinations. The intention is that the independent review mechanism will review, at a prospective adopter's request, applications that adoption agencies have indicated they are minded to turn down. It is also intended to use the independent review mechanism to review adoption agency determinations about the disclosure of information concerning a person's adoption.

Placement for adoption

9. The Bill changes the process of adoption itself, placing the needs and welfare of children at the centre of the adoption process. The Bill makes the welfare of the child the paramount consideration for courts and adoption agencies in all decisions relating to adoption, including in deciding whether to dispense with a birth parent's consent to adoption. It provides a welfare checklist which must be applied by the court and adoption agencies. The paramountcy test brings adoption legislation into line with the Children Act 1989.

10. The Bill establishes new legal processes for placing a child for adoption through an adoption agency. Two routes are provided: birth parents may give consent to placement or a local authority may secure a placement order from the court, authorising it to place a child with adopters whom they select. A local authority must apply for a placement order where it is satisfied that a child should be adopted, but the parents do not consent to placement or have withdrawn such consent.

11. The intention is to ensure that decisions about whether adoption is the right option for the child, whether the birth parents consent and, if not, whether parental consent should be dispensed with are taken earlier in the adoption process than at present, with court involvement where necessary. The system aims to provide greater certainty and stability for children by dealing as far as possible with consent to placement for adoption before they have been placed; to minimise the uncertainty for prospective adopters, who possibly face a contested court hearing at the adoption order stage; and to reduce the extent to which birth families are faced with a 'fait accompli' at the final adoption hearing.

Disclosure of information about a person's adoption

12. The Bill also makes new provision for the disclosure to adopted people of background information held by the adoption agency in connection with their adoption, and for access to their birth records. These provisions also cover the release of adoption agency information to birth relatives and others. The

Bill provides for a single point of access to identifying information through adoption agencies, as the bodies best placed to provide the support and counselling needed for this sensitive task. The provisions include a new right for adopted people to have access to a standard package of background information about themselves and their birth family from their adoption agency records when they reach the age of 18 to promote more consistent access to this information for adopted people. The new regulatory framework for the disclosure of information about a person's adoption seeks to recognise the interests of all those involved. The Bill provides for the exercise of discretion by adoption agencies in this area, to be reviewed by an independent panel.

13. The new scheme would only apply to adoptions that take place after the Bill has been brought into force. Previous arrangements for access to information would continue to apply to those adopted prior to the date of implementation of the Bill.

Adoptions with a Foreign Element

14. The Bill incorporates most of the provisions of the Adoption (Intercountry Aspects) Act 1999 (the 1999 Act), which will largely be repealed in respect of England and Wales when the Bill is enacted. The 1999 Act provides a statutory basis for the regulation of intercountry adoption, enables the United Kingdom to ratify the Hague Convention on Protection of Children and Co-operation and introduces sanctions against those who bring children into the UK without following the proper procedures. The 1999 Act also clarifies that local authorities have a duty to provide, or arrange to provide, an intercountry adoption service and provides that children who are the subject of a Convention adoption will receive British nationality automatically.

15. To ensure that people living in the UK wishing to adopt a child from overseas follow the appropriate approval procedure, whether they adopt the child abroad or in the UK, the Bill enhances the safeguards in the 1999 Act. It incorporates the restriction in that Act on bringing a child into the UK for the purpose of adoption by a British resident, and provides a new restriction where a child is brought into the UK if he has been adopted by a British resident under an adoption order made under the law of a country outside the British Islands, which is not a Hague Convention adoption, within the previous six months. It also extends the penalty which may be applied when someone is found guilty of bringing a child into the UK without complying with the prescribed procedures. In cases where the Magistrates' Court refers the case to a Crown Court or the defendant enters a plea of not guilty and elects for a Crown Court trial, the maximum penalty will be 12 months' imprisonment or an unlimited fine, or both.

Safeguards for the adoption process

16. The Bill reaffirms with amendment existing safeguards under the Adoption Act 1976 that restrict who can lawfully arrange adoptions, and advertise about adoption. This includes advertising about adoption through traditional media and electronically. It also provides restrictions on the preparation of certain reports and prohibits certain payments or rewards in connection with adoption.

Measures to tackle delay

17. The Bill includes measures intended to tackle delays in the adoption process. It makes express provision to enable the Secretary of State to establish an Adoption and Children Act Register to suggest matches between children waiting to be adopted and approved prospective adopters. The Register, the functions of which will be regulated jointly by the Secretary of State and the National Assembly, is intended to reduce delay in matching children with adoptive families. The Bill also includes measures requiring courts to draw up timetables for resolving adoption cases without delay, and to give directions to ensure the timetable is adhered to.

Special Guardianship

18. The Government promised in the White Paper to develop a new legal option called ‘special guardianship’. This is intended to meet the needs of children for whom adoption is not appropriate, but who cannot return to their birth parents and could benefit from the permanence provided by a legally secure family placement. For example, some older children (who may, for instance, be being looked after in long term foster placements) do not wish to be adopted and have their legal relationship with their parents severed, but could benefit from greater security and permanence. Adoption may also not be the best option for some children being cared for on a permanent basis by members of their wider family. Some ethnic minority communities have religious or cultural difficulties with adoption in the form provided for in the law of England and Wales.

19. The Bill amends the Children Act 1989 to provide for the new special guardianship order. It sets out who may apply for an order, the circumstances in which orders may be made and their nature and effect. The intention is that, in order to provide the child with the stability he needs, the special guardian has clear responsibility for all the day to day decisions about caring for the child or young person and for taking the decisions about his upbringing. But, unlike adoption, there is the possibility of discharge or variation of the order, and the child’s legal relationship with his birth parents is not severed. They remain legally the child’s parents, though their ability to exercise their parental responsibility is limited. Special guardians will have access to a range of support services under procedures similar to those provided for adoption support.

Conclusion:

20. The attached Annex gives brief details of the Bill’s clauses and the extent of the power of the National Assembly to commence parts of the act and to make regulations, etc.

21. The Bill will affect all adoptions and arrangements for the adoption of children in England and Wales and all adoption applications from persons resident and settled in England and Wales who seek to adopt children living abroad. Some parts of the Bill extend to Scotland and Northern Ireland. It is intended that the current mutual recognition of adoption and cross border placement for adoption between England, Wales, Scotland and Northern Ireland will continue.

Action:

22. The Committee is invited to note the contents of this paper.

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Contact:

The contact on this subject is Mr Mike Burns, Child Protection and Placements Team, Children and Families Division.

THE ADOPTION AND CHILDREN BILL

SUMMARY OF CLAUSES AND EXTENT OF THE POWERS OF THE NATIONAL ASSEMBLY TO COMMENCE PARTS OF THE ACT AND TO MAKE REGULATIONS, ETC.

		National Assembly Powers	
		Comm	Regs, etc.
Comm = Commencement Powers Regs, etc. = Regulation making powers, powers of direction, etc. / = Full power within the clause to commence or make regulations etc (regulation, etc. making powers may only be contained in parts of the clause). s.2(6), etc = Powers restricted to these sections only – other powers conferred by the clause rest elsewhere. Consultation = Power rests with Secretary of State for Health after consultation with the National Assembly			
Where the entry is blank, either there are no regulation making, etc powers in that clause or powers rest with other Ministers (generally the Secretary of State for Health)			
PART 1	Sets out the framework of adoption law for England and Wales.		
Chapter 1			

<i>Clause 1</i>	Provides for the welfare of the child to be paramount		
Chapter 2	Covers basic definitions of the adoption service.	2(6)	2(6)
<i>Clause 3</i>	Places a duty on local authorities in England and Wales to maintain an adoption service, which includes making arrangements for the adoption of children and for the provision of adoption support services;	3(4)	3(3) & (4)
<i>Clause 4</i>	Provides a statutory right to request an assessment for adoption support services;	/	/
<i>Clause 5</i>	Imposes a duty on local authorities to prepare and publish a plan for adoption services.	/	/
<i>Clause 6</i>	Arrangements on cancellation of registration of an adoption society.	/	/
<i>Clause 7</i>	Empowers the appropriate Minister to make directions where an adoption society is inactive or defunct.	/	/
<i>Clause 8</i>	Amends Part 2 of the Care Standards Act 2000 to provide for the registration of adoption support agencies;	/	/
<i>Clauses 9 to 11</i>	General power to regulate adoption agencies and adoption support agencies.	/	/

Clause 12	Enables the appropriate Minister to establish a new independent review mechanism to consider determinations made by adoption agencies about the suitability of prospective adopters and the disclosure of protected information;	/	12(1) to (7)
Clause 13	Requires adoption agencies and courts to provide the appropriate Minister with information required.	/	/
Clause 14	Provides for appropriate Minister default powers;	/	/
Clause 15	Provides for inspection;	/	/
Clause 16	Provides for inquiries into matters connected with the functions of an adoption agency	/	/
Chapter 3			
Clauses 17 to 28	Covers placement for adoption and adoption orders. It introduces placement by consent and placement orders;	26(3)	26(3)
Clauses 29 to 34	Makes provision for the removal of children who are or may be placed for adoption;		
Clauses 35 to 40	Restrictions on removal in non-agency cases.		

Clause 41	Sets out the period a child must live with applicants before they can apply for adoption order.		
Clause 42	Responsibility of an adoption agency to prepare reports for court.		
Clause 43	Sets out the circumstances and the form in which notice can be given of intention to adopt and the action which a local authority must take upon receipt of such notice		
Clauses 44 to 49	Makes provision for adoption orders;		
Clause 50	Covers the giving and withdrawal of consent to placement or adoption.		50(7)
Clause 51	Modifies the Children Act 1989 in relation to adoption	s.51 (1)-(3)	s.51(1)-(3)
Clause 52	Provides that an adoption order may be revoked where a child is legitimised.		
Clauses 53 to 62	Makes provision for disclosure of information about a person's adoption.	/	/

Chapter 4			
<i>Clauses 63 to 73</i>	Covers the status of adopted children.		
Chapter 5			
<i>Clauses 74 to 78</i>	Makes provision for the Adopted Children Register and the Adoption Contact Register – both maintained by the Registrar General.		
<i>Clause 79</i>	Interpretation.		
Chapter 6			
<i>Clauses 80 to 87</i>	Makes provision for adoptions with a foreign element		Consultation in relation to 80(4), (5) & (6), 81(3) & (6) & 83(2)
Chapter 7	Covers miscellaneous provisions.		
<i>Clause 88</i>	Restrictions on arranging adoptions		Consultation in relation to 88(5) & (6)

<i>Clause 89</i>	Makes provision for offences relating to arranging adoptions;		
<i>Clause 90</i>	Restrictions on preparing reports about the suitability of a child or prospective adopter		Consultation in relation to 90(1)
<i>Clauses 91 & 92</i>	Prohibitions on making certain payments for the adoption of a child or to obtain consents required in connection with adoption		
<i>Clause 93</i>	Interpretation, s.88 to 92		
<i>Clauses 94 to 105</i>	Cover court proceedings, including Proceedings for adoption offences, Appointment and role of CAFCASS officers		
PART 2	Makes amendments to the Children Act 1989;		
<i>Clause 106</i>	Provides for the acquisition of parental responsibility by an unmarried father who jointly registers with the mother their child's birth;		
<i>Clause 107</i>	Introduces a more straightforward process for step-parents to acquire parental responsibility either through the courts or with consent;		
<i>Clause 108</i>	Provides for a local authority foster parent to apply for a section 8 order if the child has lived with him for one year rather than three years;		

Clause 109	Provides for enhanced residence orders;		
Clause 110	Provides for special guardianship;		s.14F & G
Clause 111	Amends the complaints procedure by allowing for regulations to impose time limits for the making of representations and establish an informal resolution stage, and extending the procedure to some services provided under Parts 4 and 5 of the Children Act; and		/
Clause 112	Makes provision regarding care plans .		s.112(2) "s.31a(3)"
PART 3	Miscellaneous Provisions,		
Clauses 113 & 114	Makes provision on advertising;		Consultation in relation to s.113(7)
Clauses 115 to 119	Establishes the Adoption and Children Act Register.		Jointly with SoS Health
Clauses 120 to 134	Miscellaneous provisions, Amendments and Final Provisions		

SCHEDULES:	1 Registration of Adoptions.		
	2 Disclosure of Birth Records by Registrar General.		
	3 Minor and consequential amendments.		
	4 Transitional provisions and savings.		
	5 Repeals.		
	6 Glossary.		