

Children and Adoption Bill [HL]

3.19 pm

The Parliamentary Under-Secretary of State, Department for Education and Skills (Lord Adonis): My Lords, I beg to move that this Bill be now read a second time.

Although promoted by the Department for Education and Skills, most of the Bill in fact relates to the courts, so I am grateful to have the assistance of my noble friend Lady Ashton, especially for Part 1.

The Bill is about better serving the needs of children. Part 1 promotes improved arrangements to facilitate contact with children—for example, following parental separation. Part 2 promotes further protection for children who are or might be subject to inter-country adoption requests. Those are highly sensitive matters, and the Government are glad that they have already received your Lordships' close attention through the valuable work of the Joint Committee on the draft Bill,

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chaired by my soon-to-be noble friend Clive Soley. We are grateful for the work of the Joint Committee and have taken on board a number of its key recommendations in the Bill.

Of today's 12 million children, perhaps 3 million will experience the separation of their parents at some point during their childhood. Although many parents separate amicably and handle the subsequent parenting arrangements well, we know that all too often conflict arising from separation can have terrible consequences for children. About 90 per cent of separating parents make provision for bringing up their children, including contact arrangements, without recourse to the courts. It is of course best for such arrangements to be made consensually, and we are giving additional support to encourage that outcome, including better information, specialist legal assistance and mediation services. However, about one in 10 cases goes to the courts for resolution of matters including the arrangements for contact between the parties and children. The Bill gives the courts a wider and more effective range of options to deal with those situations.

The principle guiding our policy is simple: the interests of children come first. The Bill extends the Children Act 1989, enacted under the previous government, which states in its opening words that,

"when a court determines any question with respect to . . . the upbringing of a child . . . the child's welfare shall be the court's paramount consideration".

The provisions of the Bill on the facilitation of contact and the enforcement of contact orders have their origins in recommendations of the judiciary. Four years ago, the Children Act sub-committee of the Lord Chancellor's advisory body on family law, chaired by Lord Justice Wall, examined the problems faced by the family courts in resolving disputes about contact with children after parental separation. Lord Justice Wall's report highlighted, first, the inadequate powers available to the courts in resolving disputes about contact, and, secondly, the inadequate powers of the courts to enforce contact orders, once made, when they are not observed by one of the parties.

Although the courts may hold the offending parent in contempt for breaching a contact order, that can lead only to a fine or imprisonment. Since those penalties often damage the child directly, and often substantially, the courts are rightly reluctant to impose them. As Lord Justice

Wall's report put it,

"fines and committal are not only crude methods of enforcement; they are wholly inadequate as a means of addressing the problem of contact orders which have not been implemented . . . [and there must be] legislation widening the powers of the courts to enable them, in addition to imposing fines or ordering imprisonment, to make a whole range of orders designed to meet the circumstances of the individual case".

That is precisely the objective that the Bill seeks to attain. It does so by implementing many of the specific recommendations made by Lord Justice Wall to give the courts more flexible powers, including powers to

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refer parents to appropriate classes, programmes or counselling and powers to impose community-based penalties to enforce contact orders once made.

Clause 1 allows courts to make contact activity directions even before a contact order has been made. Contact activities can include parenting classes, programmes, counselling and information sessions on mediation, the last of which was recommended by the Joint Committee on the draft Bill. Clause 1 would also allow the courts to direct parties to attend a domestic violence perpetrator programme in cases where the safety of one of the parties or the child is at issue. Domestic violence is a serious issue in a significant proportion of contact disputes, and the Bill gives the courts additional means to address it. The option to require people to undertake contact activities would also be available to courts later in proceedings and may be required as a condition attached to a contact order.

On contact activities, let me deal with the issue of family resolution pilots, since, if I may say so, they have been intemperately cited, in advance of any evaluation, by the shadow Children's Minister in the other place as a "complete and utter disaster", which makes the Bill a "complete and utter farce" and dooms it to failure.

Let me be clear that the Bill ranges far wider—perhaps I should say "completely and utterly wider"—than the specially designed information, guidance and counselling sessions that form part of the family resolution pilots. The provisions on the enforcement of contact orders and on inter-country adoptions have no relation whatever to the pilots; and even in respect of contact activities, the range of activities made available under the Bill—for example, domestic violence perpetrator programmes—go far beyond the scope of the pilots.

In respect of the pilots specifically, it is true that the numbers going through the pilot activities in the three courts concerned have been small, significantly smaller than envisaged in the design of the pilots. Yet, it is certainly not the case that the judges and magistrates in those three courts regard the new information, guidance and counselling sessions as failing. On the contrary, having met Judge Nick Crichton, the district judge at the Inner London Family Proceedings Court, the main family court serving London, who deals with difficult cases day in and day out, I can report to your Lordships that he believes the new options included in the pilots to be extremely valuable. They concentrate the minds of parents much more effectively on the needs of their children in making contact arrangements, rather than on a legal battle to be won or lost.

Furthermore—this is a crucial point in relation to the Bill—Judge Crichton told me that a major problem with the pilots was precisely the fact that the family courts did not have the power to require parents to undergo such contact activities when they believed that it would be in the best interests of parents and children to do so; and that without the power of compulsion in the Bill, it would continue to be difficult to persuade many couples who are in a state of bitter

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tension and dispute to undertake sessions that could help them address the needs of their children more effectively than through a protracted legal battle. I submit that such views from judges and magistrates on the front line demand respect. I am sure that they will receive it from this House.

Clause 4 provides the community-based enforcement powers that Lord Justice Wall recommended. Where a contact order is breached, courts will be able to impose an enforcement order requiring the party in breach to undertake unpaid work. The orders will be administered through the Home Office's existing arrangements for community penalties, giving the courts a wider range of enforcement powers that can be imposed without punitive fines or depriving children of their parent's care for days at a time.

Clause 5 will also allow courts to make orders requiring financial compensation to be paid by one party to another where the breach of an order results in financial loss, such as the cost of a holiday that has already been paid for.

Following the recommendations of the Joint Committee, Clause 6 reforms family assistance orders. We have not gone so far as to remove the requirement that people consent to those orders being made, as suggested by the Joint Committee. Clause 2, however, allows the courts to require the Children and Family Court Advisory and Support Service to monitor compliance with contact orders, a process that will not require consent.

The Government appreciate that there are those who believe that the contact provisions in the Bill should be framed differently. As I said at the outset, the Bill remains founded on the principle underlying the Children Act 1989, passed under the previous government, that the interests of the child should be paramount when determining a question relating to the child's upbringing. The Bill does not direct that presumption of a particular contact arrangement should weigh against what would otherwise be the court's judgment on the best interests of the child.

As the House knows, there are those who propose that such a provision should apply in respect of contact with both parents, but that is not a position that the Government believe it right to impose. Contact with both parents is, of course, generally the outcome of contact proceedings. We fully support the position established in case law that children normally benefit from a meaningful relationship with both parents following separation, so long as it is safe and in their best interests for that to happen, but each situation is unique, and we do not believe it right to restrict the ability of the courts to make an unfettered judgment about the best interests of the child on the facts of each case. In that respect, we agree wholeheartedly with Fathers Direct, a leading fathers group. In its response to the consultation on the Green Paper which led to the Bill, it said:

"The problem is not the law. It is that the implementation of the current law is not bringing about the intended outcome, namely, the best interests of the child. . . . The problem of how we support families in separation is far more complex and diverse than can be solved by one dramatic gesture".

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Part 2 of the Bill deals with inter-country adoption, which affects comparatively few people in this country—there being around only 300 cases each year where children are adopted from abroad. For those children, it is a fundamental life change, and it is our duty to ensure that the process is as safe, compassionate and efficient as possible.

Our legal system already provides fully for the welfare of adopted children once in this country, and noble Lords recently improved the position through the Adoption and Children Act 2002. However, in the past we have not given such attention to the procedures applying in respect of children adopted from abroad before they are brought into this country. Clauses 8 to 11 address that. They provide a statutory power for the temporary suspension of adoptions from a specified country that may be invoked where the Secretary of State has concerns about the adoption system in that country. The power is likely to be used only rarely in response to serious concerns such as evidence of child trafficking or of parents being paid or coerced to give up their children for adoption.

As the House knows, though such cases are rare, it is not a hypothetical concern. Last year, the Government felt obliged to impose such a suspension using the Crown's discretionary common law powers in response to acute concerns about the adoption process in Cambodia. That decision is currently a matter of legal proceedings, so I will not elaborate on it much now. Suffice it to say that similar situations could well recur, and we believe that it is better for the framework for the suspension of inter-country adoptions to be made explicit in primary legislation rather than requiring prerogative powers.

Clauses 8 to 11 extend to England, Wales and Northern Ireland. Inter-country adoption is a devolved matter, and we understand that Scottish Ministers plan to include provisions relating to inter-country adoption in Scottish legislation in due course.

The provisions in the clauses are intended to protect the welfare of the children involved, not to penalise prospective adopters or to impose general restrictions that fail to meet the needs of particular children. That is why we have made provision in Clause 10 for cases to be allowed to proceed in spite of any suspension at the discretion of the Secretary of State or appropriate devolved authority.

Clause 12 allows the Secretary of State to charge an appropriate fee for the processing of inter-country adoption applications. Prospective adopters are receiving a direct and personal benefit from that service, and we believe it reasonable for adopters to contribute to the administrative cost of their case where they are able to make such a contribution. However, the clause also gives the Secretary of State power to reduce or waive the fee, and we intend those powers to apply in particular to adopters from lower income households. I am aware that concerns have been raised about the provision by the British Association for Adoption and Fostering and others. I have written to them to explain in more detail how the system will operate, and I will place copies of that letter in the Library of the House.

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Two final measures in the Bill relate to inter-country adoption. Clause 13 amends Section 83 of the Adoption and Children Act 2002 to make it harder to circumvent restrictions on bringing children into the UK. Section 83 of the 2002 Act states that, where the external adoption order was effected less than six months before the child is brought into the UK, the adopter must meet certain conditions, such as being assessed and approved by an adoption agency. In some cases, the restrictions are being circumvented by UK residents adopting children and then leaving them in the care of a person in the other country until six months has passed, to avoid meeting the conditions. The Bill discourages people from circumventing the restrictions by extending the time limit in such cases from six months to 12.

Clause 13 clarifies that a child brought into the UK for adoption is not also classified in law as a privately fostered child. That prevents an overlap of functions for local authorities, who otherwise might find themselves subject to two different sets of duties in respect of the same child.

In conclusion, I repeat that the Bill is largely inspired by the judiciary, based on its everyday experience in seeking to resolve difficult, often traumatic separation disputes and to promote the interests of the children concerned. Lord Justice Wall and his committee described the current arrangements for resolving contact disputes and enforcing contact orders as,

"seriously deficient and, in our judgment, the system needs urgent and radical change".

That was also the judgment of the Joint Committee that examined the Bill and is one that the Government share.

Although the Bill will not of course settle all contact disputes, it will resolve more of them better and faster to the benefit of all concerned and, first and foremost, to the advantage of the children involved. If it achieves that objective, it will be one of the best endeavours of this new Parliament. I commend the Bill to the House.

Moved, That the Bill be now read a second time.—(*Lord Adonis.*)

3.35 pm