

HOUSE OF LORDS

Select Committee on Adoption Legislation

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1st Report of Session 2012–13

# **Adoption: Pre-Legislative Scrutiny**

Report

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Ordered to be printed 13 December and published 19 December 2012

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Published by the Authority of the House of Lords

*London* : The Stationery Office Limited  
£10.00

HL Paper 94

### *The Select Committee on Adoption Legislation*

The Select Committee on Adoption Legislation was appointed by the House of Lords on 29 May 2012 with the orders of reference “to consider the statute law about adoption.”

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See Appendix 1.

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Evidence is published online at [www.parliament.uk/hladoption](http://www.parliament.uk/hladoption) and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to a question in oral evidence

Witness names without a question reference refer to written evidence

## SUMMARY

The Government published *Draft Legislation on Adoption* on 7 November 2012. In the foreword, the Government outlined their aims, which were to “reform the adoption system to remove barriers and reduce delay so that all children for whom adoption is in their best interests can be placed quickly with adoptive families”. We support these aims. We believe that it is essential that children are placed for adoption as quickly as possible.

The Committee considered the two draft clauses. The first clause deals with ‘fostering for adoption’. We support the Government’s intention to place children with prospective permanent carers as soon as possible. We also support the aim to minimise disruption by reducing the number of placements children experience whilst in care. We believe, however, that the Government’s proposal is too limited, and does not place a sufficient obligation on local authorities to consider and promote fostering for adoption. We make recommendations to widen the duty, to require all local authorities actively to consider a foster for adoption placement for all children for whom adoption is the plan. We also recommend that decisions regarding a child’s permanency plan should be made as soon as possible after the child’s entry into the care system. To this end we propose changes to the Statutory Guidance on Adoption.

The second draft clause is intended to repeal the requirement to give due consideration to ethnicity when matching for adoption in England. We share the Government’s belief that children should not experience undue delay whilst a search for a perfect or near perfect ethnic match takes place. We do not, however, believe that considerations of race, religion, culture and language should be neglected altogether, as they are all components of a child’s identity. We are concerned as to how the removal in England of section 1(5) of the Adoption and Children Act 2002 will be interpreted by those working in the field, and that it may be seen as a signal that race and ethnicity should be given no weight in the matching process. A better balance needs to be achieved. We therefore propose that the welfare checklist, at section 1(4) of the Act, should be amended to include considerations of ethnicity. This will ensure that issues of race, religion, culture and language are considered alongside the other elements of a child’s welfare.

# Adoption: Pre-Legislative Scrutiny

## CHAPTER 1: INTRODUCTION

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1. The House of Lords agreed to establish a committee to ‘consider the statute law on adoption and to make recommendations’ on 21 May 2012.<sup>1</sup> This is the first instance of a House of Lords select committee being established specifically to undertake post-legislative scrutiny. Our terms of reference, agreed by the House on 29 May 2012, require us to report by the end of February 2013.<sup>2</sup>
2. The period of our existence has coincided with considerable Government activity in relation to adoption policy, culminating in the publication of draft legislation on 7 November 2012<sup>3</sup>. The draft legislation takes the form of two draft clauses which are expected to be incorporated into the Children and Families Bill, which it is anticipated will be introduced into parliament in early 2013. Pre-legislative scrutiny on other draft clauses dealing with the wider, non-adoption, content of that Bill has been undertaken by the Joint Committee on Human Rights and the Education and Justice Committees of the House of Commons.<sup>4</sup>
3. It was agreed by the House on 8 November that we should have our terms of reference amended to enable us to conduct pre-legislative scrutiny of the draft adoption clauses and to provide a short report by 21 December 2012.<sup>5</sup> This would allow us, having heard evidence on the matters at hand, to bring our experience to bear on the draft clauses.
4. As a result of the short time scales for considering the draft clauses we were not able to issue a new call for evidence or arrange dedicated evidence sessions. We have, however, taken advantage of the evidence sessions arranged for our main inquiry to seek the views of witnesses, where appropriate; we have also sought supplementary written evidence from the principal stakeholders; and we have taken into account evidence sent to our main inquiry, before the draft clauses were published, where it was relevant so to do. The issues addressed by the draft clauses have been well-trailed in consultations and announcements and are in many respects germane to the wider evidence we have received.
5. Our substantive work continues, and we will publish our main report, focusing upon the Adoption and Children Act 2002, the Children and Adoption Act 2006, and related legislation, in February next year.

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<sup>1</sup> HL Deb 21 May 2012 col 636

<sup>2</sup> HL Deb 29 May 2012 col 1082

<sup>3</sup> Command Paper 8473: Draft legislation on Adoption: Early Permanence through ‘Fostering for Adoption’ and Matching for Adoption.

<sup>4</sup> Human Rights Joint Committee, 6th Report (2012–13): *Reform of the Office of the Children’s Commissioner: draft legislation* (HL Paper 83); the Education and Justice Committees had not reported at the time of writing.

<sup>5</sup> HL Deb 8 November col 1095

### Draft legislation on adoption

6. The Government published the Command Paper “Draft legislation on Adoption: Early Permanence through ‘Fostering for Adoption’ and Matching for Adoption” on 7 November 2012. On the same day Edward Timpson MP, the Parliamentary Under-Secretary of State for Children and Families, wrote to our Chairman explaining that the two draft clauses would “reduce delay for children for whom adoption is the plan”.<sup>6</sup> Mr Timpson also explained that the Welsh government had decided that it did not want the clauses to apply in Wales.
7. The remainder of this report considers in turn the two draft clauses, as they would apply in England.

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<sup>6</sup> See Appendix 3

## CHAPTER 2: PLACEMENT OF LOOKED AFTER CHILDREN WITH PROSPECTIVE ADOPTERS

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8. The Government's *Action Plan for Adoption: Tackling Delay*, published in March 2012, set out the Government's aims of ensuring early permanence for children for whom adoption is the plan:

“Our aim is to help children find loving permanent homes as early as possible and to minimise the damage caused by disruption to children of moving between the placements. This means that wherever a local authority has decided that adoption is the plan for a child, they should aim to place that child as early as possible with the carers who are likely to become their adoptive parents. This can never pre-empt a court's decision that a child should be adopted, but it means that whether or not the child is adopted, they should suffer less trauma from disruption”.<sup>7</sup>
9. The risks of harm caused by delay and moving the child from one foster placement to another are well documented. Professor Julie Selwyn's written evidence to us explained that as a result of successive moves in foster care children are likely to be “highly stressed and become avoidant, not able/wanting to make relationships”. They may also develop “externalising behaviour such as being aggressive, loud, lying, and difficult to manage”. Mental health problems may be triggered by moves in foster care. The effects of these experiences are often life-long, with one study finding that “instability in care often leads to a downward spiral: worsening emotional and behavioural difficulties, further instability, poor educational results, unemployment and a lifetime of poverty.”<sup>8</sup> The aim of minimising the disruption caused by moves between placements is therefore one that we fully support.
10. The Government's first draft clause amends section 22C (Ways in which looked after children are to be accommodated and maintained) of the Children Act 1989 by adding three new clauses: 9A, 9B and 9C, and making a series of consequential amendments to section 22C. Appendix 4 contains a Keeling schedule for section 22C.<sup>9</sup>

### What is the legislation seeking to achieve?

11. In a written ministerial statement on 7 November,<sup>10</sup> the Minister explained that the draft legislation fulfilled the commitments made in the *Action Plan for Adoption*. In particular the Government was committed to reducing the time children have to wait for an adoptive placement. They would do this by requiring local authorities to place children as early as possible where adoption was in the child's best interests. In a letter to us on the same day the Minister explained that the draft clauses were designed to:

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<sup>7</sup> *An Action Plan for Adoption: Tackling Delay*, Department for Education, March 2012, paragraph 59.

<sup>8</sup> *Social work assessment of children in need: what do we know? Messages from research*, Danielle Turney, Dendy Platt, Julie Selwyn and Elaine Farmer, March 2011, ref DFE-RBX-10-08, p. 3.

<sup>9</sup> A Keeling schedule is an aid to understanding the effect of a bill which significantly amends an earlier Act. It reproduces the earlier measure and shows the effect of the amendments embodied in the bill.

<sup>10</sup> HL Deb 7 November 2012 WS83

“create a new duty on local authorities to give preference to a ‘Fostering for Adoption’ placement. This would apply when they have decided that a child should be placed for adoption with particular prospective adopters but where there is no authority to place the child for adoption. This would be where the court has yet to make a decision on an application for a placement order. The placement would be a foster placement, only changing to an adoptive placement if a placement order is made”.<sup>11</sup>

12. The principal aims of the draft clauses, therefore, are to reduce delay in placing children with their prospective adoptive families, and to minimise the damage caused by moving between placements.

*How does fostering for adoption differ from concurrent planning?*

13. The Government gave their support to concurrent planning in their *Action Plan for Adoption*, highlighting the benefits of giving children a stable loving home as early as possible, and letting adults rather than children carry the risk of placement breakdown. They stated that they would like the principles behind concurrent planning to be used more widely, and for children as well as infants. But what are the differences between concurrent planning and fostering for adoption as proposed by the draft clauses?
14. The Minister, Edward Timpson MP, summed up the differences as follows:

“Concurrent planning, by the very word suggests there are two plans. So you have the plan that you are considering on one parallel, which is rehabilitation to the birth family, and the other plan, which is a permanency decision that is outside the birth family ... However, as regards fostering for adoption, there is one plan. The decision has been made that the right long-term placement for that child is adoption, so the circumstances are very different”.<sup>12</sup>
15. The key distinction therefore between the two approaches is the stage in the decision-making process at which the move to a prospective permanent placement takes place. In concurrent planning a child is moved to a foster placement with carers who are also approved prospective adopters *before* a decision on whether the child should be adopted has been made. In practice, this can mean that a child is placed in a concurrent placement on entering care or very soon after entry into care. If it is decided that the child should be adopted, the foster carers will already have developed a bond with the child, and there will be no need for the child to be moved again as the foster carers are already approved prospective adopters who have been matched with that child.
16. In fostering for adoption, the move to a placement with foster carers who are also approved prospective adopters takes place *after* the decision by the local authority that the child should be placed for adoption has been made. In practice, this tends to be some time after care proceedings have been issued and the child will have been in a temporary placement (or placements) up until that decision is made. The child would then be moved to carers who are also prospective adopters prior to a placement order being granted.

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<sup>11</sup> Appendix 3

<sup>12</sup> Q 825



17. Other differences between the two approaches arise from the different stages in the decision-making process at which the move to the foster care placement takes place. Because a child under the concurrent planning model is moved before any decision regarding adoption has been made, the local authority continues to work actively towards rehabilitation with the birth family. Under the fostering for adoption approach there is no work undertaken with the birth parents because the child is moved after the decision on adoption has been taken by the local authority.
18. The levels of risk engaged in by the prospective adopters in accepting to foster a child whom they hope to be able to adopt is therefore quite different. Under fostering for adoption the child is not expected, subject to the court's decision on the care and placement order applications, to return to its birth family; under concurrent planning the local authority will be working with the birth family to establish whether they are able safely to parent their child. It is recognised, however, that the rate of children returning to their birth families under the concurrent planning model is low. We were told by Ms Martha Cover, Co-Chair of the Association of Lawyers for Children, that the low rate of reunification may be because of the circumstances of the children who are typically selected for concurrent planning, "for instance, the eighth child of a heroin-addicted mother who has not shown up for her drug test".<sup>13</sup>
19. Concurrent planning has to date been used in very few local authorities but the reported outcomes for children have been good. Coram, a voluntary adoption agency with substantial experience of concurrent planning, has placed 59 children in such placements between 2000 and 2011. Of the 59 children, 54 were adopted by their concurrent carers, and three children were returned to their birth families (a further two children were still subject to proceedings). The average age of the child at adoption was 17 months, compared with the national average of 3 years and 11 months. The average time from entry into care until adoption was 14 months, compared with the national average of 2 years and seven months. All 57 children for whom a decision had been made remained with their concurrent planning carers until a final decision on permanency was reached. There have been no pre or post placement disruptions, nor children returned to care after adoption or reunification with their birth families. Most of the children were placed before their first birthday—in 20 cases they were placed at birth.<sup>14</sup>
20. At present the Coram concurrent planning programme is run only for children under the age of two. In their written evidence to us Coram recommended that the practice should be extended to all children who enter the care system under the age of two, and that piloting with older children should be considered thereafter. By comparison, the Government's proposal for fostering for adoption is not restricted to any age group.
21. **We support the aim to minimise disruption by reducing the number of placements experienced by children in care. We agree with the Government that where possible children should be placed at the earliest opportunity with the carers who will become their permanent carers. Concurrent planning already delivers these benefits to a small**

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<sup>13</sup> Q 666

<sup>14</sup> *Concurrent Planning Study Interim Report*, Sophie Laws, Rebekah Wilson and Sumi Rabindrakumar, Coram Policy and Research Team, July 2012.

**number of children and we would support the wider application of the principles behind concurrent planning in suitable cases.**

*Does the legislation create a new duty?*

22. The explanatory note accompanying the draft clauses recognises that it is already legally possible under the Children Act 1989 for children to be placed with carers who are local authority foster parents, but who are also prospective adopters and have been identified as prospective adopters for that particular child. This fact was highlighted by Lord Justice McFarlane who told us that the judiciary could not see “any legal hurdle to that model”,<sup>15</sup> and in written evidence by the Association of Directors of Children’s Services (ADCS) who did not feel that more legislation was necessary.<sup>16</sup>
23. We understand from the explanatory note however that “the intention of the amendment is to ensure that local authorities give preference to such placements”. We support the Government’s intention but we are concerned that the draft clauses do not meet this aim because the duty for local authorities to give preference to such placements only arises in circumstances where the local authority has already decided that the child ought to be placed for adoption and it has matched the child with a prospective adopter who is also a local authority foster parent.
24. Some local authorities have an excellent track record in early placement. The British Association for Adoption and Fostering (BAAF) however, expressed concern that “local authorities who are less than enthusiastic about these placements can simply avoid this duty”.<sup>17</sup> We are aware that there are levels of delay in some local authorities that are unacceptable and need to be improved. These differences in performance, and ways in which they could be addressed through joint working or consortia, will be considered in more detail in our later report.
25. **We share the concern expressed by the British Association for Adoption and Fostering that the new duty contained in the proposed amendment of the Children Act 1989 will have a limited practical effect. Whilst it is the case that the new duty will give priority to a fostering for adoption placement where the local authority has decided that such a placement is suitable and a matched placement is available, it does not place any wider obligation on local authorities actively to consider and promote such placements once the decision has been taken that adoption is the permanency plan.**
26. This appears to us to be a missed opportunity since it would be possible to widen the scope of the proposed duty by introducing a duty to consider a fostering for adoption placement once the decision has been taken that adoption is the permanency plan. This would ensure that local authorities cannot simply avoid the duty and would require them to give consideration to a foster for adoption placement for all children for whom adoption is the plan. In Box 1 we show how the draft clauses could be amended to reflect this proposal.

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<sup>15</sup> Q 791

<sup>16</sup> Association of Directors of Children’s Services (ADCS), supplementary written evidence

<sup>17</sup> BAAF, supplementary written evidence

**BOX 1****Our suggestion for amending draft clauses 9A, 9B and 9C of section 22C of the 1989 Children Act**

- (9A) Subsection (9B) applies where the local authority are a local authority in England and
- (a) are satisfied that C ought to be placed for adoption, *and*
  - ~~(b) have decided that C ought to be placed for adoption with a person who is a local authority foster parent and has been approved as a prospective adopter, and~~
  - (c) are not yet authorised to place C for adoption.
- (9B) The local authority must consider placing C with a person who is a local authority foster parent and has been approved as a prospective adopter ~~mentioned in subsection (9A)(b)~~, unless in their opinion it would be more appropriate—
- (a) to make arrangements for C to live with a person falling within subsection (3), or
  - (b) to place C in a placement of a description mentioned in subsection (6).
- (9C) For the purposes of subsection (9A), a local authority are authorised to place C for adoption only if they have been authorised to do so under—
- (a) section 19 of the Adoption and Children Act 2002 (placing children with parental consent); or
  - (b) under a placement order made under section 21 of that Act.

27. **We urge the Government to widen the scope of the proposed duty to require all local authorities actively to consider a foster for adoption placement for all children for whom adoption is the permanency plan. Broadening the duty in this way should mean that more children benefit from early permanency.**

*Will fostering for adoption reduce the time children have to wait for an adoptive placement and minimise disruption caused by moving between placements?*

28. We have received evidence suggesting that the new duty would lead to some reduction in delay, and therefore reduce the likelihood of multiple short-term placements and the disruption that this causes. However, it is likely that the reduction in delay would be limited to two months. Because fostering for adoption only applies to children for whom the decision has already been taken that adoption should be the plan, the amount of time saved is the time that it typically takes from the point of decision-making to the granting of the placement order. Coram suggested that evidence from local authorities with whom they were currently working indicated that “the mean time between ADM [agency decision maker] decision and Placement Order is now 2 months”.<sup>18</sup> BAAF concurred with this estimate, explaining that:

“most local authorities will not make the adoption decision until all expert evidence and assessments have been filed in proceedings. This is typically only two months before the final hearing and could become less

<sup>18</sup> Coram, supplementary written evidence

if the expectation on courts to complete care proceedings within six months results in the imposition of tighter time scales”.<sup>19</sup>

29. BAAF was also concerned that the fostering for adoption model would not necessarily reduce the number of placements a child would experience:
- “A child will have been removed from his or her birth family and placed in short-term foster care for several months between [when] the local authority has issued care proceedings and the agency has made its adoption decision. Foster to adopt will not prevent a placement move at a crucial time in the child’s development with all the consequences that result from this”.<sup>20</sup>
30. In addition, whilst it is highly unlikely that the court would refuse the placement order, there is a small risk that if the care and/or placement orders are refused the child will have been moved unnecessarily from the short-term foster home to the prospective adopters and may then have to be moved again, as the prospective adopters are not looking to be foster carers.
31. Coram concluded that the point at which the new duty arises, which is after the agency decision maker has decided that adoption should be the plan, may not in reality have much of an impact on delay because it is likely to be very close to the placement order hearing.<sup>21</sup>
32. We have also received evidence from Mr Justice Ryder on the plans for the modernisation of the family court, intended to reduce delay in care proceedings.<sup>22</sup> It is anticipated under those plans that placement order proceedings would be run concurrently with care order proceedings, once the decision for adoption has been made. The new target of 26 weeks for care order proceedings to be completed would also *de facto* become the target for placement order proceedings. We expect there to be a significant impact on delay given that the average length of care proceedings at present is 50 to 60 weeks.<sup>23</sup> In cases where it is not possible to complete placement proceedings within the same timetable as care proceedings, the expectation is that the two decisions will be only slightly staggered.<sup>24</sup> Under Statutory Guidance on Adoption decisions regarding permanency must be made no later than four months after a child’s entry into care.<sup>25</sup> Therefore, if the new targets for completing care proceedings are achieved, and if placement proceedings are run concurrently, the time lag between decision and placement order is likely to be no more than two months on average.
33. We put the question of the elapse of time between the decision by the local authority and the placement order to the Minister, Edward Timpson MP.<sup>26</sup> He did not concur with the estimates that BAAF and Coram had put

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<sup>19</sup> BAAF, supplementary written evidence

<sup>20</sup> *ibid.*

<sup>21</sup> Coram, supplementary written evidence

<sup>22</sup> Q 788; *Judicial Proposals for the Modernisation of Family Justice*, Mr Justice Ryder, July 2012

<sup>23</sup> Q 787

<sup>24</sup> Q 788

<sup>25</sup> Statutory Guidance on Adoption, Chapter 2, paragraph 4. This guidance is issued under section 7 of the Local Authority Social Services Act 1970, requiring local authorities in their social services functions to act under the general guidance of the Secretary of State. As such, the document does not have the full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation.

<sup>26</sup> Q 825

forward. He suggested the time would be closer to three to four months on average, and for some children it was likely to be longer.<sup>27</sup> However, he maintained that three to four months “may be a considerable period of time”, especially for a very young child, and that he “would not want to downplay the importance of getting that placement sooner rather than later”.<sup>28</sup> We cannot reconcile the different estimates put forward by BAAF and Coram on the one hand and the Department for Education on the other, but we agree that any reduction in the delay experienced by children waiting for an adoptive placement would be beneficial.

34. **We welcome the Government’s efforts to reduce the time children have to wait for an adoptive placement, and the disruption caused by moving between placements. We accept that reducing that time by even two months can be of significance for any child, and especially a very young child.**
35. However, we are concerned that much of the delay experienced by children takes place *before* the decision has been taken that adoption should be the permanency plan. Written evidence from Barnardo’s states that “the most significant delays take place early on in the process, in reaching the decision that the child should be taken into care and then that the child should be adopted. There is insufficient planning for permanency at an early stage when a child enters care”.
36. It appears to us that efforts targeted at reducing delay at this earlier stage of the child’s journey through the care system, ensuring that the necessary permanency decisions are taken sooner, would enhance the potential impact of the Government’s proposals for fostering for adoption. Under the current Statutory Guidance on Adoption<sup>29</sup> the decision on permanency must be taken no later than at the second review, which takes place four months after entry into care.<sup>30</sup> The relevant excerpt from the guidance is provided in Box 2.

## BOX 2

### Statutory Guidance on Adoption

#### **Chapter 2: Considering and deciding whether a child should be placed for adoption**

##### **Planning for permanence**

4. A local authority will need to consider a child’s needs for permanence when that child is about to be relinquished for adoption or who is looked after, either because the child is being voluntarily accommodated, is the subject of an interim care order under the Children Act 1989 (the 1989 Act), or care proceedings have been initiated. An appropriate permanence plan should be identified no later than at the second statutory review—the four-month review. This review should consider all the options for best meeting the child’s welfare, including the child’s needs for permanence—see the Care Planning, Placement and Case Review (England) Regulations 2010 and associated guidance.

<sup>27</sup> Q 825

<sup>28</sup> *ibid.*

<sup>29</sup> This guidance is issued under section 7 of the Local Authority Social Services Act 1970, requiring local authorities in their social services functions to act under the general guidance of the Secretary of State. As such, the document does not have the full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation.

<sup>30</sup> Statutory Guidance on Adoption, chapter 2, paragraph 4

37. Earlier decision-making could be encouraged by amending the current Statutory Guidance on Adoption to emphasise the need to begin formulating permanency plans at the first statutory review, one month after entry into care, and that the second review should be the very latest point at which a decision on permanency is made. The amended guidance should stress the imperative of early permanency planning and the potential benefit to children of earlier decision-making.
38. **We recognise the advantages for the child of being in a secure and settled placement with a clear permanency plan as soon as possible after entering care. In order to enhance the potential benefit offered by fostering for adoption the decisions regarding a child's permanency plan need to be made as soon as possible after the child's entry into care.**
39. **More robust and earlier decision-making by social workers is needed to establish whether rehabilitation with the birth family is or is not in the child's best interest. If return to the birth family is not in the child's best interest, the child can benefit from a fostering for adoption placement much sooner. To support this we recommend a review of the Statutory Guidance on Adoption in order to ensure permanency planning is given serious consideration one month after a child enters care.**
40. **Furthermore, we strongly support concurrent planning which enables the child to be placed with prospective adopters prior to the adoption decision being made and whilst work with the birth family is continuing.**

*Practical application of the new duty*

41. We are acutely aware that regardless of whether permanency decisions are taken one month or four months after a child's entry into care, taking advantage of fostering for adoption and the consequent reduction in the delay is entirely dependent not only on the availability of suitable adopters, but also on the capacity of local authorities to start the process of matching children to approved adopters as soon as possible. Mr Ian Bugg, from the Family Law Bar Association, summed up the difficulty as follows: "you are recruiting your foster carers from your already small pool of adopters. You are not recruiting your adopters from a much larger pool of fosters carers".<sup>31</sup>
42. We have been told that it is "common practice" for local authorities only to seek a family to adopt a child once a placement order has been made.<sup>32</sup> Martha Cover, Co-Chair of the Association for Lawyers for Children, suggested the reasons for this are manifold:

"Social workers are very conservative—rightly so—about upsetting people who have been fully assessed by them as prospective adopters, getting their hopes up that they can have a child and keep a child ... I think social workers jealously guard them, not just because of the investment they have made, in terms of time and money, but because they sympathise with their position and they do not want to start to search for a specific family before they have a placement order. That is a

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<sup>31</sup> Q 663

<sup>32</sup> Q 635

pretty entrenched culture. I think you can change it but you have to educate social workers to think in a different way.”<sup>33</sup>

43. The child cannot be placed in a foster for adoption placement until a match has been found and delays in matching will have an impact on the benefit of a fostering for adoption placement. We are aware that adoption panels no longer have a role in deciding if adoption is in the best interests of a child. They do, however, retain responsibilities in the matching process, and consider potential matches between children and adopters. There is the potential that this process could also be the cause of further delay.
44. A change in social work culture and practice will be necessary to ensure that the new duty is effective in promoting greater use of fostering for adoption. In order for a child to benefit from such a placement the matching process will need to have begun not only before the placement order is made but before the decision that the child should be adopted has been made. That is implicit in the Government’s proposals since without this preparatory work the benefit of early placement is lost.
45. **In order to increase the take-up of fostering for adoption and for more children to benefit from the reduced delay it will be vital to address the current practice among some local authorities of waiting for a placement order before family-finding is begun. Unless the preparatory work of matching children and prospective adopters takes place much earlier, the new duty is unlikely to achieve what the Government intends.**

*Other consequences of the draft legislation*

46. A number of submissions raised concerns about the impact on prospective adopters of the Government’s proposals. Barnardo’s were worried that the Government’s proposals to prioritise fostering for adoption placements would lead to a “system which may deter adopters in the future”, at a time when recruiting adopters was already very difficult. They were concerned also that a prospective adopter might find their application prejudiced if they did not demonstrate a willingness to “take the risk” of a fostering for adoption placement.<sup>34</sup> The Association of Directors of Children’s Services (ADCS) also referred to the “unintended consequence of deterring some prospective adopters from coming forward. It is hard enough to find people who want to adopt without this added risk attached”.<sup>35</sup>
47. It was recognised in several of the submissions that such placements would require a lot of preparation and support, and would be resource-intensive. The Local Government Association (LGA) said that prospective adopters would need to be fully aware of the possibility that they may not be able to adopt the child, and that for these reasons not all prospective adopters will wish to foster to adopt.<sup>36</sup> BAAF argued that in their experience legal uncertainty was one of the factors that made a child harder to place. They argued that because the child will already be placed in short-term foster care for several months during the care proceedings “the advantage to the child of

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<sup>33</sup> Q 638

<sup>34</sup> Barnardo’s, supplementary written evidence

<sup>35</sup> ADCS, supplementary written evidence

<sup>36</sup> LGA, supplementary written evidence

that move being just a couple of months earlier than it would have been under a placement order may not be significant enough to persuade prospective adopters to accept the potential risks of the placement”.<sup>37</sup> As a result they claimed it would be extremely difficult to recruit prospective adopters to fostering for adoption as currently constructed.<sup>38</sup>

48. **We recognise the challenges faced by prospective adopters in the fostering for adoption model. The emotional and practical commitment combined with the potential, albeit low, risk of a child not being placed for adoption can be a deterrent. However, this challenge is not unique to the Government’s proposals; the same challenges, with a significantly higher risk factor, exist in concurrent planning, and yet there are parents willing to take the risk in order to care for a child from a very young age.**
49. **Adoption agencies are understandably concerned about proposals which they feel may deter prospective adopters from coming forward. However, the wider issue of better recruitment and retention of prospective adopters needs to be addressed separately, and not simply in relation to this proposal; we will consider this in more detail in our later report. We do not believe that the merits of fostering for adoption should be dismissed on the grounds that it may put off some prospective adopters from coming forward.**
50. Further concerns were raised about the impact of the proposal on the ability of birth parents to challenge the placement order. The Family Rights Group argued that fostering for adoption appeared to turn back the clock to a time before the implementation of the Adoption and Children Act 2002 which had introduced placement orders. The purpose of the placement order was “to ensure that the real contest between the birth parent or the birth family and the local authority about whether or not the child was going to return home, or should go for adoption, was going to be had before the child was placed”.<sup>39</sup> The concern was expressed that under the new proposals a child could be placed and begin to form attachments with a new family, before the birth family had a chance to contest the application for a placement order in court.<sup>40</sup>
51. We understand from Lord Justice McFarlane that it is currently extremely rare for placement orders not to be granted in cases of children for whom adoption is the plan:
- “ ... for a placement order to be refused is a very rare event indeed. Where you have the care order decision made, quite often with a very clear care plan at that point, and placement order proceedings have persisted so you are not seriously then looking at a family member ... it is a rarity not to have one”.<sup>41</sup>
52. This would suggest that on the whole applications for placement orders are made appropriately. It is crucial however, that local authorities have taken all reasonable steps to explore the possibility of the child returning to the birth

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<sup>37</sup> BAAF, supplementary written evidence

<sup>38</sup> *ibid.*

<sup>39</sup> Q 681

<sup>40</sup> Q 681

<sup>41</sup> Q 790



parents during pre-proceedings work, before the care application is made. In addition, the local authority should have ensured that the birth parents have been effectively involved throughout the decision-making process.

53. One mechanism for ensuring early engagement from the wider birth family is for the local authority to convene a family group conference at which the child's future care plan is discussed. We note the Minister's comment that "there is a lot of merit in an effective family group conference at as early a point as possible".<sup>42</sup>
54. We have received evidence that family group conferences vary in their quality and effectiveness.<sup>43</sup> The Family Rights Group have drawn up a pre-proceedings protocol and a key component of this protocol is the convening of a family group conference before a child becomes looked after.<sup>44</sup> We support the principle of family group conferences being incorporated within a pre-proceedings protocol, with specific guidance on how such conferences should be conducted. We invite the Government to give further consideration to this.
55. If the pre-proceedings work with the birth family has been properly carried out by the local authority, the concern that fostering for adoption would unfairly tilt the balance in favour of the placement order being granted appears to us to be unfounded.
56. **We are not persuaded that the ability of birth parents to challenge the application for a placement order would be adversely affected by fostering for adoption, so long as all reasonable steps have been taken by the local authority to explore reunification of the child with the birth family at the earliest opportunity, and the parents have been able effectively to participate in the decision-making process. We do not believe that such concerns should be allowed to outweigh the potential benefit to the child of moving as early as possible into a permanent placement.**

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<sup>42</sup> Q 816

<sup>43</sup> Kinship Care Alliance

<sup>44</sup> Family Rights Group, supplementary written evidence

### CHAPTER 3: MATCHING FOR ADOPTION: REPEAL OF THE REQUIREMENT TO GIVE DUE CONSIDERATION TO ETHNICITY IN ENGLAND

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57. The Government's *Action Plan for Adoption* gave consideration to the relationship between ethnicity and matching for adoption:
- “Where there are two sets of suitable parents available then those with a similar ethnicity to the child may be the better match for the child. Sometimes an ethnic match will be in a child's best interests, for example when an older child expresses strong wishes. However, it is not in the best interests of children for social workers to introduce any delay at all into the adoption process in the search for a perfect or even partial ethnic match when parents who are otherwise suitable are available and able to provide a loving and caring home for the child”.<sup>45</sup>
58. The Government's second draft clause amends section 1 of the Adoption and Children Act 2002 ('the Act') so that section 1(5) does not apply to local authorities and adoption agencies in England.<sup>46</sup> Section 1(5) requires adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when placing him or her for adoption. The current text of section 1 is provided in Box 3:

#### BOX 3

##### Adoption and Children Act 2002

###### Section 1: Considerations applying to the exercise of powers

- (1) This section applies whenever a court or adoption agency is coming to a decision relating to the adoption of a child.
- (2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.
- (3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
- (4) The court or adoption agency must have regard to the following matters (among others)—
  - (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
  - (b) the child's particular needs,
  - (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
  - (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

<sup>45</sup> *An Action Plan for Adoption*, paragraph 52.

<sup>46</sup> Non-local authority adoption societies and agencies are held to be 'in' England if their principal office is in England, as the explanatory notes to the provisions make clear. It should be noted that the Welsh Government have decided to retain section 1(5) in legislation. Whilst we have not received substantial evidence on this point, it has been suggested to us that this might create future barriers to cross-border placements and adoptions.

- (e) any harm (within the meaning of the Children Act 1989 (c 41)) which the child has suffered or is at risk of suffering,
- (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—
  - (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
  - (ii) the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs,
  - (iii) the wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.
- (5) In placing the child for adoption, the adoption agency must give due consideration to the child’s religious persuasion, racial origin and cultural and linguistic background.
- (6) The court or adoption agency must always consider the whole range of powers available to it in the child’s case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.
- (7) In this section, “coming to a decision relating to the adoption of a child”, in relation to a court, includes—
  - (a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 (or the revocation or variation of such an order),
  - (b) coming to a decision about granting leave in respect of any action (other than the initiation of proceedings in any court) which may be taken by an adoption agency or individual under this Act, but does not include coming to a decision about granting leave in any other circumstances.
- (8) For the purposes of this section—
  - (a) references to relationships are not confined to legal relationships,
  - (b) references to a relative, in relation to a child, include the child’s mother and father.

### **What is the legislation seeking to achieve?**

59. The explanatory note for the draft provision explains that this amendment is “intended to avoid any suggestion that the current legislation places a child’s religious persuasion, racial origin and cultural and linguistic background above the factors in section 1(2) to (4)”. Sections 1(2) to (4) of the Act require adoption agencies, whenever coming to a decision relating to a child’s adoption, to make a child’s welfare throughout his or her life their paramount consideration, and to have regard to a range of matters, including

the child’s age, sex, relationship with relatives, needs, wishes and “any of the child’s characteristics which the court or agency considers relevant”.<sup>47</sup>

60. The Ministerial foreword to the Command Paper cites the *Action Plan for Adoption*, and the commitment contained within that document to reduce delay caused by the search for a perfect or near perfect ethnic match for a child.<sup>48</sup> The Minister’s letter to us expressed confidence that this new clause, allied to the Government’s wider programme of adoption reform, would “change practice so that we see more children living with their prospective adoptive families earlier, giving them a better chance of living full and happy lives”.<sup>49</sup>
61. It is apparent, therefore, that this change is intended both to overcome any suggestion that legislation places ethnicity above other considerations when seeking an adoptive match and, also, to facilitate the matching of children with their prospective adoptive parents more quickly.

### The case for legislation

62. The Government have previously sought to address the issue of delays in the matching process resulting from ethnicity by amending the Statutory Guidance on Adoption.<sup>50</sup> This amendment, effective from April 2011, stated that “It is unacceptable for a child to be denied adoptive parents solely on the grounds that the child and prospective adopter do not share the same racial or cultural background”.<sup>51</sup>
63. The *Action Plan for Adoption* cited research published by Professor Elaine Farmer in 2010, which examined the effectiveness, outcomes and costs of different family finding methods and matching practices in adoption.<sup>52</sup> The research was based on a sample of 149 children, of which 46 were of Black and Minority Ethnic origin (BME). The researchers found that “older age, ethnicity and health or development difficulties were all significantly related to delay in achieving a match”.<sup>53</sup> Of the 32 BME children in the sample who experienced delay, attempts to find an adoptive family of similar ethnicity was a factor causing delay in 22 cases (which is 70% of the BME children experiencing delay; 48% of the total sample of BME children).<sup>54</sup>
64. The perceived problem that delay is caused by a search for a ‘perfect or near perfect ethnic match’ was considered in another study led by Professor Julie Selwyn.<sup>55</sup> This found that the likelihood of adoption was low for both black

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<sup>47</sup> Section 1(4)(d)

<sup>48</sup> Command Paper 8473: Draft legislation on Adoption: Early Permanence through ‘Fostering for Adoption’ and Matching for Adoption, p. 4.

<sup>49</sup> See Appendix 3

<sup>50</sup> This guidance is issued under section 7 of the Local Authority Social Services Act 1970, requiring local authorities in their social services functions to act under the general guidance of the Secretary of State. As such, the document does not have the full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation.

<sup>51</sup> Statutory Guidance on Adoption, Chapter 3: Preparing, assessing and approving prospective adopters, paragraph 16

<sup>52</sup> *An Action Plan for Adoption*, paragraph 50.

<sup>53</sup> Farmer, E. et. al (2010). *An investigation of family finding and matching in adoption—briefing paper*, DFE-RBX-10-05, p. 5.

<sup>54</sup> *ibid.*

<sup>55</sup> Selwyn, J. et al (2008). *Pathways to permanence for Black, Asian and mixed ethnicity children—briefing paper*, DCSF-RBX-13-08

and Asian children and that the care plan was changed away from adoption for 60% of Asian children in the study group.<sup>56</sup> The findings were more encouraging for children of mixed ethnicity, with 69% placed in adoptive placements by the end of the study. This was, however, still lower than white children, 83% of whom were successfully placed. Most of the BME children who were in adoptive placements had been exactly or partially matched by ethnicity. The research concluded that the most important predictive factor as to whether a child would be adopted or not was age.<sup>57</sup> Ethnicity was, however, still found to be a significant factor.<sup>58</sup> The researchers concluded that, “problems in securing adoptive placements may have arisen through an overly narrow approach to matching”.<sup>59</sup> Other potential factors affecting the placement of BME children were also identified:

- (i) minority ethnic children had fewer prospective adopters showing interest in them in comparison with white children;
- (ii) prospective adopters from BME communities could select younger children with fewer difficulties;
- (iii) a failure by social workers to actively promote and publicise BME children as available for adoption; and
- (iv) social workers’ pessimism about securing a placement.<sup>60</sup>

65. Overall, recent research has suggested a number of potential reasons for the delay in placing some BME children. Age remains the most important predictive factor. The search for an ‘ideal’ matched placement may be a factor in some cases. There is, however, also evidence from the recent research of flexibility in adoption agencies’ approach to matching. A key finding in Professor Farmer’s study was that “29% of BME children were placed with families whose characteristics did not match their ethnicity, often in order to secure a placement for children with complex needs where the need to place was considered more important than finding an ‘ideal’ match”.<sup>61</sup>
66. Evidence from those working in adoption did not reveal wide-spread concern about current practice. Barnardo’s, whilst agreeing that any delays in placement must be removed, believed that legislation and guidance in this area was adequate and clear in stating that the child’s need for a family should take precedence over ethnic matching.<sup>62</sup> PAC, an organisation providing pre and post-adoption support services, thought that the current legislation and most recent guidance made clear that ‘due consideration’ did not mean keeping a child waiting endlessly, and that the current position was perfectly adequate.<sup>63</sup>

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<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

<sup>58</sup> *ibid.*

<sup>59</sup> *ibid.*

<sup>60</sup> *ibid.*

<sup>61</sup> Farmer, E. *et. al* (2010), *An investigation of family finding and matching in adoption—briefing paper*, DFE-RBX-10-05, p. 4

<sup>62</sup> Barnardo’s, supplementary written evidence

<sup>63</sup> PAC, supplementary written evidence

67. We asked members of the judiciary for their views of the existing legislative provision regarding ethnicity and again were told that the existing framework did not prioritise religious persuasion, racial origin and cultural or linguistic background, and furthermore that delay for those reasons was not acceptable under the current legislation. As HH Judge Swindells put it:

“It is extremely important to go back to the section 1 principles, under the Adoption and Children Act 2002, because there is a clear distinction made between the no delay principle, the welfare considerations and looking at the whole range of options. That is where the court and the adoption agency must have regard to those factors. In section 1(5) it is the adoption agency alone that has to give “due consideration” to those factors of religious persuasion. Those words, “due consideration”, were included in that way to give a clear signal that, in relation to the other principles—and in particular the no delay principle—those have a higher precedence in the section 1 principles. There should be no reason for there to be delay, if the adoption agency is simply giving due consideration to those factors”.<sup>64</sup>

68. Coram maintained that, whilst too much weight might have been given to factors of “racial matching” in the past, the situation was now improving rapidly:

“The climate has shifted significantly over the past couple of years. Whilst there is occasional poor practice, the majority of local authorities are now flexible and realistic in seeking families for their BME children, and we make a number of successful trans-racial placements each year”.<sup>65</sup>

69. Officials from the Department for Education, in giving evidence to us, thought that “it is more an issue of practice” than a problem with the current legislation.<sup>66</sup> However, the Department argued that changes to practice might best be enabled through changes to the legislation. The former Minister for Children, Tim Loughton MP, was unsure as to whether legislative change was required, believing that “people are beginning to get the message” but conceded that “some people for various reasons still do not”.<sup>67</sup>

70. Professor June Thoburn considered that the issue of delay caused by ethnic matching was not as widespread as portrayed, but believed that there were anecdotal examples of poor practice which indicated that problems were still potentially occurring.<sup>68</sup>

71. **We have heard evidence that delay is sometimes caused by the search for a perfect ethnic match, although it is unclear how widespread the problem is. Overall, the evidence we have received does not suggest that this is such a significant problem that legislative change is necessary. We do, nevertheless, recognise that section 1(5) of the Adoption and Children Act 2002 gives issues of race, religion, culture and language a greater degree of prominence than the many other**

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<sup>64</sup> Q 793

<sup>65</sup> Coram, supplementary written evidence

<sup>66</sup> Q 48

<sup>67</sup> Q 586

<sup>68</sup> Q 756

**factors contained in section 1(4) of the Act. A more balanced approach needs to be achieved.**

**What effect will the legislation have?**

72. Section 1(4)(d) of the Act requires the court or adoption agency to have regard to “the child’s age, sex, background and any of the child’s characteristics which the court or agency considers relevant” (often referred to as the ‘welfare checklist’). The Government have made clear their belief that this provision will allow considerations of race, religion, culture and language to be taken into account, once section 1(5) no longer applies.
73. This belief is not shared by all of those who work in the sector. There is concern about the message this legislative change could send out to social workers on the ground. BAAF pointed to Article 20 of the United Nations Convention on the Rights of the Child, which states that: “Children who cannot be looked after by their own family have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language”.<sup>69</sup> They argued that a child’s identity was an important part of their development, and that the four factors identified in Article 20 were an important part of that identity. BAAF considered that Article 20 and section 1(5) embodied this ‘widely acknowledged’ principle. In their view the proposal for section 1(5) to not apply in England brought with it a risk that these important considerations of identity would be neglected when making decisions for adoption matching.<sup>70</sup>
74. Peter Sandiford, Chief Executive of PAC, stressed the importance of parents being able to understand the identity of the child they were adopting:
- “I am not suggesting you would have to go to the Caribbean or wherever to get it, but providing evidence of having an understanding must be there. It should not just be that there has been an attempt to find the right racial family for this child, it has not been possible, and so any family will do. It has to be a family that understands and has committed themselves to that journey”.<sup>71</sup>
75. Coram expressed concern as to how the change will be interpreted, believing that it may lead to considerations of ethnicity being neglected: “It is possible and even likely that the change will be mistakenly interpreted by some social workers as meaning that no consideration can / should be given to any of these matters. This could lead to ‘first in the queue’ matching”.<sup>72</sup>
76. These concerns were echoed by the Association of Lawyers for Children, who highlighted the need to understand how the change would be interpreted on the ground, stating that: “social workers, who are often poorly supervised and trained, may have an edict that these things are no longer to be considered at all”.<sup>73</sup>
77. **We accept that it is important to ensure that appropriate weight is given to religion, race, language and culture when making adoption**

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<sup>69</sup> BAAF, supplementary written evidence

<sup>70</sup> *ibid.*

<sup>71</sup> Q 140

<sup>72</sup> Coram, supplementary written evidence

<sup>73</sup> Q 661

**matches. However, we believe that the Government need to give further consideration to the practical effect of the proposed change to Section 1(5) of the Adoption and Children Act 2002 on social work culture and practice.**

78. One method for providing a better balance might be to introduce regard for race, religion, culture and language into the welfare checklist in section 1(4) of the Act. We tested this proposition with a number of witnesses and there was widespread support from those consulted. Coram thought that this move would be appropriate.<sup>74</sup> The Association of Lawyers for Children shared this view.<sup>75</sup> BAAF thought that this proposal was “worthy of discussion”.<sup>76</sup> Professors Julie Selwyn and June Thoburn both agreed with this proposal,<sup>77</sup> as did the Association of Directors of Children’s Services.<sup>78</sup>
79. We appreciate that the Government believe that section 1(5) has given a perception of prominence to considerations of ethnicity, and that this has resulted in more weight being attached to ethnicity than some of the other factors identified at 1(4). The Government are concerned with ensuring that the appropriate weight is given to ethnicity, and to avoid any suggestion that legislation places consideration of religion, race, culture or language above the factors in sections 1(2) to 1(4).
80. In order to attach the appropriate weight to considerations of religion, race, culture and language, we believe that these factors should be considered alongside those identified at 1(4). We are clear that there is no substantive difference between ‘have regard to’, at section 1(4), and ‘give due consideration to’, at section 1(5). We acknowledge that the current section 1(5) applies solely to adoption agencies, whilst section 1(4) applies to both the court and adoption agencies; we do not believe that this presents a problem.
81. **Placing the factors embodied in section 1(5) alongside the other elements of the welfare checklist at 1(4) will rule out any suggestion of prominence or pre-eminence for any one attribute, and will therefore meet the Government’s stated aim. To remove mention of religion, race, culture and language altogether will run the risk of these important factors of identity being neglected in matching decisions.**
82. **We recommend that regard to matters of religion, race, culture and language be introduced into the welfare checklist at section 1(4). Specifically, we recommend that in section 1(4)(d), after ‘background’, the words ‘religious persuasion, racial origin and cultural and linguistic background’ should be inserted.**
83. Box 4 demonstrates how the amended section 1(4) would appear. The newly inserted text is underlined:

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<sup>74</sup> Coram, supplementary written evidence

<sup>75</sup> Q 661

<sup>76</sup> BAAF, supplementary written evidence

<sup>77</sup> Q 753

<sup>78</sup> Association of Directors of Children’s Services, supplementary written evidence



**BOX 4****Proposed amendment to section 1 (4) of Adoption and Children Act 2002**

- (4) The court or adoption agency must have regard to the following matters (among others)—
- (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
  - (b) the child's particular needs,
  - (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
  - (d) the child's age, sex, background, religious persuasion, racial origin and cultural and linguistic background, and any of the child's characteristics which the court or agency considers relevant,
  - (e) any harm (within the meaning of the Children Act 1989 (c 41)) which the child has suffered or is at risk of suffering,
  - (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—
    - (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
    - (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,
    - (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

## CHAPTER 4: RECOMMENDATIONS

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84. We support the aim to minimise disruption by reducing the number of placements experienced by children in care. We agree with the Government that where possible children should be placed at the earliest opportunity with the carers who will become their permanent carers. Concurrent planning already delivers these benefits to a small number of children and we would support the wider application of the principles behind concurrent planning in suitable cases. (para 21)
85. We share the concern expressed by the British Association for Adoption and Fostering that the new duty contained in the proposed amendment of the Children Act 1989 will have a limited practical effect. Whilst it is the case that the new duty will give priority to a fostering for adoption placement where the local authority has decided that such a placement is suitable and a matched placement is available, it does not place any wider obligation on local authorities actively to consider and promote such placements once the decision has been taken that adoption is the permanency plan. (para 25)
86. We urge the Government to widen the scope of the proposed duty to require all local authorities actively to consider a foster for adoption placement for all children for whom adoption is the permanency plan. Broadening the duty in this way should mean that more children benefit from early permanency. (para 27)
87. We welcome the Government's efforts to reduce the time children have to wait for an adoptive placement, and the disruption caused by moving between placements. We accept that reducing that time by even two months can be of significance for any child, and especially a very young child. (para 34)
88. We recognise the advantages for the child of being in a secure and settled placement with a clear permanency plan as soon as possible after entering care. In order to enhance the potential benefit offered by fostering for adoption the decisions regarding a child's permanency plan need to be made as soon as possible after the child's entry into care. (para 38)
89. More robust and earlier decision-making by social workers is needed to establish whether rehabilitation with the birth family is or is not in the child's best interest. If return to the birth family is not in the child's best interest, the child can benefit from a fostering for adoption placement much sooner. To support this we recommend a review of the Statutory Guidance on Adoption in order to ensure permanency planning is given serious consideration one month after a child enters care. (para 39)
90. Furthermore, we strongly support concurrent planning which enables the child to be placed with prospective adopters prior to the adoption decision being made and whilst work with the birth family is continuing. (para 40)
91. In order to increase the take-up of fostering for adoption and for more children to benefit from the reduced delay it will be vital to address the current practice among some local authorities of waiting for a placement order before family-finding is begun. Unless the preparatory work of matching children and prospective adopters takes place much earlier, the new duty is unlikely to achieve what the Government intends. (para 45)

92. We recognise the challenges faced by prospective adopters in the fostering for adoption model. The emotional and practical commitment combined with the potential, albeit low, risk of a child not being placed for adoption can be a deterrent. However, this challenge is not unique to the Government's proposals; the same challenges, with a significantly higher risk factor, exist in concurrent planning, and yet there are parents willing to take the risk in order to care for a child from a very young age. (para 48)
93. Adoption agencies are understandably concerned about proposals which they feel may deter prospective adopters from coming forward. However, the wider issue of better recruitment and retention of prospective adopters needs to be addressed separately, and not simply in relation to this proposal; we will consider this in more detail in our later report. We do not believe that the merits of fostering for adoption should be dismissed on the grounds that it may put off some prospective adopters from coming forward. (para 49)
94. We are not persuaded that the ability of birth parents to challenge the application for a placement order would be adversely affected by fostering for adoption, so long as all reasonable steps have been taken by the local authority to explore reunification of the child with the birth family at the earliest opportunity, and the parents have been able effectively to participate in the decision-making process. We do not believe that such concerns should be allowed to outweigh the potential benefit to the child of moving as early as possible into a permanent placement. (para 56)
95. We have heard evidence that delay is sometimes caused by the search for a perfect ethnic match, although it is unclear how widespread the problem is. Overall, the evidence we have received does not suggest that this is such a significant problem that legislative change is necessary. We do, nevertheless, recognise that section 1(5) of the Adoption and Children Act 2002 gives issues of race, religion, culture and language a greater degree of prominence than the many other factors contained in section 1(4) of the Act. A more balanced approach needs to be achieved. (para 71)
96. We accept that it is important to ensure that appropriate weight is given to religion, race, language and culture when making adoption matches. However, we believe that the Government need to give further consideration to the practical effect of the proposed change to Section 1(5) of the Adoption and Children Act 2002 on social work culture and practice. (para 77)
97. Placing the factors embodied in section 1(5) alongside the other elements of the welfare checklist at 1(4) will rule out any suggestion of prominence or pre-eminence for any one attribute, and will therefore meet the Government's stated aim. To remove mention of religion, race, culture and language altogether will run the risk of these important factors of identity being neglected in matching decisions. (para 81)
98. We recommend that regard to matters of religion, race, culture and language be introduced into the welfare checklist at section 1(4). Specifically, we recommend that in section 1(4)(d), after 'background', the words 'religious persuasion, racial origin and cultural and linguistic background' should be inserted. (para 82)

## APPENDIX 1: MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Baroness Armstrong of Hill Top  
 Baroness Butler-Sloss (Chairman)  
 Baroness Eaton  
 Viscount Eccles  
 Baroness Hamwee  
 Baroness Howarth of Breckland  
 Baroness King of Bow  
 Baroness Knight of Collingtree  
 Baroness Morris of Bolton  
 Lord Morris of Handsworth  
 Baroness Walmsley  
 Lord Warner

### Specialist Adviser

Professor Sonia Harris-Short, Professor of Family Law and Policy

### Declaration of Interests

#### Baroness Armstrong of Hill Top

*Chair, the Cyrenians, Newcastle—among other projects the Cyrenians run a residential centre for women with addictions, and their children, trying to prevent the children from entering the care system. No financial involvement. Ambassador for Action for Children, a children’s charity that works with children in the care system. No financial interest.*

#### Baroness Butler-Sloss

*President of the Family Division until April 2005 in charge of appointing adoption Judges.  
 Sat as an adoption Judge and as an appeal Judge on adoption.  
 Governor of Coram.  
 Patron of BAAF.  
 Trustee of Human Trafficking Foundation  
 Informal work on trafficked children with Barnardo’s.  
 Previous work on trafficking with NSPCC.  
 President of the Grandparents Association.  
 Former independent member on the Conservative Social Work Commission.*

#### Baroness Eaton

*Past Chairman of Bradford MDC Social Services.  
 Past Chairman of the Local Government Association.*

#### Viscount Eccles

*No relevant interests.*

#### Baroness Hamwee

*Patron, PAC.  
 Patron, Intercountry Adoption Centre.  
 Joint President, London Councils.  
 Past Council Member and Legal Adviser, Parents for Children.  
 Past Member, Legal Group, British Association for Adoption and Fostering (BAAF).  
 Past Member of adoption panel, LB Richmond-upon-Thames.*

**Baroness Howarth of Breckland**

*Chair of Cafcass and deputy before that, no present involvement.*

*Member of B.A.S.W.*

*Associate, Association of Directors of Adult Social Services.*

*Vice President of National Youth Advocacy Scheme.*

**Baroness King of Bow**

*Mother of three adopted children.*

**Baroness Knight of Collingtree**

*No relevant interests.*

**Baroness Morris of Bolton**

*Vice-President OXPIP—Oxford Parent Infant Project.*

*Vice-President NORPIP—Northampton Parent Infant Project.*

*Former Shadow Minister for Children, Schools and Families.*

*Served on Conservative Social Work Commission.*

**Lord Morris of Handsworth**

*No relevant interests.*

**Baroness Walmsley**

*Sister to an adopted brother.*

*Grandmother to an adopted granddaughter through an overseas adoption (China).*

**Lord Warner**

*Director of social services, Kent County Council 1985–91.*

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

**Professor Sonia Harris-Short**

*Authored publications on issues relating to adoption law and policy and the accommodation of cultural and religious diversity.*

## **APPENDIX 2: LIST OF WITNESSES**

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Evidence is published online at <http://www.parliament.uk/hladoption> and available for inspection at the Parliamentary Archives (020 7219 5314)

As a result of the short time scales for considering the draft clauses we were not able to issue a new call for evidence or arrange dedicated evidence sessions. However, we have taken advantage of the evidence sessions arranged for our main inquiry to seek the views of witnesses, where appropriate; we have also sought additional written submissions from the principal stakeholders; and we have taken into account evidence sent to our main inquiry, before the draft clauses were published, where it was relevant so to do.

Evidence cited in our pre-legislative scrutiny report is listed below in alphabetical order. Those witnesses marked with \* gave both oral evidence and written evidence. Those marked with \*\* gave oral evidence and did not submit any written evidence.

### **Alphabetical list of witnesses cited**

- \* Association of Directors of Children's Services (ADCS)
- \*\* Association of Lawyers for Children
- \* Barnardo's
- \* British Association for Adoption and Fostering (BAAF)
- \* Coram
- \* Department for Education
- \*\* Family Law Bar Association
- \* Family Rights Group
- \* Local Government Association (LGA)
- \*\* Tim Loughton MP
- \*\* Lord Justice McFarlane
- \* PAC
- \* Professor Julie Selwyn
- \*\* Her Honour Judge Swindells
- \* Professor June Thoburn
- \*\* Edward Timpson MP, Minister for Children and Families, Department for Education

**APPENDIX 3: LETTER FROM EDWARD TIMPSON MP,  
PARLIAMENTARY UNDER SECRETARY OF STATE FOR CHILDREN  
AND FAMILIES, DEPARTMENT FOR EDUCATION DATED  
7 NOVEMBER 2012**

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**Draft Clauses on Adoption**

I am writing to draw your attention to the command paper that the Government is publishing today which contains two draft clauses which would reduce delay for children for whom adoption is the plan. The Welsh Government has decided that it does not want the clauses to apply in Wales.

I understand that your Committee is intending to carry out pre-legislative scrutiny of these draft clauses. I very much welcome this as the work that your Committee has done so far in considering existing adoption legislation will give you a valuable perspective on these draft clauses.

One of these clauses will amend section 1(5) of the Adoption and Children Act 2002 to remove the requirement on adoption agencies to give due consideration to a child's religious persuasion, racial origin and cultural and linguistic background when placing the child for adoption.

There would be no changes to the requirement of adoption agencies to make the child's welfare throughout his or her life their paramount consideration and to have regard to the welfare checklist when placing a child for adoption.

The other clause would amend section 22C of the Children Act 1989 to create a new duty on local authorities to give preference to a "Fostering for Adoption" placement. This would apply when they have decided that a child should be placed for adoption with particular prospective adopters but where there is no authority to place the child for adoption. This would be where the court has yet to make a decision on an application for a placement order. The placement would be a foster placement, only changing to an adoptive placement if a placement order is made.

I attach, for your information, a copy of the Statement I am making to the House today and a copy of the command paper.<sup>79</sup>

I am confident that the reforms we are introducing, which include these clauses, will change practice so that we see more children living with their prospective adoptive families earlier, giving them a better chance of leading full and happy lives.

I welcome the Committee's continued interest in this policy area and look forward to your views on these important reforms. I also look forward to meeting the committee to discuss adoption legislation on 4 December.

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<sup>79</sup> The attachments referred to have not been reprinted here.

## APPENDIX 4: KEELING SCHEDULE OF SECTION 22C OF THE CHILDREN ACT 1989

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This schedule shows how section 22C of the Children Act 1989 would look as amended by the draft clause.

Inserted text is shown in italics, omitted text is struck through.

This schedule has been prepared by the Department for Education. It is intended for illustrative purposes only, to assist the reader to understand the changes made by the provision. While care has been taken in its preparation it may not be full and complete.

### *Children Act 1989*

#### *Section 22C: Ways in which looked after children are to be accommodated and maintained*

- (1) This section applies where a local authority are looking after a child (“C”).
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but ~~subject to subsection (4)~~ *subject to subsections (4) and (9B)*).
- (3) A person (“P”) falls within this subsection if—
  - (a) P is a parent of C;
  - (b) P is not a parent of C but has parental responsibility for C; or
  - (c) in a case where C is in the care of the local authority and there was a residence order in force with respect to C immediately before the care order was made, P was a person in whose favour the residence order was made.
- (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
  - (a) would not be consistent with C’s welfare; or
  - (b) would not be reasonably practicable.
- (5) If the local authority are unable to make arrangements under subsection (2), they must place C in the placement which is, in their opinion, the most appropriate placement available (*but subject to subsection (9B)*).
- (6) In subsection (5) “placement” means—
  - (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;
  - (b) placement with a local authority foster parent who does not fall within paragraph (a);
  - (c) placement in a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000; or
  - (d) subject to section 22D, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.



- (7) In determining the most appropriate placement for C *under subsection (5)*, the local authority must, subject to the other provisions of this Part (in particular, to their duties under section 22)—
- (a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;
  - (b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and
  - (c) comply with subsection (9) unless that is not reasonably practicable.
- (8) The local authority must ensure that the placement is such that—
- (a) it allows C to live near C's home;
  - (b) it does not disrupt C's education or training;
  - (c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;
  - (d) if C is disabled, the accommodation provided is suitable to C's particular needs.
- (9) The placement must be such that C is provided with accommodation within the local authority's area.
- (9A) *Subsection (9B) applies where the local authority are a local authority in England and—*
- (a) *are satisfied that C ought to be placed for adoption,*
  - (b) *have decided that C ought to be placed for adoption with a person who is a local authority foster parent and has been approved as a prospective adopter, and*
  - (c) *are not authorised to place C for adoption.*
- (9B) *The local authority must place C with the local authority foster parent mentioned in subsection (9A)(b), unless in their opinion it would be more appropriate—*
- (a) *to make arrangements for C to live with a person falling within subsection (3), or*
  - (b) *to place C in a placement of a description mentioned in subsection (6).*
- (9C) *For the purposes of subsection (9A), a local authority are authorised to place C for adoption only if they have been authorised to do so under—*
- (a) *section 19 of the Adoption and Children Act 2002 (placing children with parental consent); or*
  - (b) *under a placement order made under section 21 of that Act.*
- (10) The local authority may determine—
- (a) the terms of any arrangements they make under subsection (2) or (9B) in relation to C (including terms as to payment); and
  - (b) the terms on which they place C with a local authority foster parent (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).

- (11) The appropriate national authority may make regulations for, and in connection with, the purposes of this section.
- (12) In this Act “local authority foster parent” means a person who is approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2.