



Northern Ireland
Assembly

Research and Information Service Bill Paper

25 February 2015

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The Children's Services Co-operation Bill

NIAR 183-15

The Children's Services Co-operation Bill was introduced to the Assembly by Mr Steven Agnew, MLA on 8 December 2014. The Bill amends the Children (NI) Order 1995. It requires NI departments to co-operate with each other to contribute to the achievement of specified outcomes relating to the well-being of children and young people. It creates a duty for all key agencies to cooperate in the planning, commissioning and delivery of children's services. The Bill also creates an enabling power to allow departments to pool budgets for crosscutting children's issues

Key Points

- The Children's Services Co-operation Bill was introduced to the Assembly by Mr Steven Agnew, MLA on 8 December 2014.
- The Bill amends the Children (NI) Order 1995¹. It requires NI departments to co-operate with each other to contribute to the achievement of specified outcomes relating to the well-being of children and young people. It creates a duty for all key agencies to cooperate in the planning, commissioning and delivery of children's services. The Bill also creates an enabling power to allow departments to pool budgets for crosscutting children's issues.
- The extent of joined up working at central government level in NI was identified as the main barrier to effective government delivery for children in research published by the Children's Commissioner in 2011.
- The Bill consists of five clauses. The 6 specified outcomes listed in clause 1 are:
 - *Being healthy,*
 - *Enjoying learning and achieving,*
 - *Living in safety and with stability,*
 - *Experiencing economic and environmental well-being,*
 - *Contributing positively to community and society, and*
 - *Living in a society which respects their rights*
- Clause 2 proposes a requirement to report on the progress of the departments towards achieving the specified outcomes every three years.
- Clause 3 is an enabling power which will permit NI departments to establish pooled budgets and share resources to achieve the six outcomes outlined in clause 1.
- Clause 4 amends the Children (NI) Order 1995. The Health and Social Care Board is required to review and publish a children and young people's plan setting out how the relevant public bodies will co-operate with one another in planning, commissioning and delivering children's services, and what actions will be taken on a shared basis. There is a requirement to set targets to assess the effectiveness of co-operation. The plan is to be reviewed or modified at least every three years. The Board is to consult the relevant public bodies on the plan. The relevant public bodies are required to co-operate in its preparation, review, and implementation. The Board is to monitor and report on the implementation of the plan.
- The Bill's Second Stage debate was held on 26 January 2015. Responding on behalf of the Executive Junior Minister Bell expressed support for the general principles and the policy intent of the Bill. He added however that significant revisions and amendments would be put forward, particularly with respect to clause 4.

¹ <http://www.legislation.gov.uk/nisi/1995/755/contents/made>

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1 Introduction

The Children's Services Co-operation Bill

The Children's Services Co-operation Bill² was introduced to the Assembly by Mr Steven Agnew, MLA on 8 December 2014 and passed its Second Stage on 26 January 2015.

The Bill amends the Children (Northern Ireland) Order 1995³. It requires Northern Ireland departments to co-operate with each other to contribute to the achievement of specified outcomes relating to the well-being of children and young people. It creates a duty for all key agencies to cooperate in the planning, commissioning and delivery of children's services. The Bill also creates an enabling power to allow departments to pool budgets for crosscutting children's issues.

Mr Agnew outlined the background to the Bill at the Second Stage Debate in the Assembly. A key influence he said was discussion within the children's sector around the failure of the Ten Years Strategy for Children and Young People to lead to the desired outcomes. The main reason for this was judged to be a lack of joined-up working between departments.

Co-operation in other UK jurisdictions

Similar legislation was introduced in **England** in 2004. The Laming Report in 2003 identified that a lack of co-operation was a factor that contributed to the failure of Government in their duties towards Victoria Climbié⁴. It recommended a fundamental change in the way that services to support children and families are organised and managed. The Children Act of 2004⁵ gave legal force to 5 key outcomes for children and young people expressed in England's *Every Child Matters* policy framework. Section 10 placed a duty on local authorities in England to make arrangements to promote co-operation between statutory agencies and other bodies (e.g. voluntary and community and private sectors).

Five key outcomes for improving the wellbeing of children in **Wales** from conception to adulthood are set out in section 25(2) of the Children Act 2004. The Act placed a duty on all local authorities in Wales to make arrangements to promote co-operation with a view to improving the well-being of children in their area, in relation to the five key outcomes.

The Children and Young People (Scotland) Act 2014⁶ requires local authorities and health boards in **Scotland** to develop joint children's services plans in co-operation with a range of other service providers every three years and to report on progress every year.

² <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/private-members-bills/session-2014-15/childrens-services---as-introduced---08-12-14.pdf>

³ <http://www.legislation.gov.uk/nisi/1995/755/contents/made>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273183/5730.pdf

⁵ <http://www.legislation.gov.uk/ukpga/2004/31/contents>

⁶ <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

Consultation

A twelve week consultation was held in 2012. The consultation document was issued to approximately 200 organisations and all Assembly Members and Northern Ireland MPs. A total of 27 responses were submitted. There was unanimity in the responses that the proposed duty to co-operate would increase co-operation. Respondents agreed strongly that children's services currently suffered from a lack of collaboration within government. Respondents varied in their views on the reporting mechanism. Strong support was expressed for an enabling power to pool budgets.

Committee for OFMdfM briefings

The Bill's sponsor Mr Agnew briefed the Committee for OFMdfM on 22 February 2012, 29 January 2014⁷ and 14 January 2015⁸. The main issues raised by Members included:

- Engagement with and feedback from departments, NICCY and NGOs.
- Increase in bureaucracy and duplication in reporting.
- Powers conferred on Health and Social Care Board.
- Finance and resourcing.
- Examples from other jurisdictions – impact of duty to cooperate.
- How pooling budgets would work.
- Implications for the CYSPPS.
- The specified outcomes and the children's strategy.
- The need for legislation to achieve cooperation.

Officials from OFMdfM briefed the Committee on 14 January 2015⁹. Points made by the Officials included:

- The department strongly agrees with the principles of the Bill.
- The Bill will strengthen the new children and young people's strategy.
- The Bill may need significant amendments and a restructuring.
- Extent of consultation and engagement with the Health and Social Care Board.
- As yet, there has been no assessment of the funding and resource costs to the department.

⁷ http://www.niassembly.gov.uk/globalassets/documents/official-reports/ofmdfm/2013-2014/140129_draftchildrenservicesco-operationbillmrstevenagnewmla.pdf

⁸ <http://data.niassembly.gov.uk/HansardXml/committee-11323.pdf>

⁹ <http://data.niassembly.gov.uk/HansardXml/committee-11324.pdf>

- Clarity on the reporting procedures is needed.

Second Stage Debate

The Bill's Second Stage debate¹⁰ was held on 26 January 2015. Responding on behalf of the Executive, Junior Minister Bell expressed support for the general principles and the policy intent of the Bill. He added however that significant revisions and amendments would be put forward, particularly with respect to clause 4 to "ensure the cooperation happens in both policy and operation."

Children's Services Co-operation Bill: Committee Stage

The Committee for OFMdfM issued a written call for evidence in order to assist it with the scrutiny of the Bill. The consultation closed on 24 February 2015. The Bill's Committee Stage commenced on 27 January and the first oral evidence session will be held on the 4 March.

2 Content of the Bill

The Bill consists of five clauses. The Explanatory and Financial Memorandum¹¹ provides a commentary on each of the clauses:

Clause 1 General duty

Clause 1 creates a new two-fold duty on the Northern Ireland departments:

- *To work towards the achievement of 6 specified outcomes relating to the well-being of children and young people and,*
- *To co-operate with one another in order to further the achievement of those objectives*

The objectives are consistent with those listed in the Children's Strategy and clause 1(4) allows the Office of the First Minister and deputy First Minister (OFMdfM) to modify the objectives by means of subordinate legislation which would have to be approved by the Assembly.

The 6 specified outcomes listed in the Children's Strategy¹² are:

- *Being healthy,*
- *Enjoying learning and achieving,*
- *Living in safety and with stability,*
- *Experiencing economic and environmental well-being,*

¹⁰ <http://data.niassembly.gov.uk/HansardXml/plenary-26-01-2015.pdf>

¹¹ <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/private-members-bills/session-2014-15/childrens-services-efm---as-introduced---08-12-14.pdf>

¹² OFMdfM *Our Children and young People – Our Pledge A ten year strategy for children and young people in Northern Ireland 2006-2016* <http://www.ofmdfmi.gov.uk/ten-year-strategy.pdf>

- *Contributing positively to community and society, and*
- *Living in a society which respects their rights.*

The Children's Strategy pledges:

*..a coordinated approach across government departments, and the wider public sector, to the development of policies which impact on the lives of children and young people.*¹³

The extent of joined up working at central government level was identified however as the main barrier to effective government delivery for children in research published by the Children's Commissioner in 2011.¹⁴ Although it found some evidence of good practice in collaboration at intra-agency level in relation to children's services planning the report concluded:

*As the first overarching and cross-departmental attempt to meeting the rights and needs of all children and young people in Northern Ireland, the Ten Year Children and Young People's Strategy brought with it high expectations of a much needed joined up and coordinated approach to government delivery for children. Such expectations have, however, been replaced with profound disappointment. Concerns expressed by NICCY and NGOs, during the call for comments on the Strategy's 2008-2011 action plan, at the 'silo' mentality of some individual departments and at the inability of the Children and Young People's Unit to compel other departments to undertake specific actions under the Ten Year Strategy, have not been addressed... As such, there is anxiety that the Ten Year Strategy has become something of a 'dust-gatherer' in the absence of effective and/or compulsory collaboration.*¹⁵

Clause 2 Co-operation report

- *Clause 2 requires OFMdfM to publish periodically a report on the progress of the departments towards achieving the specified outcomes; the extent to which they have co-operated with one another as required under clause 1; any efficiency achieved through co-operation and any opportunities identified for further co-operation.*
- *The other departments are required to co-operate with OFMdfM in preparing the report and OFMdfM must lay a copy of the report before the Assembly as soon as is practicable after publication.*

The Bill proposes a requirement to report on the progress of the departments towards achieving the specified outcomes every three years. Since 2011 progress on achieving the Children's Strategy's 6 outcomes has been monitored and reported on by the Children and

¹³ Ibid page 15

¹⁴ NICCY *Barriers to Effective Government Delivery for Children* November 2011
[http://www.niccy.org/uploaded_docs/2011/Publications/QUB%20Barriers%20Report%20-%203%20Nov%2011%20\(body%20pages\).pdf](http://www.niccy.org/uploaded_docs/2011/Publications/QUB%20Barriers%20Report%20-%203%20Nov%2011%20(body%20pages).pdf)

¹⁵ Ibid page 32

Young People's Strategic Partnership (CYSPS) at NI, local government district and Outcomes Groups level¹⁶.

In a briefing to the Committee for OFMdFM on the draft Bill Departmental officials acknowledged that monitoring progress on the specified outcomes is already taking place and anticipated that any potential for duplication in reporting arising from the Bill could be avoided through an amendment allowing incorporation with information currently gathered by departments on child poverty and the UNCRC:

*If the strategic objectives or outcomes set out in the Bill remain the same, I can say that we are already reporting on the progress that is being made on all of those. As I said, we are already reporting on the UNCRC, so I hope that our amendments would try to bring all of those together, rather than having another layer of reporting that we would have to do.*¹⁷

Clause 3 Sharing resources and pooling funds

Clause 3 is an enabling power which will permit Northern Ireland departments to establish pooled budgets and share resources to achieve the six outcomes outlined in clause 1.

The previously cited research commissioned by the Children's Commissioner examined the resourcing of strategies, policies and actions for children and young people. The authors found that the infrastructure of the current funding system is viewed by stakeholders¹⁸ as undermining cross-departmental working. They stated:

*The issue of joined up working across government is exacerbated by funding structures which do not encourage or facilitate opportunities for pooled funding for cross-cutting children's issues. Thus, individual departments are responsible for determining expenditure on particular aspects of children's issues in accordance with departmental priorities, leading to a situation where elements of particular strategies may be resourced by some departments but not others*¹⁹.

The research report recommended that government develop a mechanism to enhance opportunities for pooled funding between departments on crosscutting children's issues. The Explanatory Memorandum to the Bill states that:

¹⁶ <http://www.cypsp.org/publications/>

¹⁷ <http://data.niassembly.gov.uk/HansardXml/committee-11324.pdf>

¹⁸ Interviews with representatives from voluntary, statutory and government agencies
NICCY *Barriers to Effective Government Delivery for Children* November 2011
[http://www.niccy.org/uploaded_docs/2011/Publications/QUB%20Barriers%20Report%20-%203%20Nov%2011%20\(body%20pages\).pdf](http://www.niccy.org/uploaded_docs/2011/Publications/QUB%20Barriers%20Report%20-%203%20Nov%2011%20(body%20pages).pdf)

¹⁹ NICCY *Barriers to Effective Government Delivery for Children* November 2011
[http://www.niccy.org/uploaded_docs/2011/Publications/QUB%20Barriers%20Report%20-%203%20Nov%2011%20\(body%20pages\).pdf](http://www.niccy.org/uploaded_docs/2011/Publications/QUB%20Barriers%20Report%20-%203%20Nov%2011%20(body%20pages).pdf)

The purpose of this bill is to improve the efficiency and effectiveness of children's services. The intention is that greater levels of cooperation would improve efficiency and enable public bodies to provide enhanced outputs with a given level of expenditure... It is anticipated that after an initial transition period the effect of the Bill would be to save costs through greater administrative efficiency.²⁰

Clause 4 Amendment of the Children (Northern Ireland) Order 1995

Clause 4 amends the Children (Northern Ireland) Order 1995 substituting the existing paragraph 2A of Schedule with a more detailed provision.

- *The newly inserted paragraph 2A(1) replaces the current duty on the Regional Health and Social Care Board ("the Regional Board") to review and publish a children's plan with the requirement to review and publish a children and young people's plan.*
- *2A(2) requires that the plan set out how the relevant public bodies will co-operate with one another in planning, commissioning and delivering children's services, what actions will be taken on a shared basis and a requirement to set targets to assess the effectiveness of co-operation. This sub-paragraph also links the plan to the specified outcomes.*
- *2A(3) sets out that the plan will be reviewed or modified at least every three years.*
- *Sub-paragraphs (4)-(6) require the Regional Board to consult the relevant public bodies on the plan.*
- *Sub-paragraph (7) provides a list of organisations currently represented on the Children and Young People's Strategic Partnership who, for the purposes of this Bill, are to be regarded as relevant public bodies.*
- *Sub-paragraph (8) establishes a duty on the relevant public bodies to co-operate to prepare, review, implement and report on the children and young people's plan.*
- *Sub-paragraphs (9) and (10) require the Regional Board to monitor the implementation of the plan and provide information on its implementation when requested.*
- *Sub-paragraphs (13) and (14) require the Regional Board to prepare a report on the implementation of the plan and how the plan and co-operation can be improved.*

Children's services planning is already a statutory responsibility in Northern Ireland. It is a statutory duty of the Health and Social Care Board within the Department for Health²¹. This

²⁰ page 6 *Children's Services Co-operation Bill Explanatory and Financial Memorandum*. Refers to the Bill as introduced on 8 December 2014

<http://www.niassembly.gov.uk/assembly-business/legislation/current-non-executive-bill-proposals/childrens-services-co-operation-bill-as-introduced/childrens-services-co-operation-bill-as-introduced-efm/>

²¹ The Children (1995 Order) (Amendment) (Children's Services Planning) Order (Northern Ireland) 1998 introduced children's services plans in NI. It placed a statutory duty on the precursor of the Health and Social Care Board (4 Health and Social Services Boards) to prepare and publish plans in respect of services identified in the Children (NI) Order 1995 Order.

duty is supported by the Children and Young People's Strategic Partnership (CYPSP) established by the Board in 2011. The Partnership is cross-sectional consisting of the leadership of all key agencies who have responsibility for improving outcomes for children and young people including health, social services, education, policing, housing as well as representatives from the voluntary and community sector. In accordance with the duty placed upon the Board, the CYPSP prepares a Children and Young People's Plan²² for NI setting out how integrated planning and commissioning arrangements will be put into place to secure improvements in the 6 high level outcomes for children and young people expressed in the Ten Year Strategy for Children and Young People²³). The legislation requires that the plan is reviewed annually²⁴. Outcome monitoring reports are published by the CYPSP at NI, local government district and Outcomes Groups level²⁵.

Clause 5 Definitions

- *This clause defines children and young people in accordance with the meaning prescribed in the Commissioner for Children and Young People (Northern Ireland) Order 2003 to ensure that this legislation mirrors existing legislative definitions of children and young people.*

In the Commissioner for Children and Young People (Northern Ireland) Order 2003²⁶ a child or young person is defined as a person under the age of 18 or under the age of 21 and disabled or care experienced.

3 Financial implications of the Bill

The Explanatory and Financial Memorandum²⁷ informs that the Bill will have cost implications for departments, the Regional Health and Social Care Board and the 'relevant public bodies' listed under clause 4. These costs:

...may include, but may not be limited to, transitional, implementation and running costs arising from the general duty to cooperate under clause 1, and the reporting requirement under clause 2: for example, administration, IT and staff training costs relative to the

²² CYPSP Northern Ireland Children and Young People's Plan 2011-2014

http://www.cypsp.org/wp-content/uploads/2015/02/cypsp_action_plan_2011-2014.pdf

²³ OFMdfM *Our Children and young People – Our Pledge A ten year strategy for children and young people in Northern Ireland 2006-2016* <http://www.ofmdfmi.gov.uk/ten-year-strategy.pdf>

²⁴ CYPSP NI Outcome Monitoring Report October 2014

http://www.cypsp.org/wp-content/uploads/2015/02/cypsp_northern_ireland_monitoring-2014.pdf

²⁵ <http://www.cypsp.org/publications/>

²⁶ <http://www.legislation.gov.uk/nisi/2003/439/article/3/made>

²⁷ *Children's Services Co-operation Bill Explanatory and Financial Memorandum* Refers to the Bill as introduced on 8 December 2014

<http://www.niassembly.gov.uk/assembly-business/legislation/current-non-executive-bill-proposals/childrens-services-co-operation-bill-as-introduced/childrens-services-co-operation-bill-as-introduced-efm/>

development, operation and delivery of new policies, procedures, guidance, as well as recording and reporting systems. Similarly, administration of the shared resources and pooling funds under clause 3 may have cost implications relating to administration, IT and staff training.

4 Human rights and equality considerations

The Explanatory and Financial Memorandum states that the Human Rights Commission and the Equality Commission did not raise any concerns in relation to the Bill's compliance with Human Rights or Equality law²⁸.

²⁸ Page 6 *Children's Services Co-operation Bill Explanatory and Financial Memorandum* Refers to the Bill as introduced on 8 December 2014

<http://www.niassembly.gov.uk/assembly-business/legislation/current-non-executive-bill-proposals/childrens-services-co-operation-bill-as-introduced/childrens-services-co-operation-bill-as-introduced-efm/>