



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

“Adopting the Future – A Consultation Document”

Comments by the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding ‘soft law’ standards developed by the human rights bodies. In the present consultation a particularly relevant standard is the UN Convention on the Rights of the Child (CRC).
2. The Commission broadly welcomes the proposed changes to the adoption system in Northern Ireland, as outlined in the current

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid.*, s.69(3).

³ *Ibid.*, s.69(4).

⁴ *Ibid.*, s.69(6).

consultation. In particular, it welcomes efforts to address long-standing concerns about the failings of the current system, which can adversely impact on children in care. The proposals also acknowledge the need for the new arrangements to be even more centred on the welfare of the child – this would be better expressed in terms of the CRC criterion of “the best interests of the child”.

3. For many children who are permanently deprived of their family environment, or who in their own best interests cannot be allowed to remain in that environment, adoption may be the best solution. However the reforms proposed in this area need to be accompanied by a continued effort to expand provision of short- and medium-term fostering to meet the needs of children temporarily deprived of their family.
4. The Commission supports the proposals to change the eligibility criteria for adopters to include persons who under the current system are not able to be considered to be adoptive parents. Changes in our society should be reflected in wider opportunities for adoptive parents living in stable relationships, regardless of their sexual orientation and the legal bond created by marriage or civil partnership. Such provision brings the system in line with principles of equality and human rights. A fair, objective and professional system of pre-adoption checks, with an independent mechanism for case review, as outlined in the consultation, has the potential to provide all those who wish to adopt with an equal opportunity of doing so, and also provides more choice of adoptive families for children who need them.
5. A particular problem in the present system is the requirement in certain circumstances for a birth parent to have to adopt his or her own child in order to secure parental rights for another person. Currently, for the step-parent in any relationship other than marriage to adopt their partner’s child, the birth parent must also apply to adopt their own offspring. The proposals under consultation would remove this requirement to disrupt the continuity of the natural relationship arising from birth and supplant it with the legal construct of adoptive parenthood. The Commission particularly welcomes that as satisfying the CRC obligations to respect the rights of parents in the fulfilment of the State’s responsibilities towards the child, and to refrain from arbitrary or unnecessary interventions that do not serve the

6. The independent audit of the Adoption (NI) Order 1987, referred to in the consultation document at paragraph 3.7 with its recommendations outlined in Appendix D, rightly identified the Convention on the Rights of the Child as the most important document outlining the principles of treatment of children, including in the adoption process. The provisions of the CRC should be central to the new system and the principles governing guidelines and practice by all professionals involved in the adoption process, as they address not only the rights of children but also the position of parents and the support and assistance that may be needed.
7. While the Commission agrees that the ultimate goal of the adoption process should be to secure a safe and stable family environment for a child in as short a period of time as possible after she or he has been taken into care, the requirements of expediency should not automatically override consideration of the rights of others – particularly of birth parents – in adoption proceedings. It is unfortunate that the consultation document appears in places to present human rights considerations as an obstacle to a speedy adoption process. While the Commission agrees that the concerns of adoption practitioners regarding challenges on the basis of human rights law to adoption proceedings and their impact on the welfare of children need to be taken carefully into consideration, the influence on the adoption process of human rights legislation should be seen as positive, rather than threatening expedition of the proceedings.
8. It is unavoidable that the interests of children and parents, and their respective rights, will on occasion come into conflict in adoption proceedings. Individual circumstances have to be examined on a case by case basis, with due consideration of and their review vis-à-vis human rights obligations which include, as a primary consideration, the principle of the best interests of the child.
9. The Commission would encourage the Department to look at what systematic solutions can be introduced that place human rights standards at the centre of the whole adoption process and limit the need for contested proceedings. Periodic review of cases where alleged human rights violations occurred, and

10. The Commission therefore welcomes the undertaking by the Department that training on the new policy and legislation will be made available to all professionals involved in the adoption processes. The Commission recommends inclusion in the training programs and guidelines of comprehensive material addressing human rights standards, stemming in particular from the UN Convention on the Rights of the Child and the Human Rights Act 1998.
11. Lastly, the Commission urges the Department to accept the recommendations of the independent audit of the 1987 Order, as outlined in Appendix D, in relation to compliance with human rights standards. In particular, the Department should ensure that the obligations arising under the CRC are complied with to the same degree as the Human Rights Act 1998 for the purposes of adoption law, and that relevant authorities be obliged to act in a manner compliant with the UN Convention.

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