

Order of the Day

1. Adoption Bill 2021 – Second Reading approved

Mrs Sharpe to move:

That the Adoption Bill 2021 be read a second time.

The President: We turn now to our Order Paper. The first Item of business is the Adoption Bill and for Second Reading I call on the mover, Hon. Member of Council, Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

Mr President, Hon. Members, I am pleased to move the Second Reading of the Adoption Bill 2021 on behalf of the Department of Health and Social Care.

In my First Reading speech on 4th May, I gave a brief overview of the background to this Bill and the reason why an update to the Bill is so greatly needed. Our adoption legislation is simply out of date. To update our legislation, one of the most significant changes this Bill brings to Manx law is to make the child's welfare the paramount consideration of the court or adoption agency for the whole of the child's life, rather than just the first consideration, as it is currently in the Adoption Act 1984. This change brings the Adoption Bill in line with the Children and Young Persons Act 2001.

The Department, when considering policy for the new Bill, considered adoption law in other small islands and the law in Commonwealth jurisdictions. As a result of the close relationship we have with the UK and the numbers of cross-border placements, the Adoption and Children Act 2002 (of Parliament) for very practical reasons was deemed to be the most suitable starting point for our legislation. The Bill, however, is slightly different to English and Welsh law and is different in the areas which are appropriate in order to ensure it works correctly for our Island.

One of the most significant areas of divergence with England and Wales is in relation to post-adoption contact. The Hon. Member, Mrs Lord-Brennan, raised this distinction last week at the First Reading of the Bill. Unlike Parliament's Adoption and Children Act 2002, the court cannot award direct contact when making an adoption order. At First Reading, I responded to the Hon. Member and explained that the Department decided against allowing direct contact – sorry, Mr President – as we are a small community. Direct contact could disrupt the child's ability to bond with their adoptive family. This could have a detrimental effect on the formation of the child's attachment with their adoptive family and beyond.

Mr President, there is no getting away from the fact that adoption is a lifelong transformative change. It creates a new legal relationship with the adoptive parents and legally severs the relationship with the birth parent. I would like to point out, though, that there are other legal routes to achieving permanence for a child in those circumstances where it is appropriate to maintain direct contact with family members. This can be achieved, for example, through residence orders or special guardianship orders.

These orders are made when it is not appropriate for the link with the birth family to be completely severed. In such cases where there are links to be continued with family members, then the Department believes these other routes for permanence, such as special guardianship should be used rather than adoption. In short, it is the achievement of permanence for the child which is imperative, rather than the legal route taken.

Indirect contact *only* can be awarded by the court in the Bill. However, the importance and value of indirect contact should not be overlooked. Indirect contact provides the child with an important link to their birth family and serves to help the adopted child to establish their identity.

So to conclude on this point, the Department considers that diverging from the Adoption and Children Act 2002 (of Parliament) in terms of direct and indirect contact is necessary for the Island.

As mentioned in the First Reading, the Bill was amended in the House of Keys as a result of concerns with some definitions, in particular if 'adoption agency' or 'registered adoption society' should be used. To provide clarity, some amendments were then made. The Bill is in parts complex, but necessarily so. The adoption of a child creates a new family for that child. Adoption is unique in this respect.

Mr President, I will not outline the principles as I did at the First Reading, as I am sure Hon. Members are aware of these now. I trust I have responded to Mrs Lord-Brennan and should any other Members have anything else to raise I am happy to address this now or indeed during the clauses stage which, Mr President, I intend to defer until the next sitting.

Mr President, I beg to move that the Adoption Bill 2021 is read for the second time.

The President: Thank you.

Mr Henderson.

Mr Henderson: I beg to second, sir.

The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

I would like to thank the Hon. Member for her explanation of the rationale for limiting the Bill to indirect contact. I suppose one remaining question, which is one that I have sent on this point about the limitation to indirect contact, notwithstanding that we are a small jurisdiction and there are obviously going to be more challenges with the potential for direct contact is, what the Bill is doing is saying in no circumstance could a court order direct contact, it can only order indirect contact. I would be just interested in a situation where that might be something that would be appropriate, perhaps with siblings, for example. So I completely understand that the permanence for the child and the birth parents might not be suitable for direct contact, but one could potentially see a situation where there are siblings and it might, in certain circumstances, be appropriate, and why it would not be suitable for a court looking at all the circumstances of that particular situation to consider the possibility of direct contact.

So I would just be glad to hear the Department's thinking as to why they are absolutely satisfied that the only option for a court is indirect contact in any circumstance.

Then more broadly, Mr President, I belatedly, with apologies, have had a really good root through the detail of the Adoption Bill, and I am very supportive of what it is achieving, but there are some questions and technical points which I have raised with the mover and the Department, and we are engaging thoroughly in that. I would like to thank the mover and the Department and the drafter for their consideration of the points being raised.

Thank you, Mr President.

The President: Thank you.

Mrs Sharpe to reply.

Mrs Sharpe: Thank you, Mr President.

I would like to sincerely thank the Hon. Member for her observations on the Bill. Just to pick up on the point very briefly about direct and indirect contact, it is true that within the Bill the ability to give direct contact is not given to the court, only indirect contact. However, that does not mean to say that, in certain circumstances, a child who is adopted would not be able to have direct contact with, for example, siblings. That would occur under a voluntary agreement. So that is indeed possible and, wherever possible, the Department places siblings together anyway.

But I will discuss this more fully with the Department and get a detailed answer for the Hon. Member at the next sitting.

The President: Thank you, Hon. Member.

I put to Council the question that the Adoption Bill be read for the second time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.