

6. CONSIDERATION OF CLAUSES

**6.1. Adoption Bill 2021 –
Consideration of clauses commenced and adjourned**

Mr Ashford to move.

The Speaker: We turn to Item 6 on our Order Paper, Consideration of Clauses and the Adoption Bill. I call on Mr Ashford to move clauses 1 to 6, please.

Mr Ashford: Thank you, Mr Speaker.

2445 I am pleased to move the consideration of the clauses in relation to the Adoption Bill 2021.

Mr Speaker, we have discussed the grouping of clauses and, as you have said, I firstly propose to take clauses 1 to 6 together.

2450 Part 1 introduces the Bill, with clause 1 giving the resulting Act its short title and clause 2 providing that the Act comes into operation on a day that the Department by order may appoint, with any transitional provisions as necessary.

Clause 3 sets out what Part 1 deals with.

Clause 4 deals with the Adoption Service and provides that the services maintained by the Department under the Bill is 'the Adoption Service'.

Clause 5 deals with the maintenance of the Adoption Service.

2455 Clause 6 enables the Department to make arrangements for its functions listed in sub-section (2) to be carried out by one or more adoption agencies.

Mr Speaker, I beg to move that clauses 1 to 6 stand part of the Bill.

The Speaker: Thank you.

2460 Mrs Corlett.

Mrs Corlett: Mr Speaker, I beg to second.

The Speaker: Mr Hooper.

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Mr Hooper: Thank you very much, Mr Speaker.

2470 I went through this Bill at quite a high level some time ago and nothing jumped out at me as potentially causing problems – not with the principles behind it or the rationale why the Bill was being brought in. But as I started going through the Bill line by line, I started to run into a number of road blocks. Two of them are pretty fundamental, I think. The first is actually around terminology used in the Bill.

Going back to basics, the Bill sets out that there are two categories of organisation: the first is an adoption society; and the second is an adoption agency. 'Adoption agency' is not defined anywhere in the Bill. 'Registered adoption society' is defined.

2475 Quite interestingly, the way that this seems to interact with the Regulation of Care Act 2013, there seems to have been some errors made, I think, in the way that they cross-reference each other, in that the Regulation of Care Act will now point back to this Bill as part of its definition of a 'voluntary adoption agency', and this Bill points back to that Act in its definition of a 'registered adoption society', which is somewhat circular. So I am a little bit unclear to start off with actually how that is going to work.

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But my real issue is that there is not any definition anywhere of an adoption agency and, in fact, even the terminology 'voluntary adoption agency' is being removed from the Regulation of Care Act by Schedule 3 of this Bill, so we end up with a Bill that in clause 3 talks about the recognition of registered adoption societies, the regulation and control of registered adoption

2485 societies, but actually then does not mention anywhere this concept of an adoption agency. There does not seem to be any link at all between an adoption society and an adoption agency.

This is problematic because the Bill only references 'adoption society' a handful of times. If I search the Bill itself for the terminology, 'adoption agency' as a phrase appears in this Bill 135 times. Quite conversely, however, if you search for 'adoption society', it appears in this Bill eight times. So there clearly is a differentiation between the two. The Bill references them separately and treats them separately. The problem is, the way that some of the clauses are worded, they provide certain powers or options to adoption agencies, but then do not mention anything about adoption societies.

2495 So the Minister mentioned there that clause 6 allows the Department to make arrangements with an adoption agency to provide some of its services. It does not mention that the Department may be able to make an arrangement with an adoption society and because the two terminologies do not seem to interact anywhere ...

I cannot see them in this Bill. I cannot see a definition of it in this Bill. There is a definition of an adoption agency in the 1984 Act, which is being repealed by this Bill. There also is no definition of an adoption agency inside the Regulation of Care Act, outside the phrase 'voluntary adoption agency', which again, as I have said, references back here to adoption societies registered. So I am really quite confused as to how this Bill actually is going to work in practice, if there are some powers and responsibilities passed on adoption agencies and others are passed on to societies.

2505 The Bill does not seem to allow the registration of an adoption agency: that seems to be the function of the 2013 Regulation of Care Act, but again the terminology is being removed from that. In fact 'voluntary adoption agency' is being removed as a care provider from that Act by one of the amendments put forward in this Bill.

I have raised this with the Member in charge of the Bill in Legislative Council the other day and I have not really had an explanation back as to why this is the case; how this concept of an adoption agency or an adoption society ... why they are different things; why the Bill references both; why there seems to be no interaction; why there, quite importantly, appears to be no definition of an adoption agency anywhere in the Bill.

2515 The second issue I have with this first set of clauses is actually that it talks a little bit about the Adoption Service being maintained. So the distinction I made, and I think the Bill makes quite clearly, is the Adoption Service is the Government-run adoption service in the Isle of Man, as opposed to a private or voluntary or charitable service.

The Adoption Service currently is run by the Department of Health and Social Care. It is my understanding that it is going to be run by Manx Care. The problem is this Bill in front of us does not amend the Manx Care Act, as far as I can see, to insert this new Adoption Bill as one of the bits of responsibility of the Manx Care organisation. The Manx Care Act itself also does not seem to reference Adoption as a piece of legislation it works under.

2525 The mandate for Manx Care does reference the original Adoption Act 1984 as a piece of relevant legislation for which 'some services' – that is the language it uses; not all services – may be provided, but then the mandate itself makes no further reference at all to the Adoption Service. In fact, it does not make a reference to the Adoption Service at all. It simply refers to the Adoption Act.

2530 So it appears, on the face of it then, that the Department is retaining responsibility for the Adoption Service because if it were to be transferred to Manx Care, then the Adoption Service would be mentioned in the mandate: there may be a description of the service, there may be some metrics associated with it. None of that is the case, and it is not appearing in any of the legislation surrounding Manx Care either.

2535 So, as I said, the Bill itself and the principles behind it: I am completely on board with what it is trying to achieve, to modernise the adoption process on the Isle of Man. But the one area that does very much concern me is that I managed to get to clause 3 before I ran into this brick wall of actually how do these definitions tie in with each other? What is it that the Department is trying to regulate? Are we mirroring some of the things that already exist elsewhere?

What is an adoption agency? That is the fundamental question, which I have not been able to answer. And who is going to provide this Adoption Service?

2540 I think the Minister needs to come back and explain very clearly what the different terminology is, how it all ties together, how the various terminologies in the Bill actually work and importantly, how this ties in with Manx Care and who is going to be providing this service.

I could go on, Mr Speaker, but I will not. I do feel that I should declare an interest in this particular Bill, as I am going through an adoption process myself. It is worth placing on the record, just for the avoidance of doubt. My concerns are quite broad in terms of: the Bill itself seems to
2545 have these structural weaknesses in that I really think the Minister needs to explain.

The Speaker: Thank you, Mr Hooper.
I call on the mover to reply.

2550 **Mr Ashford:** Thank you very much, Mr Speaker.

In relation to 'adoption agency' and 'adoption society', the advice that I have had is that they are very similar and that, in fact, when this goes to Legislative Council, it is something that we may look to have to tie up, because I believe they are basically the same thing. So I think the language perhaps needs to be tightened there, and I would agree with the Hon. Member on that.

2555 In relation to Manx Care, it would be Manx Care that has responsibility because the Children and Families Division of Manx Care, under which this falls, would actually sit within Manx Care as a service. The Department would obviously have its role in relation to setting a policy, but in terms of the actual delivery of the service, that would sit with Manx Care.

2560 **The Speaker:** I am not sure, Minister, if you are able to see the chat box. Whilst you are speaking, Mr Hooper would like to interject, if that is possible.

Mr Ashford: Yes, I am more than happy to take the interjection, Mr Speaker.

2565 **The Speaker:** Mr Hooper.

Mr Hooper: Thank you very much, Mr Speaker.

2570 That answer from the Minister is quite concerning, because again, the Bill is very specific in terms of registering adoption societies, regulating and controlling adoption societies. Some of the powers, some of the actions in here, are handed over to adoption societies as opposed to agencies.

Clauses 7 and 8 for example: clause 7 deals with cancelled registrations of adoption agencies; clause 8 deals with cancelled registrations of adoption societies, which means they *must* be different or the Bill would not be splitting them out in this way.

2575 So I am not particularly comfortable myself in saying, 'Oh, actually, that probably is an issue we should look at in Legislative Council.' To my mind, as we go through this Bill, some clauses will reference 'adoption agency', some will reference 'adoption society', and it seems to me that actually that is pretty fundamental to the operation of the Bill.

2580 There is a clause further on in the Bill that turns round and says that placement of a child under an adoption placement order cannot be made unless the child has been placed by an adoption agency. So immediately there that flags up a red flag for me: that anything to do with an adoption society will not be covered. That feels pretty fundamental, so if the Minister is saying, oh, he is not sure, he thinks they are pretty much the same thing, but the Bill actually does not specify, that seems a fundamental weakness in the Bill, and I would strongly encourage the Minister to go away
2585 and actually get a solid answer to that question before he proceeds taking this Bill any further through clauses in this Hon. House.

The Speaker: You have the floor, Minister.

2590 **Mr Ashford:** Thank you very much, Mr Speaker.

I did not say they were exactly the same thing; I said they were similar. In fact, an adoption society has to be registered as such, and so does an adoption agency, and it is all around the registration process.

2595 What I said is that we may need to look at clarity, maybe within the glossary of terms that is included within clause 126, to specify exactly what a society is and particularly what an adoption agency is.

Mr Speaker, my understanding is that in terms of their functions, many of them are the same, but their registration I believe is different.

2600 **The Speaker:** Thank you. I do not really want this to be a running conversation, but Mr Hooper has again asked to interject.

Mr Ashford: Mr Speaker, I will take the interjection, but I am not continuously taking interjections on every clause.

2605 **The Speaker:** Quite understood.
Mr Hooper.

Mr Hooper: Thank you, Mr Speaker.

2610 Unfortunately, the Minister seems to have not understood the issue here. There is no registration process for an adoption agency. The Regulation of Care Act refers to a *voluntary* adoption agency as being a body that may be subject to regulation under that Act. That definition, that terminology is being removed by this Bill, so we are ending up with a regulation regime for adoption societies; I cannot see anywhere in any piece of legislation that then refers back to an adoption agency, other than the 1984 Act that is being repealed, yet this Bill uses the phrase
2615 'adoption agency' *substantially*.

So this is not just a terminology issue, a definitional issue at the back of the Bill that can be tidied up. The Minister telling us that there are registration differences: he needs to point to the piece of legislation and the relevant bits under which an adoption agency can be registered, because I am not convinced by that answer, Mr Speaker.

2620 **The Speaker:** Mr Ashford.

Mr Ashford: Thank you, Mr Speaker.

2625 In relation to an adoption agency, an adoption agency is, I believe, a defined term. The Hon. Member says that it is under the 1984 Act, which he says is being repealed as part of this. I will take that away and look at it, Mr Speaker, but the simple fact is that 'adoption agency' and 'adoption society' do feature heavily in the Bill. The Hon. Member is correct in that, but in relation to an adoption agency, I think we all ... certainly, I have had dealings with adoption agencies, and I think they are slightly different to adoption societies.

2630 I will leave it there, Mr Speaker.

The Speaker: I put the question that clauses 1 to 6 stand part of the Bill and I will assume that that motion is carried unless anyone indicates dissent, which they should do now, please.

2635 Mr Hooper, you have indicated dissent. Can I just ask you: is it particularly with any one clause or is it to the whole group of clauses, because I will put the question as appropriate?

Mr Hooper: It will be the whole group of clauses, Mr Speaker. I think it is entirely inappropriate to proceed down the road of this Bill when there are fundamental questions like that that remain unanswered questions.

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The Speaker: In which case, Hon. Members, I will put the question and I will ask the Clerks to run the vote. The question will be that clauses 1 to 6 stand part of the Bill.

Voting resulted as follows:

FOR

Dr Allinson
Mr Ashford
Mr Baker
Mrs Barber
Mr Boot
Mr Cannan
Mrs Corlett
Mr Cregeen
Mr Harmer
Mr Quayle
Mr Moorhouse
Mr Peake
Mr Perkins
Mr Skelly
The Speaker

AGAINST

Mrs Caine
Mr Callister
Mrs Christian
Ms Edge
Mr Hooper
Mr Quine
Mr Robertshaw
Mr Shimmins
Mr Thomas

The Speaker: With 15 votes for, 9 against, the ayes have it. The ayes have it. We turn, then, to clauses 7 to 9. I call on Mr Ashford to move.

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Mr Ashford: Thank you, Mr Speaker.

Hon. Members, I now move to clauses 7 to 9, which I propose to take together.

Clause 7 empowers the Department, where a registered adoption society has ceased to be registered, to direct that society to make appropriate arrangements for the transfer of its functions relating to children.

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Clause 8 allows the Department to take action where a registered adoption society ceases to be registered but has not made arrangements for the transfer of its activities relating to children. The Department, following consultation with the society, is permitted to step in and take action and has the ability to charge the society for any expenses incurred.

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Clause 9 requires adoption agencies and the courts to provide to the Department statistical or other general information relating to adoption as may be required.

Mr Speaker, I beg to move that clauses 7 to 9 stand part of the Bill.

The Speaker: Thank you.

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Mrs Corlett.

Mrs Corlett: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Mr Hooper.

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Mr Hooper: Thank you very much, Mr Speaker.

I think the Minister may have misspoken there when he referred to clause 7. He said clause 7 allows the Department to direct an adoption society to make arrangements for the transfer of activities relating to children. The clause actually refers to an adoption agency and not an adoption society. So if the Minister could advise why that power is necessary in respect of agencies, but not societies, it would be appreciated.

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Clause 8 dealing with adoption societies, on the other hand, only allows the Department to take any action as might have been taken by the society or the society jointly with the Department. So again, why are the powers in relation to adoption societies and adoption agencies different?

2675 In connection with clause 9, which the Minister is also moving, the adoption agency is required to provide the Department with statistical or other general information. Can the Minister advise why adoption societies are not required to provide similar information in respect of their registration and activities?

2680 **The Speaker:** I call on the mover to reply.

Mr Ashford: Thank you, Mr Speaker.

2685 In relation to adoption agencies, which is the clause 7, yes, the Hon. Member is correct: I misread my notes. I do apologise for that. Oh sorry, wrong clause. I did read the wrong sentence out. It is indeed the agencies, Mr Speaker.

2690 In relation to this, this again I think comes down to the difference between societies and agencies. With the permission of the House, Mr Speaker, I have just spoken with the drafters, I think it is important that this legislation is correct. There is clearly a division in the House over this, and I wish to pause consideration of clauses with the agreement of the House, so we can get the difference between the agencies and societies, which the Hon. Member has already said runs through this Bill – it has not been raised with me prior to today that there is this issue, but I would like to consider that we pause clauses until that can be done, because otherwise it will just come up as questions on every single clause.

2695 **The Speaker:** Okay, Hon. Members. Given that notice from the mover of the Bill, I will not put the question then regarding clauses 7 to 9, and consideration of the Adoption Bill is suspended to a future sitting.